
NEW-AGE DISCRIMINATION:
DETERMINING WHETHER TINDER PLUS'S PRICE IS RIGHT

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I. Introduction

The rise of mobile applications (“apps”) has infiltrated the lives of people all around the world and as a result, it has become one of the fastest growing categories of the global market.¹ As of July 2015, phone-tech company, Android,² has the largest app market allowing users to choose between 1.6 million apps, while Apple’s App Store remained in a close second offering 1.5 million apps.³ Apps are software programs, running on mobile devices that are designed to

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¹ See Kristen Purcell, Roger Entner & Nichole Henderson, *The Rise of Apps Culture*, PEW RES. CTR. (Sept. 14, 2010), *archived at* <https://perma.cc/B2E4-QB4N> (describing the growing popularity of the app development market).

² See Gareth Beavis, *A complete history of Android: Everything you need to know about Google’s mobile operating system*, TECHRADAR (Sept. 23, 2008), *archived at* <https://perma.cc/B99G-QTQE> (characterizing Android as an operating system created and owned by Google).

³ See *Number of apps available in leading app stores as of June 2016*, STATISTA (last visited July 31, 2016), *archived at* <https://perma.cc/94EP-A6BZ> (portraying the number of apps available offered by the two largest app stores in 2016).

perform specific tasks such as streaming music, providing news updates, and checking the weather.⁴ Prospective creators and designers are often attracted to apps' cost effectiveness and simplicity, which has resulted in a growing popularity in app development.⁵

Modern day app development can be a highly rewarding and dynamic business venture with the capability of thriving for little start-up cost.⁶ Even though barriers in the app business are few and low, there are still the same potential financial and legal pitfalls that are prevalent for any start-up business.⁷ The most prominent legal issues in app development are entity formation, confidentiality, intellectual property ownership and protection, terms of use, and privacy.⁸ While apps have historically been developed for informative and entertainment purposes, mobile online dating apps such as Tinder, Clover, and Hinge, have taken the app market by storm as digital dating has evolved into a "hand-held activity."⁹ Amongst all others of its kind, Tinder has been at the forefront of the mobile-dating surge.¹⁰

Tinder is a free, location based app that brings convenience to the conventional dating scene.¹¹ Along with reaching the milestone of being one of the first successful apps of its kind, Tinder has also brought attention to a legal issue not particularly prevalent in the app

⁴ See Laura Lorenzetti, *These are the most popular iPhone and iPad apps ever*, FORTUNE (Sept. 2, 2015), archived at <https://perma.cc/MS8S-QBVE> (listing the world's most popular apps).

⁵ See Roy Chomko, *The Real Cost of Developing an App*, ADAGE TECHNOLOGIES (Feb. 15, 2013), archived at <https://perma.cc/A9TC-VTHP> (setting forth the foreseeable long term costs associated with app development).

⁶ See Jessica E. Lessin & Spencer E. Ante, *Apps Rocket Toward \$25 Billion in Sales: Players in Quickly Growing Business Scramble to Figure Out Best Ways to Attract Users and Turn a Profit*, WALL ST. J. (last updated Mar. 4, 2013), archived at <https://perma.cc/3JWY-N57E> (providing a cost-benefit analysis of the app development and success).

⁷ See Aaron George, *Top 5 Legal Issues Facing App Developers*, APP EMPIRE (last visited Jan. 18, 2017), archived at <https://perma.cc/245E-WCAH> (summarizing several frequent legal issues app designers face).

⁸ See *id.* (justifying the relevance and frequency of pertinent legal issues within the app development industry).

⁹ See Molly Wood, *Led by Tinder, a Surge in Mobile Dating Apps*, N.Y. TIMES (Feb. 4, 2015), archived at <https://perma.cc/F28G-ZW6K> (establishing the most popular mobile and online dating apps).

¹⁰ See *id.* (highlighting how easy Tinder is to set up, use, and how messages are restricted unless both parties like each other's profile).

¹¹ See *id.* (distinguishing Tinder's popularity among other dating apps).

development market—price discrimination on the basis of age.¹² On April 29, 2014, Tinder was confronted with a class action suit in California Federal Court alleging that their mobile app’s pricing policy discriminates on the basis of age.¹³ Two years later, the presiding judge dismissed the class action suit on the basis that the plaintiff was unable to evidence “how he was harmed by the allegation.”¹⁴ Interestingly enough, in issuing his decision, the Judge stated that it was not made on the merits of the case, which bids the question, what would have happened had the plaintiff provided sufficient evidence of harm?¹⁵

This Note will analyze both state and federal laws preventing discriminatory sales practices from a historical perspective and will advise on the issue of whether California’s legal precedent should apply to Tinder’s newly implemented pricing policy in the case, *Manapol v. Tinder, et.al.*¹⁶ Section II of this note will discuss the evolution of social networking technology and illustrate how virtual social networks have become functionalized within our culture.¹⁷ Additionally, this section will introduce the historical reasoning behind the prevention of discriminatory practices in various other fields while also highlighting discrimination on the basis of age using relevant case law and statutory regulations.¹⁸ Section III will describe the facts of *Manapol*, and will connect the issue to past discriminatory

¹² See Jordan Crook, *New Tinder Charges Whatever It Wants*, TECHCRUNCH (Mar. 2, 2015), archived at <https://perma.cc/SBH3-PDXZ> (inferring that age discrimination is not particularly prevalent in the app development industry).

¹³ See Brandon Lowrey, *Tinder App Pricing Burns Men, Older Daters, User Alleges*, LAW 360 (Apr. 29, 2015), archived at <https://perma.cc/N24Z-7RHU> (commenting on the current legal proceedings against Tinder).

¹⁴ See Melissa LaFreniere, *Tinder Dating App Escapes Gender Discrimination Class Action*, TOP CLASS ACTIONS (Feb. 19, 2016), archived at <https://perma.cc/6399-QDFM> (explaining the dismissal of the class action suit against Tinder). Judge Highberger of the Los Angeles Superior Court stated “the male plaintiff had not ‘connected the dots’ to show how he had been harmed.” *Id.*

¹⁵ See *id.* (explaining that there was not enough evidence to show a pattern of discrimination).

¹⁶ See Complaint at 17, *Manapol v. Tinder*, 2015 WL 1951056 (C.D. Cal. 2015) (No. 2:15-cv-03175) (illustrating the class action law suit against Tinder on the basis of price discrimination).

¹⁷ See *infra* Section II.

¹⁸ See *infra* Section II.

practices and explore our culture's rising concerns related to the pricing of smartphone apps and services.¹⁹

Section IV will compare and contrast *Manapol's* argument regarding Tinder's new pricing policy with case law, in an effort to determine whether this particular pricing policy is analogous to policies that have been previously outlawed.²⁰ Additionally, this Note will address the contention that even though this form technology may *appear* unnecessary and far removed from the Unruh Civil Rights Act's ("UCRA") legislative purpose, the rights and opportunities for consumers to enjoy products and services must remain consistent as we progress to a technologically advanced society. Section V will predict what the *Manapol* case's outcome would have been had it proceeded to litigation and articulate why the Plaintiff's argument would have prevailed as Tinder's pricing policy is in clear violation of the statutes enacted to prevent businesses from employing discriminatory practices towards those who collectively make up the consumer market.²¹

II. History

A. *The History of Mobile App Development*

From where our society stands today, it is quite difficult to remember what life was like without the ability to use apps on cell phones, computers, and tablets.²² Dating back to 1983, the age of apps began with the world's first cell phones—designed and distributed by Nokia.²³ Primitive apps included simple games like Tic-Tac-Toe, Snake, and Pong.²⁴ As unsophisticated as they were, these apps changed the way cell phone owners used their devices and “opened the doors” to app development.²⁵ Initially, cell phone users only had the ability to use simple apps such as “calculators, ringtone creators,

¹⁹ See *infra* Section III.

²⁰ See *infra* Section IV.

²¹ See *infra* Section V.

²² See *The History Of App Development And What It Means In The Future*, EMPIRICAL WORKS (June 2, 2014), archived at <https://perma.cc/R5TN-57LV> (tracing the beginning of the app development industry).

²³ See *id.* (describing when apps first begun being used on cell phones).

²⁴ See *id.* (providing a description of the original pre-installed apps on Nokia cell phones).

²⁵ See *id.* (proffering the implementation of apps and the effect on users).

basic arcade games, and calendars.”²⁶ Companies habitually refrained from furthering their app development out of fear of revealing trade secrets in the competitive market.²⁷ Yet, as competition in the field drastically increased, the cost to develop devices decreased and companies had no choice but to innovate in order to survive through the implementation of Linux and Windows platform programming.²⁸ The execution of these new-age advancements provoked the generation of future app development.²⁹

In 1993, International Business Machine Corporation (“IBM”) developed and distributed the first “smart phone” with a touch screen named “Simon.”³⁰ This concept allowed users to access pre-installed apps such as “calendars, clocks, notepads, e-mails, contacts, and games.”³¹ Research In Motion Limited (“RIM”) interpreted this as a challenge and created the first Blackberry, a device devoted to e-mail—a function users were craving.³² In 2007, Apple then released the first iPhone and introduced the concept of the “App Store,” providing device users with futuristic capabilities they had always dreamt about.³³

The App Store created a gateway for users to access a multitude of apps they could install on their personal devices.³⁴ Shortly after this release, Android, Inc. introduced the Android Market into the

²⁶ See *id.* (listing the task-oriented apps commonly available on cell phones).

²⁷ See *id.* (justifying companies’ reasoning for not expanding app development).

²⁸ See *The History Of App Development And What It Means In The Future*, *supra* note 22 (suggesting a new age of app development began when Linux and Windows platforms were used in initial programming).

²⁹ See *The History Of App Development And What It Means In The Future*, *supra* note 22 (explaining that Apple’s App store created a whole new way for users to access apps).

³⁰ See *The History Of App Development And What It Means In The Future*, *supra* note 22 (noting IBM’s development of “Simon” and its revolutionized concept).

³¹ See *The History Of App Development And What It Means In The Future*, *supra* note 22 (outlining the concept of “pre-installed” apps as well as the ones accessible to first time users).

³² See *The History Of App Development And What It Means In The Future*, *supra* note 22 (characterizing the Blackberry model as a product that combines a number of functions including emails, web browsing, schedule management, and text messaging into one portable device).

³³ See Oliver Haslam, *A Brief History of the iOS App Store and the Rise of the Mobile App*, iDOWNLOAD BLOG (Dec. 21 2011), archived at <https://perma.cc/5HAJ-DBX3> (describing Apple’s iPhone capabilities and the release on the App Store).

³⁴ See *id.* (demonstrating how the Apple Store allowed users to customize their app use through marketplace downloads).

industry.³⁵ High Tech Computer Corporation (“HTC”)³⁶ jumped at this opportunity and distributed the first available Android phone creating competition for Apple’s iPhone.³⁷ In 2009, both markets reached one billion downloads, significantly surpassing society’s expectations.³⁸ Apple then attempted to one-up their competitors by releasing the iPad,³⁹ which provided a “futuristic” method of enjoying mobile apps.⁴⁰ Competition in app development continued to increase during 2007 when Apple and Google’s markets typical surpassed web usage by offering over one (1) million apps.⁴¹ Several years later, both companies realized their visions had rose above all expectations when their marketplaces each reached over fifteen (15) billion app downloads.⁴²

Today, large companies, start-ups, and government entities are strong-armed into upgrading to mobile platforms because apps are now vital for communication and commercial success around the

³⁵ See *id.* (recalling how Google broke through the app development industry by creating a competitive app store).

³⁶ See *HTC Corporation Company Information*, HOOVERS (last visited July 31, 2016), archived at <https://perma.cc/4JAF-WXA7> (describing “HTC” as a Company that designs and manufactures handheld wireless telecommunications devices, based on Google’s Android and Microsoft’s Windows Mobile operating systems).

³⁷ See Dominic Rushe, *Smartphone competition heats up as HTC closes in on Apple*, GUARDIAN (Feb. 26, 2011), archived at <https://perma.cc/72ZN-2F2J> (suggesting that competition between Apple and HTC began when HTC began distributing large numbers of smart phones).

³⁸ See *The History Of App Development And What It Means In The Future*, *supra* note 22 (acknowledging the high volume of downloads reached by Apple and Android Marketplaces).

³⁹ See Margaret Rouse, *iPad*, SEARCHMOBILE COMPUTING (last updated Feb. 2011), archived at <https://perma.cc/J2QL-WU2F> (describing the iPad as a “9.7 inch touch screen tablet PC made by Apple”).

⁴⁰ See *The History Of App Development And What It Means In The Future*, *supra* note 22 (reviewing Apple’s release of the iPad, a revolutionary concept providing users with a new way to enjoy apps).

⁴¹ See *The History Of App Development And What It Means In The Future*, *supra* note 22 (addressing Apple and Android’s achievement of surpassing web usage in reaching over one million downloads).

⁴² See *The History Of App Development And What It Means In The Future*, *supra* note 22 (discussing the success of mobile app marketplaces during 2007).

globe.⁴³ As the App development market continues to grow, the amount of legal issues involved steadily increases.⁴⁴

B. *The History of Mobile App Pricing*

Originally, apps were either pre-downloaded on devices or could only be downloaded from the creating company's app store, usually free of charge.⁴⁵ When Apple initially launched the iPhone in 2007, it was not capable of running third-party software.⁴⁶ Thus, the CEO of Apple, Steve Jobs, led the implementation of "web apps,"⁴⁷ which allowed users to utilize Internet connections when using the product.⁴⁸ Shortly after Apple's iPhone release, developers around the world began "jail breaking"⁴⁹ their devices and began re-coding third-party apps to work on the device.⁵⁰ In an attempt to accommodate users' steady progression in technological perspicacity, with the launch of Apple's app store in July of 2008, Apple incorporated

⁴³ See Jerin Mathew, *Apple App Store growing by over 1,000 apps per day*, INT'L BUS. TIMES (June 6, 2015), archived at <https://perma.cc/R9D6-S9KC> (stating that businesses continue to develop apps despite the difficulty in getting approval to do so).

⁴⁴ See Amrita Srivastava, *Legal Issues for Mobile Applications*, LEGAL INSIGHTS (May 18, 2013), archived at <https://perma.cc/YG67-NKQZ> (describing legal risks associated with the mobile app development industry).

⁴⁵ See Mel Beckman, *What the app store future means for developers and users: Apple's iOS and Mac app stores have popularized the concept, but Microsoft, Google, and others are now adopting it*, INFO WORLD (May 16, 2011), archived at <https://perma.cc/LKC3-N8QR> (explaining that app developers have to set up separate payment, download, and update mechanisms for each app store in which they sell).

⁴⁶ See *id.* (reporting that the original iPhone did not have the capability to support apps developed by programmers other than Apple's).

⁴⁷ See Daniel Eran Dilger, *Editorial: Google's Android haunted by Steve Jobs' warnings on app signing security*, APPLEINSIDER (July 14, 2013), archived at <https://perma.cc/THB9-5JVS> (distinguishing "web apps" as client-user applications run through a web browser).

⁴⁸ See *id.* (providing that the use of web apps furthered user experience on mobile devices).

⁴⁹ See Rob Mead-Green, *Should you jailbreak an iPhone: Is jailbreaking good for an iPhone or iPad? Is jailbreaking safe? The pros and cons of iOS jailbreaking*, MACWORLD (Sept. 3, 2015), archived at <https://perma.cc/DT7L-Z7RJ> (defining "jailbreaking" as the removal of hardware restrictions imposed by device manufacturers and coding developers to allow the addition of applications and extensions).

⁵⁰ See *id.* (describing the process and purpose of jailbreaking iPhone devices).

third-party app development software on their mobile devices, allowing developers to build apps and enabling end-users to download free third-party apps.⁵¹

During this time, Apple collected commission on app purchases through the Apple Store, essentially incentivizing third-party developers to charge for their products.⁵² In order to subsidize the cost of app development and generate a reasonable profit margin, the most popular app developers utilized advertisements to help finance the product's exposure to the world of mobile apps.⁵³ Shortly thereafter, competing app stores, such as Android's App Store and BlackBerry's App Store, sprouted up across the app development market in 2008 and 2011 respectively.⁵⁴ In an effort to motivate users to purchase apps, rather than only download those that were free, developers offered added premium features like blocked advertisements.⁵⁵ Thus, the competitive and innovative app market as we know it today, was born.⁵⁶

C. Age Discrimination Legislation in the United States

1. The Legislative History of the UCRA

During the 1960's, many Americans were only slightly aware of the capability of "equal protections of the laws" and often held high expectations of the federal branches to enforce the protections

⁵¹ See Beckman, *supra* note 45 (stating that Apple adapted their programs to incorporate the ability for users to download apps from outsider developers via the Apple Store).

⁵² See Beckman, *supra* note 45 (revealing that Apple took up to 30 percent commission from third party revenue for allowing apps to be marketed on the Apple Store).

⁵³ See Mary Ellen Gordon, *The History of App Pricing, And Why Most Apps Are Free*, FLURRY INSIGHTS (July 18, 2013), archived at <https://perma.cc/2526-8RA6> (asserting that app developers often utilize promotions and advertisements to help fund the cost of placing app on the App Store's large platform).

⁵⁴ See Dan Rowinski, *[Infographic] History of Mobile App Stores*, READWRITE (Feb. 7, 2012), archived at <https://perma.cc/UT3N-FR57> (elaborating on the competitive expansion of companies like BlackBerry and Android during the mobile app market's apex).

⁵⁵ See Natasha Starkell, *How Much Money Top 50 Free Apps Actually Make*, HUFFINGTON POST (July 7, 2014), archived at <https://perma.cc/B4HX-Y3ZN> (suggesting that free apps profit through promotions and advertisements).

⁵⁶ See Rowinski, *supra* note 54 (stating how iOS and Android have been growing exponentially).

reserved under the Fourteenth Amendment.⁵⁷ As a result, the federal branches of government debated whether the Constitution's prohibition of acts that deny equal protection "always bans the use of ethnic, racial, or gender criteria" and whether it was set in place in order to motivate social justice and benefits.⁵⁸

In 1964, Congress took this issue's resolution into its own hands and passed Public Law 88-352,⁵⁹ which "forbade any discrimination the on basis of gender and race when hiring, firing, and promoting employees."⁶⁰ The finalized legislation, after much criticism, made it unlawful to "fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions or privileges or employment, because of such individual's race, color, religion, sex, or national origin."⁶¹ Further, Title VII of the Civil Rights Act of 1964 essentially gave way to the creation of the Equal Employment Opportunity Commission ("EEOC")⁶² to enforce the law.⁶³

California, in particular, has expanded on the Federal prohibitions, in an attempt to strictly enforce non-discriminatory business practices on a state level.⁶⁴ Within the California Civil Code, Section

⁵⁷ See U.S. CONST. amend. XIV § 1 (instituting citizenship rights and equal protection of the laws); *Teaching With Documents: The Civil Rights Act of 1964 and the Equal Employment Opportunity Commission*, NAT'L ARCHIVES AND RECORDS ADMIN. (last visited July 31, 2016), archived at <https://perma.cc/37T7-F9DG> (surmising the public's knowledge of the anti-discriminatory laws was minimal and the public relied heavily on the support of the federal branches for protection).

⁵⁸ See *id.* (proposing the constitutional question that initiated the progressive movement of the non-discriminatory legislation).

⁵⁹ See Civ. Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241 (codified as amended in scattered sections of 2 U.S.C., 28 U.S.C., and 42 U.S.C.).

⁶⁰ See *id.* (providing that any hiring, firing, or promoting on the basis of gender or race is outlawed).

⁶¹ See *id.* (prohibiting discrimination of any kind on the basis of individualized characteristics such as race, color, religion, sex, and national origin).

⁶² See Susan M. Heathfield, *Summary of Employment Related Components of the Civil Rights Act of 1964*, ABOUT MONEY (last updated Nov. 30, 2015), archived at <https://perma.cc/3EYZ-4XZK> (describing the EEOC as the federal agency that has the responsibility to "promote equal opportunity in employment through administrative and judicial enforcement of federal civil rights laws").

⁶³ See *id.* (suggesting that Title VII guaranteed equal opportunity in employment).

⁶⁴ See California Unruh Civil Rights Act, CAL. CIV. CODE §§ 51-52 (outlawing discrimination based on sex, race, color, religion, ancestry, national origin, disability, medical condition, marital status, or sexual orientation); see also *ADA Violations & The California Unruh Civil Rights Act*, CUSTODIO & DUBEY, LLP (last visited Jan.

51 was amended several times within the past century.⁶⁵ After being amended in 1905, 1919, and 1923, the section stated:

[a]ll citizens within the jurisdiction of this state are entitled to the full and equal accommodations, advantages, facilities and privileges of inns, restaurants, hotels, eating houses, places where ice cream or soft drinks of any kind are sold for consumption on the premises, barber shops, bath houses, theatres, skating rinks, public conveyances and all other places of public accommodation or amusement, subject only to the conditions and limitations established by law, and applicable alike to all citizens.⁶⁶

In order to further the anti-discrimination initiative, California's legislature instituted remedial measures for those oppressed by implementing penalties for violators.⁶⁷ As set forth in Section 52, the provision originally declared that those who "denied a citizen access to public accommodation or facility would be liable for an amount not less than one hundred [100] dollars in damages."⁶⁸ This made it quite clear that California's legislature intended to provide equality for the citizens of California by enabling protection against discriminatory business practices and by encouraging citizens to pursue damages for violations.⁶⁹

The successive amendments broadening the Act were developed to include specific classes of persons and enumerated the form

30, 2017), *archived at* <https://perma.cc/9Q93-6GW6> (describing California's long history of preventing discriminatory practices).

⁶⁵ See CAL. CIV. CODE §§ 51-52 (outlining the influential amendments made to the Unruh Civil Rights Act between 1905 and 1923).

⁶⁶ See *id.* (detailing the forms of public accommodations protected as set forth by the act).

⁶⁷ See *Americans with Disabilities Act Legislation and Defenses*, MOHAJERIAN 1 (last visited July 31, 2016), *archived at* <https://perma.cc/6QGP-WYZD> (introducing the remedial measures set forth by the legislature for violations of the UCRA).

⁶⁸ See *id.* (proffering the original remedial measures under Section 51).

⁶⁹ See *Feezor v. Del Taco, Inc.*, 431 F. Supp. 2d 1088, 1090 (S.D. Cal. 2005) (determining that damages will be in the amount of up to three times the actual damages and no less than \$4,000 in statutory damages). The court reasoned further ruled "such an interpretation is supported by case law and is consistent with the plain language of the [Unruh Civil Rights Act]." *Id.* at 1091.

of public accommodations protected by the California law.⁷⁰ In 1959, Section 51 was revised to emphatically prohibit discrimination in every business and to emblemize a list of protected peoples.⁷¹ The act was revised to include “[a]ll citizens within the jurisdiction of this State are free and equal, and no matter what their race, color, religion, ancestry or national origin are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.”⁷²

During 1974, Section 51 was further amended to prohibit gender-based discrimination and then in 1987, the UCRA was expanded to include any discriminatory practices against the physically disabled.⁷³ In 1992, once the Americans with Disabilities Act (“ADA”)⁷⁴ was enacted, the UCRA was revised once more to incorporate the ADA standards set forth in order to ensure that any inherent violation of the ADA would contemporaneously violate UCRA.⁷⁵ The California legislature then determined that in order for a plaintiff to prevail on a Section 51 claim, it is necessary for them to prove that

⁷⁰ See MOHAJERIAN, *supra* note 67, at 1 (discussing the legislature’s expansion on Section 51 to include classes of people and ulterior forms of accommodations).

⁷¹ See MOHAJERIAN, *supra* note 67, at 1 (illustrating the revisions made to Section 51 to incorporate the overarching protection afforded to people of all races at every form of business establishment).

⁷² See *Curran v. Mount Diablo Council of the Boy Scout*, 952 P.2d 218, 223 (Cal. 1998) (demonstrating that an exclusionary practice may not be justified solely on the grounds that the presence of a class of persons does not accord with the nature of the organization or its facilities); see also *Isbister v. Boys’ Club of Santa Cruz Inc.*, 40 Cal.3d 72, 75 (1985) (reiterating all persons within the jurisdiction of California are entitled to full and equal accommodations, facilities, or services in all business establishments through Sec. 51 of the Unruh Civil Right Act).

⁷³ See *In re Cox*, 3 Cal.3d 205, 212 (1970) (discussing the common law prohibition of all acts of “arbitrary discrimination” by business establishments).

⁷⁴ See 42 U.S.C. § 12101 (1992) (guaranteeing equal opportunity for individuals with disabilities in employment, public accommodations, transportation, state and local government services, and telecommunications).

⁷⁵ See CAL. CIV. CODE § 51(f) (2016) (providing that a violation of the right of any individual under the ADA also constitutes a concurrent violation of the Unruh Civil Rights Act); see also *Munson v. Del Taco, Inc.*, 208 P.3d 623, 673 (Cal. 2009) (providing that under the Unruh Act, if there is an ADA violation the injured party may sue an owner for damages specified in the Act); *Lentini v. Cal. Ctr. for the Arts*, 370 F.3d 837, 847 (9th Cir. 2004) (holding that “[b]ecause the Unruh Act has adopted the full expanse of the ADA, it must follow the same standards for liability apply under both Acts”). The court held that violating the ADA is considered to be a “per se” violation of the Unruh Act. *Id.*

the defendant's violation was made with intent, except for those "predicated on a violation of the ADA."⁷⁶

Since the 1959 amendment, California courts interpreted the UCRA "liberally" in an attempt to prevent arbitrary discrimination and promote equality.⁷⁷ In the past, in order to distinguish which forms of business establishments fell under the restrictions of the UCRA, the courts reasoned the legislature's policy rational for emphasizing the words "all" and "of every kind whatsoever" was done in an attempt to broaden the coverage of the act's protection.⁷⁸ Further, the courts considered this perspective as indicative of the legislature's intent to expand such protection to incorporate all private and public organizations that could reasonably constitute a "business establishment."⁷⁹ Consequently, the UCRA has been applied to both for profit⁸⁰ and non-profit⁸¹ organizations, out rightly banning all discriminatory practices in California.⁸²

⁷⁶ See *Hubbard v. Twin Oaks Health and Rehabilitation Center*, 408 F. Supp. 2d 923, 932 (E.D. Cal. 2004) (holding that the plaintiff does not need to prove that he was "wholly excluded from enjoying the defendant's services, only that they were denied full and equal access"). In *Hubbard*, the plaintiff was disabled and was able to prove that on each individual visit she paid to the care facility, she experienced difficulty when entering and exiting the facility and inability to use soap and paper towel dispensers in bathroom. *Id.* The Plaintiff was awarded \$60,000 in damages, \$4,000 per visit. *Id.* See also *Harris v. Capital Growth Investors XIV*, 805 P.2d 873, 875 (Cal. 1991) (describing the elements of an attempted economic discrimination claim); *Donald v. Café Royale Inc.*, 218 Cal. Rptr. 804, 810 (Cal. Ct. App. 1990) (holding that an individual must establish that they were denied full and equal access on a particular occasion).

⁷⁷ See Steven Wyllie, *The UNRUH Civil Rights Act: A Weapon to Combat Homophobia in Military On-Campus Recruiting*, 24 LOY. L.A. L. REV. 1333, 1336 (1991) (indicating that California courts have employed a liberal approach to the interpretation of the act).

⁷⁸ See *id.* (explaining how the courts tend to interpret the revised sections of the act).

⁷⁹ See *Isbister*, 707 P.2d at 214 (asserting that the court viewed all forms of business establishments covered by the act).

⁸⁰ See *id.* at 215 (establishing that such protections apply to profitable organizations).

⁸¹ See *O'Connor v. Village Green Owners Ass'n*, 662 P.2d 427, 431 (Cal. 1983) (providing that non-profit organizations are included in the coverage of the act); see also *Burks v. Poppy Constr. Co.*, 370 P.2d 313, 315 (Cal. 1962) (defining business establishments to include non-profit organizations).

⁸² See *O'Connor*, 662 P.2d at 431 (concluding that such an interpretation considers the legislature's intent to ban discriminatory practices within the state and community).

2. Structure of the UCRA

California courts have often interpreted the UCRA in a manner consistent with the underlying legislative intent to ban all practices of discrimination by extending its coverage to certain forms of business establishments, and various types of services that must be rendered to patrons equally.⁸³ In terms of the Plaintiff's burden, the UCRA provides that "a Plaintiff does not need to prove that they suffered actual damages to recover the independent statutory damages amount of \$4,000."⁸⁴

3. The Protected Classes

Preceding the 1959 amendment to the UCRA, the California Supreme Court confirmed that the Act protected classes other than the ones explicitly listed within its scripture.⁸⁵ Currently, the Act explicitly identifies the protected classes: age, ancestry, color, disability, genetic information, medical condition (cancer and genetic characteristics), marital status, national origin, race, religion, sex, and sexual orientation.⁸⁶ The California Supreme Court, however, held that these protections are not necessarily limited to these enumerated

⁸³ See *id.* at 430 (insisting that the Act's intention is to be construed liberally to include and cover all discriminatory practices).

⁸⁴ See CAL. CIV. CODE § 52(a) (detailing the UCRA's remedial provisions which allow a Plaintiff to recover up to the maximum of three times the actual damages in addition to any attorney's fees). Section 52 (a) reads:

Whoever denies, aids or incites a denial, or makes any discrimination or distinction contrary to Section 51, 51.5, or 51.6, is liable for each and every offense for the actual damages and any amount of actual damage but in no case less than four thousand (\$4,000), and attorney's fees that may be determined by the court in addition thereto, suffered by any person denied the rights provided in Section 51, 51.5, or 51.6.

Id.

⁸⁵ See MOHAJERIAN, *supra* note 67, at 1 (confirming that the legislative intent was not to make the list of protected classes exhaustive in nature).

⁸⁶ See *Marina Point, Ltd. v. Wolfson*, 640 P.2d 115, 130, (Cal. 1982) (Richardson, J., dissenting) (listing the protected classes as listed in the Unruh Act's specific language).

characteristics.⁸⁷ Furthermore, it was the legislature's to include all arbitrary and intentional discrimination by business establishments on the basis of personal characteristics similar to those explicitly listed.⁸⁸

4. Distinguishing Unequal Services

As stated above, the UCRA does not only apply to goods; it also applies to services.⁸⁹ A clear and recent example of the California courts considering the Act's application to business services took place in January of 2013, when Daniel Javorsky ("Javorsky") filed suit against Western Athletic Club⁹⁰ ("WAC") claiming that he did not qualify for the "Young Professionals Discount"⁹¹ which only applied to members between the ages of eighteen and twenty-nine.⁹²

In his complaint, Javorsky argued that by charging those thirty and older a higher membership⁹³ price than those below the age of thirty, the fitness club violated the UCRA.⁹⁴ Further, Javorsky's complaint alleged that this instituted pricing policy was not motivated

⁸⁷ *See id.* (asserting the court's interpretation that the act explicitly lists sex, race, and various other forms of discrimination however the act's protection is not confined to those enumerated classes).

⁸⁸ *See id.* (emphasizing that the legislative intent behind the UCRA was to ban all forms of arbitrary and intentional discrimination against consumers).

⁸⁹ *See O'Connor*, 662 P.2d at 430 (affirming that the UCRA applies to both goods and services).

⁹⁰ *See Javorsky v. Western Athletic Club, Inc.*, 195 Cal. Rptr. 3d 706, 708 (Cal. Ct. App. 2015) (describing WAC as a health and fitness club in the San Francisco Bay Area).

⁹¹ *See Javorsky*, 195 Cal. Rptr. 3d at 708 (explaining individuals between the ages of 18 and 29 paid significantly lower initiation fees and monthly dues). According to WAC's Chief Executive Officer, the program reflects the reduced financial resources of the under 30 age group and promotes WAC's membership to younger individuals who might not otherwise be able to afford to join WAC's clubs. *Id.* at 709. WAC introduced testimony from an expert demographer who analyzed U.S. Census income data and arrived at the conclusion that financial resources of the 18-29 population are substantially lower than those in the 30-64 population. *Id.* at 710.

⁹² *See id.* at 710 (emphasizing Javorsky's argument that the Young Professional discount constituted illegal age discrimination and violated the UCRA).

⁹³ *See id.* at 718 (characterizing "Unrestricted memberships" as access to services and activities designed to promote physical fitness and general well-being, including exercise equipment, swimming pools, basketball, squash, tennis courts, personal training services, and spa treatments).

⁹⁴ *See id.* at 709 (arguing that charging higher membership prices on the basis of age was discriminatory in nature and unjustified).

by “a compelling societal interest or other strong public policy demonstrated by legislation.”⁹⁵

Building off this argument, Javorsky attacked the credibility of WAC’s claim that this discriminatory pricing scheme was justified by a “legitimate business interest.”⁹⁶ Thus, with the intent to represent a class of similarly situated individuals, Javorsky claimed that the “Young Professional Discount” was an act of illegal age discrimination.⁹⁷ The trial court granted summary judgment for WAC reasoning that WAC met its burden of proof by showing that the Young Professional Discount was “reasonable and not arbitrary,” which resulted Javorsky’s inability to “establish a triable issue of material fact.”⁹⁸

In Javorsky’s appeal, the Appellate Court considered the specific language of the UCRA as well as the Act’s history of past amendments, concluding that the legislative intent behind the Act was to prevent all forms of discriminatory practices, including both “outright exclusion and pricing differentials.”⁹⁹ More specifically, the Court reasoned that the “fundamental purpose of the UCRA’s enactment was to eliminate all anti-social discriminatory practices, except for those that are socially beneficial.”¹⁰⁰

Therefore, case law stands for the proposition that discrimination may be legal (and not in violation of the UCRA) as long as it is done so reasonably and not arbitrarily, “in light of the nature of the enterprise or its facilities, legitimate interests (maintaining order,

⁹⁵ *See id.* at 710-11 (characterizing Javorsky’s argument that by employing a pricing policy granting discounts to those under the age of 30, WAC was violating the UCRA).

⁹⁶ *See Javorsky*, 195 Cal. Rptr. 3d at 708 (explaining that Javorsky led the class action suit against WAC accompanied by “others similarly situated” by means of unequal treatment).

⁹⁷ *See id.* at 711 (discussing the procedural posture of Javorsky’s appeal by noting the trial court granted summary judgment in favor of WAC).

⁹⁸ *See id.* at 711 (providing that the Court granted summary judgment in favor of WAC because they were able to submit sufficient evidence that justified the age-based discount).

⁹⁹ *See id.* at 718 (suggesting the appeals court focused their analysis on the legislative intent of the UCRA in order to decide whether or not the discrimination was justifiable).

¹⁰⁰ *See Sargoy v. Resolution Trust Corp.*, 10 Cal. Rptr. 2d 889, 895 (Cal. Ct. App. 1992) (holding that the act does not absolutely prevent business establishments of patrons in all circumstances but considers the socially inhibiting nature).

complying with legal requirements, and protecting business reputation or investment), and public policy supports the disparate treatment.”¹⁰¹

Throughout the Court’s analysis of Javorsky’s argument, congruency was established with *Starkman v. Mann Theatres Corp.*,¹⁰² where the plaintiff filed a complaint against a movie theatre for discounting prices for children and seniors.¹⁰³ After reviewing both past and current social policy considerations regarding age-based discounts, the court concluded that a discounted ticket price for children and seniors did not violate the Act because the theatre’s intention was to promote “the family oriented nature of the business” and “tended to benefit disadvantaged groups who had less disposable income.”¹⁰⁴ Further, based on the inevitable fact that everyone will age, “age-based benefits are often something that all members of society, at some point in life, can enjoy.”¹⁰⁵

Following the reasoning of *Starkman*, the court found that WAC was justified in providing the Young Professional discounted rate to those between the ages of eighteen and twenty-nine because studies demonstrated that without such a benefit, many may not be able to access the healthful benefits of the club’s membership due to their lower medium incomes.¹⁰⁶ Additionally, research suggested that persons over the age of thirty, in the specific geographical area

¹⁰¹ See *Javorsky*, 195 Cal. Rptr. 3d at 712-13 (highlighting that discrimination may be legal under UCRA based on certain business circumstances); see also *Koire v. Metro Car Wash*, 707 P.2d 195, 198 (Cal. 1985) (stating there may be justification for discrimination so long as the business establishment can show that “the nature of the business enterprise or the facilities provided has been asserted as a basis for upholding a discriminatory practice *only* when there is a public policy in favor of such treatment”).

¹⁰² See *Starkman v. Mann Theatres Corp.*, 278 Cal. Rptr. 543, 546-47 (Cal. Ct. App. 1991) (discussing a movie theatre’s pricing policy that offered discounts to children and senior citizens through a claimed “compelling societal interest”).

¹⁰³ See *id.* at 549 (explaining the policy is not arbitrary discriminatory or unfair because “all members of society regardless of their sex, race, religion or national origin” will be entitled to the discount at some point).

¹⁰⁴ See *id.* at 544-45 (emphasizing the court’s finding that generally young children and seniors have less disposable income and thus such a price discount both serves a legitimate business purpose as well as a compelling societal interest).

¹⁰⁵ See *id.* at 548 (justifying the perpetual benefits of age-based benefits).

¹⁰⁶ See *Javorsky*, 195 Cal. Rptr. 3d at 721 (indicating that the *Javorsky* Court followed the reasoning set forth in *Starkman*); see also *Starkman*, 278 Cal. Rptr. at 548 (arguing that from a policy standpoint these particular classes may be deprived from the services if not for the availability of discounted rates).

within California, generally had more disposable income, and therefore charging the discounted rate to this specific age range did not “perpetuate irrational stereotypes.”¹⁰⁷ With that, WAC demonstrated that this specific pricing policy refrained from arbitrary, unreasonable or invidious discrimination and public policy did in fact support the disparate pricing.¹⁰⁸

For these reasons, the trial court correctly ruled that WAC was entitled to judgment under the Act because a policy treating age groups differently may be upheld if “the pricing policy (1) ostensibly provides a social benefit to the recipient group; (2) the recipient group is disadvantaged economically when compared to other groups paying full price; and (3) there is no invidious discrimination.”¹⁰⁹ In *Javorsky*, the court interpreted invidious discrimination as the treatment of individuals in a manner that is “malicious, hostile, or damaging.”¹¹⁰ Therefore, under circumstances such as these, there is a high probability that public policy will justify the age discrimination and in this dispute, it did.¹¹¹

III. Premise

After receiving financing from the esteemed company, InterActiveCorp,¹¹² in 2013, Justin Mateen and Sean Rad developed Tinder with the help of Hatch Labs, and after four months on the market,

¹⁰⁷ See *Javorsky*, 195 Cal. Rptr. 3d at 715 (asserting that allowance of this type of age discrimination would not promote or perpetuate stereotypes).

¹⁰⁸ See *id.* at 719 (concluding that WAC was able to prove that their pricing policy did not reflect an arbitrary, class-based generalization and public policy supported the motivation for pricing).

¹⁰⁹ See *Martin v. International Olympic Committee*, 740 F.2d 670, 677 (9th Cir. 1984) (asserting that if a rule arbitrarily discriminates against any class, it may be justified with a compelling societal interest); see also Laura S. Flynn, *Civil Rights – Unruh Civil Rights Act – Standard to Be Applied*, LOW, BALL & LYNCH (Dec. 11, 2015), archived at <https://perma.cc/3AAD-XG5E> (describing circumstances where age discrimination is legal and permissible).

¹¹⁰ See Flynn, *supra* note 109 (defining “invidious discrimination as the treatment of individuals in a manner that is malicious, hostile, or damaging.”).

¹¹¹ See *Javorsky*, 195 Cal. Rptr. 3d at 1398 (explaining that public policy may justify a business establishment’s reasoning for implementation of an age discriminatory practice). Legislative enactments are sufficient, but unnecessary, to evince public policy. *Id.*

¹¹² See *About, IAC* (last visited Feb. 6, 2017), archived at <https://perma.cc/HZ6T-AAMX> (characterizing IAC as a leading media and Internet company comprised of some of the world’s most recognized brands and products, such as HomeAdvisor,

the app received both high volumes of publicity and downloads, quickly exceeding 20,000 per day.¹¹³ The app was first introduced on the University of Southern California's campus.¹¹⁴ At the time, the average age of Tinder users "peaked" at twenty-seven.¹¹⁵ This statistic proved ephemeral as just one year later the percentage of users between the ages of eighteen and twenty-four fell from ninety to fifty-one percent.¹¹⁶

As a "cultural phenomenon," Tinder abruptly took the dating scene by storm.¹¹⁷ Although older generations stigmatize the app's influence¹¹⁸ on society, its growing popularity cannot be debated considering that in just three years, more than ten billion connections

Vimeo, About.com, Dictionary.com, The Daily Beast, Investopedia, and Match Group's online dating portfolio, which includes Match, OkCupid, and Tinder).

¹¹³ See Jenna Wortham, *Tinder, a Dating App With a Difference*, N.Y. TIMES (Feb. 26, 2013), archived at <https://perma.cc/QLR6-DN55> (proffering that shortly after the app's release, statistics showed that it was being downloaded nearly 20,000 times per day).

¹¹⁴ See *id.* (discussing the Tinder experience on the University of Southern California campus).

¹¹⁵ See *id.* (reporting that at the time of the app's release, the average age for Tinder users was 27 years old).

¹¹⁶ See Laura Stampler, *Inside Tinder: Meet the Guys Who Turned Dating Into an Addiction*, TIME (Feb. 6, 2014), archived at <https://perma.cc/8Q57-TWAI> (estimating remaining breakdown of Tinder users is: 13-17 year-olds represent 7 percent, 25-32 year-olds represent 32 percent, 35-44 represent 6.5% and the remainder are older than 45). Statistics also show that people 55 and over visit dating sites more than any other age group. *Id.*

¹¹⁷ See *id.* (inferring that Tinder became a "cultural phenomenon" in September 2012 when the user base grew by one million in just sixty days of its release).

¹¹⁸ See Tomas Chamorro-Premuzic, *The Tinder effect: psychology of dating in the technosexual era*, GUARDIAN (Jan. 17, 2014), archived at <https://perma.cc/UJ9G-CM4G> (analyzing Tinder's continuing success as a result of the process of dating becoming "gamified, but also sexualized, by technology). "[T]inder bridges the gap between digital and physical dating, enabling users to experience instant gratification." *Id.* One of the biggest psychological lessons learned from the Tinder effect is "[h]ook-up apps are more arousing than actual hook-ups." *Id.* Tinder is often considered to be the pretext to a hook-up; however most of the pleasure is delivered from the Tinder selection process. *Id.* The second lesson learned is that "digital eligibility exceeds physical eligibility." *Id.* The app does this by increasing users' degrees of attractiveness compared to the real world. *Id.* A third lesson is that we often overestimate the impact that technology has on human behavior, as it is typically human behavior that drives technological innovation and determines whether it succeeds or fails. *Id.* The final lesson is Tinder is an "extension of mainstream real-world dating habits, especially compared to traditional dating sites. *Id.*

have been made around the globe thanks to Tinder.¹¹⁹ Many of these matches have led to friendships, serious relationships, and even marriages.¹²⁰ According to the New York Times, there are roughly fifty million active Tinder users, who check their accounts about eleven times per day, and devote about ninety minutes of each day to their “romantic endeavors.”¹²¹ In April 2015, Global Web Index’s¹²² data provided that users between the ages of twenty-four and thirty-four make up forty-five percent of the app’s total demographic and thirty-eight percent of users are between the ages of sixteen and twenty-four.¹²³ As additional evidence of Tinder’s growing popularity, large student campuses like Florida State University and Georgetown University had the highest number of matched users.¹²⁴

Today, people around the world recognize Tinder as a free, location-based app that “brings convenience to the conventional dating scene by empowering users to create connections that might otherwise have never been possible.”¹²⁵ As stated on the Tinder’s web page, the app allows users to choose who can contact them by only allowing the chat function to occur when both users select each

¹¹⁹ See *You Asked, We Listened: The Best Tinder Experience Yet*, TINDER (Nov. 11, 2015), archived at <https://perma.cc/P9MW-QNF4> (introducing statistics representing the 10 billion matches made worldwide).

¹²⁰ See *id.* (claiming Tinder matches have transpired into more than just communications via the app).

¹²¹ See Stampler, *supra* note 116 (surmising Tinder’s continued popularity has been on the constant incline with users between 18 and 24).

¹²² See *About The Data*, GLOBALWEBINDEX (last visited Feb. 6, 2017), archived at <https://perma.cc/VF3F-E4SZ> (introducing global web index as a service that tracks and calculates trend active usage across platforms and allows users to discover the motivations behind social behaviors).

¹²³ See Felim McGrath, *What to Know About Tinder in 5 Charts*, GLOBALWEBINDEX (Apr. 24, 2015), archived at <https://perma.cc/PF4Y-CSRQ> (disclosing that the majority of the apps user base is composed of those between the ages of 24 and 35 years old). Additional data suggest that 13 percent of users are between 35 and 44 years old, 3 percent of users are between the ages of 45 and 54, and 1 percent of users are between 55 and 64 years old. *Id.*

¹²⁴ See *Most Right-Swiped Campuses 2015: Did Yours Make the List?*, TINDER (Aug. 26, 2015), archived at <https://perma.cc/5TY6-TV33> (informing readers that the list was determined based on the ratio of matches received by students attending each university who were between the ages of 18-23 in the spring of 2015).

¹²⁵ See Sam Sanders, *Tinder’s Premium Dating App Will Cost You More If You’re Older*, NAT’L PUB. RADIO (Mar. 2, 2015), archived at <https://perma.cc/ZT9S-JSMC> (describing Tinder as a free application that incorporates a number of preferences personalized to the user).

other.¹²⁶ Additionally, the app’s creators “hang their hats” on the user’s ability to protect the anonymity of their “swipes” by only allowing users to see if someone selected them when the selections are mutual.¹²⁷

To create a Tinder account, the user downloads the app using their Facebook account, selects several profile pictures, and composes a short biography.¹²⁸ The app immediately presents photos of dozens of other single users based on the user’s preferences and current geographical location.¹²⁹ From there, the user swipes to the right if they are interested in the person and to the left if they are not.¹³⁰ If both users select each other, the app allows them to enter a one-on-one chat and the future of the romantic interest is left to the thumbs of the users.¹³¹

Tinder’s developers have responded to user’s requests of increased the safety and by granting them the ability to verify other users who they may or may not match with.¹³² Through the app’s “Smart Profile” feature, users may now add both their job and education so that other users will know whether they are viewing the profile of someone from their school or possibly someone who works an

¹²⁶ See *About Tinder*, TINDER (last visited Feb. 6, 2017), *archived at* <https://perma.cc/ARS8-X4FX> (suggesting that but for the app, a majority of those who have matched would never have met).

¹²⁷ See *id.* (stating that Tinder allows users to only receive messages from people they are interested in). The Chat feature is only enabled when both people “swipe right” on each other. *Id.*

¹²⁸ See *Terms of Use*, TINDER (last revised Sept. 14, 2016), *archived at* <https://perma.cc/9WRD-V8GX> (providing that in order for a user to activate and register an account with Tinder, they must first verify his or her identify using a Facebook account).

¹²⁹ See Anamika Singh, *How Does Tinder Work?* QUORA (last visited Feb. 12, 2017), *archived at* <https://perma.cc/3K7Y-LKTV> (explaining that users will be prompted to answer a variety of questions such as preferred partner’s gender, age, and location). The app will then ask users to select several photos that will be supplied for other users to view. *Id.*

¹³⁰ See *Sanders, supra* note 125 (describing the process by which users select other users).

¹³¹ See Christen Costa, *How Does Tinder Work? What is Tinder?* GADGET REVIEW (Dec. 30, 2016), *archived at* <https://perma.cc/D3NF-VCDD> (inferring that once two users are connected, the users are placed in a virtual chat room and it is up to their discretions to determine the future interactions).

¹³² See *Introducing Verified Profiles*, TINDER (Jul. 7, 2015), *archived at* <https://perma.cc/9DNJ-329P> (acknowledging users’ request to update security features through verifying other user profiles).

industry that interests them.¹³³ Another newly added feature is the ability to “Super Like”¹³⁴ another user.¹³⁵ This feature allows for a user to give a prospective match an “extra” notification that they are interested in them by placing a bright blue star icon next to the user’s name when they scroll through potential prospects.¹³⁶

On March 2nd, 2014, Tinder introduced, “Tinder Plus,” which allows users access to the app’s two most-requested features through “Passport” and “Rewind” as well as “unlimited liking capabilities.”¹³⁷ The Passport feature allows users to change their location to connect with other users across the globe (without geographical limitations), while the Rewind feature allows users to “take back” their previous swipe.¹³⁸ Additionally, Tinder Plus allows users to surpass the twelve hour “like limit”¹³⁹ imposed in an attempt to diminish low

¹³³ See *Tinder’s Most Right-Swiped Jobs*, TINDER (Feb. 24, 2016), archived at <https://perma.cc/Y5CG-KZ2S> (describing the feature that dynamically highlights information most relevant to the user, such as jobs, about their potential match); see also *You Asked, We Listened: The Best Tinder Experience Yet*, supra note 119 (explaining this information is displayed on the front of the user’s profile under their name—such as whether they attended the same school or have a friend in common). Additionally, Tinder now shows users the mutual friends and friends of friends’ users have in common with potential matches, adding more context and an extra degree of connection to every swipe. *Id.*

¹³⁴ See *Updated: Introducing ‘Super Like’ – A New Type of Swipe*, TINDER (Sept. 9, 2015), archived at <https://perma.cc/7CPF-LRST> (explaining that by tapping the new blue star icon when looking at a user’s Tinder profile, all users can let “that special someone” know that they stand out from everyone else).

¹³⁵ See *id.* (advertising that by using the Super Like feature, users are three times more likely to match with another user).

¹³⁶ See *id.* (proffering that by using Super Like, conversations initiated by a Super Like last 70% longer).

¹³⁷ See *Tinder Plus: The Next Level of Tinder*, TINDER (Mar. 2, 2015), archived at <https://perma.cc/4QY4-CABK> (stating that the app’s premium service allows users to select farther geographical parameters, have access to unlimited swipes, and even use an undo button for mistaken swipes).

¹³⁸ See *id.* (explaining the Passport and Reverse features enabled through the premium service).

¹³⁹ See *Keeping Tinder Real*, TINDER (Mar. 11, 2015), archived at <https://perma.cc/PKR7-68J4> (describing the implementation of the Like limit to encourage user thoughtfulness with swipes). Users who hit the like limit have the chance to purchase Tinder Plus for additional likes if they want to do so. *Id.* Charging for this simultaneously curbs excessive right swiping and gives users that hit the like limit an elective option to swipe more if they value that. *Id.* Tinder also imposes limitations on rewinding and right swiping to give users more incentive to make sure their swipes are honest. *Id.*

quality matches that rarely lead to conversations.¹⁴⁰ To no surprise, however, these extra perks came with a price.¹⁴¹ For users above the age of thirty, the cost of the services was \$19.99 per month while users under thirty were only required to pay a mere \$9.99 per month.¹⁴² Legal issues arose immediately after the app's new pricing policy went public and users alleged Tinder was employing age discriminatory pricing to deter older users.¹⁴³

On April 29th, 2014, Tinder was served with a class action¹⁴⁴ suit in California Federal Court alleging that the mobile app's pricing policy discriminated on the basis of age.¹⁴⁵ In *Manapol v. Tinder, et al.*,¹⁴⁶ Plaintiff Michael Manapol ("Manapol") alleged that in order for him to use "Tinder Plus," he was forced to pay \$19.99 per month simply because he was over the age of thirty.¹⁴⁷ Manapol asserted

¹⁴⁰ See *id.* (explaining that Tinder creators have seen a 25% increase in the number of matches per right swipe, a 25% increase in the number of messages per match, and a 52% decrease in spam bots as a result of the like limitation).

¹⁴¹ See Patrick Campbell, *Why Tinder's charging older users more, and why it makes perfect sense*, PRICE INTELLIGENTLY (Mar. 9, 2015), archived at <https://perma.cc/6X95-PMR9> (describing the differences in pricing set forth by Tinder's new pricing policy).

¹⁴² See *id.* (detailing Tinder's new pricing policy and stating that for premium service, those under the age of 30 are charged \$9.99 per month while users over 30 are charged \$19.99 per month); see also Sara Ashley O'Brien, *Tinder Angers Swipe-Happy Users*, CNN TECH (Mar. 3, 2015), archived at <https://perma.cc/WW3Q-74EP> (introducing Tinder's new feature "Tinder Plus").

¹⁴³ See Lowrey, *supra* note 13 (explaining that Tinder was served with a class action law suit which alleged they were employing age discriminatory pricing to deter users above the age of 30 from continuing their memberships).

¹⁴⁴ See Complaint at 17, *Manapol v. Tinder*, 2015 WL 1951056 (C.D. Cal. 2015) (No. 2:15-cv-03175) (describing the subclass as "all persons in the United States that purchased subscription from Tinder and were charged a rate exceeded by the rate for a comparable purchase by an individual who was offered a discount based on the reported age").

¹⁴⁵ See *Tinder Dating App Facing Discrimination Class Action Lawsuit*, BIGCLASSACTION.COM (Apr. 30, 2015), archived at <https://perma.cc/4KVD-6V64> (alleging that the app charges men and users over the age of 30 more to use its premium service, and is therefore discriminating on the basis of age and gender).

¹⁴⁶ See *id.* (summarizing the alleged violations of age discriminatory practice laws and listing the requests for damages).

¹⁴⁷ See Courtney Jorstad, *Class Action: Tinder Engaged in 'Bait-and-Switch,' Charges Older Men More*, TOP CLASS ACTIONS (Apr. 30, 2015), archived at <https://perma.cc/8ZPW-ZRAU> (outlining Manapol's allegations that Tinder was forcing him to pay more to subscribe to Tinder Plus because of his age).

that Tinder violated the UCRA,¹⁴⁸ which protects all persons against arbitrary and unreasonable discrimination by a business establishment.¹⁴⁹ Manapol argued that the objective of the UCRA is to prohibit businesses from engaging in “unreasonable, arbitrary or invidious discrimination.”¹⁵⁰

As described above, the UCRA does not only apply to situations where businesses exclude individuals altogether, but also where treatment (or service) is unequal.¹⁵¹ For purposes of the Act, unequal treatment includes offering price discounts on an arbitrary basis to certain classes of individuals.¹⁵² In Manapol’s complaint, he referenced the UCRA, which noted that there is no requirement that the aggrieved party must demand equal treatment and be refused and for that reason, Manapol was not obligated to provide any direct dispute with Tinder prior to the suit.¹⁵³ Additionally, Manapol argued that Tinder’s pricing policy is analogous to free entrance to “Ladies

¹⁴⁸ See CAL. CIV. CODE § 51 (2016) (providing that “all persons are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, or sexual orientation are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever”).

¹⁴⁹ See Complaint at 17, *Manapol v. Tinder*, 2015 WL 1951056 (C.D. Cal. 2015) (No. 2:15-cv-03175) (describing Manapol’s foundational support using the Unruh Civil Rights Act to show that such discriminatory practices are outlawed in California).

¹⁵⁰ See MOHAJERIAN, *supra* note 67, at 1 (advising that the purpose of the Unruh Civil Rights Act was to “compel recognition of the equality of all persons in the right to the particular service offered by an organization or entity covered by the act”).

¹⁵¹ See MOHAJERIAN, *supra* note 67, at 1 (claiming that not only does the Unruh Civil Rights Act apply to the exclusion of a customer’s right to service but also to any unequal treatment as set forth in Section 51).

¹⁵² See Complaint at 17, *Manapol v. Tinder*, 2015 WL 1951056 (C.D. Cal. 2015) (No. 2:15-cv-03175) (arguing that the act’s language should be interpreted to mean that arbitrary pricing based on age is “unequal treatment”).

¹⁵³ See *id.* at 23-24 (suggesting that this type of discriminatory treatment has previously been ruled on by the California Supreme Court and outlawed).

Night”¹⁵⁴ at bars, a tradition declared illegal by the California Supreme Court.¹⁵⁵

In response to the class action suit, Tinder’s Vice President of Corporate Communications, Rosette Pambakian, interviewed with National Public Radio and commented, “during our testing we’ve learned, not surprisingly, that younger users are just as excited about Tinder Plus but are more budget constrained and need a lower price to pull the trigger.”¹⁵⁶ Furthermore, in order to justify the newly implemented pricing policy, Pambakian said, “[w]e’ve priced Tinder Plus based on a combination of factors, including what we’ve learned through our testing, and we’ve found that these price points were adopted very well by certain age demographics.”¹⁵⁷ Tinder strongly believes that not only is the pricing policy justified, but it is also comparable to the student discount¹⁵⁸ offered by music-streaming service, Spotify,¹⁵⁹ who charges a rate of \$4.99 for students and \$9.99 for all

¹⁵⁴ See Anna Buono, “Ladies’ Night” Promotions Violate California Law, JD SUPRA (Nov. 21, 2013), archived at <https://perma.cc/BW79-Y9T8> (defining “Ladies’ Night” as the preferential treatment towards women for nightclub promotional purposes). This includes drink specials, cutting lines, and exemption from cover charges. *Id.*

¹⁵⁵ See *id.* (declaring that “Ladies’ Night” was ruled to be discriminatory on its face and became an outlawed practice in California per the decision by the California Supreme Court).

¹⁵⁶ See Sanders, *supra* note 125 (alleging that Tinder’s spokes people claimed that their pricing policy was based on reasonable assessments and adaptations to provide younger users with the opportunity to enjoy the service).

¹⁵⁷ See Jennifer Swann, *Singles Are Boycotting a Popular Dating App Because of Age Discrimination*, TAKEPART (Mar. 3, 2015), archived at <https://perma.cc/8DBH-GP4N> (explaining that Tinder’s justification for their new pricing policy is to increase the ability for younger users to purchase the premium service despite having less disposable income).

¹⁵⁸ See Jared Newman, *Spotify adds \$5 student plan, but note the fine print*, TECHHIVE (Mar. 25, 2014), archived at <https://perma.cc/GE9Q-T5SQ> (providing that students at accredited universities can pay half price for Spotify Premium subscription, bringing the cost down to 5 dollars per month compared to the standard 10-dollar rate).

¹⁵⁹ See John Patrick Pullen, *Everything You Need to Know About Spotify*, TIME (June 3, 2015), archived at <https://perma.cc/M6J8-ZDYR> (describing Spotify as a music streaming service that allows users to browse music collections of friends, artists, and celebrities using their mobile device); see also Newman, *supra* note 158 (explaining that as of March 2013, roughly 25 percent of Spotify users pay for the Premium service, and on average the company gains \$41 in revenue per user—70 percent of which goes back to rights holders).

other users who wish to access the premium service.¹⁶⁰ Analogous to the timeless phrase, “*there are two sides to every story*”—here, there are two prevalent arguments that encompass consumers’ reaction to Tinder Plus’s pricing.¹⁶¹

In WIRED’s March 2015 article, writer, Dani Burlison, discusses the generally construed claim that the pricing policy is “blatantly age-ist.”¹⁶² Burlison, a forty-one (41) year-old Tinder user, addresses the misconception that “those in their twenties have far less financial resources by claiming that this specific age group does not typically have to face the burdens of student loan payments, mortgages, as well as children in some cases.”¹⁶³ Burlison also believes that she, along with many others adversely affected by the price increase, will inevitably abandon their use of the premium service due to the unfairness of the pricing policy, out of both principal and the lack of means to afford the service.¹⁶⁴

Others, however, contend that Tinder is “doing precisely what companies in the free market do: price differentiate to make money.”¹⁶⁵ More specifically, Tinder’s pricing policy is nothing

¹⁶⁰ See Swann, *supra* note 157 (comparing Tinder’s price tier to the 50 percent student discounts offered by Spotify for its premium upgrade).

¹⁶¹ See Emily Dreyfuss, *Point-Counterpoint: Is Tinder’s New Pricing Policy Ageist?*, WIRED (Mar. 10, 2015), archived at <https://perma.cc/U32X-W3AB> (introducing the arguments and counter arguments attributed to Tinder’s alleged ageist pricing policy).

¹⁶² See Dani Burlison, *Yes, Tinder’s New Pricing is Ageist, Pure and Simple*, WIRED (Mar. 10, 2015), archived at <https://perma.cc/2W6X-WBYL> (exemplifying older users’ experience with Tinder and discussing misconceptions that those above the age of 30 have more plentiful financial resources).

¹⁶³ See *id.* (arguing that users in their 20s do not suffer from the extensive list of financial burdens that those over age 30 typically do).

¹⁶⁴ See *id.* (predicting that older users will discontinue the use of Tinder Plus as a result of heightened pricing policy).

¹⁶⁵ See Dreyfuss, *supra* note 161 (introducing the counter argument that Tinder’s pricing is a result of capitalism, not ageism).

more than “bad capitalism” utilizing the free market¹⁶⁶ advantage.¹⁶⁷ Author Jeff Gibbard, argues that companies “apply price discrimination where possible because, with only a handful of exceptions, pricing is largely left up to business with no oversight.”¹⁶⁸ According to Gibbard, the United States has “historically condoned price differentiation” through common practices like “car insurance premiums¹⁶⁹ and health insurance policies.”¹⁷⁰ Further, consumers also benefit from the free market as they typically have their choice when spending their money on products or services.¹⁷¹ For example, if a consumer does not want to pay Allstate’s high insurance premiums, they have the ability to select their own price with Progressive Insurance.¹⁷²

In terms of replacing Tinder, Gibbard explains that it would be quite easy to do so.¹⁷³ In fact, alternatives such as Bumble,¹⁷⁴

¹⁶⁶ See Murray N. Rothbard, *The Concise Encyclopedia of Economics: Free Market*, LIBR. ECON. & LIBERTY, archived at <https://perma.cc/CDH7-VSDL> (illustrating the free market as a voluntary exchange between two or more people where parties engage based on their expectations of what they will gain). If the parties did not expect to gain for a given agreement, they would not enter into such an obligation willingly. *Id.*

¹⁶⁷ See Jeff Gibbard, *No, Tinder’s Pricing Policy is Not Ageist. It’s Capitalist*, WIRED (Mar. 10, 2015), archived at <https://perma.cc/SV3Q-MGMT> (suggesting that in a competitive market, customers always have their choice).

¹⁶⁸ See *id.* (emphasizing that companies are encouraged to evaluate the market and maximize profits by adjusting price differentials when applicable).

¹⁶⁹ See *id.* (exemplifying notorious car premium’s price differentials on the basis of car color, model, and credit scores).

¹⁷⁰ See *id.* (claiming that insurance companies charge higher rates for older people because they are generally at higher risk for poor health).

¹⁷¹ See *id.* (arguing that price discrimination is prevalent everywhere in business and is generally considered “smart business”).

¹⁷² See Gibbard, *supra* note 167 (inferring that there are already several free alternatives that Tinder Plus users could resort to in the event they do not want to pay for the service).

¹⁷³ See Gibbard, *supra* note 167 (suggesting there are currently alternative online dating apps that have similar functionality and do not charge users for the same “perks” that Tinder charges for).

¹⁷⁴ See Maya Kosoff, *I spent a week using five of the most popular dating apps — here’s the one I unexpectedly liked the most*, BUS. INSIDER (Oct. 24, 2015), archived at <https://perma.cc/799N-NXNA> (describing ‘Bumble’ as a free app that allows both men and women to swipe, but only women can start the conversation).

Hinge,¹⁷⁵ JDate,¹⁷⁶ and OKcupid¹⁷⁷ are already available and provide similar “hot-or-not” platforms for free.¹⁷⁸ Rather instead of being ageist, from an economic business perspective, Gibbard identifies Tinder’s motivation as a “genius attempt” to sway users to consider using actual online dating services by pricing Tinder Plus at a comparable rate to “more serious dating sites” like Match.com or OkCupid.¹⁷⁹

IV. Analysis

The implementation of the UCRA, requiring “[f]ull and equal accommodations, advantages, facilities, privileges or services in all business establishments,” was a clear attempt to eliminate discriminatory practices by all businesses.¹⁸⁰ Even though the UCRA exhibits language preventing sex, race, and various other forms as a basis for discrimination, courts have been reluctant to interpret the Act in a way that is restrictive.¹⁸¹ Rather, courts have read between the lines and held that the UCRA’s language and history “compel the conclusion that the Legislature intended to prohibit all arbitrary discrimination by business establishments,” regardless of whether or not the form of discrimination is clearly proscribed in the act.¹⁸²

¹⁷⁵ See *id.* (depicting Hinge as a free app that matches Facebook friends’ friends).

¹⁷⁶ See *id.* (characterizing JDate as a free app geared toward matching Jewish users).

¹⁷⁷ See Britney Fitzgerald, *OkCupid Tips: Dating Experts Tell Us 11 Things NOT To Do Online*, HUFFINGTON POST (Aug. 24, 2012), archived at <https://perma.cc/CF5W-BC4X> (portraying OkCupid as a free online dating website that “uses algorithms to find digital matches for its 7 million users based on their answers to questions about themselves”).

¹⁷⁸ See Gibbard, *supra* note 167 (listing several similarly functioning dating apps available to users who enjoy the concept and service).

¹⁷⁹ See Gibbard, *supra* note 167 (surmising that Tinder’s true motivation behind the pricing policy is to convince “serious users” to enroll in online dating services, rather than settle for a simple “hot-or-not” app).

¹⁸⁰ See MOHAJERIAN, *supra* note 67, at 1 (suggesting that the UCRA was implemented in an attempt to diminish all forms of discriminatory practices that employed by business establishments).

¹⁸¹ See MOHAJERIAN, *supra* note 67, at 1 (insinuating that the UCRA has often been interpreted to protect against all forms of discriminatory practices, not only against specific protected classes listed within the act itself).

¹⁸² See *Marina Point*, 640 P.2d at 121 (determining the legislature’s intent was to prohibit against all forms of discrimination and was not meant to be restrictively interpreted).

In light of *Manapol v. Tinder*, it is important to consider that California's courts have been clear about their intention to afford protection to those discriminated against on the basis of age as the UCRA does not only prevent outright exclusionary practices, but also pricing inconsistencies.¹⁸³ Simply because a business employs an inconsistent pricing policy, does not mean they are necessarily breaking the law because courts have had a tendency to refrain from banning practices that are socially beneficial.¹⁸⁴ Moreover, the UCRA only deems discriminatory practices unlawful if they are "arbitrary, invidious or unreasonable."¹⁸⁵

While new age technology such as iPhones and services like mobile dating apps undoubtedly make our lives more convenient and stimulating, it is important to consider how past legal precedent applies in terms of affording protection to consumers.¹⁸⁶ Historically, the UCRA was created to apply to business establishments during a time when purchasing products and services occurred within public places.¹⁸⁷ Additionally, the UCRA was passed to maintain fluidity and fairness within society and to ensure that all consumers were able to take advantage of the health and socioeconomic benefits that business often offer.¹⁸⁸ Yet, many of the very services and products our generation uses are no longer purchased and enjoyed within confines of brick and mortar emporiums.¹⁸⁹

Tinder allows users to fulfill basic evolutionary and social needs such as the user's own intellectual curiosity by enabling consumers to discover other users' interests and personalities as well as

¹⁸³ See *id.* at 742-43 (stating it is irrefutable that the UCRA applies to age discrimination although it is not explicitly stated).

¹⁸⁴ See *Sargoy*, 10 Cal. Rptr. 2d at 895 (claiming the act does not absolutely disallow business establishments from employing "disparate treatment" of customers). The "fundamental purpose of the UCRA is the elimination of antisocial discriminatory practices—not the elimination of socially beneficial ones." *Id.*

¹⁸⁵ See *id.* at 893 (determining that the act only bans arbitrary or unreasonable discrimination).

¹⁸⁶ See Wood, *supra* note 9 (stating that mobile dating sites are popular and easy to use).

¹⁸⁷ See MOHAJERIAN, *supra* note 67, at 1 (suggesting that the UCRA was intended to prevent discrimination in public places that citizens were able to enter).

¹⁸⁸ See CAL. CIV. CODE § 51 (2016) (stating that citizens are entitled to equal service and accommodations offered by business establishments).

¹⁸⁹ See *The History Of App Development And What It Means In The Future*, *supra* note 22 (implying that apps are considered both products and services that are no longer restricted in terms of where they can be used).

what others think of their own—quenching a thirst for social acceptance.¹⁹⁰ More specifically, the app satisfies users’ “competitive instincts by testing and maximizing their dating potential.”¹⁹¹ While this may seem exciting to current and prospective users, arguably, the unrestricted ability to play “hot or not” does not align with the form of services that the Legislature intended to preserve.¹⁹²

When applying the analytical standard of the URCA, several issues must be addressed.¹⁹³ As discussed in the ruling of *Javorsky*,¹⁹⁴ a policy treating age groups differently may be upheld if the policy (1) “ostensibly provides a social benefit to the recipient group,” (2) “the recipient group is disadvantaged economically when compared to other groups paying full price,” and (3) “there is no invidious discrimination.”¹⁹⁵

A. Societal Benefit

With respect to the first issue, in *Manapol*,¹⁹⁶ Tinder argues that the pricing policy is providing an opportunity for users between the ages of eighteen and twenty-nine to purchase the premium service based on statistics illustrating that those between this particular age-

¹⁹⁰ See Chamorro-Premuzic, *supra* note 118 (suggesting human behavior drives and impacts technological changes).

¹⁹¹ See Chamorro-Premuzic, *supra* note 118 (surmising that humans have an instinctual and competitive fascination with searching for prospective mates and Tinder allows users to maximize their capabilities).

¹⁹² See *Javorsky*, 195 Cal. Rptr. 3d at 717 (discussing applicable situations where price discrimination has been condoned by the court and has been determined the fit the legislature’s intent to provide societal benefits to financially disadvantaged groups).

¹⁹³ See *id.* at 712 (indicating that a defendant in an age discrimination suit must submit evidence that the age group receiving the discount has a lower economic status and the discount provides an economic benefit).

¹⁹⁴ See *id.* at 716 (listing the factors to be considered when determining whether a business’ practices are in violation of the UCRA).

¹⁹⁵ See *id.* at 718 (reiterating that the objective of the UCRA is to prevent businesses from employing unreasonable, arbitrary or invidious discriminatory practices).

¹⁹⁶ See Complaint at 14-15, *Manapol v. Tinder*, 2015 WL 1951056 (C.D. Cal. 2015) (No. 2:15-cv-03175) (alleging that Tinder charges users over the age of 30 more to use its premium service, and is therefore discriminating on the basis of age).

range generally have less disposable income.¹⁹⁷ Similar to the defendants in *Starkman*¹⁹⁸ and *Javorsky*,¹⁹⁹ Tinder contends that many of their younger users may be restricted from spending their funds due to their “limited earning capacity” and can therefore only use the free version of the app instead of the premium version.²⁰⁰ Additionally, unlike both *Starkman* and *Javorsky*, where the business establishments provided services that promoted healthy life styles and family-entertainment, Tinder provides a dating service that arguably promotes a “hook-up” culture.²⁰¹

When juxtaposed with previous case law, the court reviewing this issue should analogize Tinder’s service with the recently prohibited “Ladies’ Night” promotion because “encouraging attendance to sporting events, museums, movies, zoos, and amusement parks” provides a societal benefit and a service branded as a “hook-up” app should not be afforded similar deference.²⁰² This conclusion is supported by the decision in *Javorsky* when the court held that a discounted admission to a gym increased the ability for those between the ages of eighteen and twenty-nine to partake in recreational activities.²⁰³

¹⁹⁷ See O’Brien, *supra* note 142 (articulating Tinder’s justification for the pricing policy is that younger users are “excited about Tinder Plus” but are reluctant to upgrade due to budget constraints).

¹⁹⁸ See *Starkman*, 278 Cal. Rptr. at 546 (holding the UCRA may be applicable where business establishments make classifications based on age). The discount ticket policy was not arbitrary discrimination based on age. *Id.*

¹⁹⁹ See *Javorsky*, 195 Cal. Rptr. 3d at 712 (holding that the health club’s purported goal of facilitating access for an age group with lower income was sufficient to justify pricing plan and the discount did not constitute ‘invidious discrimination’ against older people).

²⁰⁰ See Swann, *supra* note 157 (reinforcing Tinder’s justification for implementing the pricing discount is that user under the age of 30 need a lower price on Tinder Plus or else they will be reluctant to “pull the trigger”).

²⁰¹ See Wortham, *supra* note 113 (identifying Tinder as a dating app that is also widely known as a “hook-up” app).

²⁰² See *Starkman*, 278 Cal. Rptr. at 547 (reasoning that reasonable discounts allow members of society to enjoy American past-times and entertainment).

²⁰³ See *Javorsky*, 195 Cal. Rptr. 3d at 717 (contending that the Young Professional discount made the gym membership more readily available for those between the ages of 18 and 29 and therefore, promoted physical fitness). The court suggested that the availability the membership promoted physical activity such as “swimming, basketball, squash, tennis, and the like.” *Id.*

B. Economically Disadvantaged Group

The next issue is whether the recipient group is economically disadvantaged in comparison to other groups paying full price.²⁰⁴ Age-based discounts are permissible under circumstances where the policy benefits an age group with “relatively limited financial resources.”²⁰⁵ In *Javorsky*, WAC contended that the Young Professional Discount “benefited those between the ages of eighteen and twenty-nine year-olds because without it, prospective members may not be able to afford the membership.”²⁰⁶ The court concluded that the evidence presented by WAC, through their expert demographer, was “sufficient for a trier of fact to find that individuals under the age of thirty generally have substantially less disposable income than those above the age of thirty.”²⁰⁷

Manapol’s argument was that Tinder refrains from offering any discounts for its premium service other than one based on the user’s age.²⁰⁸ Further, because Tinder’s practice discriminates on the basis of age it is therefore illegal under UCRA unless it can be justified by a “compelling societal interest” or some form of strong public policy.²⁰⁹ Such a policy is displayed in *Starkman*, where the court concluded that movie ticket pricing policy did not violate the act as it

²⁰⁴ See *Starkman*, 278 Cal. Rptr. at 547 (discussing the necessity to show that without such a pricing policy, the targeted age-range of customers may be unable to purchase the product or service). In *Starkman*, the court found that discounted movie theater tickets for young children and senior citizens justifiably benefited the group because both classes generally had less disposable income. *Id.* at 548.

²⁰⁵ See *Sargoy*, 10 Cal. Rptr. 2d at 891-92 (insisting that age-based discounts have generally been allowed under circumstances where the pricing policy benefited a group that had “relatively limited earning capacities”).

²⁰⁶ See *Javorsky*, 195 Cal. Rptr. 3d at 722 (holding Young Professionals discount provide an economic benefit for purposes of extending access to WAC’s health clubs).

²⁰⁷ See *id.* at 718-19 (explaining that because WAC was able to show the pricing policy did not constitute arbitrariness, unreasonableness, or invidious discrimination, *Javorsky* had to establish an alternative triable issue).

²⁰⁸ See Complaint at 15, *Manapol v. Tinder*, 2015 WL 1951056 (C.D. Cal. 2015) (No. 2:15-cv-03175) (claiming that Tinder offers discounts to users for Tinder Plus solely based on the users age).

²⁰⁹ See Complaint at 16, *Manapol v. Tinder*, 2015 WL 1951056 (C.D. Cal. 2015) (No. 2:15-cv-03175) (arguing that Tinder’s pricing policy lacks any foundation for a legitimate business purpose is arbitrary in nature).

was designed to promote the family-oriented nature of the movie theatre business while also benefiting classes that ordinarily have less disposable income.²¹⁰

In *Manapol*, Tinder's likely argument would have been that the pricing policy in place is similar to WAC's justification as well as the movie theatre in *Starkman* because the policy provides an opportunity for users between the ages of eighteen and twenty-nine to purchase the premium based upon statistics illustrating that those in this particular age-range generally have less disposable income and therefore would be unable to purchase the service otherwise.²¹¹ Manapol's strongest argument, using *Javorsky*, would have been that age brackets do not accurately portray income and that the pricing policy should be based on income rather than age.²¹² His second strongest argument would have been to criticize the societal benefit theory of the pricing policy on the basis that there are no legislative enactments set forth which considers eighteen to twenty-nine year-olds "financially disadvantaged."²¹³ Further, had he had the opportunity to do so, he likely would have argued that Tinder is different from *Starkman* because the approved movie ticket pricing policy was for a miniscule monetary amount whereas this specific premium service bills continuously on a month-to-month basis.²¹⁴

²¹⁰ See *Starkman*, 278 Cal. Rptr. at 547-48 (concluding public policy encourages availability of societal benefits to both children and elderly as a result of tendency to have less disposable income). Additionally, the court held that statutes in other contexts supported the notion that children and the elderly were classes whom should be given assistance. *Id.* at 548.

²¹¹ See Dreyfuss, *supra* note 161 (quoting Tinder spokeswoman which justifies Tinder's pricing policy on the reasoning that because of the age range's budget constraints they would be reluctant to upgrade to the premium service).

²¹² See *Javorsky*, 195 Cal. Rptr. 3d at 719 (contending that the expert demographer's results displayed that those older than 28 had equal or greater medium income when compared to those between the ages of 33 and 89). Therefore, WAC's pricing system would not be discriminatory if it was based on income rather than age. *Id.* at 711.

²¹³ See *id.* at 719 (articulating that young professionals in the San Francisco Bay area were not who the legislature intended to protect when they enacted the UCRA). Instead, public policy supported rendering financial assistance and benefits to children and senior citizens. *Id.* at 719. Moreover, there is no existence of any statute or law that describes those between the ages of 18 and 29 as "financially disadvantaged." *Id.* at 719.

²¹⁴ See *id.* at 719 (arguing that the age-based discounts provided in previous legal precedent have been for lower monetary amounts and not for high-priced monthly memberships).

In response to the first argument, a court reviewing this issue should rule similarly to *Javorsky* under the reasoning that if such an argument was accepted, “there would no longer be any age-based discounts based on the theory that all age groups contain people with both higher and lower incomes on the wealth spectrum.”²¹⁵ Additionally, it’s likely that a court would conclude that because those between the ages of eighteen and twenty-nine generally have less disposable income, in comparison to those thirty and older, and that Tinder is not arbitrarily providing lower prices to the group.²¹⁶ In terms of the second argument that: Tinder is providing a societal benefit afforded to the group of people between the ages of eighteen to twenty-nine a court will likely follow the reasoning of *Javorsky* that “the law is not entirely bereft of indications that persons under 30—including students and those just beginning their careers—might feel economic pressures worthy of attention and assistance as a public policy matter.”²¹⁷

Although, what would likely differentiate Manapol’s argument is the fact that once again, Tinder is not offering a service that is necessarily viewed as benefiting society.²¹⁸ Therefore, under this reasoning, theoretically Manapol would have prevailed, because even if it was concluded that the pricing policy is not arbitrary, Tinder’s service probably does not fit the “socially beneficial” criteria that the UCRA was designed to protect.²¹⁹

²¹⁵ See *id.* at 715-16 (explaining that by introducing income-based discounts, age-based discounts would cease to exist and would therefore contradict previous legal precedent).

²¹⁶ See Campbell, *supra* note 141 (suggesting that unless each of Tinder’s customers are identical, they are forced to price with multiple tiers if they want to accommodate and meet the demand curve).

²¹⁷ See *Javorsky*, 195 Cal. Rptr. 3d at 720 (suggesting that those between the ages of 18 and 26 are “most vulnerable” and the protection of outside assistance while they finishing their education and seeking their first employment).

²¹⁸ See Chamorro-Premuzic, *supra* note 118 (describing society’s view on the service Tinder provides and the message it sends about our society condoning promiscuity).

²¹⁹ See *Sargoy*, 10 Cal. Rptr. 2d at 895 (describing the UCRA’s fundamental purpose as “the elimination of anti-social discriminatory practices”).

C. Invidious Discrimination

As proscribed by law, invidious discrimination is the “malicious, hostile or damaging treatments of individuals.”²²⁰ In *Javorsky*, the plaintiff argued the Young Professional Discount promoted and perpetuated “ageism” by inferring the stereotype that, “the younger crowd is preferred.”²²¹ Additionally, the plaintiff contended that by employing this reasoning, our society evidently makes “unjustified assumptions about the ability of those between the ages of forty and sixty-five having the ability to obtain work.”²²² It was the court’s position that the Young Professional Discount did not constitute “invidious discrimination” because it was applied “equally to all people regardless of their sex, color, race, religion, ancestry, national origin, disability, and medical condition of sexual orientation.”²²³ As additional support for this argument, the pricing discount did not “perpetuate any harmful stereotypes.”²²⁴

As a rebuttal, Tinder would have likely conveyed an argument similar to WAC in *Javorsky*, where WAC claimed that they were “not suggesting one group is better than the other, rather, they are simply trying to offer a reasonable discount for a specific age group who statistically has less disposable income.”²²⁵ Additionally, because the use of this app is not “life essential,” it is more likely that the younger users will feel reluctant to upgrade to the premium service if they cannot reasonably afford it; an argument supported by the underlying theory of capitalism.²²⁶ However, as a lackluster counter

²²⁰ See *Javorsky*, 195 Cal. Rptr. 3d at 720 (defining “invidious discrimination”).

²²¹ See *id.* at 720-21 (insinuating that invidious discrimination includes the perpetuating of existing stereotypes through the employment of such discrimination).

²²² See *id.* at 721 (suggesting that offering discounts to specific age groups generates unwarranted assumptions that one age group is deserving of preferential treatment where as another is not).

²²³ See CAL. CIV. CODE § 51 (2016) (stating that protected classes include “sex, color, race, religion, ancestry, national origin, disability, medical condition, marital status, sexual orientation or genetic information”).

²²⁴ See *Starkman*, 278 Cal. Rptr. at 548 (establishing that different price rates for seniors and children in amusement parks did not perpetuate “irrational stereotypes”).

²²⁵ See *Sanders*, *supra* note 125 (explaining that Tinder claims they have implemented this pricing policy in an attempt to incentivize younger users to purchase the premium service as they may not normally be able to afford it at full price).

²²⁶ See *Dreyfuss*, *supra* note 161 (inferring that it is likely consumers will not purchase products if they do not feel they are necessary or essential).

to this argument, Manapol could have argued that Tinder is “perpetuating ageism” by decreasing the cost of the premium service for younger users.²²⁷

While this pricing policy is similar to the Young Professional’s discount in the sense that it applies to all people regardless of “sex, color, religion, national origin, disability etc.,” it does seem as though this service is attempting preserve its younger user base.²²⁸ Yet, it is difficult to characterize the pricing policy’s motivation and purpose as being implemented with hostility, malice, or damage due to the fact, this is a mobile dating application—arguably not something that is depriving someone of a healthy and prosperous life.²²⁹

V. Conclusion

Had this case moved forward, it clearly would have hinged on whether Tinder is a service that is socially beneficial. The answer to that question would have probably been dependent on the judge’s view on the app’s influence on society. This is because there is supporting evidence that Tinder’s service has led to a number of successful, long-term romantic relationships and even marriages. On the other hand, a significant percentage of our society disagrees with what the app promotes. Therefore, if the app’s service was determined to have some sort of “societal benefit,” the outcome of *Manapol* would have been decided dependent on how the court viewed Tinder’s impact on society.

More specifically, if the court found that the app does not benefit society, the court likely would have likely rejected Tinder’s argument as they did in *Koire* where a nightclub argued that a gender-based discount promoted a “socially desirable goal” by encouraging women to attend bars and socialize with men. With that being

²²⁷ See *Javorsky*, 195 Cal. Rptr. 3d at 720 (illustrating Javorsky’s claim that by offering younger crowds age based discounts, the business establishment is prolonging the unjust stereotype that “younger generations are better”).

²²⁸ See *Sanders*, *supra* note 125 (suggesting that Tinder’s pricing policy could be seen as a “subtle indicator of how likely—or unlikely—older people are to find love on the app”).

²²⁹ See *Javorsky*, 195 Cal. Rptr. 3d at 709 (explaining the objective of WAC’s discount was to “inspire younger people to pursue a lifetime of health and fitness”); see also *Chamarro-Premuzic*, *supra* note 118 (discussing how although utilizing Tinder does not correlate to long-term relationship success, the app makes the dating market more efficient and rational).

said, had the case moved forward, the court would have considered the fact that there is a free version of the app that is reasonably restrictive when compared to what the premium service offers as well the fact that this service is not something that promotes participation in socially beneficial activities.

While many may compare Tinder's offerings to reputable online services like Match.com, the general public continues to brand the app as one that promotes promiscuity by nicknaming it, "the hook-up app." Accordingly, a court would likely find that the age-based discount is not justified because protection has historically been afforded to services that tend to benefit society as whole, and without such discounts, the public would be deprived. Despite Tinder's growing popularity and "questionable success," it is unlikely that such a service is in sync with what the legislature originally intended to disallow.