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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF NAPA

10 STEVE FRYE,
11 Plaintiff,

12 vs.

13 EAGLE VINES VINEYARDS AND GOLF
14 CLUB, L.L.C. dba EAGLE VINES GOLF
15 CLUB; and DOES 1 thru 100,

16 Defendants.

Case No.

COMPLAINT FOR:

1. Violation of Civil Code § 51 - The Unruh Civil Rights Act;
2. Violation of Civil Code § 51.5; and
3. Violation of Civil Code § 51.6 - The Gender Tax Repeal Act of 1995.

UNLIMITED JURISDICTION

17 1. This lawsuit arises out of a recurring Ladies Day, gender-based pricing promotion
18 occurring on Mondays at defendant's Eagle Vines Golf Club in Napa, California. On Ladies Day,
19 Eagle Vines charged patrons different prices to play golf based solely on the patrons' sex.
20 Specifically, on Ladies Day, Eagle Vines charged male golfers \$44 for their green fee and cart fee,
21 but charged female golfers only \$30 for their green fee and cart fee – no matter how wealthy the
22 female golfers were or how skilled or experienced the female golfers were compared to the male
23 golfers.

24 2. Despite the many State of California anti-discrimination statutes, California Supreme
25 Court opinions, actions by the California Department of Fair Employment & Housing and California
26 Attorney General, and regulations of the California Department of Alcoholic Beverage Control – all
27 prohibiting businesses from discriminating against patrons based on the patrons' sex, and
28 specifically prohibiting Ladies Day and Ladies Night promotions, Eagle Vines employed a Ladies
Day promotion that charged patrons different prices to play golf based solely on the patrons' sex.

1 3. On the Monday, December 13, 2010 Ladies Day, plaintiff Steve Frye visited Eagle
2 Vines Golf Club where Mr. Frye, as well as other male golfers, paid \$44 for his green fee and cart
3 fee, while Eagle Vines charged female golfers only \$30 for their green fee and cart fee on this day.

4 4. Eagle Vines discriminated against plaintiff, as well as other male golfers, on Ladies
5 Day by charging plaintiff and other male golfers a higher price than it charged female patrons to play
6 golf – no matter how wealthy female golfers were in comparison to male golfers, or no matter how
7 experienced or skilled female golfers were in comparison to male golfers.

8 5. Charging male patrons a higher price than female patrons to play golf is as illegal
9 and repugnant as charging female patrons a higher price than male patrons to play golf, charging
10 African-American patrons a higher price than Caucasian patrons to play golf, or charging
11 homosexual patrons a higher price than heterosexual patrons to play golf. Simply put, it is against
12 many California laws for any California business to discriminate against patrons based on protected
13 personal characteristics such as sex, race, religion, or sexual orientation.

14 6. In the seminal California case on gender-based pricing promotions, *Koire v. Metro*
15 *Car Wash* (1985) 40 Cal.3d 24, the California Supreme Court unanimously held that gender-based
16 pricing promotions, such as Ladies' Day and Ladies' Night promotions that charged men more than
17 women, violated the Unruh Civil Rights Act. *Koire* ruled "the Legislature established that arbitrary
18 sex discrimination by business is *per se* injurious" and "differential pricing based on sex may be
19 generally detrimental to both men and women, because it reinforces harmful stereotypes." *Id.* at 33.
20 The actual amount charged to the plaintiffs in *Koire* based on their gender ranged from 15 cents to
21 \$3 more than that charged to women. *Id.* at 27.

22 7. Gender-based pricing promotions not only treat men and women unequally, but they
23 also set back the equal rights movement and perpetuate harmful stereotypes such as: (1) women are
24 genetically incapable of earning as much money as men; (2) women enjoy being subsidized by
25 strange men at golf courses by having the men indirectly pay for the women's golf; (3) women will
26 pay for anything if it is put on sale; (4) adult women enjoy businesses treating them like little girls
27 by charging them a lower price for the same goods or services than adult male patrons are charged;
28 and (5) men are expected stand by and take it like sheared sheep when a business charges them more

1 than female patrons for the same goods or services. Furthermore, certain types of traditional sex
2 discrimination that ostensibly appear to benefit women, such Ladies’ Day or Ladies’ Night
3 promotions, are, as Justice William J. Brennan Jr. wrote in *Frontiero v. Richardson*, 411 U.S. 677,
4 684 (1973), “rationalized by an attitude of ‘romantic paternalism’ which, in practical effect, put
5 women, not on a pedestal, but in a cage.”

6 8. *Koire’s* holding was upheld by the California Supreme Court in its latest opinion on
7 gender-based pricing promotions, *Angelucci v. Century Supper Club* (2007) 41 Cal.4th 160, wherein
8 the Court unanimously ruled victims of a Ladies’ Night promotion – men who were charged more
9 than women to enter a supper club – did not have to affirmatively assert their right to equal treatment
10 to have a discrimination claim under the Unruh Act or the Gender Tax Repeal Act. So if a golf
11 course were to host a gender-based pricing promotion, such as a “Men’s Day,” which charged
12 female golfers more than male golfers to play golf, female patrons would not have to confront the
13 offending golf course and demand that they be treated the same as their male counterparts in order to
14 have standing for an Unruh Act or Gender Tax Repeal Act claim.

15 9. The effect of Eagle Vines’ conduct has been to deny plaintiff and other male patrons
16 equal treatment by denying them the same accommodations, advantages, facilities, privileges, or
17 services provided to female patrons, thereby violating several California anti-discrimination laws,
18 and promoting harmful negative stereotypes contrary to California law and public policy as
19 articulated by the California Supreme Court in *Koire*, and as embodied in Civil Code sections 51,
20 51.5, and 51.6.

21 10. Eagle Vines’ Ladies Day tended to cause discontent, animosity, harm, resentment, or
22 envy among the sexes, and is especially troubling, arbitrary, and invidious at a time when the
23 struggling economy has put a higher proportion of men out of work than women. For example,
24 when Mr. Frye patronized Eagle Vines in December of 2010, the male unemployment rate in
25 California was 13% while the female unemployment rate was 11%, yet Eagle Vines chose to charge
26 men more than women to play golf on that day and on all Ladies Days in 2010.

27 11. The California Department of Fair Employment and Housing (“DFEH”), the State
28 agency charged with preventing unlawful discrimination in places of public accommodations, has

1 recently published an Unruh Civil Rights Act brochure specifically addressing the unlawfulness of
2 Ladies' Night promotions. This DFEH brochure is attached hereto as Exhibit A, and can also be
3 found at <http://www.dfeh.ca.gov/DFEH/Publications/PublicationDocs/UnruhActBrochure.pdf>.

4 12. In January of 2008, in response to the proliferation of ladies only poker tournaments
5 at California's licensed card rooms, the California Attorney General and the Bureau of Gambling
6 Control issued a Gambling Establishment Advisory, attached hereto as Exhibit B, which advised
7 card rooms that ladies only poker tournaments violated the Unruh Act. The Attorney General also
8 warned that it may also be unlawful under the Unruh Act to advertise tournaments as "ladies only"
9 even if men are in fact admitted. The Attorney General's Advisory can also be found at
10 <http://ag.ca.gov/gambling/pdfs/NUM8LOT.pdf>.

11 13. By this action, plaintiff seeks to enforce California's strong public policy of
12 eradicating sex discrimination, and put an end to Eagle Vines' Ladies Day that treats patrons
13 unequally based solely on their sex.

14 **PARTIES**

15 14. At all times relevant hereto, plaintiff Steve Frye was a male California resident.

16 15. On information and belief, at all times relevant hereto, defendant Eagle Vines
17 Vineyards and Golf Club, L.L.C. was a Virginia limited liability company doing business as Eagle
18 Vines Golf Club in Napa, California.

19 16. The true names and capacities of Does 1 through 100 are unknown to plaintiff.
20 When their true names and capacities are ascertained, plaintiff will amend this complaint
21 accordingly. Plaintiff is informed and believes, and on that basis alleges, each of the fictitiously
22 named defendants is responsible in some way for the occurrences herein alleged, and those
23 defendants proximately caused plaintiffs and the other male patrons' damages. Each reference in
24 this complaint to "defendant," "defendants," or a specifically named defendant refers to all
25 defendants sued under fictitious names.

26 17. Unless otherwise alleged, whenever reference is made in this complaint to any act of
27 "defendant," "defendants," or a specifically named defendant, such allegation shall mean that each
28 defendant acted individually and jointly with the other defendant named in the complaint.

1 18. Unless otherwise alleged, whenever reference is made in this complaint to any act or
2 omission of any corporate or business defendant, such allegation shall mean that such corporation or
3 other business defendant committed or omitted to act as in this complaint through its officers,
4 directors, employees, agents, and/or representatives while they were acting within the actual or
5 apparent scope of their authority.

6 19. At all relevant times alleged herein, each defendant acted as an agent, representative,
7 partner, joint venturer, employee, assistant, or aide of each of the other defendants and has acted
8 within the course and scope of said agency, representation, partnership, or joint venture.

9 **JURISDICTION AND VENUE**

10 20. This court has subject matter jurisdiction over this matter pursuant to Article VI,
11 section 10 of the California Constitution because this action is a cause not given by statute to other
12 trial courts, and seeks (among other relief) a permanent injunction. Subject matter jurisdiction is
13 further premised on, *inter alia*, California Civil Code sections 51, 51.5, and 51.6.

14 21. This court has personal jurisdiction over defendants because defendants do sufficient
15 business in California and have sufficient minimum contacts in California to render the exercise of
16 personal jurisdiction over them by California courts consistent with traditional notions of fair play
17 and substantial justice.

18 22. Venue is proper in this court because the unequal treatment, discrimination, or
19 distinction alleged herein occurred in Napa, California.

20 **FIRST CAUSE OF ACTION**

21 **Violation Of Unruh Civil Rights Act, Civil Code Section 51**

22 23. Plaintiff incorporates in this cause of action the allegations contained in each and
23 every preceding paragraph of this Complaint as if they were set out at length herein.

24 24. By virtue of defendant Eagle Vines Vineyards and Golf Club requiring plaintiff and
25 other male patrons to pay a higher price than female patrons were required to pay to play golf on
26 Ladies Day, Eagle Vines Golf Club intentionally made a distinction or discrimination against
27 plaintiff and other male patrons on the basis of their sex as prohibited by the Unruh Civil Rights Act,
28 codified as Civil Code section 51. Plaintiff paid for the disparately priced green fee and cart fee.

- 1 25. Eagle Vines' conduct harmed plaintiff and caused him damages.
2 26. Eagle Vines' conduct was a substantial factor in causing harm to plaintiff.
3 27. Said discrimination renders Eagle Vines subject to injunctive relief.

4 **SECOND CAUSE OF ACTION**

5 **Violation of Civil Code Section 51.5**

6 28. Plaintiff incorporates in this cause of action the allegations contained in each and
7 every preceding paragraph of this Complaint as if they were set out at length herein.

8 29. By virtue of Eagle Vines requiring plaintiff and other male patrons to pay a higher
9 price than female patrons were required to pay to play golf on Ladies Day, Eagle Vines made a
10 distinction or discrimination against plaintiff and other male patrons on the basis of their sex as
11 prohibited by Civil Code section 51.5. Plaintiff paid for the disparately priced green fee and cart fee.

- 12 30. Eagle Vines' conduct harmed plaintiff and caused him damages.
13 31. Eagle Vines' conduct was a substantial factor in causing harm to plaintiff.
14 32. Said discrimination renders Eagle Vines subject to injunctive relief.

15 **THIRD CAUSE OF ACTION**

16 **Violation Of The Gender Tax Repeal Act, Civil Code Section 51.6**

17 33. Plaintiff incorporates in this cause of action the allegations contained in each and
18 every preceding paragraph of this Complaint as if they were set out at length herein.

19 34. By virtue of Eagle Vines requiring plaintiff and other male patrons to pay a higher
20 price than female patrons were required to pay for green fees during the Gender-Based Pricing
21 Promotion, Angeles National Golf Club discriminated against plaintiff as prohibited by the Gender
22 Tax Repeal Act of 1995, codified as Civil Code section 51.6. Plaintiff paid for the disparately priced
23 green fee and cart fee.

- 24 35. Eagle Vines' conduct harmed plaintiff and caused him damages.
25 36. Eagle Vines' conduct was a substantial factor in causing harm to plaintiff.
26 37. Said discrimination renders Eagle Vines subject to injunctive relief.

1 PRAYER FOR RELIEF

2 WHEREFORE, plaintiff prays for the following relief:

3 a. For an order providing injunctive relief permanently enjoining defendants from
4 engaging in the unequal treatment of patrons by charging patrons different prices to play golf based
5 on the patrons' sex in violation of Civil Code sections 51, 51.5, and 51.6;

6 b. For actual damages for each offense pursuant to Civil Code section 52;

7 c. For statutory damages for each offense pursuant to Civil Code section 52;

8 d. For costs incurred herein, and attorneys' fees provided by statute, including Civil
9 Code sections 52 and Code of Civil Procedure section 1021.5; and

10 e. For such other and further legal and equitable relief as this court may deem proper.
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12 Dated: December 12, 2011

Respectfully submitted,

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15 By: 

16 Alfred G. Rava
17 Attorney for Plaintiff
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EXHIBIT A

Protections Under the Law Against Sex Discrimination

The Unruh Civil Rights Act (Civ. Code, § 51), originally enacted in 1959, was designed to protect the rights of Californians from arbitrary discrimination and to guarantee their rights to full and equal access to all public accommodations regardless of sex.

Discrimination by business establishments on the basis of sex is against the law. It is unlawful for any business that is open to the general public to discriminate against a patron based on any of the following classifications: sex, race, color, religion, ancestry, national origin, disability, medical condition, marital status, or sexual orientation. The Unruh Act protection is not limited to these classifications. It is an Unruh Act violation for a business to offer special treatment, whether preferential or detrimental, to one class of patrons regardless of the business' motives for doing so.

Businesses that are Governed by the Unruh Civil Rights Act

The list below includes examples of businesses that are covered by the Unruh Act. This list is non-exhaustive, and may include any place of public accommodation regardless of whether the entity is a traditional business or non-profit entity.

- **Bars and Nightclubs.**
- **Restaurants.**
- **Hotels and Motels.**
- **Retail Shops.**
- **Golf Courses.**
- **Fitness Clubs or Gyms.**
- **Theaters.**
- **Hospitals.**
- **Barber Shops and Beauty Salons.**
- **Non-Profit Organizations (open to the public).**
- **Public Agencies.**
- **Housing Accommodations.**

Filing a Complaint

The Department of Fair Employment and Housing (DFEH or Department) is charged with the task of upholding the Unruh Act, and ensuring that its laws and principles are not violated. If you believe you are a victim of unlawful discrimination, do not hesitate to call the DFEH and file a complaint following these steps:

- Contact the DFEH by calling the toll free number at (800) 884-1684 to schedule an appointment.
- "Be prepared to present specific facts about the alleged harassment of discrimination.
- "Provide any copies you may have of documents that support the charges in the complaint.
- Keep records and documents about the complaint, such as receipts, stubs, bills, applications, flyers, witness contact information, and other materials.

Examples of Sex-Based Discrimination Under the Unruh Violations

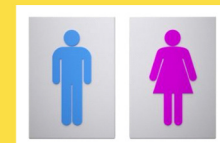
The following are examples of potential violations of the Unruh Act. The list is not meant to be exhaustive, and there is other conduct that may violate the Act.

- Providing free admission, discounts, or promotional gifts to only one sex.
- Charging men and women different prices for comparable services, such as clothing alterations, haircuts, dry cleaning, or drinks at a restaurant or bar.

- Maintaining "women only" or "men only" exercise areas of a fitness club or gym and excluding or deterring the opposite sex from those areas.
- Establishing a "women only" or "men only" business establishment which would otherwise be completely open to the public.
- Excluding one sex from a business premises during certain times.
- Posting signs or adopting policies for "women recommended" or "men preferred."
- Requiring members of one sex to submit to searches to gain admittance to a business.

establishment while providing admittance to members of the other sex without the same level or degree of search.

- Promoting a business with "ladies night" discounts on admission and services.
- Denying access to a business, such as a nightclub to a particular sex, or giving preference to one sex over the other.



Complaints must be filed within one year from the last act of discrimination. The DFEH will conduct an impartial investigation.

The Department is not an advocate for either the person complaining or the person complained against. The Department represents the state. The DFEH will, if possible, try to assist both parties to resolve the complaint. If a voluntary settlement cannot be reached, and there is sufficient evidence to establish a violation of the law, the Department may issue an accusation and litigate the case before the Fair Employment and Housing Commission or in civil court. This law provides for a variety of remedies that may include the following:

- Out-of-pocket expenses.
- Cease and desist orders.
- Damages for emotional distress.
- Statutory damages of three times the amount of actual damages, or a minimum of \$4,000 for each offense.

For more information, contact the DFEH
Toll Free (800) 884-1684
Sacramento area and out-of-state (916) 227-0551
Videophone for the Deaf (916) 226-5285
E-mail contact.center@dfeh.ca.gov
Web site www.dfeh.ca.gov

Facebook
<http://www.facebook.com/#!/pages/Department-of-Fair-Employment-and-Housing/183801915445>
YouTube <http://www.youtube.com/califdfeh>
Twitter <http://twitter.com/DFEH>

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State of California
**DEPARTMENT OF
FAIR EMPLOYMENT & HOUSING**



References

1. California Civil Code section 51.
2. *Rotary Club of Duarte v. Board of Directors* (1987) 178 Cal.App.3d 1035. A non-profit club was a business establishment under the Unruh Act because it offered its members substantial "commercial advantages and business benefits." Membership in these kinds of organizations is a privilege or advantage under the Unruh Act. Thus, termination of membership based on sex is prohibited.
3. *Warfield v. Peninsula Golf & Country Club* (1995) 10 Cal.4th 594. By offering the public access to its facilities, the County Club became a business establishment under the Unruh Act and could not exclude women.

4. *Ibister v. Boys' Club of Santa Cruz* (1985) 40 Cal.3d 72. A non-profit activities center for boys was a place of public accommodation, and excluding an entire class of patrons, such as women, was illegal.
5. *Angelucci v. Century Supper Club* (2007) 41 Cal.4th 160. It was a violation of the Unruh Act for a night club to charge its male patrons a higher price for admission. The patrons need not affirmatively request nondiscriminatory treatment, but rather, are entitled to it. The Unruh Act imposes a compulsory duty upon business establishments to serve all persons without arbitrary discrimination.
6. *Koire v. Metro Car Wash* (1985) 40 Cal.3d 24. The Unruh Act broadly condemns any business establishment's policy of gender-based price discounts.

Unruh Civil Rights Act

All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, 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.

EXHIBIT B



BUREAU OF GAMBLING CONTROL

EDMUND G. BROWN JR.
Attorney General

Mathew J. Campoy
Acting Bureau Chief

NUMBER 8

GAMBLING ESTABLISHMENT ADVISORY

January 18, 2008

“LADIES ONLY TOURNAMENTS”

It has come to the attention of the Bureau of Gambling Control that some gambling establishments conduct “ladies only” poker tournaments that exclude men from participating, or admit them on different terms from those accorded to women. It is the Bureau’s view that such tournaments may violate California’s anti-discrimination laws.

Under the Unruh Civil Rights Act (Civil Code sections 51 and 51.5), businesses may not discriminate in admittance, prices, or services offered to customers based on the customers’ sex, race, color, religion, ancestry, national origin, disability, medical condition, marital status, or sexual orientation. “Ladies only” tournaments or any other promotional events that fail to admit men and women to advertised activities on an equal basis regardless of sex are unlawful. It may also be unlawful under the Unruh Act to advertise tournaments as “ladies only” even if men are in fact admitted.

The Bureau will approve only those events that include the following features: the event will be open to all customers, the promotional gifts will be given equally to all event participants, the fees and prices will be the same for all event participants, any discounts will not be based on gender or another personal characteristic protected by the Unruh Act, and the event’s promotional materials do not advertise gender-based discounts or imply a gender-based entrance policy or any other unlawful discriminatory practice.

Gambling establishments should take notice that pursuant to Business and Professions Code section 125.6, violations of the Unruh Act are cause for discipline under the Gambling Control Act.

For more information regarding this advisory, contact the California Department of Justice, Bureau of Gambling Control at (916) 263-3408.