FILED
LOS ANGELES SUPERIOR COURT

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JOHN A. CLARKE, CLERK

BY ELMER SABALBURO, DEPUTY

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

LINDA CARLSON, on behalf of herself and all other similarly situated, Plaintiffs, vs. EHARMONY.COM, a California Corporation; NEIL CLARK WARREN, an individual; and Does 1 through 30, inclusive, Defendants.	CASE NO. ~~BC 321513~~ BC371958 RULING ON MOTIONS FOR CLASS CERTIFICATION AND BIFURCATION

Hearing date: September 25, 2008
Ruling date: November 19, 2008

After considering the moving, opposing, and reply papers and the arguments of counsel at the hearing, the court now rules as follows:

Plaintiffs' motion for class certification is GRANTED as to the general proposed class and subclass 1 and DENIED as to subclass 2.

Plaintiffs' motion for bifurcation is GRANTED.

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I. FACTUAL AND PROCEDURAL HISTORY

eHarmony.com is a matchmaking website that excludes homosexual and bisexual persons seeking same-sex matches from accessing its relationship matching services. Plaintiffs bring a discrimination claim under the Unruh Civil Rights Act (Civ. Code, § 51 *et seq.*) and move to certify a class comprising:

> All gay, lesbian, and bisexual individuals who have been and/or are still denied full and equal accommodations, advantages, privileges, or services offered to the public by eHarmony.com based on their sexual orientation, at any time within the period of May 31, 2004, until resolution of this action.

Plaintiffs also seek certification of two subclasses, defined as:

> 1) All gay, lesbian, and bisexual individuals who attempt or have attempted to use eHarmony.com to be matched with an individual of the same sex but were denied this service; and
>
> 2) All gay, lesbian, and bisexual individuals who are or have been deterred from using eHarmony.com because eHarmony refuses to provide its online matching services to gay, lesbian, and bisexual individuals seeking same-sex matches.

Plaintiffs also move to bifurcate the trial into issues of class liability and individual damages.

II. CONTENTIONS

Plaintiffs contend the proposed class meets all California class certification requirements. Plaintiffs also contend bifurcation of liability and damages is appropriate and efficient. Defendants contend the proposed class is not ascertainable and individual issues will predominate. Defendants also contend the proposed class representative cannot adequately represent the interests of the proposed class and further contend the class action vehicle is not a superior form of adjudication.

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III. CLASS CERTIFICATION

"When the question is 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, one or more may sue or defend for the benefit of all." (Code Civ. Proc., § 382.) California public policy favors class actions. (See *City of San Jose* (1974) 12 Cal.3d 447, 457; *Sav-On Drug Stores* (2004) 34 Cal.4th 319, 340; *Howard Gunty Profit Sharing Plan v. Superior Court* (2001) Cal.App.4th 572, 578 ["As a general proposition, class actions are favored in California."].)

Plaintiffs bear the burden of demonstrating that class certification is proper by a preponderance of the evidence. (*City of San Jose, supra*, 12 Cal.3d at p. 460; *Sav-On Drug Stores, Inc., supra*, 34 Cal.4th at p. 332.) To do so, they must "establish the existence of both an ascertainable class and a well-defined community of interest among the class members." (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.) The community of interest requirement has three essential elements: "(1) predominant questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class." (*Ibid.*) Plaintiffs must also demonstrate that the class procedure is superior to other forms of adjudication. (*Reese v. Wal-Mart Stores, Inc.* (1999) 73 Cal.App.4th 1225, 1234.)

The focus of the court is not on whether plaintiffs can affirmatively prove their claims at trial, but rather, whether the class action "will splinter into individual trials," given the disputed facts and defendants' due process right to present individual evidence on the triable issues. (See *Kennedy v. Baxter Healthcare Corp.* (1996) 43 Cal.App.4th 799, 810.) However, "issues affecting the merits of a case may be enmeshed with class action requirements, such as whether substantially similar questions are common to the class and predominate over individual questions or whether the claims or defenses of the representative plaintiffs are typical of class claims or defenses." (*Linder, supra*, 23 Cal.4th at p. 443.) Thus, class certification analysis often requires referring to the legal

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foundation of the underlying claims not to review the merits, but to evaluate whether common questions of law or fact will predominate over individual ones.

The Unruh Civil Rights Act provides that "[a]ll persons within the jurisdiction of this state are free and equal, and no matter what their . . . sexual orientation are entitled to full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever." (Civ. Code, § 51, subd. b.) "'Sexual orientation' means heterosexuality, homosexuality, and bisexuality." (Civ. Code, § 51, subd. e(6); Gov. Code, § 12926, subd. q.) In enacting the 2005 amendments to the Unruh Act, which enumerated sexual orientation as a basis of unlawful discrimination, the Legislature declared, "The Unruh Civil Rights Act was enacted to provide broader, more effective protection against arbitrary discrimination. California's interest in preventing that discrimination is longstanding and compelling." (Cal. Leg. Serv. 420 (2005) A.B. 1400, § 2, subd. a.)

A. Ascertainability

A "class is ascertainable if it identifies a group of unnamed plaintiffs by describing a set of common characteristics sufficient to allow a member of that group to identify himself or herself as having a right to recover based on the description." (*Bartold v. Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828.) The identification of individual class members, however, is not required at the class certification stage. (See *Daar v. Yellow Cab Co.* (1967) 67 Cal.2d 695, 706 [distinguishing the necessity of establishing the existence of an ascertainable class from that of identifying individual members claiming damages].)

All of the proposed class definitions first limit class members to "gay, lesbian, and bisexual" individuals. The 2005 amendments to the Unruh Act encompass precisely such a class of persons; thus, this part of the proposed class is ascertainable.

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1. General proposed class

The second portion of the proposed general class definition relates to those who allegedly have been "denied" services. "Deny" can mean "withhold," and "withhold" can mean to keep something from another. (Ballantine's Law Dict. (3d ed. 1969); see also *Angelucci v. Century Supper Club* (2007) 41 Cal.4th 160, 168 [interpreting the U.S. Constitution to indicate that a victim is denied rights even "if the victim is a passive sufferer of discrimination rather than a person who expressly demands his or her rights and is refused."].)

Plaintiffs seek only declaratory and injunctive relief for general class members. To identify such members, plaintiffs propose providing effective notice through publication and presenting claims under penalty of perjury or through special master proceedings.

Defendants do not dispute the ascertainability of the proposed general class, other than submitting a blanket statement that the class is not ascertainable. Defendants acknowledge that eHarmony.com does not offer same-sex matching services, which is the functional equivalent of denying such services to plaintiffs.

The court finds that plaintiffs have presented sufficient evidence, under the preponderance standard, to demonstrate that the proposed general class is ascertainable.

2. Subclass 1

The definition of subclass 1 limits the proposed class members to only those who have attempted to use the matching services of eHarmony.com but were denied.

Defendants first argue that "attempt" is amorphous under the law. In addition, defendants rely on *Weaver v. Pasadena Tournament of Roses* (1948) 32 Cal.2d 833 to support their claim that the "attempt" class is not ascertainable. In *Weaver*, plaintiffs sought to certify a class of individuals who, while in line to purchase advance tickets to the 1947 Rose Bowl, received proper identification stubs but were denied the opportunity

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to purchase such tickets. Of those who waited for advance tickets, some went to the box office on game day with their identification stubs and demanded tickets. Although they tendered the admittance fee, those individuals were denied admission. The trial court determined class adjudication was improper. (*Id.* at 835, 836.)

The reliance is misplaced. The California supreme court upheld the denial of class adjudication in *Weaver* because the proposed class was overbroad and, as defined, would include persons who may not even have attempted to gain admission to the Rose Bowl on game day. Thus, the class was not ascertainable by its very definition. (See also *Angelucci*, *supra*, 41 Cal.4th at p. 170 [discussing *Weaver*, *supra*, on these grounds].)

Here, plaintiffs present e-mail evidence that 224 unique gay, lesbian, or bisexual individuals attempted to use eHarmony's services from May 31, 2004 to October 10, 2007 but were denied. The evidence documents that these persons tried, i.e., attempted, to use the services of eHarmony. eHarmony's responses to the e-mail inquiries indicate that eHarmony does not provide same-sex matching services. Thus, the common characteristics of these individuals include their non-heterosexual orientation, their attempts to use same-sex matching services through eHarmony, and their denial of such services by eHarmony.

Plaintiffs have met their burden of demonstrating the ascertainability of the "attempt" subclass. The court finds that subclass 1 is ascertainable.

3. Subclass 2

The definition of subclass 2 limits the proposed class members to only those who were deterred from using the matching services of eHarmony.com because of eHarmony's refusal to provide such services.

"If the rights of each member of the class are dependent upon facts applicable only to him, there is not the requisite ascertainable class required for a representative suit." (*Daar*, 67 Cal.2d, at p. 705.) When defining a subclass requires delving into

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significant and substantial individualized facts, the question also becomes one of predominance. (See *id.* at p. 706.)

Arguing against the ascertainability of this subclass, defendants list seven different factual questions that would prove deterrence only through individualized evidence—that plaintiffs: (1) are of homosexual orientation; (2) had knowledge of eHarmony, including that the website does not provide same-sex matching; (3) were single; (4) desired to use eHarmony's services; (5) would have paid for services through eHarmony; (6) decided not to use eHarmony based on their knowledge; and (7) but for their knowledge of eHarmony, plaintiffs would have purchased eHarmony services.

Plaintiffs rely primarily on *Int'l Brotherhood of Teamsters v. United States* (1977) 431 U.S. 324. In *Teamsters*, the federal government brought a suit alleging racially discriminatory hiring practices. Although the suit was not a class action per se, the Supreme Court treated the minority workers as a class with three subdivisions. One subclass included existing employees deterred from applying for promotions based on the discriminatory practices. The court found that these incumbent employees were not barred from asserting discrimination claims.

Even accepting the parallels of the issue before the Supreme Court and that of class certification here, the *Teamsters* logic cannot be applied in this instance. The court in *Teamsters* dealt with incumbent minority employees who were already ascertainable based on their employment records. (See *id.* at p. 364.) Thus, the realm in which the high court operated was defined not solely by deterred status, but also by clear documentation of eligible class members.

Deterrence is inherently a subjective inquiry. Each class member would be deterred not based on a set of objective, common facts, but rather would have individual reasons for abstaining from attempting to use eHarmony's services. These individual facts would overwhelm common issues of fact and law. Plaintiffs have not met their burden of proving otherwise.

The court finds that subclass 2 is not ascertainable.

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B. Predominance of Common Questions of Law and Fact

Class certification is proper where "the issues which may be jointly tried, when compared to those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants." (*Brown v. The Regents of the University of California* (1984) 151 Cal.App.3d 982, 989.) The relevant inquiry is "whether there are issues common to the class as a whole sufficient in importance so that their adjudication on a class basis will benefit both the litigants and the court." (*Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 811.) Common issues predominate when they would be "the principal issues in any individual action, both in terms of time to be expended in their proof and of their importance." (*Id.* at p. 810.) In determining whether common issues predominate, the court must consider both plaintiffs' legal theories and defendants' affirmative defenses. (*Walsh v. IKON Office Solutions, Inc.* (2007) 148 Cal.App.4th 1440, 1450.)

In addition to foundational evidence, six inquiries are relevant either to proving a violation or to raising a defense in an Unruh Act action; namely, whether the: (1) alleged discrimination arises out of provision of goods, services or facilities; (2) alleged discrimination is based on a personal characteristic of plaintiffs—here, sexual orientation; (3) alleged discriminator is a "business establishment"; (4) alleged discrimination is intentional and arbitrary in violation of the Act; (5) alleged discrimination is permitted or preempted by another statute; and (6) alleged discrimination is privileged under a constitutional right. (Cal. Civ. Practice Civ. Rights Lit. (2008) § 2:4.) Damages under the Unruh Act merely require a finding of liability; no proof of actual damages is required. (See *Koire v. Metro Car Wash* (1985) 40 Cal.3d 24, 33 ["[B]y passing the Unruh Act, the Legislature established that arbitrary sex discrimination by businesses is *per se* injurious."].)

Of the above inquiries related to liability under the Unruh Civil Rights Act (numbers 1 through 4), three are based entirely on characteristics of the defendants. Even the second, which requires evidence of the sexual orientation of individual class

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members, also relates to the basis of defendants' alleged discriminatory practices. As for the kind of evidence required to raise affirmative defenses in the final two areas above, neither relates to individual characteristics of class members. In short, the majority of the evidence required to prove either the claim or any affirmative defenses relates not to individual class members, but to eHarmony or other legal constructs.

Plaintiffs also submit that common questions exist relating to the appropriate statute of limitations, form of declaratory and injunctive relief, and calculation of statutory damages.

In support of their claim that individual facts predominate over the legal question at issue, defendants rely on *Bartlett v. Hawaiian Village, Inc.* (1978) 87 Cal.App.3d 435. *Bartlett* is readily distinguishable and not persuasive. In that case, the court upheld the denial of class certification of a group of disparate persons whose class definition centered on the denial of admission to a public bathhouse. The nine potential subclasses were based on distinct individual characteristics such as effeminacy, race, age, and obesity. The factual evidence required to prevail for a hypothetical class member in the race subclass in *Bartlett* would not be the same for another in the subclass based on age. Common questions would not predominate. Here, on the contrary, class members are bound by the commonality of sexual orientation, a class of persons the law seeks to protect from unlawful discrimination.

Defendants also list five individualized questions of fact they believe each "attempt" subclass member must prove to prevail: (1) homosexual orientation; (2) visiting the eharmony.com website; (3) intent to use eHarmony matching services; (4) attempt to select a same-sex match; and (5) no further attempt to use eHarmony services because same-sex matches were unavailable. Of these, only the first four are relevant, and these last three may even be consolidated into "attempt." The fifth—that class members "did not continue to try to use eHarmony because of their inability to select [a same-sex] option"—is not. A putative class member should not have to make multiple attempts to select an option that does not exist.

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Defendants' four remaining evidentiary requirements are readily met. Proof of sexual orientation is already required under the law. As plaintiffs point out, a simple declaration should suffice. In addition, the 224 e-mails already submitted may serve several purposes; first, as evidence of logging on to www.eharmony.com (defendants' second requirement), because it appears to be possible to contact eHarmony only via the company's website. The text of the e-mails also demonstrates an intent to use eHarmony services (third) as well as at attempt to find a same-sex match (fourth). Two of the users even wrote that they completed the questionnaire, which took one at least one hour, only to find that eHarmony did not offer same-sex matching. Providing such e-mails does not seem unreasonably burdensome, particularly since those defendants have already provided cover more than three years. The court is not persuaded that the individual foundational evidence is so significant or substantial to overwhelm the predominance of common questions.

Defendants also argue that individual questions will predominate in the "deterred" subclass; however, since the court finds that the "deterred" subclass is not ascertainable, this line of inquiry is moot.

The majority of questions of law and fact are common to all proposed class members. The individual foundational evidence required to prove the claim is not so significant or substantial so as to destroy predominance. Thus, the court finds that common questions of law and fact predominate.

C. Typicality of Claims

Typicality turns on whether a sufficient relationship exists between the injury to the named plaintiff and the conduct affecting the class. A plaintiff's claim is typical if it arises from the same event or practice or course of conduct that gives rise to the claims of other class members, and if his or her claims are based on the same legal theory. A class representative's claims are typical if the individual facts applicable to the representative are very similar, but not necessarily identical, to the facts common to the class. (*Hanlon*

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v. Chrysler Corp. (9th Cir. 1998) 150 F.3d 1011, 1020 [class representative's claims are typical "if they are reasonably co-extensive with those of absent class members; they need not be substantially identical"].) The similarity must be such that the named representative has a motive to obtain relief on behalf of the class. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 45.)

Like the proposed class members, Mr. Cardin was denied same-sex relationship matching services by eHarmony. Defendants do not challenge typicality.

The court finds the named plaintiff's claim is typical of class claims.

D. Adequacy of Representation

Adequacy of representation depends on whether plaintiff's attorney is qualified to conduct the litigation and whether the named plaintiff's interests are not antagonistic, or in conflict with, to the interests of the other class members. (*McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450.) "Only a conflict that goes to the very subject matter of the litigation will defeat a party's claim of representative status." (*Richmond v. Dart Industries, Inc., supra*, 29 Cal.3d at p. 470.) "Most differences in situation or interest among class members . . . should not bar class suit." (*Id.* at p. 473.)

Defendants provide three reasons why Mr. Cardin is unfit to represent the class, arguing first that he does not understand how eHarmony's matching services work. They also submit that Mr. Cardin cannot articulate the relief sought on behalf of the class. Defendants footnote their final claim proposing that Mr. Cardin is unfit because his concerns as a homosexual man differ from any potential bisexual class members. Defendants do not contest the qualifications of the attorneys.

Plaintiffs offer substantial evidence that Mr. Cardin will adequately represent the class. His deposition testimony reflects that he understands the claim, i.e., discrimination, and the relief sought, i.e., full access to eHarmony's services, as well as could be expected of any lay person. Mr. Cardin also is not required to understand the internal mechanisms of eHarmony's matching process. In fact, he could not know how

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the matching process worked. eHarmony requested and this court granted relief from responding to discovery requests concerning such information. Furthermore, by defendants' own admission, a potential user must select the type of match (man seeking woman or woman seeking man) before she or he can proceed beyond the registration page. Mr. Cardin cannot be expected to know about a process to which he has no access. Finally, the fact that he is gay, as opposed lesbian or bisexual, is irrelevant to the issue of class certification.

The court finds that the proposed class has adequate representation.

E. Class Action as a Superior Form of Adjudication

Courts are required to weigh carefully the respective benefits and burdens and to allow maintenance of the class action only where substantial benefits accrue both to litigants and the courts. (*Linder*, *supra*, (2000) 23 Cal.4th at p. 435.)

1. Numerosity

When class members are so numerous that joinder is impracticable, the class vehicle may substantially benefit the litigants and courts. (See *Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934 [34 members sufficient to sustain class adjudication]; *Hebbard v. Colgrove* (1972) 28 Cal.App.3d 1017, 1030 [28 members sufficient].)

Plaintiffs estimate the class to number in the thousands based on two calculations extrapolated from existing data. Defendants also admit that 224 individuals submitted e-mails to eHarmony documenting their inability to use eHarmony's matching services to seek same-sex matches during the relevant period. Most appear to be eligible for class membership.

The court finds the proposed class sufficiently numerous such that joinder is impracticable.

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2. Adequacy of Statutory Remedies

One function of the class action is to "provide[] small claimants with a method of obtaining redress for claims which would otherwise be too small to warrant individual litigation." (*Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 469.) "The class action has been held appropriate when numerous parties suffer injury of insufficient size to warrant individual action and when denial of class relief would result in unjust advantage to the wrongdoer." (*Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d 381, 385; see also *Daar*, *supra*, 67 Cal.2d at p. 715 [finding that when recovery was so small that individual action would be economically unfeasible, defendants would retain the benefits of its alleged wrongs absent a class action].) "[T]he possibility of a potential recovery for each class member larger than a nominal sum does not militate against the maintenance of such an action." (*Collins v. Rocha* (1972) 7 Cal.3d 232, 238.)

Defendants argue that the availability of minimum statutory damages are adequate and thus render the class action vehicle inappropriate. The availability of the $4000 minimum damage award and attorneys' fees for the prevailing plaintiff is enough, defendants claim, to incentivize truly aggrieved individuals to bring suit. According to defendants, this incentive effectively eliminates the efficiency of the class action, thereby destroying superiority. Defendants rely heavily on *Reese*, *supra*, 73 Cal.App.4th 1225 which recites "[t]here are enough incentives built into the [Unruh Act] that any person who truly feels individual aggrieved by defendant's Ladies Day practice will file suit." (*Ibid.* at p. 1232, 1235.) In *Reese*, the court upheld the denial of class certification. The court agreed with the trial court's finding that class adjudication was not superior, in part because the statutory remedies available to the sole plaintiff were adequate, providing for actual damages and equitable remedies.

The court is not persuaded. As the *Reese* court recognized, the "possibility of a larger-than-nominal recovery does not preclude class action treatment." (*Id.* at p. 1235.) The availability of both a statutory minimum award and attorneys' fees if plaintiffs should prevail does not mean that the class action vehicle is inappropriate because

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individual litigation is adequate. Furthermore, the *Reese* plaintiff presented no evidence of any other person who was even remotely aggrieved by the Ladies Day special. Here, e-mail evidence documents that at least 224 individuals were interested in same-sex matching services through eHarmony. Of those, at least some, if not the majority, are plausible class members.

That the putative class may have suffered no actual injuries or damages seems to evince precisely the kind of protection the California Supreme Court envisioned. (See *Daar, supra*, 76 Cal.2d at p. 715; *Richmond, supra*, 29 Cal.3d at p. 469.) The injury here may not be a question of small size, but one of actual existence. Moreover, the law recognizes that an injured party may suffer no actual damages in an Unruh claim. A prevailing party claiming the statutory minimum award is not required to show actual damages. (See *Koire, supra*, 40 Cal.3d, at p. 33.)

Finally, plaintiffs present evidence that the Unruh Act incentives may not be enough to sustain individual action. Both of the prior named plaintiffs, who initially agree to withstand the responsibilities of class representative, were unable to continue acting in such capacity for personal reasons; one due to a death in the family, the other due to a desire to protect small children from media scrutiny or other social stigma. It seems reasonable to assume that such circumstances also would have warranted dropping an individual cause of action.

3. Costs versus Benefits of Class Action Adjudication

In determining the superiority of a class action, the court weighs the costs and benefits of adjudicating the litigants' claims in the class setting. The court considers the benefits to the litigants and the public as well as to the court. (*Reyes, supra*, 196 Cal.App.3d at p. 1271.) "[One] factor in determining feasibility of the group approach is the probability each member will come forward ultimately, identify himself and prove his separate claim to a portion of the total recovery." (*Blue Chip Stamps, supra*, 18 Cal.3d at p. 386.)

Defendants argue that class certification is improper because thus far, only one lawsuit has been filed in the approximately nine years eHarmony has been providing relationship matching services. Defendants seem to argue that because Mr. Cardin is the only named plaintiff, class treatment provides insufficient returns on the time and energy investments required of the litigants and the court.

However, that only one person is currently named in this matter does not mean that only one person has an interest in the outcome of this lawsuit. As previously discussed, the two prior named plaintiffs have a demonstrated interest in this claim. It also seems probable that at least some, if not most, of the 224 individuals who e-mailed eHarmony inquiring about same-sex matching would come forward to make their claim. The courts would substantially benefit from avoiding repetitious litigation. In addition, the court notes that the enumeration of "sexual orientation" as a prohibited basis of discrimination took effect not even four years ago.

Defendants also argue that the class vehicle will impose unnecessary class management and other administrative burdens on the court, which would be eliminated in the absence of class treatment. Plaintiffs contend the convenience of class adjudication would provide substantial benefits to the litigants and the court as the claim would be adjudicated just once and plaintiffs would avoid inconsistent judgments. In addition, one determination would bind all plaintiffs, benefitting defendants. Class treatment also would reduce future drain on judicial resources. Finally, the action may bring substantial benefits to the public by serving the compelling state interest in redressing unlawful discrimination.

Defendants lastly claim that class certification will be unjust, potentially leading to fraud as well as a damages award of more than $2.1 billion. The court presumes defendants calculated this figure by multiplying 546,000 (the high-end estimation of single gay, lesbian, and bisexual persons in California) by the $4000 statutory minimum award to arrive at $2,184,000,000. Plaintiffs, however, seek only declaratory and injunctive relief for the putative general class members. Defendants' figure is thus inflated.

Not only do defendants exaggerate the potential damage amount, but also they seem to imply that the statutory minimum is unfair. Defendants cannot claim simultaneously that the statutory minimum is adequate as to individual lawsuits, but unfair as to a class action. Defendants also seem to set aside the fact that damages are awarded only if plaintiffs prevail on the merits.

Upon consideration of the whole, the court finds plaintiffs have shown, by a preponderance of the evidence, that class treatment is a superior form of adjudication. The putative class members are sufficiently numerous to make joinder impractical. The availability of the minimum statutory remedy, even in the absence of actual damages, only reinforces the need for class adjudication as the actual injuries allegedly suffered are small if they exist at all. The convenience of litigating the claim in one instance provides substantial benefits to litigants, the court, and the public.

The court finds that class treatment is a superior form of adjudication.

For all of the foregoing reasons, the court finds that the proposed general class and subclass 1 are certifiable.

IV. BIFURCATION

Section 598 of the California Code of Civil Procedure authorizes the trial court to bifurcate issues to serve "the ends of justice" or to promote "the economy and efficiency of handling the litigation." Bifurcating the issue of liability from that of individualized relief is a recognized appropriate and efficient means of conducting litigation. (*Dept. of Industrial Relations v. UI Video Stores, Inc.* (1997) 55 Cal.App.4th 1084, 1097.) Bifurcation is particularly well-suited to class action procedures, in which common issues of liability must be shown before individualized damages can be addressed. "A bifurcated procedure allows the class representative to try common issues to final judgment. . . . If the class representative prevails on the common issues, . . . individual issues may be resolved in a second trial." (3 Newberg & Conte (4th ed. 2002) *Newberg on Class Actions* § 9:53 at pp. 429-30.)

Plaintiffs move to bifurcate the issue of class liability and individual damages. Defendants do not oppose plaintiffs' motion for bifurcation.

The court finds that bifurcation of liability and damages is appropriate.

In sum:

Plaintiffs' motion for class certification is GRANTED as to the general class and subclass 1 and DENIED as to subclass 2.

Plaintiffs' motion for bifurcation is GRANTED.

IT IS SO ORDERED.

Dated: 11/19/2008

Victoria Gerrard Chaney

Judge