Lambda LEGAL

August 26, 2005

Honorable Chief Justice Ron George
And the Honorable Associate Justices of the
California Supreme Court
350 McAllister Street
San Francisco, CA 94102

Re: **Request for Depublication of decision in *Angelucci v. Century Supper Club,* B173281 (Second App. Dist., Div. Five, filed June 28, 2005), currently published at (2005) 130 Cal.App.4th 929 [30 Cal.Rptr. 460])**

Dear Chief Justice George and the Associate Justices of the California Supreme Court:

Pursuant to Rule 979(a) of the California Rules of Court, Lambda Legal Defense and Education Fund, Inc. ("Lambda Legal") and the American Civil Liberties Union ("ACLU") Foundations of Southern California; Northern California; and San Diego & Imperial Counties.respectfully request that the Court order depublication of the June 28, 2005 decision of Division Five of the Second Appellate District in *Angelucci v. Century Supper Club*, B173281, currently published at (2005) 130 Cal.App.4th 929 [30 Cal.Rptr. 460] ("*Angelucci*"). That decision wrongfully limits the ability of those who suffer discrimination in our state to seek relief under California's Unruh Civil Rights Act (Civ. Code § 51) ("the Unruh Act" or "Unruh") and Gender Tax Repeal Act (Civ. Code § 51.6) (collectively, the "Acts"). The *Angelucci* decision's imposition of a requirement that victims of discrimination affirmatively have requested equal treatment from a business establishment in order to state a claim is unsupported by the plain language of both Acts and by precedent. The Court of Appeal's interpretation of *Koire v. Metro Car Wash* (1985) 40 Cal.3d 24 [219 Cal.Rptr. 133, 707 P.2d 195] ("*Koire*"), on which the appellate court relied for its extraordinary ruling, is simply incorrect. Depublication is necessary because, if the decision were allowed to stand as precedent, the state's important public

policy of eliminating and remedying arbitrary discrimination by businesses in California severely would be compromised.

As a national organization (with a regional office in California) whose mission is to defend the civil rights of lesbian, gay, bisexual, and transgender ("LGBT") individuals and those living with HIV, Lambda Legal has a strong interest in ensuring continued effective access to the state's legislation that seeks to deter and remedy discrimination.[1] LGBT persons and those living with HIV regularly suffer discrimination by business establishments. While persons with disabilities and medical conditions (like those living with HIV) expressly are covered under the Unruh Act's language, this Court has recognized that Unruh also protects Californians against discrimination based on sexual orientation, family status, and unconventional dress or appearance. (See *Koebke v. Bernardo Heights Country Club,* 2005 Cal. LEXIS 8359, at *30.) Allowing the Court of Appeal's decision in *Angelucci* to remain published seriously would undermine these protections. Lambda Legal therefore is an appropriate party to request depublication of the Court of Appeal's opinion. (See Cal. Rules of Court 979 (a) ("any person," who sets forth an interest in the case (not merely a party to the lawsuit) may request that the Supreme Court order than an opinion certified for publication not be published.)

Lambda Legal is joined in this request by the American Civil Liberties Union Foundations of Southern California; Northern California; and San Diego & Imperial Counties. These organizations are the California affiliates of the ACLU, a national organization dedicated to the principles of liberty and equality embodied in the Constitution and our nation's civil rights law. The ACLU has been involved extensively as counsel and amici in federal and state litigation to fight unequal treatment based on sexual orientation, marital status, gender, race, ethnicity, religion, and national origin.

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[1] Lambda Legal has been counsel in numerous important cases brought under the Unruh Act, including *Koebke v. Bernardo Heights Country* Club (2005) 2005 Cal. LEXIS 8359; *Curran v. Mt. Diablo Council of the Boy Scouts* (1998) 17 Cal.4th 670 [72 Cal.Rptr.2d 410, 952 P.2d 218]; and *Benitez v. North Coast Women's Care Medical Group* (2003) 106 Cal.App.4th 978 [131 Cal.Rptr.2d 364].

For the same reasons, these organizations also are appropriate parties to request that this Court order that the opinion of the Court of Appeal be depublished.

Depublication should be ordered for the reasons set forth below.

1. The plain language of the Unruh and Gender Tax Repeal Acts makes clear that a victim of discrimination does *not* have to have asked for equal treatment in order to have a cognizable claim.

The Unruh Act guarantees that, "[a]ll persons within the jurisdiction of this state are free and equal, and no matter their sex, race, color, religion, ancestry, national origin, disability, or medical condition are entitled to the *full and equal* accommodation, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever." (Civ. Code § 51(b) (emphasis added)). As the inclusion of the terms "full and equal" indicates, the "scope of the Unruh Act is not narrowly limited to practices which totally exclude classes or individuals from business establishment," (*Koire*, *supra*, 40 Cal.3d at p. 30), but extends to "all aspects" of a business's practices that arbitrarily deny "equal treatment of patrons." (*Id.* at p. 29.)[2] Similarly, the Gender Tax Repeal Act states, without qualification, that, "No business establishment of any kind whatsoever may discriminate, with respect to the price charged for services of similar or like kind, against a person because of the person's gender." (Civ. Code § 51.6(b).)

Nowhere in the text of these statutes is there a requirement that, before a claim may be made under either act, the victim of discrimination must first request or demand

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[2] See, e.g., *Koebke*, *supra*, (finding violation of Unruh in denial of certain benefits to registered domestic partners that were provided to married spouses); *Koire*, *supra*, 40 Cal.3d at pp. 30, 33-38 (finding violation of Unruh in charging men more than women for the same services); *Suttles v. Hollywood Turf Club* (1941) 45 Cal.App.2d 283, 287 [114 P.2d 27] (finding violation of Unruh in denying otherwise available clubhouse seating to African-American ticket holders admitted to racetrack).) Moreover, this Court has made clear that the Unruh Act's coverage is to be interpreted "in the broadest sense reasonably possible" (*Isbister v. Boys' Club of Santa Cruz* (1985) 40 Cal.3d 72, 75 [219 Cal.Rptr. 150, 707 P.2d 212]), with a view towards effectuating Unruh's purposes of eliminating and remedying discrimination based on arbitrary distinctions. (*Koire, supra*, 40 Cal.3d at p. 27; *Orloff v. Los Angeles Turf Club* (1947) 30 Cal.2d 110, 113 [227 P.2d 449].)

equal treatment by a business. Grafting such a requirement onto the ability to sue for violation of the Acts accordingly violates the plain language of those statutes. Imposition of any such requirement therefore must be rejected.

2. The Court of Appeal misconstrued *Koire* as imposing an additional requirement of requesting equal treatment under the Unruh and the Gender Tax Repeal Acts.

The Court of Appeal in *Angelucci* interpreted dicta in a footnote in the *factual discussion* of this Court's decision in *Koire* to stand for a holding that, before alleged victims of discrimination under the Unruh Act (and, by extension of reasoning, under the Gender Tax Repeal Act as well[3]) may assert discrimination, they must "affirmatively assert their right to equal treatment." (*Angelucci, supra*, 130 Cal.App.4th at p. 922.) The *Koire* footnote in question stated, in its entirety:

> There was conflicting testimony at trial about whether defendant State College Car Wash refused to wash plaintiff's car for the reduced "Ladies' Day" price. The trial court did not resolve the factual dispute, since it held as a matter of law that "Ladies' Day" discounts do not violate the Unruh Civil Rights Act. State College Car Wash does not deny that it advertises special "Ladies' Day" prices. At a minimum, men who wish to be charged the same price as women on "Ladies' Day" must affirmatively assert their right to equal treatment.

(*Koire*, *supra*, 40 Cal.3d at p. 27, fn. 3.) Nowhere in the remainder of the *Koire* opinion did this Court state any notion that "affirmative assertion" of one's legal rights is required for a cognizable claim of discrimination to exist under the Unruh Act. To the contrary, this Court concluded in *Koire* that, "[t]he Legislature has clearly stated that business establishments must provide '*equal*...advantages...[and] privileges' to all customers 'no matter what their sex.'" (*Id.* at p. 39, citing Civ. Code § 51 (emphasis in original).) In

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[3] *Koire* was decided before the Gender Tax Repeal Act was enacted in 1995.

other words, this Court made clear that business establishments "must provide" non-discriminatory service – not that they must provide non-discriminatory service *upon request*.

The *Angelucci* decision interpreted this footnote describing the *facts* of *Koire* to mean that plaintiffs seeking to recover for discrimination under Unruh "must, at a minimum, plead and prove a request for equal treatment." (*Angelucci*, *supra*, 130 Cal.App.4th at p. 922.) Further, the *Angelucci* opinion argued that – given the Legislature's "aware[ness] of the holding of [*Koire*]" – the fact that the later-enacted Gender Tax Repeal Act failed to specifically *exclude* a request for equal treatment as a condition precedent to a legitimate claim for gender price discrimination meant that "the Legislature approved of *Koire*'s request requirement." (*Angelucci*, *supra*, at p. 923.)

These conclusions grossly misinterpret this Court's position in *Koire*. The "at a minimum" language on which the *Angelucci* decision is so centrally based does not refer to an additional pleading or proof requirement for an Unruh Act discrimination claim (or, by extension, a claim under the Gender Repeal Tax Act). The opinion in *Koire* to the contrary used that language to underscore the clear discrimination under Unruh perpetrated by business establishments, like the car washes at issue there, that offer preferential treatment based solely on gender. The point this Court was making was that, even though the State College Car Wash apparently denied that it had refused to wash Mr. Koire's car at the reduced Ladies Day price, that was irrelevant, since the business admitted it had advertised such special prices for women. This in itself treated men unequally in violation of the Unruh Act because, "[a]t a minimum, men who wish to be charged the same price as women on "Ladies' Day" must affirmatively assert their right to equal treatment" (*Koire*, *supra*, 40 Cal.3d at p. 27, fn. 3), whereas women could obtain that reduced price without having to make such a demand.

This must be so because the trial court in *Koire* "did not resolve the factual dispute" over whether or not Dennis Koire was refused the "Ladies' Day" discount by this particular business or simply was not offered the discount (*id.*) and yet that did not preclude this Court from finding that Mr. Koire suffered "actual injury" and "*was*

adversely affected by the price discounts." (*Id.* at p. 34 (emphasis in original).) This Court explained that "[t]he plain language of the Unruh Act mandates equal provision of advantages, privileges and services in business establishments in this state. Absent a compelling social policy supporting sex-based price differentials, *such discounts* violate the Act." (*Id.*, at p. 38 (emphasis added).) In other words, in most cases, gender-based discounts in and of themselves violate Unruh's protections – *not* gender-based discounts that were denied after a request that they also be extended to those of the excluded gender. This Court's decision in *Koire* simply did not add a "request requirement" for relief under the Unruh Act (or, by extension, the Gender Tax Repeal Act) and the *Angelucci* opinion should be ordered depublished for misconstruing *Koire* to suggest that it did.[4]

3. The issue of *when* a person has been discriminated against in order to be able to sue under the Unruh and Gender Tax Repeal Acts need not have been reached, since the plaintiffs in *Angelucci* actually experienced gender-based discrimination.

The *Angelucci* court confused the question of whether a person needs to "actually suffer the discriminatory conduct" (*Angelucci*, *supra*, 105 Cal.App.4th at p. 924) with an invented prerequisite "request [for] equal treatment" before a claim of discrimination under Unruh is proper. (*Id.* at p. 925.) There is a difference between requiring a victim of discrimination (who may not even know they are being discriminated against) to ask the business establishment for *equal treatment* and the victim of discrimination requesting *service*. The latter is the regular course of conduct for any person who frequents a business establishment and, while patrons expect equal treatment, they do not anticipate having to ask for it in order to get it.

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[4] Indeed, prior to *Angelucci*, no court has ever held that such a requirement exists under the Unruh Act or the Gender Tax Repeal Act, nor that the *Koire* opinion imposed any such requirement.

As explained above, the *Angelucci* court erred when it incorrectly interpreted the *Koire* footnote discussing the facts of that case to stand for the proposition that "mere advertising a sex-based price discount does not violate the Unruh Civil Rights Act." (*Angelucci, supra*, 105 Cal.App.4th at p. 922.) Blatant, advertised discrimination is just as impermissible under the Unruh and Gender Tax Repeal Acts as in-person, experienced discrimination, contrary to the *Angelucci* decision's assertion.[5] Likewise, the Gender Tax Repeal Act requires that certain business establishments[4] clearly and conspicuously post a price list for their most common services (Civ. Code § 51.6(f)) and provides for a separate penalty for a violations of this specific provision of the Gender Tax Repeal Act. (Civ. Code § 51.6(f)(5).)

However, this question need not have been reached, since the *Angelucci* plaintiffs clearly "actually suffered" discriminatory conduct. They were required to pay more than women to enter the Century Supper Club. The basis of the admission fee differential was impermissibly based solely on gender. The *Angelucci* court's analysis should have stopped there. Its error should not be multiplied statewide by allowing the decision to remain published as precedent.

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[5] California's Fair Employment and Housing Act ("FEHA"), (Gov. Code, §§ 12900 et seq.), serves as a helpful analogous statutory scheme. Just as advertisements for apartments that read "Latinos Need Not Apply" or advertisements for employment that read "Men Only" are clearly discriminatory and prohibited under the FEHA, so too are advertisements like the "Ladies' Day" discounts of State College Car Wash under Unruh. (*See Aguilar v. Avis Rent A Car Sys.* (1999) 21 Cal. 4th 121, 139 [87 Cal.Rptr.2d 132, 980 P.2d 846] (discussing how a Pittsburgh city ordinance proscribing employment discrimination "in a manner similar to the FEHA" forbade newspapers from carrying gender-specific "help-wanted" advertisements in *Pittsburgh Press Co. v. Human Rel. Comm'n* (1973) 413 U.S. 376; *see also* Cal. Code Regs., tit. 2, § 7287.7(a)(5) (Fair Employment and Housing Commission regulation stating, "It is unlawful to advertise for employment on a basis prohibited in the [FEHA]," as it aids and abets employment discrimination); Cal. Gov. Code § 12955(c) (prohibiting making or publishing any advertisement with respect to the sale or rental of a housing accommodation indicating a preference, limitation or discrimination based on any of the grounds of discrimination covered by FEHA).)

[4] Tailors (and others providing aftermarket clothing alterations), barbers, hair salons, dry cleaners and laundries providing services to individuals are specifically required to follow these dictates. (Civ. Code § 51.6(f)(1).)

4. The opinion in *Angelucci* places unfair and unjustifiable barriers to victims seeking redress for discrimination under the Unruh and Gender Tax Repeal Acts and is not consistent with their purpose.

Allowing the *Angelucci* opinion to stand would deal a significant blow to the protections against arbitrary discrimination that safeguard millions of Californians every day. The Unruh Act was enacted to require places of public accommodation "to serve all customers on reasonable terms without discrimination ... and to provide the kind of product or service *reasonably to be expected* from their economic role." (*In re Cox* (1970) 3 Cal.3d 205, 212, emphasis added.) Every California customer *expects* not to be arbitrarily discriminated against, not to have to affirmatively ask to be treated equally before being entitled to that treatment.[5]

If the *Angelucci* opinion is allowed to stand as precedent, business establishments will be free to discriminate egregiously at will, as long as they "rectify" their discrimination upon request. This is a perverse incentive that would undermine the purposes underlying the Unruh and the Gender Tax Repeal Acts. Arbitrary discrimination is unlawful from its inception, not only after a request for equal service is refused. The requirement interposed by the *Angelucci* decision – which does not have a basis in the Acts' statutory language or precedent – wrongfully would chill valid discrimination claims by placing an unwarranted burden upon the victims of discrimination who already may be intimidated and suffering from emotional distress by the unequal treatment they have received. The onus should be on California businesses

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[5] The fact that an injury due to discrimination may be considered "self-generated" and might thereby be grounds for denial of class certification does not undermine the wrongfulness of the discrimination nor the right to sue for it. (*Compare Reese v. Wal-Mart Stores* (1999) 73 Cal.App.4th 1225, 1236 (finding that "self-generated" injury due to gender-based price discrimination meant a multiplicity of actions was unlikely and denial of class certification was appropriate) *with Konig v. Fair Employment and Housing Commission* (28 Cal.4th 743, 746 [123 Cal.Rptr.2d 1, 50 P.3d 718] (allowing recovery in administrative proceedings of emotional distress damages for housing discrimination against Fair Housing Council "testers".) One need only think of Rosa Parks' deliberate action in refusing to give up her seat to a white person, taken within the context of her twelve-year participation within the civil rights movement in Alabama in the 1960s, to appreciate why this must be true.

not to discriminate, not on patrons to have to assert their rights to non-discriminatory treatment after it already has been denied them.

The opinion in *Angelucci* is wrong in its central holding in a way that seriously undermines California law and public policy. Neither the Unruh Act, nor the Gender Tax Repeal Act, require that persons frequenting places of public accommodation in California first ask for equal treatment before they will be legally protected against arbitrary discrimination. Lambda Legal accordingly respectfully requests that the Court order depublication of the *Angelucci* opinion pursuant to Rule 979 of the California Rules of Court.

Respectfully submitted,

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MARC ANGELUCCI et al., Plaintiffs and Appellants, v. CENTURY SUPPER CLUB, Defendant and Respondent.

B173281

COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT, DIVISION FIVE

130 Cal. App. 4th 919; 30 Cal. Rptr. 3d 460; 2005 Cal. App. LEXIS 1028; 2005 Cal. Daily Op. Service 5793; 2005 Daily Journal DAR 7893

June 28, 2005, Filed

PRIOR HISTORY: [***1] Superior Court of Los Angeles County, No. BC278640, Joseph R. Kalin, Judge.

LexisNexis(R) Headnotes

COUNSEL: Law Offices of Morse Mehrban and Morse Mehrban for Plaintiffs and Appellants.

Law Offices of Steven L. Martin and Steven L Martin for Defendant and Respondent.

JUDGES: Armstrong, J., with Turner, P. J., and Mosk, J., concurring.

OPINIONBY: ARMSTRONG [*921] [**460]

OPINION:

ARMSTRONG, J.--On July 30, 2002, in Superior Court case number BC278640, plaintiffs and appellants Mark Angelucci, Edgar Pacas, Elton Campbell, and Jeff Kent sued respondent Century Supper Club and many other clubs for violation of the Unruh Civil Rights Act (*Civ. Code, § 51*) n1 and the Gender Tax Repeal Act (*Civ. Code, § 51.6*). n2 Appellants alleged that on specified dates they went to the Century Supper Club and were charged a higher admission fee than women [**461] were charged. Angelucci and Pacas alleged that on June 14, 2002 they were charged $ 20, although the admission fee for women was $ 15, and that on June 16, 2002, they were charged $ 20, although women were admitted free. Campbell went to the club seven times in June and July and had similar experiences. Kent went three times and had similar experiences. Plaintiffs alleged that they were charged the [***2] higher price because they were men.

n1 That statute provides that "All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, or medical condition are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever." (*Civ. Code, § 51, subd. (b)*.)

n2 That statute provides that "No business establishment of any kind whatsoever may discriminate, with respect to the price charged for services of similar or like kind, against a person because of the person's gender." (*Civ. Code, § 51.6, subd. (b)*.)

Shortly thereafter, Campbell sued respondent in another case, BC281386, filed on October 7, 2002. This case also included many other defendants. As to respondent, Campbell alleged that he went to the Century Supper Club on July 20 (a date which was not the subject of his allegations in the earlier case), paid $ 20 admission although [***3] women were admitted free, and was subjected to a physical body search although women were not searched. The cases were consolidated. n3

n3 Another case, BC284595, was also part of the consolidation order. Our record does not include a copy of the complaint in that case, or any other information about it.

Respondent moved for judgment on the pleadings. For purposes of that motion, the parties agreed that plaintiffs did not ask to be admitted free, as women were, or at the price women were charged. Citing *Koire v. Metro*

Car Wash (1985) 40 Cal. 3d 24 [219 Cal. Rptr. 133, 707 P.2d 195], respondent contended that without such requests, plaintiffs could not recover. The trial court agreed, and entered judgment for respondent.

Discussion

In *Koire v. Metro Car Wash, supra, 40 Cal. 3d 24*, a male plaintiff visited car washes on "Ladies' Day," asked to be charged the same discounted price **[*922]** as women were charged, and was refused. He also went to a nightclub which had advertised **[***4]** free admission for women aged 18 to 21, asked to be admitted free, and was refused. (*Id. at p. 27.*) He sued, contending that the car washes and bars had violated the Unruh Civil Rights Act by charging men more than they charged women. The trial court entered judgment for defendants after finding that sex-based price discounts did not violate the Unruh Civil Rights Act. The Supreme Court reversed, finding that the Unruh Civil Rights Act prohibits businesses from offering sex-based price discounts. (*40 Cal.3d at p. 38.*)

The Court also noted that "There was conflicting testimony at trial about whether defendant State College Car Wash refused to wash plaintiff's car for the reduced 'Ladies' Day' price. The trial court did not resolve the factual dispute, since it held as a matter of law that 'Ladies' Day' discounts do not violate the *Unruh Civil Rights Act.* State College Car Wash does not deny that it advertises special 'Ladies' Day' prices. *At a minimum, men who wish to be charged the same price as women on 'Ladies' Day' must affirmatively assert their right to equal treatment.*" (*Koire v. Metro Car Wash, supra, 40 Cal. 3d at p. 27, fn. 3*, italics added.)

(1) Plaintiffs argue that **[***5]** *Koire* merely describes State College Car Wash's policy, and contend that the case holds that State College Car Wash violated the Unruh Civil Rights Act, even though the factual dispute was not resolved. We do not agree. The Supreme Court made the statement in a footnote, and the footnote appended to the sentence that tells us that most of the car washes refused plaintiff's request for the discounted price. The Supreme Court reversed the judgment in favor of the defendants **[**462]** and remanded the case to the trial court "for further proceedings consistent with the views expressed herein." The Court thus directed the trial court to resolve the factual dispute in light of the holding that sex-based price discounts violate the Unruh Civil Rights Act. By so doing, it implicitly held that a denial of services (the requirement in the Gender Tax Repeal Act) is necessary to state a claim for sex-based price discrimination under the Unruh Civil Rights Act. Further, the "at a minimum" language, following as it does the statement that "State College Car Wash does not deny that it advertises special 'Ladies Day' prices," establishes that mere advertising a sex-based price discount does not violate the Unruh Civil Rights Act.

(2) As respondent argues, **[***6]** *Koire* holds that an Unruh Civil Rights Act plaintiff seeking to recover for sex-based price discounts must, at a minimum, plead and prove a request for equal treatment. The parties do not separately address the Gender Tax Repeal Act, perhaps because they believe, as we conclude, that whatever *Koire*'s holding is, it applies equally to that statute. **[*923]**

Koire recognizes that the legislative object of the Unruh Civil Rights Act was "to prohibit *intentional* discrimination in access to public accommodations," so that "a plaintiff must ... plead and prove a case of intentional discrimination to recover under the Act." (*Harris v. Capital Growth Investors XIV (1991) 52 Cal. 3d 1142, 1148 [278 Cal. Rptr. 614, 805 P.2d 873].*)

The legislative objective of the Gender Tax Repeal Act was to eliminate the gender tax, defined as "the additional amount women pay for similar goods or services due to gender-based discrimination in pricing." The Legislature acted after an assembly committee held hearings and concluded that "adult women effectively pay a gender tax which costs each woman about $ 1,351, annually."

At that time, the Legislature was aware that *Koire* had determined that gender-based price discounts **[***7]** violate the Unruh Civil Rights Act. Both the Assembly and Senate Committee analyses of the bill (Assem. Bill No. 1100 (1995-1996 Reg. Sess.)) discuss the case, noting that "Opponents [of the bill contend] that the bill is unnecessary because discriminatory practices are already generally prohibited under the [Unruh Civil Rights Act]. However, the only published California case which relies on the [Unruh Civil Rights Act] to disallow price discrimination, does so in the narrow context of special discounts for 'Ladies Night' at a bar and 'Ladies Day' at a car wash," citing *Koire v. Metro Car Wash, supra, 40 Cal.3d 24.* (Sen. Com. on Judiciary, Analysis of Assem. Bill No. 1100 (1995-1996 Reg. Sess.) as amended May 3, 1995.)

The Legislative intent was thus to extend *Koire* to all forms of gender tax and all businesses. The Legislature, fully aware of the holding of that case, did not specify that under the new statute, unlike the old, no request for equal services would be necessary.

(3) Moreover, as a matter of logic, we would not have expected them to do so. If the Legislature disagreed with *Koire*'s reading of the Unruh Civil Rights Act, it would have amended that Act. We thus conclude that the Legislature approved of *Koire's* request **[***8]** requirement. Given that, exclusion of the request require-

ment from the Gender Tax Repeal Act would have resulted in an oddity, or, indeed, an unfairness. Insofar as gender-based price discounts are concerned, the Unruh Civil Rights Act and the Gender Tax Repeal Act are parallel statutes. They prohibit the same conduct and are addressed to the same societal evils, and thus are subject to the same pleading and proof requirements.

They are also governed by the same statute concerning remedies. Under *Civil Code section 52*, "Whoever denies ... or **[**463]** makes any discrimination or distinction contrary to," the Unruh Civil Rights Act or the Gender Tax Repeal **[*924]** Act is liable for treble damages or a minimum of $ 4,000, and, if the court so rules, the attorney fees incurred by "any person denied the rights" set out in the statute. (*Civ. Code, § 52, subd. (a)*.)

(4) *Koire*'s holding that there must be an affirmative assertion of the right to equal treatment is based on the fact that there cannot be a discrimination or a denial of services unless services are requested. The principle is consistent with long-standing California law, cited by respondent, which holds that a plaintiff cannot sue for discrimination **[***9]** in the abstract, but must actually suffer the discriminatory conduct.

In *Weaver v. Pasadena Tournament of Roses (1948) 32 Cal. 2d 833 [198 P.2d 514]*, the allegation was that plaintiffs waited in line for Rose Bowl tickets, but were not able to buy them because fewer tickets were available for public sale than had been promised. Plaintiffs sought to sue in the name of all individuals who waited on line but were denied tickets. The Court concluded that the case was not cognizable as a representative suit because "[t]he question, as to each individual plaintiff, is whether *he* 'as a person over the age of twenty-one years' presented himself and demanded admittance to the game, whether *he* tendered the price of the ticket, ..." (*Weaver v. Pasadena Tournament of Roses, supra, 32 Cal. 2d at p. 838.*)

The plaintiff in *Orloff v. Hollywood Turf Club (1952) 110 Cal. App. 2d 340, [242 P.2d 660]* was admitted to, then ejected from, a racetrack turf club for a reason which he alleged to be unlawful. He was told that he would never again be admitted, or, if admitted, would be ejected. He sued under an earlier version of the Unruh Civil Rights Act, seeking damages for his nonadmission **[***10]** or ejection on each day the track was open, and arguing that the statement that he would be ejected meant that he could sue without actually seeking admittance. The Court found that the plaintiff failed to state a cause of action. (*Orloff v. Hollywood Turf Club, supra, 110 Cal. App. 2d 340.*)

(5) The fact that those cases arose in the class action context should not obscure their meaning: a plaintiff can only sue for discrimination after actively seeking equal treatment.

Here, plaintiffs alleged that women were charged less, but not that they asked for equal treatment. The rule announced in *Koire* applies. The trial court was thus correct that respondent was entitled to judgment on the pleadings. **[*925]**

Finally, *Koire's* holding that a plaintiff must request equal treatment before filing suit ensures that the statutes will be used to redress genuine grievances and to punish genuine misconduct, not by those who seek to exploit the law for financial gain. (See *Reese v. Wal-Mart Stores, Inc. (1999) 73 Cal. App. 4th 1225, 1236 [87 Cal. Rptr. 2d 346]* ["self-generated" nature of Unruh Civil Rights and Gender Tax Repeal Acts injury relevant to class certification].)

Disposition

The judgment **[***11]** is affirmed.

Turner, P. J., and Mosk, J., concurred.

PROOF OF SERVICE BY U.S. MAIL

I, TITO GOMEZ, declare:

That I am a resident of the County of Los Angeles, California; that I am over eighteen (18) years of age and not a party to this action; that I am employed in the County of Los Angeles, California; and that my business address is 3325 Wilshire Blvd., Suite 1300, Los Angeles, CA 90010.

On August 26, 2005, I served a copy of the attached document, described as **REQUEST FOR DEPUBLICATION OF DECISION IN ANGELUCCI v. CENTURY SUPPER CLUB,** by U.S. Mail, on the parties of record by placing true and correct copies thereof in sealed envelopes, with first-class postage thereon fully prepaid, addressed as follows:

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I am readily familiar with the office's practice of collecting and processing correspondence for mailing. Under that practice, this correspondence would be deposited with the U.S. Postal Service on that same day. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit for mailing stated in this affidavit.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: August 26, 2005

Tito Gomez