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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN DIEGO - CENTRAL DISTRICT

10 JONATHAN CORRELL; ED LEO; STEVE
11 SURREY; and STEVE FRYE,

12 Plaintiffs,

13 v.

14 DICK'S SPORTING GOODS, INC. dba GOLF
15 GALAXY; NIKE, INC.; TAYLOR MADE
16 GOLF COMPANY, INC.; ACUSHNET
17 COMPANY; CALLAWAY GOLF COMPANY;
18 ADAMS GOLF IP, L.P.; BRIDGESTONE
19 GOLF, INC.; and DOES 1 through 100,

20 Defendants.

Case No. **37-2012-00094631-CU-CR-CTL**

Case No.

**COMPLAINT FOR INJUNCTIVE
RELIEF AND DAMAGES FOR:**

- 1. **Violation of Civil Code § 51 – The Unruh Civil Rights Act; and**
- 2. **Violation of Civil Code § 51.5.**

UNLIMITED JURISDICTION

21 Plaintiffs allege on information and belief the following:

NATURE AND BASIS OF CLAIMS

22 1. This lawsuit arises out of the April 20, 2010, Women's Night promotion at defendant Dick's
23 Sporting Goods, Inc.'s Golf Galaxy stores ("Women's Night") where defendants discriminated
24 against and/or at least aided in the discrimination of the plaintiffs and all male consumers based on
25 the consumers' sex and/or marital status. On Women's Night, male consumers, including the male
26 plaintiffs, were denied the full and equal accommodations, advantages, facilities, privileges, or
27 services that were provided to female consumers. An advertisement for Women's Night, attached
28 hereto as Exhibit 1, reads as follows:

1 TUESDAY, APRIL 20TH

2 7:00PM - 9:00PM

3 YOU'RE INVITED TO ATTEND

4 **WOMEN'S NIGHT**

5
6 EVENT INCLUDES:

- 7 • Exclusive offers on Women's merchandise
- 8 • Free \$10 Golf Galaxy gift card and goodie bag to the first 50 customers at each store
- 9 • On-site Manufacturer Representatives from all the big brands
- 10 • Signature Paula Creamer adidas golf shoe giveaway (1 winner per store)
- 11 • Enter to win a Nike Karma 12-ball pack when you demo the Women's MachSpeed Driver
- 12 • Gift card raffles
- 13 • Gifts with purchase
- 14 • Refreshments and more . . .

15 2. This same advertisement for Women's Night also explained that the above "goodie bag" given
16 to the first 50 customers at each store included a Nike Karma 3-ball sleeve, a Callaway Solaire 3-ball
17 sleeve, a Precept Lady 2-ball sleeve, and a Pinnacle Lavender single-ball pack. This ad also invited
18 readers, but it turned out to be only female readers, to "Register to Win" (1) a Nike Golf "Head-to-
19 Toe Package" including golf clothing, shoes, and balls, (2) a Taylor Made "Head-to-Toe Package"
20 including golf clothing, clubs, bag, and balls, and (3) a set of Adams Golf clubs.

21 3. Despite the many State of California anti-discrimination statutes, California Supreme Court
22 opinions, California Attorney General actions, and California Department of Alcoholic Beverage
23 Control regulations – all prohibiting California businesses from treating patrons unequally based on
24 their sex, defendants brazenly advertised, employed, and at least aided the Women's Night
25 promotion, which treated patrons unequally based on the patrons' sex and/or marital status.

26 4. On Women's Night, female millionaires such as Nancy Pelosi or Sarah Palin would have been
27 allowed into Golf Galaxy's stores and provided with the gift cards, gifts, refreshments, and
28 opportunities to win thousands of dollars worth of merchandise, while male consumers, who may

1 have recently lost their jobs, would have been denied entry in Golf Galaxy and the accommodations,
2 advantages, facilities, privileges, or services provided to only female consumers and/or to only
3 female consumers and their male spouses that night. Indeed, according to the U.S. Department of
4 Labor, in 2010, the unemployment rate for American men averaged 10.5 percent, while the average
5 unemployment rate for American women was much lower at 8.6 percent. Yet on Women's Night,
6 only women and/or only women and their male spouses were allowed into Golf Galaxy's stores and
7 provided gift cards, gifts, refreshments, and opportunities to win thousands of dollars worth of
8 merchandise.

9 5. Single men and married men not accompanied by their female spouses were prohibited from
10 entering Golf Galaxy's stores on Women's Night. Therefore, based on their sex and/or marital status,
11 single men and married men not accompanied by their female spouses, were denied the exclusive
12 offers on merchandise, free \$10 Golf Galaxy gift cards, free goodie bags, access to on-site
13 manufacturer representatives from major golf equipment brands, signature Paula Creamer adidas
14 golf shoe giveaway, chances to win a Nike Karma 12-ball pack when demonstrating a golf club, gift
15 card raffles, gifts with purchase, refreshments, " and chances to win (1) a Nike Golf "Head-to-Toe
16 Package" including golf clothing, shoes, and balls, (2) a Taylor Made "Head-to-Toe Package"
17 including golf clothing, clubs, bag, and balls, and (3) a set of Adams Golf clubs.

18 6. On Women's Night, experienced female golfers such as retired LPGA pros Annika Sorenstam
19 or Lorena Ochoa would have been allowed into Golf Galaxy's stores by themselves, but men who
20 never played golf or who were not very good at golf were told they could not enter these places of
21 public accommodations because of their sex.

22 7. On Women's Night, male plaintiffs Jonathan Correll, Ed Leo, and Steve Surrey were denied
23 entry into the Golf Galaxy store located on Carmel Mountain Road in San Diego. At this store's
24 entrance, each of these men was stopped by a Golf Galaxy employee who told these men that this
25 Golf Galaxy store was open to only women this night and told each of these men to leave.

26 8. On Women's Night, male plaintiff Steve Frye was denied entry into the Golf Galaxy store
27 located on El Camino Real in Encinitas, California. At this store entrance, Mr. Frye was stopped by
28 a Golf Galaxy employee who told Mr. Frye that this Golf Galaxy store was open to only women this

1 night and told Mr. Frye to leave. While at this store entrance, Mr. Frye observed approximately
2 three males, who appeared to be patrons, inside this Golf Galaxy. Mr. Frye asked this same Golf
3 Galaxy employee why these men were allowed inside the store, and this employee told Mr. Frye that
4 these men were allowed inside the store only because they were there with their wives, and women
5 were allowed inside the store that night, but single men were not.

6 9. On Women's Night, Defendants Nike, Inc., Taylor Made, Golf Company, Inc., Acushnet
7 Company, Callaway Golf Company, Adams Golf IP, L.P., Bridgestone Golf, Inc. made a
8 discrimination or a distinction contrary to Civil Code sections 51 and 51.5 based on the consumers
9 sex, or at least aided in making a discrimination or a distinction contrary to Civil Code sections 51
10 and 51.5 based on the consumers' sex and/or marital status by at least (1) providing or licensing their
11 trademarks and the goodwill associated with those trademark for advertising and promoting
12 Women's Night, (2) providing their products to be given, raffled, or awarded to only female
13 consumers on Women's Night, (3) providing employees or representatives to be present at Women's
14 Night in Golf Galaxy's California stores in support of Women's Night, and (4) participating in
15 Women's Night and the sex and marital status discrimination that was occurring in Golf Galaxy's
16 stores on Women's Night. Acushnet Company owns the Pinnacle brand of golf balls. Bridgestone
17 Golf Company owns the Precept brand of golf balls. Taylor Made Golf Company owns the Paula
18 Creamer brand of golf shoes.

19 10. Women's Night violated California's strong public policy to eradicate sex discrimination,
20 reflected in the many California statutes that prohibit businesses from discriminating against patrons
21 based on protected personal characteristics such as sex, race, religion, or sexual orientation.
22 Defendants' Women's Night was in direct contravention of California Civil Code sections 51
23 (codification of the Unruh Civil Rights Act) and 51.5, both of which prohibit California businesses
24 from treating patrons unequally on the basis of sex and marital status.

25 11. Denying male consumers entry into a golf store on "Women's Night" is as offensive, archaic,
26 and unlawful as denying female consumers entry into a sporting goods store on "Men's Night," or as
27 offensive, archaic, and unlawful as denying Hispanics or African-Americans entry into a retail store
28 on "Caucasian Night." Simply put, it is against the law for a business in California to discriminate or

1 to aid in any discrimination against patrons based on personal characteristics such as sex, race,
2 religion, medical condition, marital status or sexual orientation.

3 12. In the seminal case on sex-based promotions, *Koire v. Metro Car Wash* (1985) 40 Cal.3d 24,
4 the California Supreme Court held that Ladies' Day and Ladies' Night promotions, which treated
5 patrons unequally based on sex by charging men more than women—as little as fifteen cents more—
6 violated the Unruh Civil Rights Act. *Koire* found “Public policy in California strongly supports
7 eradication of discrimination based on sex. The Unruh Act expressly prohibits sex discrimination by
8 business enterprises.” *Id.* at 37. *Koire* also ruled “the Legislature established that arbitrary sex
9 discrimination by business is per se injurious” and “differential pricing based on sex may be
10 generally detrimental to both men and women, because it reinforces harmful stereotypes.” *Id.* at 33.

11 13. Among the harmful stereotypes detrimental to the advancement of equal rights for women
12 and men and perpetuated by Women's Night include: (1) women prefer to shop at a sporting goods
13 store if no male or single male patrons are allowed into the store at the same time; (2) women are
14 intimidated by men or single men when shopping at a sporting goods store; (3) women take pleasure
15 in having men denied entry into a sporting goods so they can have exclusive access to the goods and
16 services inside; (4) women endorse a place of public accommodation allowing access to only one
17 sex to the exclusion of the other sex; and (5) women or men are expected to just stand there and take
18 it like sheared sheep when they are being treated inferior to the other sex.

19 14. *Koire* was upheld by the California Supreme Court in its latest opinion on Ladies' Night
20 promotions, *Angelucci v. Century Supper Club* (2007) 41 Cal.4th 160, wherein the Court
21 unanimously ruled that men who were charged more than women to enter a supper club did not have
22 to ask the offending business for equal treatment in order to have an unequal treatment claim under
23 Civil Code sections 51, 51.5, or 51.6. That is, patrons who are treated unequally by a California
24 business do not have to ask the offending business “May I please be treated equally to your
25 male/female/Caucasian/heterosexual customers?” in order to have standing to bring an unequal
26 treatment claim under Civil Code sections 51 or 51.5.

27 15. The effect of Women's Night has been to deny plaintiff and other male consumers equal
28 treatment by denying them the same accommodations, advantages, facilities, privileges, or services

1 defendants provided to female consumers, thereby promoting harmful negative stereotypes contrary
2 to California law and public policy as articulated by the California Supreme Court in *Koire* and
3 *Angelucci*, and as embodied in Civil Code sections 51, 51.5, and 51.6.

4 16. By this action, plaintiffs seek redress for defendants' unequal treatment of consumers based
5 on the consumers' sex and/or marital status.

6 **PARTIES**

7 17. Plaintiff Jonathan Correll is a California citizen.

8 18. Plaintiff Ed Leo is a California citizen.

9 19. Plaintiff Steve Surrey is a California citizen.

10 20. Plaintiff Steve Frye is a California citizen.

11 21. On information and belief, at all times relevant hereto, defendant Dick's Sporting Goods
12 Store, Inc. was a Delaware corporation doing business in California as Golf Galaxy and the owner of
13 Golf Galaxy, LLC, Golf Galaxy, Inc., and the above San Diego and Encinitas Golf Galaxy stores.

14 22. On information and belief, at all times relevant hereto, defendant Nike, Inc. was an Oregon
15 corporation doing business in California.

16 23. On information and belief, at all times relevant hereto, defendant Taylor Made Golf
17 Company, Inc. was a Delaware corporation with its principal place of business in Carlsbad,
18 California, and therefore a California citizen.

19 24. On information and belief, at all times relevant hereto, defendant Acushnet Company was a
20 Delaware corporation doing business as Pinnacle in California.

21 25. On information and belief, at all times relevant hereto, defendant Callaway Golf Company
22 was a Delaware corporation with its principal place of business in Carlsbad, California, and therefore
23 a California citizen.

24 26. On information and belief, at all times relevant hereto, defendant Adams Golf IP, L.P.
25 Corporation was a Delaware limited partnership doing business in California.

26 27. On information and belief, at all times relevant hereto, defendant Bridgestone Golf, Inc. was
27 a Delaware corporation doing business as Precept in California.

1 28. The true names and capacities of Does 1 through 100 are unknown to plaintiff. When their
2 true names and capacities are learned, plaintiff will amend this complaint accordingly. Plaintiffs are
3 informed and believe, and on that basis allege, each fictitiously named defendant is responsible in
4 some way for the occurrences herein alleged, and those defendants proximately caused plaintiff and
5 the other male consumers' damages. Each reference in this complaint to "defendant," "defendants,"
6 or a specifically named defendant refers to all defendants sued under fictitious names.

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

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

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

18 **JURISDICTION AND VENUE**

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

23 33. This court has personal jurisdiction over defendants in this action because all
24 defendants do sufficient business in California and have sufficient minimum contacts in California to
25 render the exercise of personal jurisdiction over them by California courts consistent with traditional
26 notions of fair play and substantial justice.

27 34. Venue is proper in this court because the unequal treatment alleged herein occurred in
28 San Diego County, California.

1 **FIRST CAUSE OF ACTION**

2 **Violation of Unruh Civil Rights Act, Civil Code Section 51, for Sex Discrimination**

3 **By All Plaintiffs Against All Defendants**

4 35. Plaintiffs incorporate in this cause of action the allegations contained in each and
5 every preceding paragraph of this Complaint as if they were set out at length herein.

6 36. By virtue of defendants' acts related to Women's Night, defendants intentionally
7 treated plaintiffs unequally based on their sex, which is prohibited by the Unruh Civil Rights Act,
8 codified as Civil Code section 51. Plaintiffs presented themselves at Golf Galaxy stores on Women's
9 Night to tender the price for any goods or services and to receive the full and equal accommodations,
10 advantages, facilities, privileges, or services defendants were required to provide to all consumers
11 under Civil Code sections 51, but plaintiffs were denied entry into these Golf Galaxy stores.

12 37. Defendants' conduct harmed plaintiffs.

13 38. Defendants' conduct was a substantial factor in harming plaintiffs.

14 39. Said discrimination further renders defendants subject to injunctive relief.
15

16 **SECOND CAUSE OF ACTION**

17 **Violation of Civil Code Section 51.5 for Sex Discrimination**

18 **By All Plaintiffs Against All Defendants**

19 40. Plaintiffs incorporate in this cause of action the allegations contained in each and
20 every preceding paragraph of this Complaint as if they were set out at length herein.

21 41. By virtue of defendants' acts related to Women's Night, defendants discriminated
22 against plaintiffs on the basis of sex, which is prohibited by Civil Code section 51.5. Plaintiffs
23 presented themselves at Golf Galaxy stores on Women's Night to tender the price for any goods or
24 services and were entitled to equal treatment under Civil Code sections 51.5, but plaintiffs were
25 denied entry into these Golf Galaxy stores.

26 42. Defendants' conduct harmed plaintiffs.

27 43. Defendants' conduct was a substantial factor in harming plaintiffs.

28 44. Said discrimination further renders defendants subject to injunctive relief.

1 **THIRD CAUSE OF ACTION**

2 **Violation of Unruh Civil Rights Act, Civil Code Section 51, for Marital Status Discrimination**
3 **By Steve Frye Against All Defendants**

4 45. Plaintiff Steve Frye incorporates in this cause of action the allegations contained in
5 each and every preceding paragraph of this Complaint as if they were set out at length herein.

6 46. By virtue of defendants' acts related to Women's Night, defendants intentionally
7 treated plaintiff and single male Steve Frye unequally based on his marital status, which is prohibited
8 by the Unruh Act. Mr. Frye presented himself at the San Diego Golf Galaxy store on Women's
9 Night to tender the price for any goods or services and to receive the full and equal accommodations,
10 advantages, facilities, privileges, or services defendants were required to provide to all consumers
11 under Civil Code sections 51, but Mr. Frye was denied entry into this Golf Galaxy store.

12 47. Defendants' conduct harmed Mr. Frye.

13 48. Defendants' conduct was a substantial factor in harming Mr. Frye.

14 49. Said discrimination further renders defendants subject to injunctive relief.
15

16 **FOURTH CAUSE OF ACTION**

17 **Violation of Civil Code Section 51.5 for Marital Status Discrimination**
18 **By Steve Frye Against All Defendants**

19 50. Plaintiff Steve Frye incorporates in this cause of action the allegations contained in
20 each and every preceding paragraph of this Complaint as if they were set out at length herein.

21 51. By virtue of defendants' acts related to Women's Night, defendants discriminated
22 against plaintiff and single male Steve Frye on the basis of marital status, which is prohibited by
23 Civil Code section 51.5. Mr. Frye presented himself at the San Diego Golf Galaxy store on
24 Women's Night to tender the price for any goods or services and was entitled to equal treatment
25 under Civil Code sections 51.5, but Mr. Frye was denied entry into this Golf Galaxy store.

26 52. Defendants' conduct harmed Mr. Frye.

27 53. Defendants' conduct was a substantial factor in harming Mr. Frye.

28 54. Said discrimination further renders defendants subject to injunctive relief.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, plaintiffs pray for the following relief:

- 3 1. An order providing equitable and injunctive relief permanently enjoining defendants
4 from engaging in unequal treatment of consumers in violation of Civil Code sections 51 and 51.5;
- 5 2. Actual damages;
- 6 3. Statutory damages provided by Civil Code section 52;
- 7 4. For costs incurred herein, including attorneys' fees allowable by statute, including
8 Civil Code sections 52 and Code of Civil Procedure section 1021.5; and
- 9 5. For such other and further legal and equitable relief as this court may deem proper.

10
11 Dated: March 26, 2012

Respectfully submitted,

12
13
14 By: 
15 Alfred G. Rava

EXHIBIT 1



WWW.GOLFGALAXY.COM

TUESDAY, APRIL 20TH
7:00PM - 9:00PM

YOU'RE INVITED TO ATTEND ,
**women's
night**



EVENT INCLUDES:

- Exclusive offers on Women's merchandise
- Free \$10 Golf Galaxy gift card and goodie bag to the first 50 customers at each store
- On-site Manufacturer Representatives* from all the big brands
- Signature Paula Creamer adidas golf shoe giveaway (1 winner per store)
- Enter to win a Nike Karma 12-ball pack when you demo the Women's MachSpeed Driver
- Gift card raffles
- Gifts with purchase
- Refreshments and more...

GOODIE BAG INCLUDES:



REGISTER TO WIN**



Head-to-Toe package:

- Hat
- Skort
- 1 pair of shoes
- Polo
- 1 dozen balls



Head-to-Toe package:

- adidas golf outfit
- Set of Burner SuperFast Woods
- Set of Burner 09 Irons
- Stand Bag
- Burner golf balls



Women's IDEA a70S Complete Set

*Representatives vary by location. See a Player's Assistant for details.

**1 winner overall per prize. No purchase necessary.



ADVANTAGE CLUB GOLF REWARDS. YOUR BEST SCORE EVER.

