

JUL 01 2009 MC

John A. Clarke, Executive Officer/ Clerk

By M. Cervantes, Deputy  
M. CERVANTES

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

Coordination Proceeding Special Title  
(Rule 1550(b))

Case No.: JCCP4505

**BEAR VALLEY SKI COMPANY  
PROMOTIONAL EVENT CASES**

**ORDER DENYING PLAINTIFF'S MOTION  
FOR CLASS CERTIFICATION**

Coordinated actions:

*Rava v. Anheuser-Busch, Inc.*  
Los Angeles County Superior Court  
Case No. BC312394

*Pizarro v. Anheuser-Busch, Inc.*  
Alpine County Superior Court  
Case No. C0602710

This case came on for hearing on June 18, 2009 in Department 309 of the above-entitled court, the Honorable Anthony J. Mohr, Judge presiding. The court having considered all documents, pleadings, and oral argument in support and in opposition of the petition and in good cause appearing therefor, issues this order.

Code of Civil Procedure section 382 authorizes class actions "when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court...." The party seeking certification has the burden to establish the

1 existence of both an ascertainable class and a well-defined community of interest among class members.  
2 *Lockheed Martin Corp. v. Sup. Ct.* (2003) 29 Cal.4<sup>th</sup> 1096, 1104 (citing *Washington Mutual Bank v. Sup.*  
3 *Ct.* (2001) 24 Cal.4<sup>th</sup> 906, 913). The “community of interest” requirement embodies three factors: (1)  
4 predominant common questions of law or fact; (2) class representatives with claims or defenses typical  
5 of the class; and (3) class representatives who can adequately represent the class. *Lockheed*, 29 Cal.4<sup>th</sup>  
6 at 1104.

7 The certification question is “essentially a procedural one that does not ask whether an action is  
8 legally or factually meritorious.” *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4<sup>th</sup> 429, 439-40. A trial court  
9 ruling on a certification motion determines “whether ... the issues which may be jointly tried, when  
10 compared with those requiring separate adjudication, are so numerous or substantial that the  
11 maintenance of a class action would be advantageous to the judicial process and to the litigants.” *Collins*  
12 *v. Rocha* (1972) 7 Cal.3d 232, 238.

13 **A. Whether an Ascertainable Class Exists**

14 In determining the existence of an ascertainable class, a court examines three factors: (1) the  
15 class definition; (2) the size of the class; and (3) the means of identifying the class members. *Miller v.*  
16 *Woods* (1983) 148 Cal. App.3d 862, 873.

17 **1. Class Definition**

18 The class is defined as “[a]ll males, who, at any time, paid for lift tickets for use at Bear Valley  
19 Mountain Resort on March 22, 2003.” While this definition is clear enough to put putative class  
20 members on notice that they may belong, it is overbroad because it includes all males, irrespective of  
21 age, who paid for lift tickets when the only males who potentially paid a lift ticket price different from  
22 women were males aged 21 and over. Therefore, the proposed class would confer a windfall on a group  
23 of males who paid exactly the same lift ticket price as women. Although Plaintiff could re-define the  
24 class to restrict it to all males over the age of 21, the issue is moot for reasons to be discussed in the  
25 section dealing with superiority, *infra*.

1 **2. The Size of the Class**

2 Plaintiff states that discovery to date has revealed that approximately 995 men paid for lift tickets  
3 on the day in question. Whether all 995 of them were over the age of 21 is unclear, but even if only one-  
4 fourth of them were, the numerosity requirement would be satisfied.

5 **3. The Means of Identifying Class Members**

6 The definition is such that class members can easily identify themselves.

7 The court finds that the class is ascertainable, with the exception that the class definition would  
8 have to be restricted to all males over the age of 21 years on the date of the event.

9 **B. Community of Interest**

10 **1. Whether Common Questions of Law or Fact Predominate**

11 In order to establish that common questions of law or fact predominate, the plaintiff must show  
12 that 1) "each member must not be required to individually litigate numerous and substantial questions to  
13 determine his [or her] right to recover following the class judgment." *Washington Mutual Bank FA v.*  
14 *Superior Court* (2001) 24 Cal.4<sup>th</sup> 906, 913. The plaintiff must also show that 2) "the issues which may  
15 be jointly tried, when compared with those requiring separate adjudication, must be sufficiently  
16 numerous and substantial to make the class action advantageous to the judicial process and to the  
17 litigants." *Id.* at 913-14.

18 On the first issue, Plaintiff argues that there would be no reason for the individual class members  
19 to litigate anything with respect to liability after the court issues class judgment because liability under  
20 the Unruh Act is essentially automatic for any business or public accommodation that "denies, aids or  
21 incites a denial, or makes any discrimination or distinction contrary [thereto]." Civ. Code § 52(a).  
22 Plaintiff believes that if he establishes discrimination the class members would have nothing else to  
23 prove, other than that they were males over the age of 21 who purchased a lift ticket that day.

24 On the second issue, Plaintiff argues that the predominant issue is whether Defendants engaged  
25 in discriminatory activity, and no individual issues of liability must be tried.

26 Bear Valley asserts that Unruh Act defendants must be permitted to investigate and assert all  
27 available equitable defenses that limit or reduce potential damages. *See Angelucci v. Century Supper*  
28 *Club* (2007) 41 Cal.4<sup>th</sup> 160, 179. *Angelucci*, however, was not a class certification case and had nothing

1 to do with whether common questions of fact and law predominated. Furthermore, the issue in  
2 *Angelucci* was to what extent damages could accrue for repeated unannounced visits by a male person to  
3 an establishment offering discounts to women. It was in this context that the court noted that “there may  
4 be equitable considerations” limiting damages. *Id.* The facts in the case at bar are decidedly different  
5 because the complaint hinges on a one day event, which means there are no concerns over repeat visits.  
6 Defendant’s reliance on *Angelucci* is misplaced.

7 Bear Valley next conflates the issues in two distinct cases to argue that individual issues  
8 regarding damages and liability predominate. In *Surrey v. Truebeginnings, Inc.* (2008) 168 Cal.App.4<sup>th</sup>  
9 414, 416 the court stated that “a bright-line rule [in Unruh Act cases is] that a person must tender the  
10 purchase price for a business’s services or products in order to have standing to sue for alleged  
11 discriminatory practices relating thereto.” The issue in that case was “whether someone who presents  
12 him or herself to a business with the intent of purchasing its services or products, but becomes aware of  
13 that business's practice of charging different amounts for such services or products based on gender and  
14 thereafter does not purchase those services or products, is aggrieved by that practice so as to have  
15 standing to sue for violations of the Unruh Civil Rights Act.” *Id.*

16 The facts in the case at bar differ from *Surrey*, since the class only includes those male patrons  
17 who actually purchased a ticket. *Surrey* did not address whether individual proof that the ticket had  
18 been purchased was an obstacle to a finding common questions of law and fact.

19 Bear Valley then turns to *Bartlett v. Hawaiian Village, Inc* (1978) 87 Cal.App.3d 435, 438, 438  
20 n.6, to argue that individual issues predominate where “each plaintiff [would] be required to litigate a  
21 number of distinct factual issues unique to his own claim” including such distinct facts as whether each  
22 individual “presented himself [for admission] ... [and] tendered the [purchase price].... Moreover, each  
23 must litigate his own actual damages beyond the statutory minimum.”

24 Defendant’s reliance on *Bartlett* is misplaced. The plaintiffs sought to maintain a class action on  
25 behalf of nine distinct subclasses against an establishment refusing them entry. *Id.* at 437. The  
26 subclasses included groups defined by unique characteristics, including those who were excluded  
27 because of their “(1) effeminacy, (2) association with effeminate men, (3) race, (4) overage, (5) physical  
28 handicap, (6) prior permanent exclusion, (7) failure to produce adequate identification, (8) other

1 arbitrary reasons, and (9) obesity.” *Id.* at 437 n.1. Individual issues predominated because members of  
2 particular subclasses would have had to prove on an individual basis that the establishment found them,  
3 in particular, to be too effeminate or too obese. They would also have to establish on an individual basis  
4 that there was no other good reason for their exclusion.

5 The facts are different here. One reason existed for the price differential between men and  
6 women that day: gender. The class members do not have to show on an individual basis that Defendant  
7 thought they were too manly to receive the free lift ticket. Whether an individual is a man or a woman is  
8 (usually) readily apparent. Furthermore, proof that class members tendered the purchase price is no  
9 obstacle to certification. If class members retained their lift ticket or have credit card records, they will  
10 have sufficient proof to submit a claim for recovery.

11 Plaintiff has shown that common questions of law and fact predominate over individual issues.

## 12 2. Typicality

13 Plaintiff argues that his claims are not only typical of the class, but identical. He is a male, just  
14 as the rest of the class is. He purchased a lift ticket, just as every other class member did. He paid the  
15 full purchase price, as opposed to receiving a free lift ticket, as the remainder of the class did.

16 Defendants counter that he is not typical because his “injuries” were self-generated. Defendants  
17 first rely on *Cohn v. Corinthian Colleges, Inc.* (2008) 169 Cal.App.4<sup>th</sup> 523, which noted that “[plaintiff],  
18 his friends, and his counsel have been involved in numerous of what have been characterized as “shake  
19 down” lawsuits. [Citation.] They proclaim themselves equal rights activists, yet repeatedly attempted  
20 to glean money from the Angels through the threat of suit.” However, *Corinthian Colleges* never  
21 discussed whether the plaintiff’s involvement in such “shakedown” suits made his claims atypical of  
22 other class members. In fact, *Corinthian Colleges* never discussed typicality at all. Therefore, the  
23 opinion provides no support for Defendants’ argument.

24 Defendants cite *Angelucci, supra*, to argue that “[w]ell-instructed professional plaintiffs” who  
25 purposefully patronize facilities to generate litigation are subject to equitable defenses such as the  
26 doctrines of unclean hands and “avoidable consequences.” 41 Cal.4<sup>th</sup> 179. *Angelucci* provides no  
27 support for Defendants’ position. First, the court’s discussion of “[w]ell-instructed professional  
28 plaintiffs” had to do with whether such plaintiffs knew that they had to actually “demand equal

1 treatment and secure a refusal,” which, as stated earlier, was the issue with which the court was  
2 confronted. *Id.* This is a standing issue, not one of typicality.

3 Defendants identify two equitable defenses, but do not explain how either of them might apply.  
4 The first is unclean hands, which the United States Supreme Court described thusly: “[e]quity’s maxim  
5 that a suitor who engaged in his own reprehensible conduct in the course of the transaction at issue must  
6 be denied equitable relief because of unclean hands.” *McKennon v. Nashville Banner Pub. Co.*, 513 U.S.  
7 352, 360 (1995). The only “reprehensible conduct” Defendants have identified is the fact that Plaintiff  
8 showed up to the ski lodge knowing that he was likely to be discriminated against. This does not rise to  
9 the level of unclean hands. If anything it suggests this was a test case which is a long-accepted tool in  
10 civil rights litigation.

11 The second equitable defense is avoidable consequences. Citing the Restatement Second of  
12 Torts, the California Supreme Court described this equitable defense as follows: “[O]ne injured by the  
13 tort of another is not entitled to recover damages for any harm that he could have avoided by the use of  
14 reasonable effort or expenditure after the commission of the tort.” *State Dept. of Health Services v.*  
15 *Superior Court* (2003) 31 Cal.4<sup>th</sup> 1026, 1042-43. The court went on to recognize that the doctrine  
16 applies to causes of action other than tort, but the point is that the avoidable consequences doctrine  
17 arises only after the commission of the tortious (or otherwise illegal) act as a means of mitigating  
18 damages. Defendants do not explain how Plaintiff could have lessened the damages he suffered after  
19 being discriminated against. Instead, they argue that his injury was self-generated, implying that he  
20 could have avoided being discriminated against by not showing up. This is not what the avoidable  
21 consequences doctrine addresses. Moreover, if such a defense covered civil rights litigation, very few  
22 such cases would survive because each defendant would argue that once a plaintiff knew that a person in  
23 his position would experience discrimination, the plaintiff should avoid the offending facility.

24 Defendants next argue that Rava’s claims are atypical because he alone is subject to challenge  
25 based on standing under the UCL. First, Defendants argue that a plaintiff who purchases a product  
26 solely for the purpose of establishing standing under the UCL suffers no injury in fact. *See Buckland v.*  
27 *Threshold Enterprises, Ltd.* (2007) 155 Cal.App.4<sup>th</sup> 798, 816-18. The facts in *Buckland* are  
28 distinguishable. In that case the plaintiff freely admitted that she purchased the product – hand cream –

1 for the sole purpose of establishing standing. *See id.* at 804-05. Although the circumstances strongly  
2 suggest that Plaintiff chose to ski at Bear Valley on the day in question in order to establish standing, the  
3 record also indicates that Plaintiff used the lift ticket he purchased and went skiing. Alfred G. Rava  
4 Decl. in support of Reply ¶ 22. Mr. Rava may have bought his ticket in part to create standing, but he  
5 also used it to ride the lift and ski.

6 Defendant ABI argues that Plaintiff's claims are atypical because there are questions as to  
7 whether he suffered "actual damages" under Civil Code section 52(a). This is essentially the same as  
8 the UCL argument, though it addresses damages instead of standing. It fails for the same reason.

9 Plaintiff has sufficiently shown that his claims are typical of the class.

10 **3. Adequacy of Representation**

11 To demonstrate adequacy of representation a plaintiff must show (1) that he has asserted all  
12 claims that reasonably could be expected to be raised by members of the class (*City of San Jose v.*  
13 *Superior Court* (1974) 12 Cal.3d 447, 464); (2) that he is not "simply lending his name to a suit  
14 controlled entirely by the class attorney" (*Howard Gunty Profit Sharing Plan v. Superior Court* (2001)  
15 88 Cal.App.4<sup>th</sup> 572, 578); and (3) that "the qualifications of counsel [are such that] all interests,  
16 including those of as yet unnamed plaintiffs are adequately represented (*Cal Pak Delivery, Inc. v. United*  
17 *Parcel Service, Inc.* (1997) 52 Cal.App.4<sup>th</sup> 1, 12).

18 Plaintiff has asserted claims under the Unruh Act, the Gender Tax Repeal Act, Civil Code  
19 section 51.5, the UCL, and the CLRA, as well as a common law tort claim for negligent hire,  
20 supervision, and retention. The complaint seeks actual damages, exemplary damages, restitution,  
21 disgorgement, injunctive relief, attorneys' fees and costs. This covers all the bases for claims that  
22 reasonably could be expected to be raised by members of the class.

23 It is likewise clear that Plaintiff is not a mere puppet for class counsel. Mr. Rava has been  
24 involved in these types of cases for a long time. Whatever his motives for suing so often, nobody can  
25 call him a mere front for his lawyers. On the last issue, adequacy of class counsel, counsel's resume  
26 demonstrates qualification to represent the class in this case.

27 Defendant ABI attacks the adequacy of Plaintiff's class representation, arguing that his long-  
28 standing relationships with class counsel present a conflict of interest between him and the rest of the

1 class. ABI presents evidence that Plaintiff has acted a co-counsel in the Pizzaro case with Joseph Grant  
2 of the Grant Law Firm, who is co-counsel in this case. *See* Ex. 4 (Pizzaro Depo. Transcript) at 3. Mr.  
3 Grant also worked at the law firm that gave Plaintiff his first job out of law school. Ex. 2 (Rava Depo.)  
4 at 14:15-16. In addition, co-counsel Gregory Cartwright has represented Plaintiff in at least 12 other  
5 lawsuits. *Id.* at 74:6-18.

6 Defendant's argument is premised entirely on *Apple Computer, Inc. v. Superior Court* (2005)  
7 126 Cal.App.4<sup>th</sup> 1253, in which the court disqualified two firms representing the plaintiff. Plaintiff  
8 worked as an attorney for the first firm (Westrup Klick). The court cited a long line of cases  
9 disqualifying an attorney from acting as class counsel where his own law firm represents the class. *See*  
10 *id.* at 1264-74. That discussion is not particularly germane to this case because Plaintiff is not an  
11 attorney in either of the two firms that represent the class.

12 The other firm representing counsel in *Apple* (Sigel) was disqualified because of the close  
13 business connection between it, the plaintiff, and the plaintiff's law firm. The court found that the  
14 interests of this second firm and the plaintiff were too intermingled.

15 [T]he interests of [plaintiff] and the Sigel firm reach beyond this case to the 13 other  
16 actions in which Westrup Klick and the Sigel firm serve or served as co-counsel; six are  
17 still active. Because Cagney, as an attorney at Westrup Klick, may benefit from  
18 attorneys' fees recovered in the other litigation, he is not sufficiently independent to serve  
19 as the class representative in this one. Here, in light of the financial relationship and  
20 interdependence between Cagney and the Sigel firm, Cagney may acquiesce in, rather  
21 than monitor, the firm's decisions, and the firm may benefit from the situation by seeking  
22 to maximize its recovery of attorneys' fees.

21 *Id.* at 1276-77.

22 The question here is whether Plaintiff's long-standing relationship with Mr. Grant and the  
23 Cartwright firm raise similar concerns. Unlike in *Apple*, Defendant has presented evidence of only one  
24 case in which Plaintiff served as co-counsel with Mr. Grant. Given the fact that Mr. Grant is not  
25 licensed to practice law in California and is only appearing pro hac vice, the opportunities for Plaintiff  
26 and Mr. Grant to work together in the future (at least in California) are limited.

27 As for the Cartwright firm, there is an important factual distinction between this case and *Apple*.  
28 In *Apple*, the problem was that the Sigel firm had been co-counsel with the plaintiff's law firm in at least

1 thirteen other actions. Because the plaintiff worked for a law firm that had such close ties with the Sigel  
2 law firm there was the potential that he might benefit from attorneys' fees recovered in the other  
3 litigation. *Id.* at 1276. Therefore, the court found that he was “not sufficiently independent to serve as  
4 the class representative.” *Id.* at 1277.

5 In the case at bar, Defendant emphasizes the fact that Plaintiff has been represented by the  
6 Cartwright firm in at least twelve other cases. This differs from serving as co-counsel. Attorneys  
7 serving as co-counsel have a shared interest in maximizing their fees. This necessarily puts them at odds  
8 with the class, which has a shared interest in maximizing class recovery. There is no such inherent  
9 conflict between an attorney and his repeat client. Defendant argues that Plaintiff has an interest in  
10 continuing his “business” relationship with class counsel, but in reality, Plaintiff could likely do just as  
11 well with someone else representing him. There is nothing inherently special about the relationship  
12 between Plaintiff and his counsel that gives rise to a conflict of interest between Plaintiff and the rest of  
13 the class.

14 Plaintiff has sufficiently demonstrated that he and class counsel are adequate representatives of  
15 the class.

### 16 C. Superiority

17 “[B]ecause group action has the potential to create injustice, trial courts are required to carefully  
18 weigh respective benefits and burdens and to allow maintenance of the class action only where  
19 substantial benefits accrue both to litigants and the courts. [Citations]” *Linder v. Thrifty Oil* (200) 23  
20 Cal.4<sup>th</sup> 429, 435. The class device must be “superior to, and not just a good as, other available methods  
21 for handling the controversy, and such a determination lies in an area where the trial court’s discretion is  
22 paramount.” *Rutledge v. Electric Hose & Rubber Co.*, 511 F.2d 668, 673 (9<sup>th</sup> Cir. 1975) (*cited with*  
23 *approval in Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d 381, 394).

24 Defendants attack the superiority of the class device almost exclusively on the basis of *Reese v.*  
25 *Wal-Mart Stores, Inc.* (1999) 73 Cal.App.4<sup>th</sup> 1225. In that case the appellate court validated the trial  
26 court’s conclusion that class treatment was not a superior. The trial court’s reasoning is convincing with  
27 respect to the case at bar.

1 (1) “individual claims were viable without class treatment.” *Id.* at 1229.

2 In *Reese*, the trial court observed that “denial of class treatment would not burden potential class  
3 members since there were ... ‘enough incentives built into the statute [the Unruh Civil Rights Act] that  
4 any person who truly feels aggrieved by defendant's Ladies Day practice will file suit.’” *Id.* at 1235.  
5 The appellate court held that this was a relevant consideration in assessing whether class treatment  
6 would bring substantial benefits, “[s]ince one important function of class actions is to provide ‘small  
7 claimants with a method of obtaining redress for claims which would otherwise be too small to warrant  
8 individual litigation’ [Citations.]” *Id.*

9 In the case at bar, the built-in incentives are even greater than they were in *Reese*. Now the  
10 Unruh Act authorizes a statutory penalty of \$4,000, which is four times greater than when *Reese* was  
11 decided. Civil Code § 52; *Reese*, 73 Cal.App.4<sup>th</sup> at 1238. Furthermore, an examination of the legislative  
12 history of the Unruh Act reveals that the purpose of the statutory penalty is to encourage individual suits.

13 In 2001 the penalty for violating the Unruh Act was increased to \$4,000, just below the then  
14 jurisdictional limit of the Small Claims Court. The legislature’s goal was to incentivize victims of  
15 discrimination. As stated by the senate judicial committee:

16 Raising the minimum penalty at a level that is still below the threshold for small claims  
17 court actions makes it more likely that claims will be followed [sic] and that violators  
18 will be unwilling to incur these costs as absorbable business costs.... [¶] The rationale  
19 given for raising the minimum penalty to \$4,000, as opposed to a higher amount, is that  
20 these claims are usually pursued by victims in small claims court, which has a  
21 jurisdictional limit of \$5,000. Further, the amount will ensure that the small business  
(who is usually the violator) is not put out of business by the commission of one  
22 violation.”

22 Req. for Judicial Notice, Ex. B (Senate Judiciary Committee, Report on Assembly Bill No. 587  
23 (2001-2002 Reg. Sess.) July 3, 2001).

24 This legislative history points to another reason class treatment is not superior. Under Civil  
25 Code section 52, the court has no discretion to award statutory penalties in an amount any less than  
26 \$4,000. Note the use of the word “minimum” in the report: “...raising the minimum penalty to  
27 \$4,000...” (*Id.*, emphasis added) Assuming Plaintiff succeeds on the merits, Bear Valley Ski Resort  
28 would be liable for mandatory statutory penalties of \$4,000 x 995 putative class members. The product

1 of \$3,980,000 constitutes a draconian sum that would strip Bear Valley of its assets. Bear Valley Ski  
2 Resort is the precise kind of entity the legislature intended to at once punish and protect: punish by  
3 making it uneconomical to discriminate and economical for plaintiffs to sue, and protect by preventing  
4 plaintiffs from being able to demolish the business on account of one violation. To be sure, Plaintiff has  
5 alleged 995 violations, one for each class member, but they all arise from a single event. Allowing class  
6 treatment in this situation will frustrate the stated legislative purpose of protecting businesses. This  
7 legislative history does not support a finding that class treatment is superior in a case such as Mr.  
8 Rava's.

9 Furthermore, the 2001 increase in statutory penalties occurred after *Reese* was decided. The  
10 legislature could have responded to *Reese* by making it easier for plaintiffs to certify a class. Instead,  
11 the legislature responded by providing further incentives for individual plaintiffs to pursue claims.

12  
13 **(2) “multiple lawsuits were unlikely in light of the fact that the only aggrieved party who**  
14 **had brought suit (plaintiff) had deliberately generated his own injury...” *Reese*, 73**  
15 **Cal.App.4<sup>th</sup> at 1229.**

16 The trial court noted that in the four-year period between the acts alleged in the complaint and  
17 the time certification was denied, not a single other plaintiff came forward to complain of the alleged  
18 Unruh Act violations. *Id.* at 1235. The appellate court ruled that “where the only lawsuit on file was  
19 based on a self-generated injury, the trial court could reasonably conclude that it would likely not have  
20 to adjudicate a multiplicity of actions if the class was not certified.” *Id.* at 1236.

21 In the case at bar, the events giving rise to Plaintiff's complaint occurred over six years ago, on  
22 March 22, 2003. The circumstances of the case suggest that the injury was “self-generated,” and no  
23 other individuals have come forward with claims against the Defendants.

24  
25 **(3) “class treatment would consume more time and expense than adjudicating the pending**  
26 **case or a limited number of individual suits.” *Id.* at 1229.**

27 The appellate court admonished that “[i]n a typical case, it would be speculative to” assume that  
28 multiple claims are not likely, and that “a court should not uncritically assume that the absence of

1 multiple actions reflects an absence of aggrieved parties.” *Id.* at 1237. Nevertheless, their opinion stated  
2 that a trial court “may appraise ‘the extent and nature of other litigation already commenced by members  
3 of the class’ in determining whether a class action is superior. [Citation.]” *Id.* The evidence reflected  
4 that no other aggrieved party had brought suit in four years and that the plaintiff had deliberately gone to  
5 the defendant’s place of business instead of his usual proprietor for the purpose of being denied the  
6 discount. *Id.* The appellate court found no abuse of discretion in finding that under these circumstances  
7 multiple claims would not likely arise. *Id.*

8 The facts before this court show that in the six years since the Ladies Day event, no other  
9 individuals have filed suit. In addition, the circumstances strongly suggest that Plaintiff went to Bear  
10 Valley in part to generate this lawsuit. Under these circumstances, it is unlikely that multiple claims will  
11 arise. Therefore, class treatment – with its fiduciary nature and its notice and court approval  
12 requirements – is likely to consume more time and expense than adjudicating individual suits.

13 **(4) “the statutory penalties sought by plaintiff and others could disgorge any unjust**  
14 **enrichment without resort to class certification.” *Id.* at 1229.**

15 If class certification is denied, then Plaintiff only has standing to assert an Unruh Act cause of  
16 action for himself, which means Defendants would only have to pay \$4,000 in statutory penalties. Mr.  
17 Rava’s win, however, would cancel not only any profit Defendants gain from their transaction with him,  
18 but with many other individuals as well, because one \$4,000 penalty would wipe out the profits from a  
19 large number of lift ticket sales. Should other people file, each of their actions could eventually  
20 eliminate the profit defendants realized from the event.

21 **(5) “some form of effective class-wide relief was available without class certification**  
22 **through the unfair competition claim alleged by plaintiff.” *Id.***

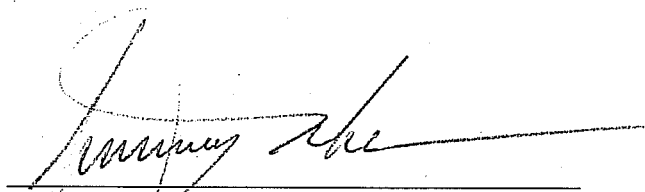
23 The trial court did not depend on this factor; the court of appeal added it. Proposition 64 has  
24 eliminated this point. To maintain a cause of action under the UCL, Plaintiff now must demonstrate that  
25 he meets Code of Civil Procedure section 382 requirements for maintaining a class action. Thus, if the  
26 court denies certification, injunctive relief and restitutionary disgorgement will not be available to absent  
27 class members.  
28

1 The court must admit that this factor and the change in the law does constitute a reason in favor  
2 of finding superiority. However, the fact that injunctive relief is not available means nothing here  
3 because the lift ticket giveaway was a one-day event that has not been repeated. Timothy Bottomly Decl.  
4 ¶ 4. Moreover, the potential statutory penalty more than makes up for the restitutionary item, i.e., the  
5 cost of the lift ticket, which is now unavailable thanks to Proposition 64. For these reasons, considering  
6 the facts and taking all of the above considerations into account, the court concludes that class treatment  
7 is not superior to the maintenance of individual suits.

8  
9 Plaintiff's motion for class certification is DENIED.

10  
11 **IT IS SO ORDERED.**

12  
13  
14  
15 DATED: \_\_\_\_\_

16  
17 

18 Anthony J. Mohr

19 Judge of the Los Angeles Superior Court