

1 Alfred G. Rava, SBN 188318
2 RAVA LAW FIRM
3 3667 Voltaire Street
4 San Diego, CA 92106
5 Phone: 619-238-1993
6 Email: alrava@cox.net

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8
9 Attorney for Plaintiffs Christine Johnson, Harry Crouch,
10 and the Putative Class

11 **UNITED STATES DISTRICT COURT**
12 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

13
14 CHRISTINE JOHNSON and HARRY
15 CROUCH, on behalf of themselves and
16 all others similarly situated,

17 Plaintiffs,

18 v.

19 FRESNO SPORTS AND EVENTS
20 LLC LLC; FRESNO SPORTS AND
21 EVENTS PARTNERS LLC; DBH
22 FRESNO LLC; DIAMOND
23 BASEBALL HOLDINGS LLC;
24 DIAMOND BASEBALL PARENT
25 LLC; MINOR LEAGUE BASEBALL
26 INC.; JONATHAN BRAVO;
27 UNIFIED BOARD OPERATIONS
28 LLC DBA VIRTCH; and DOES 1
THROUGH 20, INCLUSIVE,

Defendants.

Case No.

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

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

1 All animals are equal, but some animals are more equal than others.

2 – George Orwell, *Animal Farm*

3
4 Plaintiffs Christine Johnson and Harry Crouch allege the following:

5
6 **NATURE AND BASIS OF CLAIMS**

7 1. Nearly 40 years ago the California Supreme Court, in *Koire v. Metro Car Wash*,
8 40 Cal.3d 24 (1985), held unanimously that so-called “Ladies’ Night” promotions
9 violate the Unruh Civil Rights Act (codified as Civil Code Section 51). *Koire* held, “The
10 scope of the statute clearly is not limited to exclusionary practices. The Legislature's
11 choice of terms evidences concern not only with access to business establishments, but
12 with equal treatment of patrons in all aspects of the business.” *Koire* at 29. “Moreover,
13 differential pricing based on sex may be generally detrimental to both men and women,
14 because it reinforces harmful stereotypes.” *Koire* at 34. “Public policy in California
15 strongly supports eradication of discrimination based on sex. The Unruh Act expressly
16 prohibits sex discrimination by business enterprises.” *Id.* at 37.

17 2. *Koire* was approved by the California Supreme Court in another gender price
18 discrimination case, *Angelucci v. Century Supper Club*, 41 Cal.4th 160 (2007), wherein
19 the Court held – again, unanimously – that plaintiffs in Unruh Act cases are not required
20 to first confront the discriminating business and affirmatively assert their right to equal
21 treatment in order to have standing to sue. “As we have explained, the Act imposes a
22 duty upon business establishments to refrain from arbitrary discrimination. If businesses
23 are held not to violate the Act or inflict injury unless they are challenged by a patron,
24 their ordinary practice may revert to discrimination, with special exceptions being made
25 for individuals who happen to challenge the practice. Contrary to the purpose of the Act
26 to eradicate discrimination, the Court of Appeal’s interpretation leaves business
27 establishments free to *advertise* and provide gender-based discounts and, presumably,
28 to engage in other forms of discrimination that violate the Act, so long as these

1 establishments agree to provide equal treatment to those customers knowledgeable and
2 assertive enough to demand it.” *Angelucci* at 169. (Emphasis added.) The Plaintiffs’
3 attorney in the case at bar represented the prevailing plaintiffs at the California Supreme
4 Court in *Angelucci*.

5 3. Furthermore, in the putative class action of *White v. Square, Inc.*, 7 Cal. 5th 1019,
6 1032-1033 (2019) the California Supreme Court held, “We conclude that a person who
7 visits a business's website with intent to use its services and encounters terms or
8 conditions that exclude the person from full and equal access to its services has standing
9 under the Unruh Civil Rights Act, with no further requirement that the person enter into
10 an agreement or transaction with the business.” The court explained its reasoning by
11 referring to *Angelucci*: “Our reasoning in *Angelucci* makes clear that in order to have
12 standing, White did not need to contact Square to ask for an exception to the stated
13 restriction or to verify that the restriction applied to him. (*Angelucci, supra*, 41 Cal.4th
14 at p. 170.) Such a requirement would limit a business's liability only to individuals who
15 inquire and would potentially enable a business to make exceptions to its stated policies
16 in order to avoid suit, even as its stated policies *deter* the lion's share of customers
17 belonging to a protected group.” (Emphasis added.) Thus, *White* was undergirded by
18 the California Supreme Court’s concern that businesses will not only discriminate
19 against customers belonging to a protected group in person, but also deter customers
20 belonging to a protected group through the advertisement of discriminatory policies.

21 4. Read together, *Koire, Angelucci*, and *White* stand for the proposition that so-called
22 “Ladies’ Night” sex-based pricing promotions constitute a stated policy of unlawful
23 gender price discrimination that is harmful to both men and women; standing is not
24 limited to those persons who actually encounter the discrimination in person but is also
25 conferred on persons who intended to use a business’s services but were deterred from
26 doing so because they encountered discriminatory advertisements; and plaintiffs in such
27 cases are not required to request equal treatment or enter into an agreement or
28 transaction with the business.

1 5. In the present case, Defendants, including Fresno Sports and Events LLC LLC¹,
2 Fresno Sports and Events Partners LLC, DBH Fresno LLC, Diamond Baseball
3 Holdings LLC, and Diamond Baseball Parent LLC, doing business as a minor league
4 baseball team called the Fresno Grizzlies (“Grizzlies”), along with Defendants Minor
5 League Baseball Inc. (“MiLB”), Jonathan Bravo (“Bravo”), and Unified Board
6 Operations LLC dba VirtCh (“VirtCh”) created, approved, advertised, marketed,
7 promoted, hosted, employed, managed, participated in, incited, and/or at least aided a
8 “Ladies Night” game held on May 25, 2023 at the Grizzlies home Chuckchansi Park in
9 Fresno that required male and nonbinary fans to pay more than female fans to attend
10 that evening’s game against the Stockton Ports (hereinafter referred to as the “Ladies
11 Night game.”) Specifically, based on the fans’ sex or gender, Defendants required male
12 and nonbinary fans to pay up to at least \$28.00 each to attend this Ladies Night game,
13 while Defendants allowed all female fans to attend this Ladies Night game for free, with
14 a \$28.00 or more price differential or disparity based solely on the fans’ sex.

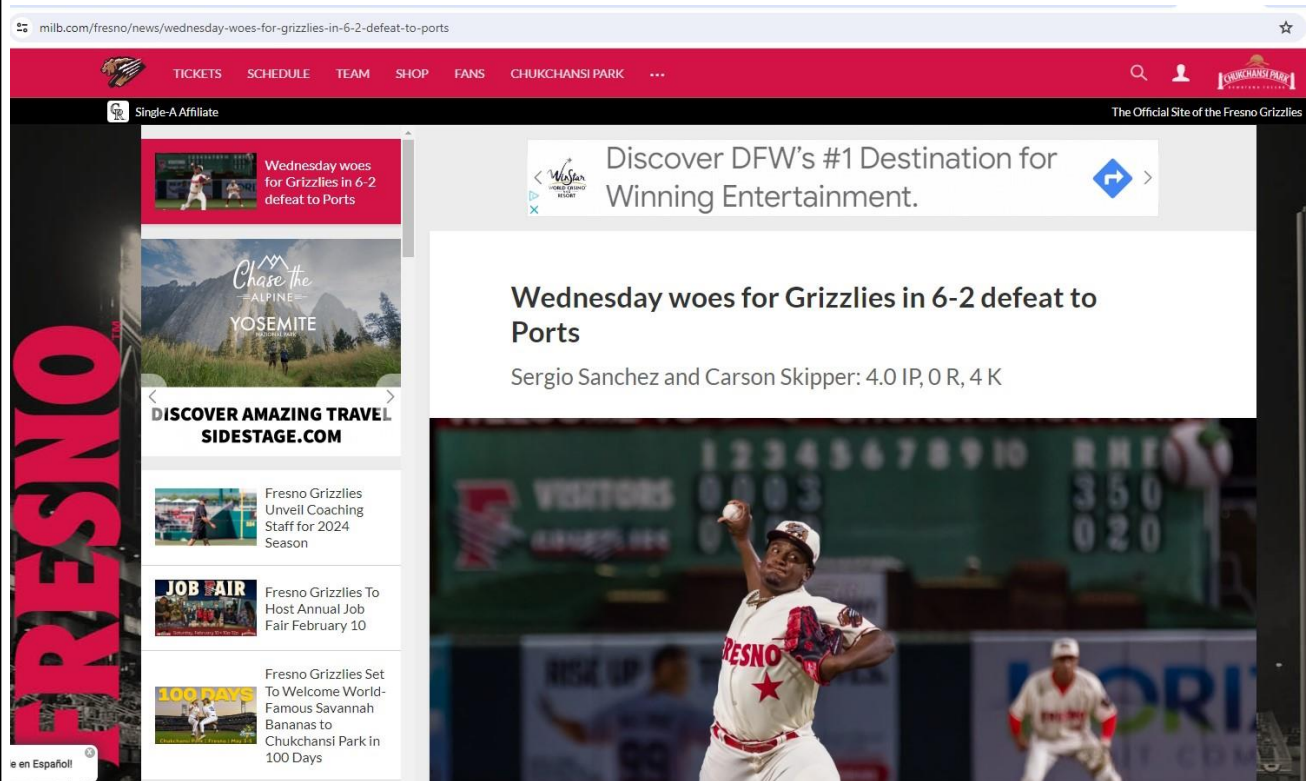
15 6. According to the box score published by the Grizzlies after the Ladies’ Night
16 game, the attendance that evening was 2,749, and upon information and belief, most
17 fans in attendance were males and nonbinary persons.

18 7. In addition, the Defendants doing business as the Grizzlies published
19 discriminatory advertisements on the Grizzlies’ websites and social media pages. The
20 Grizzlies have over 71,000 followers on Facebook, 51,000 followers on X (formerly
21 Twitter), and over 42,000 followers on Instagram, virtually all of whom, on information
22 and belief, received posts or “tweets” on their social media accounts advertising the
23 unlawful gender-based ticket pricing for the Ladies’ Night game. As a result, on
24 information and belief, thousands of Californians who intended to use Defendants’
25 services were deterred from doing so because they encountered Defendants’
26

27 ¹This Defendant’s official name on the California Secretary of State’s website
28 has “LLC” twice.

1 discriminatory advertisements.

2 8. Defendant Minor League Baseball, Inc. (“MiLB”) owns and operates the official
3 website of the Grizzlies located at <https://www.milb.com/fresno>. On information and
4 belief, at the direction of the Defendants doing business as the Grizzlies, MiLB
5 published discriminatory advertisements on the Grizzlies’ website and promotions
6 calendar, examples of which are reproduced below (e.g. “Tomorrow, the Grizzlies are
7 set to host Ladies Night, a delightful evening where all ladies will be granted free
8 entry.”)



milb.com/fresno/news/wednesday-woes-for-grizzlies-in-6-2-defeat-to-ports



Wednesday woes for Grizzlies in 6-2 defeat to Ports

Japan
DISCOVER AMAZING TRAVEL
SIDESTAGE.COM

Fresno Grizzlies Unveil Coaching Staff for 2024 Season

JOB AIR
Fresno Grizzlies To Host Annual Job Fair February 10

100 DAYS
Fresno Grizzlies Set To Welcome World-Famous Savannah Bananas to Chukchansi Park in 100 Days



May 25, 2023

f X e

Fresno, CA (Wednesday, May 24) – Despite a spirited performance, the Fresno Grizzlies (21-20) fell short, 6-2, in a closely fought contest against the Stockton Ports (14-27) Wednesday night from Chukchansi Park. The Grizzlies dropped their second straight game to the Ports and are now 50-18 (7-7 this year) all-time against them.

The defeat was characterized by some commendable play from the Grizzlies' side, particularly from starting pitcher Blake Adams (1-3, loss). Adams showcased his tenacity on the mound, striking out five across four innings, surrendering just three earned runs. Unfortunately for Adams, it was his third straight outing where he received zero runs of support. Lefty Carson Skipper and righty Sergio Sanchez combined on four shutout frames of relief, fanning four. Sanchez did not allow a hit as well.

The Ports' pitching staff of Jose Dicochea (2-0, win), Yehizon Sanchez and Dallas Woolfolk permitted just two earned runs. The runs scored on a groundout and sacrifice fly. Dicochea hurled five scoreless innings, dropping his ERA to 1.74. Stockton's Brennan Milone blasted a solo shot in the fifth while Pedro Pineda laced a triple and scored twice. Jose Escorche notched a pair of hits and Henry Bolte roped a double.

Looking ahead, there's an air of excitement surrounding the upcoming activities at the ballpark. Tomorrow, the Grizzlies are set to host Ladies Night, a delightful evening where all ladies will be granted free entry. Friday will be particularly festive as the Grizzlies don their alter ego, transforming into the Fresno Tacos, an event proudly presented by Premier Valley Bank. In addition, the evening sky will be adorned with Friday Night Fireworks, thanks to Toyota. As the Grizzlies strive to rebound from these recent games, fans can anticipate thrilling events ahead at Chukchansi Park.

TICKETS SCHEDULE TEAM SHOP FANS CHUKCHANSI PARK ...

Single-A Affiliate The Official Site of the Fresno Grizzlies

Fresno Grizzlies Promotions

May (1) Thursday (1) Time

Ports (1) Game Highlight (1) Clear All

Month x Day x Opponent x Event Info x

All Times PT. Subject to Change.

Thursday May 25 6:50 PM Stockton Ports

Game Highlight (2): Ladies Night

Game Highlight: Tioga Thursdays
Don't miss Tioga Thursdays! Grab two 19.2oz beers for ONLY \$10 every Thursday home game! Presented By Tioga Sequoia

Inside Grizzlies Tickets

- Ticket Options
- Single Game Tickets
- Promotions and Giveaways

1 9. In special interrogatory responses in the earlier state court action, Defendant
2 Fresno Sports and Events, LLC identified Defendants Bravo and VirtCh employees
3 Scot Johnson and Lindsey Webb as persons who planned, advertised, and implemented
4 the Ladies' Night game.

5 10. VirtCh's CEO Bob Masewicz, and VirtCh employee Scot Johnson host a podcast
6 called Pardon Our Promotion in which "they discuss what they've learned over their
7 decades in Live Events, Sports Promotion, and Marketing. Each week, they'll dive into
8 a new subject, sharing what works, what doesn't, and most importantly, why?" See

9 [https://www.listennotes.com/podcasts/pardon-our-promotion-virtch-productions-](https://www.listennotes.com/podcasts/pardon-our-promotion-virtch-productions-2HQFw94fxXh/#)
10 [2HQFw94fxXh/#](https://www.listennotes.com/podcasts/pardon-our-promotion-virtch-productions-2HQFw94fxXh/#) (last visited March 20, 2024.) In Episode 18, published on January
11 25, 2023, and titled "Marketing Promotions," Masewicz and Johnson interviewed
12 Defendant Bravo, the Grizzlies' Director of Marketing and Communications. Thus,
13 given the identities and roles of the persons involved, the topic of discussion, and the
14 proximity in time between the podcast interview and the Ladies' Night game (four
15 months), on information and belief Bravo and the Grizzlies on one hand, and VirtCh
16 and Johnson and Webb on the other hand, colluded to plan, advertise, and implement
17 the Ladies' Night game. As such, VirtCh is a proper defendant under an aiding or
18 inciting theory of liability pursuant to Civil Code section 52 as explained further below.

19 11. On May 25, 2023, Defendants hosted the Ladies' Night game for which
20 Plaintiffs and all other fans and attendees paid different prices for their tickets to the
21 game based on the attendees' sex or gender, which violated California Civil Code
22 sections 51 (codification of the Unruh Civil Rights Act), 51.5, and 51.6 (codification of
23 Gender Tax Repeal Act of 1995).

24 12. In order to attend the Ladies' Night game, Defendants required male Plaintiff
25 Harry Crouch to pay, and Mr. Crouch did pay, \$18.00 at a ticket window for his Ladies
26 Night game ticket to sit in Section 105, Row 2, Seat 1 in the Grizzlies' Chuckchansi
27 Park stadium.

28 13. At the same time and place, Defendants provided female Plaintiff Christine

1 Johnson with a free ticket to attend the Ladies’ Night and her seat right next to Mr.
2 Crouch – in Section 105, Row 2, Seat 2.

3 14. Both Plaintiffs presented themselves at the ticket window. Mr. Crouch paid
4 \$18.00 and in turn was provided his ticket, while the ticket clerk recognized and/or
5 perceived Ms. Johnson as a female and provided her with a free ticket. Ms. Johnson was
6 not required to ask for a free ticket in order to receive it.

7 15. Defendants’ sex-based pricing for Plaintiffs and all other attendees to the Ladies’
8 Night game was arbitrary, invidious, unlawful, and unreasonable, and intentionally
9 denied all attendees equal accommodations, advantages, facilities, privileges, or
10 services based solely on their sex or gender, which is prohibited by Civil Code sections
11 51, 51.5, 51.6, and 52.

12 16. Despite the many State of California anti-discrimination statutes, two unanimous
13 California Supreme Court opinions, and the many rules and publications by the
14 California Civil Rights Department that prohibit businesses operating in California from
15 treating members of the general public unequally based on their sex, Defendants
16 had the temerity to create, approve, advertise, market, promote, host, employ, manage,
17 participate in, incite, and/or at least aid the Ladies’ Night game and its discriminatory
18 pricing.

19 17. Aside from the two California Supreme Court cases cited above involving
20 “Ladies’ Night” gender price discrimination, there is a significant body of easily-
21 obtained, publicly-available information putting business establishments on notice that
22 such discriminatory conduct is illegal. For example, the California Civil Rights
23 Department (formerly the Department of Fair Employment and Housing), the State
24 agency charged with preventing unlawful discrimination against consumers by
25 businesses operating in California, has published an Unruh Civil Rights Act “FAQ” on
26 its website, which asks, “Can a business have a ‘ladies night’ promotion where only
27 women get a discount or free service? No. The Unruh Civil Rights Act prohibits
28 offering promotions or discounts based on sex or gender.”

1 <https://calcivilrights.ca.gov/unruh/#faq> (last visited March 19, 2024.)

2 18. The Judicial Council of California's jury instructions for violations of Civil
3 Code sections 51, 51.5, and 51.6 (all alleged here), i.e., CACI 3060, 3061, and 3062,
4 respectively, reflect the Judicial Council's recognition of the California Supreme
5 Court's ruling in *Koire* that sex-based discrimination is "per se injurious." The
6 Directions For Use for CACI 3060, 3061 and 3062 recognize that plaintiffs asking for
7 only the statutory damages provided by Civil Code section 52 for violations of section
8 51, 51.5, or 51.6, such as Plaintiffs pray for here, do not have to prove they were harmed
9 or that the defendants' conduct was a substantial factor in causing the harm, because
10 harm is presumed. Nevertheless, Plaintiffs and other similarly situated male, female,
11 and nonbinary consumers were indeed harmed and damaged in this case by being
12 subject to harmful generalizations and stereotypes and by being denied equal
13 accommodations, advantages, facilities, privileges, or services based solely on their sex.

14 19. The putative class in this case is defined below as including male, female, and
15 nonbinary fans and attendees of Defendants' Ladies' Night game, all of whom were
16 intentionally treated unequally by Defendants because of their gender.

17 **PARTIES**

18 20. At all times relevant hereto, Plaintiff Christine Johnson has been a female and a
19 California resident.

20 21. At all times relevant hereto, Plaintiff Harry Crouch has been a male and a
21 California resident.

22 22. On information and belief, at all times relevant hereto, Defendant Fresno Sports
23 and Events LLC LLC ("Fresno Sports and Events LLC") has been a business
24 establishment, a California limited liability company doing business in California, as
25 well as being the owner and/or operator of, the Fresno Grizzlies, a minor league baseball
26 team associated and affiliated with Defendant Minor League Baseball, Inc. The
27 Grizzlies are a Class A farm team for the Colorado Rockies, a Major League Baseball
28 team. Fresno Sports and Events LLC created, approved, advertised, marketed,

1 promoted, hosted, employed, managed, participated in, and/or at least aided the above
2 Ladies' Night game held on May 25, 2023 at the Fresno Grizzlies home Chuckchansi
3 Park that is described herein.

4 23. On information and belief, at all times relevant hereto, Defendant Fresno Sports
5 and Events Partners, LLC ("Fresno Sports and Events Partners") has been a business
6 establishment, a California limited liability company doing business in California, as
7 well as being the owner and/or operator of, the Grizzlies. Fresno Sports and Events
8 Partners labeled, created, approved, advertised, marketed, promoted, hosted, employed,
9 managed, participated in, and/or at least aided the above Ladies' Night game held on
10 May 25, 2023 at the Grizzlies home Chuckchansi Park that is described herein.

11 24. On information and belief, at all times relevant hereto, Defendant DBH Fresno,
12 LLC ("DBH Fresno") has been a business establishment, a Delaware limited liability
13 company doing business in California, as well as being the owner and/or operator of,
14 the Fresno Grizzlies. DBH Fresno labeled, created, approved, advertised, marketed,
15 promoted, hosted, employed, managed, participated in, and/or at least aided the above
16 Ladies' Night game held on May 25, 2023 at the Grizzlies home Chuckchansi Park that
17 is described herein.

18 25. On information and belief, at all times relevant hereto, Defendant Diamond
19 Baseball Holdings, LLC ("Diamond Baseball Holdings") has been a business
20 establishment, a Delaware limited liability company doing business in California, as
21 well as being the owner and/or operator of, the Fresno Grizzlies. Diamond Baseball
22 Holdings labeled, created, approved, advertised, marketed, promoted, hosted,
23 employed, managed, participated in, and/or at least aided the above Ladies' Night game
24 held on May 25, 2023 at the Grizzlies home Chuckchansi Park that is described herein.

25 26. On information and belief, at all times relevant hereto, Defendant Diamond
26 Baseball Parent, LLC ("Diamond Baseball Parent") has been a business establishment,
27 a Delaware limited liability company doing business in California, as well as being the
28 owner and/or operator of, the Fresno Grizzlies. Diamond Baseball Parent labeled,

1 created, approved, advertised, marketed, promoted, hosted, employed, managed,
2 participated in, and/or at least aided the above Ladies' Night game held on May 25,
3 2023 at the Grizzlies home Chuckchansi Park that is described herein.

4 27. On information and belief, at all times relevant hereto, Defendant Minor League
5 Baseball, Inc. ("MiLB"), has been a business establishment, a Delaware corporation
6 headquartered in St. Petersburg, Florida and doing business throughout California
7 through its many Minor League Baseball affiliated teams, such as the Grizzlies. MiLB
8 created, approved, advertised, marketed, promoted, hosted, employed, managed,
9 participated in, incited, and/or at least aided the above Ladies' Night game held on May
10 25, 2023 at the Grizzlies home Chuckchansi Park that is described herein. At a
11 minimum, MiLB is a proper defendant pursuant to Civil Code section 52 for
12 commercially advertising and promoting a stated policy of unlawful gender price
13 discrimination, i.e., aiding or inciting the discrimination as set forth herein. (*Hale v.*
14 *Morgan*, 22 Cal.3d 388, 396 (1978) ["It is an emphatic postulate of both civil and penal
15 law that ignorance of a law is no excuse for a violation thereof".]) Thus, any person
16 who "denies, aids or incites a denial, or makes any discrimination or distinction contrary
17 to [the Act]" is a proper defendant.

18 28. On information and belief, at all times relevant hereto, Defendant Jonathan
19 Bravo is an individual employed by the Grizzlies. Bravo created, approved, advertised,
20 marketed, promoted, hosted, employed, managed, participated in, implemented, incited,
21 and/or at least aided the above Ladies' Night game held on May 25, 2023 at the
22 Grizzlies home Chuckchansi Park that is described herein. At a minimum, Bravo is a
23 proper defendant pursuant to Civil Code section 52 for aiding or inciting the
24 discrimination as set forth herein. (*Hale v. Morgan*, 22 Cal.3d 388, 396 (1978) ["It is
25 an emphatic postulate of both civil and penal law that ignorance of a law is no excuse
26 for a violation thereof".]) In *North Coast Women's Care Medical Group, Inc. v. San*
27 *Diego County Superior Court* (2008) 44 Cal. 4th 1145, 1154, the California Supreme
28 Court held, "The Unruh Civil Rights Act subjects to liability '[w]hoever denies, aids or

1 incites a denial, or makes any discrimination or distinction contrary to [the Act].’ (Civ.
2 Code, § 52, subd. (a).) Thus, liability under the Act for denying a person the ‘full and
3 equal accommodations, advantages, facilities, privileges, or services’ of a business
4 establishment (Civ. Code, § 51, subd. (b)) **extends beyond the business establishment
5 itself to the business establishment’s employees responsible for the discriminatory
6 conduct.”** (Emphasis added.)

7 29. On information and belief, at all times relevant hereto, Defendant United Board
8 Operations LLC dba VirtCh has been a business establishment, a Georgia limited
9 liability company headquartered in Wisconsin and doing business in California by
10 providing its services to sports teams such as the Grizzlies. On information and belief,
11 on several occasions VirtCh sent its employees Scot Johnson and Lindsey Webb to
12 multiple-day, in-person meetings at Chukchansi Park in Fresno for the purpose of
13 planning the Grizzlies’ promotions, including the Ladies’ Day game at the center of this
14 case. In fact, VirtCh has historically posted photos and videos of such meetings on its
15 LinkedIn and Instagram pages:

1 linkedin.com/posts/virtch_scot-and-lindsey-just-wrapped-their-entertainment-activity-7123052357487132673-8ktx?trk=public_profile_like_view



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VirtCh's Post [Video]

VirtCh
146 followers
4mo

Scot and Lindsey just wrapped their Entertainment and Promotional Strategy Meetings with one of our VSPone clients the Fresno Grizzlies. Over the course of the three-day meetings, the team talked strategy to increase the fan experience at Chukchansi Park and planned the promotional schedule for the 2024 season. Stay tuned to see what they have up their sleeves!

10

instagram.com/virtchofficial/p/Cy1gdKRuexb/?img_index=3

Instagram

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virtchofficial • Follow
Chukchansi Park

virtchofficial Getting creative in a room full of Grizzlies is our happy place.

Scot and Lindsey just wrapped their Entertainment and Promotional Strategy Meetings with one of our VSPone clients the @fresnogrizzlies. Over the course of the three-day meetings, the team talked strategy to increase the fan experience at Chukchansi Park and planned the promotional schedule for the 2024

13 likes
October 25, 2023

Log in to like or comment.

On information and belief, and in concert with the Grizzlies, VirtCh created, approved,

1 advertised, marketed, promoted, hosted, employed, managed, participated in, incited,
2 and/or at least aided the above Ladies' Night game held on May 25, 2023 at the
3 Grizzlies home Chuckchansi Park that is described herein. At a minimum, VirtCh is a
4 proper defendant pursuant to Civil Code section 52 for aiding or inciting the
5 discrimination as set forth herein.

6 30. The true names and capacities of Does 1 through 20 are unknown to Plaintiffs.
7 When their true names and capacities are learned, Plaintiffs will amend this complaint
8 accordingly. Plaintiffs are informed and believe, and on that basis allege, each
9 fictitiously named defendant is responsible in some way for and at least aided the
10 occurrences herein alleged, and those defendants proximately caused Plaintiffs'
11 damages. Each reference in this complaint to "Defendants," "Defendant," or a
12 specifically named defendant refers to all defendants sued under fictitious names.

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

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

23 33. At all relevant times alleged herein, each defendant has been each the agent,
24 alter-ego, representative, partner, joint venturer, employee, or assistant of the other
25 defendants and has acted within the course and scope of said agency, alter-ego,
26 representation, partnership, or joint venture with the knowledge, notification,
27 authorization, and consent of each of the other defendants.

1 **JURISDICTION AND VENUE**

2 34. This Court has jurisdiction over the subject matter of this civil action pursuant
3 to 28 U.S.C. § 1332(d). This is a putative class action where: (i) the proposed nationwide
4 class consists of more than 100 members; (ii) at least one class member has a different
5 citizenship from Defendants; and (iii) the claims of the proposed class exceed
6 \$5,000,000 in the aggregate. The Court has supplemental jurisdiction over the state law
7 claims alleged herein pursuant to 28 U.S.C. § 1367(a).

8 35. The Court has personal jurisdiction over all Defendants due to their continuous
9 and systemic contacts with the State of California. Defendants have sufficient business
10 in California and have sufficient minimum contacts in California to render the exercise
11 of personal jurisdiction over them by California courts consistent with traditional
12 notions of fair play and substantial justice.

13 36. Specifically, personal jurisdiction against Defendant MiLB is proper under
14 *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770 (1984) because MiLB engages in
15 substantial business activity in the State of California, as opposed to activities which
16 could be characterized as random, isolated, or fortuitous. MiLB has continuously and
17 deliberately cultivated the California market as alleged herein. MiLB took an active role
18 in the advertisement and promotion of the Ladies’ Night game at the center of this case,
19 and MiLB actually sells physical products – ballgame tickets and apparel – in California
20 through its interactive website. See [https://www.milb.com/fresno/tickets/single-game-](https://www.milb.com/fresno/tickets/single-game-tickets)
21 [tickets](https://www.milb.com/fresno/tickets/single-game-tickets) and <https://grizzlies.milbstore.com/> (last visited March 20, 2024.) Personal
22 jurisdiction is also proper under *Herbal Brands, Inc. v. Photoplaza, Inc. et al*, No. 21-
23 17001, 2023 WL 4341454, at *1 (9th Cir. July 5, 2023) (If a defendant, in its regular
24 course of business, sells a physical product via an interactive website and causes that
25 product to be delivered to the forum, then the defendant has purposefully directed its
26 conduct at the forum such that the exercise of personal jurisdiction may be appropriate.)
27 Personal jurisdiction against MiLB is also proper under *Calder v. Jones*, 465 U.S. 783
28 (1984) because MiLB aimed its commercial activities at California knowing that the

1 effects of its activities would be felt there by advertising, marketing, and promoting the
2 Ladies' Night game to Californias, as well as selling physical products in the California
3 market and hosting the Grizzlies advertisements and promotions.

4 37. Furthermore, personal jurisdiction against Defendant Unified Board Operations
5 LLC dba VirtCh is proper under *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770 (1984)
6 because VirtCh engages in substantial business activity in the State of California, as
7 opposed to activities which could be characterized as random, isolated, or fortuitous.
8 VirtCh has continuously and deliberately cultivated the California market as alleged
9 herein and has actively and continuously provided in-person marketing and promotional
10 services to the Grizzlies, and therefore countless thousands of ballpark attendees,
11 including the Ladies' Night game. In a YouTube video posted August 17, 2022, Derek
12 Franks, President of the Grizzlies, discusses his longstanding relationship with
13 Defendant Unified Board Operations LLC's companies, Visua and VirtCh, and how
14 their services have been utilized by the Grizzlies for the benefit of Grizzlies fans and
15 the Fresno community in general. See
16 <https://www.youtube.com/watch?v=ouqufq6KkLQ&t=110s> (last visited March 20,
17 2024.) Personal jurisdiction is also proper under *Calder v. Jones*, 465 U.S. 783 (1984)
18 because VirtCh aimed its commercial activities at California knowing that the effects
19 of its activities would be felt there by bringing more customers to the ballpark.

20 38. This Court is empowered to issue a declaratory judgment pursuant to 28 U.S.C.
21 §§ 2201 and 2202.

22 39. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) because a
23 substantial part of the acts, events, or omissions giving rise to Plaintiffs' claims occurred
24 in this district and all Defendants have conducted business in this district.

25 26 **CLASS ALLEGATIONS**

27 40. Plaintiffs bring this class action on behalf of themselves and all other persons
28 similarly situated, defined as follows:

1 All persons who attended the May 25, 2023, Ladies' Night game at
2 Chuckchansi Park in Fresno and were treated unequally by being
3 charged different prices for their tickets for this game based on the
4 person's sex or gender (the "Attendee Class").

5 All persons who had the bona fide intent to attend the May 25, 2023,
6 Ladies' Night game at Chuckchansi Park in Fresno but were deterred
7 from attending because they received an advertisement reflecting a
8 stated policy of unlawful gender price discrimination (the
9 "Advertisement Class").

10 41. These classes exclude counsel representing the class, governmental entities,
11 Defendants, any entity in which Defendants have a controlling interest, any Defendant's
12 officers, directors, affiliates, legal representatives, employees, co-conspirators,
13 successors, subsidiaries, and assigns, any judicial officer presiding over this matter, the
14 members of their immediate families and judicial staff, and any individual whose
15 interests are antagonistic to other putative class members.

16 42. Plaintiffs reserve the right to amend or modify the class descriptions with greater
17 particularity or further division into subclasses or limitation to particular issues.

18 43. This action has been brought and may properly be maintained as a class action
19 under Federal Rule of Civil Procedure 23 because it is a well-defined community of
20 interest in the litigation and the class is readily and easily ascertainable.

21 44. The potential members of the class are so numerous that joinder of all members
22 of the class is impractical. Although the precise number of putative class members has
23 not been determined at this time, Plaintiffs are informed and believe that the proposed
24 classes include thousands of members.

25 45. There are common questions of law and fact that predominate over any questions
26 affecting only individual putative class members.
27
28

1 46. Plaintiffs' claims are typical of the claims of the members of the putative class
2 because Plaintiffs were treated unequally and discriminated against based on their sex
3 at the Ladies' Day game by being charged different prices for their tickets for this game
4 based on the person's sex or gender during the applicable class period, or by being
5 deterred from attending the game due to having received an advertisement reflecting a
6 stated policy of unlawful gender price discrimination. Plaintiffs and each class member
7 sustained similar injuries arising out of Defendants' conduct in violation of law. The
8 injuries of each member of the respective classes were caused directly by Defendants'
9 wrongful conduct. In addition, the factual underpinning of Defendants' misconduct is
10 common to all members of the putative class and represents a common thread of
11 misconduct resulting in injury to all members of the class. Plaintiffs' claims arise from
12 the same practices and course of conduct that give rise to the claims of putative class
13 members and are based on the same legal theory: gender price discrimination.

14
15 47. A class action is superior to other available means for the fair and efficient
16 adjudication of this controversy. Individual joinder of putative class members is not
17 practicable and questions of law and fact common to the class members predominate
18 over any questions affecting only individual putative class members. Each member of
19 the putative class has been damaged and is entitled to recovery by reason of Defendants'
20 illegal acts.

21 48. Class action treatment will allow those similarly situated to litigate their claims
22 in the manner that is most efficient and economical for the parties and the judicial
23 system.

24 49. Plaintiffs are unaware of any difficulties that are likely to be construed in the
25 management of this action that would preclude its maintenance as a class action.

26 50. The disposition of all claims of the members of the class in a class action, rather
27 than individual actions, benefits the parties and the Court. The interests of the class
28

1 members in controlling prosecution of separate claims against the Defendants is small
2 when compared to the efficiency of a class action.

3 51. Plaintiffs will fairly and adequately represent and protect the interests of the
4 classes. Plaintiffs' Counsel and for the putative class members are experienced and
5 competent in litigating class actions for violations of California Civil Code sections 51,
6 51.5, 51.6, and 52.

7 52. Plus, despite the many California statutes, California Supreme Court opinions,
8 and State of California administrative agency publications and opinions that prohibit
9 businesses operating in California from requiring consumers to pay different prices for
10 the same thing based on the consumers' sex or gender, many consumers still likely do
11 not know that pricing promotions such as Defendants' Ladies' Night game violated the
12 above-referenced anti-discrimination statutes and are subject to the remedies provided
13 by Civil Code section 52. A class action will right the wrongs inflicted on those many
14 consumers who were treated unequally by Defendants because of their sex and who
15 likely do not even know they have valid discrimination claims against Defendants.
16

17 53. Defendants, by having created, approved, advertised, marketed, promoted,
18 hosted, employed, managed, participated in, incited, and/or to least have aided a sex-
19 based pricing promotion with different ticket prices for attendees of the Ladies' Night
20 game, have acted or have refused to act on grounds generally applicable to the Classes,
21 thereby making appropriate final injunctive relief or corresponding declaratory relief
22 with respect to the Classes as a whole, and making appropriate class certification.
23

24 **FIRST CAUSE OF ACTION**

25 **Violation of The Unruh Civil Rights Act, Civil Code Section 51**

26 54. Plaintiffs incorporate in this cause of action the allegations contained in each and
27 every preceding paragraph of this Complaint as if they were set out at length herein.
28

1 55. Defendants, by charging Plaintiffs and other attendees of the Ladies' Night game
2 different prices for tickets to the game based on the attendees' sex or gender, or by
3 sending intended attendees an advertisement reflecting a stated policy of unlawful
4 gender price discrimination, intentionally denied equal accommodations, advantages,
5 facilities, privileges, or services to Plaintiffs, which is prohibited by the Unruh Civil
6 Rights Act, codified by Civil Code section 51.

7 56. A substantial motivating reason for Defendants' conduct was the Plaintiffs' sex.

8 57. Defendants' conduct harmed and damaged Plaintiffs and members of the
9 Classes.

10 58. Defendants' conduct was a substantial factor in causing harm to Plaintiffs and
11 members of the classes.

12 59. Defendants' unequal treatment of the Plaintiffs and members of the Classes
13 subjects Defendants to injunctive relief.

14 60. Defendants are, at a minimum, liable for aiding the above-referenced
15 discrimination by at least approving and advertising the Ladies Night game and its sex-
16 and gender-based ticket prices pursuant to Civil Code section 52.

17
18 **SECOND CAUSE OF ACTION**

19 **Violation of Civil Code Section 51.5**

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

22 62. Defendants, by charging Plaintiffs and other attendees of the Ladies Night game
23 different prices for tickets to the game based on the attendees' sex or gender, or by
24 sending intended attendees an advertisement reflecting a stated policy of unlawful
25 gender price discrimination, intentionally discriminated against Plaintiffs based on their
26 sex, which is prohibited by Civil Code section 51.5.

27 63. A substantial motivating reason for Defendants' conduct was the sex of the
28 Plaintiffs and the members of the Classes.

1 64. Defendants' conduct harmed and damaged Plaintiffs and the Classes.

2 65. Defendants' conduct was a substantial factor in causing harm to Plaintiffs and
3 the Classes.

4 66. Defendants' unequal treatment of the Plaintiffs and the Classes subjects
5 Defendants to injunctive relief.

6 67. Defendants are, at a minimum, liable for aiding the above-referenced
7 discrimination by at least approving and advertising the Ladies Night game and its sex-
8 and gender-based ticket prices pursuant to Civil Code section 52.

9
10 **THIRD CAUSE OF ACTION**

11 **Violation of Civil Code Section 51.6**

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

14 69. Defendants, by charging Plaintiffs and other attendees of the Ladies Night game
15 different prices for tickets to the game based on the attendees' sex or gender, or by
16 sending intended attendees an advertisement reflecting a stated policy of unlawful
17 gender price discrimination intentionally engaged in gender price discrimination as
18 codified and prohibited by Civil Code section 51.6.

19 70. Defendants' conduct harmed and damaged Plaintiffs and the Classes.

20 71. Defendants' conduct was a substantial factor in causing harm to Plaintiffs and
21 the Classes.

22 72. Defendants' unequal treatment of the Plaintiffs and the Classes subjects
23 Defendants to injunctive relief.

24 73. Defendants are, at a minimum, liable for aiding the above-referenced
25 discrimination by at least approving and advertising the Ladies Night game and its sex-
26 and gender-based ticket prices pursuant to Civil Code section 52.

1 **FOURTH CAUSE OF ACTION**

2 **Negligence**

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

5 75. Defendants had a duty of care to avoid injury to Plaintiffs and the Classes.
6 Specifically, Defendants had a duty of care to avoid treating Plaintiffs and the members
7 of the Classes unequally based on their sex.

8 76. Defendants selected, hired, retained, and contracted with persons and/or entities
9 that harmed Plaintiffs and the Classes as described above.

10 77. Defendants had the authority and duty to supervise, prohibit, control, and/or
11 regulate these persons and/or entities that harmed Plaintiffs and the Classes.

12 78. Defendants knew or reasonably should have known that persons or entities that
13 harmed Plaintiffs and the Class would harm Plaintiff and the Classes.

14 79. Defendants breached their duty of care by (1) denying Plaintiffs and the Classes
15 their right to equal treatment, and (2) failing to use reasonable care in selecting, hiring,
16 supervising, retaining, or contracting with persons or entities who harmed Plaintiff and
17 the Classes.

18 80. As a direct and proximate result of Defendants' negligence and negligent hiring,
19 supervision, and retention, Plaintiffs and the Classes suffered damages in amounts to be
20 proven at trial.

21
22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiffs and the Classes pray judgment against each and every
24 Defendant as follows:

- 25 1. Certification of the case as a class action on behalf of the proposed Classes;
26 2. Designation of Plaintiffs as representatives of the proposed Classes;
27 3. Designation of Plaintiffs' counsel of record as Class Counsel;

- 1 4. A declaratory judgment that the practices complained of herein are unlawful and
2 violate California Civil Code §§ 51, 51.5, 51.6, and 52;
- 3 5. Public injunctive relief in the form of a preliminary and permanent injunction
4 against Defendants and their officers, agents, successors, employees,
5 representatives, and any and all persons acting in concert with them, from
6 engaging in each of the unlawful policies, practices, customs, and usages set forth
7 herein;
- 8 6. For statutory damages mandated by and pursuant to California Civil Code section
9 52 for each and every offense committed by each Defendant against Plaintiffs
10 and the Class for violating California Civil Code §§ 51, 51.5, 51.6, and 52;
- 11 7. Costs incurred herein, including reasonable attorneys' fees to the extent
12 allowable by law, including as provided by California Civil Code § 52; and
- 13 8. For such other and further legal and equitable relief as this Court may deem
14 proper, appropriate, justified, or equitable.

15
16 Dated: March 26, 2024

Respectfully submitted,

/s/ Alfred G. Rava

Alfred G. Rava