

COMMITTEE FOR EQUITY IN WOMEN'S SURFING

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August 14, 2018

Steve McGrath

General Manager

San Mateo County Harbor District

504 Avenue Alhambra, Suite 200

El Granada, CA 94018

RE: Mavericks Challenge & Discrimination Against Women Athletes

Dear Mr. McGrath,

The World Surf League (WSL) has a history of gender-based discrimination. Please act to prevent the WSL from discriminating against women athletes at the Mavericks Challenge.

We urge the Harbor District to amend Special Use Permit #2016-1 to prevent gender-based discrimination. Section 4.11 states: "This Permit shall be the sole Permit issued for the purpose of using District facilities in connection with holding a Surfing Event at Mavericks surf break during the term of this agreement."

Item 5 on the Wednesday, August 15 regular agenda includes a staff report that recommends a permit amendment that would lengthen the competition window. If approved, a five-month season (November–March) would become a six-month season (October–March) for the three seasons remaining on the permit.

All permits issued by the Harbor District should be consistent with the District's antidiscrimination policy. We request that the Harbor Commission amend Special Use Permit #2016-1 to add terms and conditions that prevent the permittee from continuing a pattern of gender-based discrimination in heats and prize money.

By way of **background**, please let us clarify the past actions of WSL and the women big wave surfers below:

In Nov 2016, Paige Alms made history as the first Woman Big Wave Champion at the Pe'ahi Challenge and in Oct 2017 Alms successfully defended her title. The World Surf League paid Alms \$15,000 in prize money. Her counterpart in the men's division received \$25,000 for his win. We've done the math. The female winner earned 40% less than the male winner at the past two Pe'ahi competitions.

This summer, the Puerto Escondido Cup first place winner, Bianca Valenti earned \$1,750 while her counterpart in the men's division took home \$7,000. Valenti earned 75% less than her male counterpart surfing the same wave.

On June 26, 2018, the San Francisco Chronicle published a story about the Puerto Escondido Cup. The article included remarks by women competitors and an interview with WSL Big Wave Tour Organizer Gary Linden:

"This is the best event that's ever happened for women...Even better than the two events we had at Pe'ahi" Hawaii in 2016 and '17. The women really stepped it up. The surfing level was so good, we didn't have to change the criteria; we judged them equally as the men. The winner (Valenti) surfed well enough to have gotten through a men's heat. This is a huge step in the right direction."

—Gary Linden, WSL Big Wave Tour Organizer

"The risks are the same so why aren't the prizes the same? I think we deserve it."

—Emily Erickson, Professional Surfer

"All the athletes, male and female crushed it and put on a great show. It was rad! The entire town was stoked, the men, the women, the boys, the girls, everyone! We're all in this together. Women-up!"

—Bianca Valenti, Professional Surfer

"The chicks showed up and blowed up. So how about that equal pay?"

—Keala Kennelly, Professional Surfer

It's difficult and sometimes impossible for women professional athletes to compete internationally without an opportunity to earn equal money. The WSL's total purse formula is unfair and discriminatory. The lack of parity must be addressed with permits.

The San Mateo County Harbor District's Harassment, Discrimination and Retaliation Prevention Policy #6.2.5 states the following:

- The Harbor District has a strong commitment to prohibiting and preventing discrimination, harassment and retaliation in the workplace.
- The purpose of this Policy is to prohibit and prevent discrimination, harassment, and retaliation. The District has zero tolerance for any conduct that violates this Policy.
- Discrimination: This Policy prohibits treating individuals differently because of the individual's protected classification, actual or perceived; because the individual associates with a person who is member of a protected classification, actual or perceived; or because the individual participates in a protected activity as defined in this Policy. (Gov. Code, § 12926(o).)
- Harassment or discrimination against an applicant, intern, volunteer, Harbor Commissioner, officer, contractor, or employee by a supervisor, management employee, Harbor Commissioner, officer, co-worker, member of the public, or contractor on the basis of race, religion, sex (including gender, gender identity, gender expression, transgender, pregnancy, and breastfeeding), national origin, ancestry, disability, medical condition, genetic characteristics or information, marital status, age, sexual orientation (including homosexuality, bisexuality, or heterosexuality), or any other protected classification will not be tolerated.
- Note that harassment is not limited to conduct that the District's employees take. Under certain circumstances, harassment can also include conduct taken by those who are not employees, such as Harbor Commissioners, persons providing services under contracts, or even members of the public

Our call to action on behalf of the women athletes follows:

Please amending Permit # 2016-1 to prohibits gender-based discrimination by including the following terms and conditions:

- Permittee shall provide and ensure that equal prize money is available and awarded to all similar heats in the Mavericks Challenge surf competition, regardless of gender; specifically, identical amounts of prize money shall be available and awarded for both the Female Division and Male Division first place winner, second place winner, and throughout the competition through the

- participant level. Female and Male Competition Winners shall be awarded the identical sum of prize money, compensation, goods, and other prizes.
- Permittee shall provide a minimum of three heats for the Female Division and the Male Division.
 - Permittee shall provide and ensure equal Media Access for the Male Division and the Female Division. This access shall include but is not limited to the providing female media representatives fair and equal access to the competition and all activities associated with the competition. Female athletes, as a group, can designate at least six total media representatives for print, photography and videography.
 - Permittee shall provide and ensure that the Male and Female Divisions have equal equipment of equal quality, specifications, and quantity.
 - Permittee shall provide and ensure that the Male and Female Divisions shall have equal logistical support available including but not limited to travel expenses, airfare, quality of hotels and meals.

Let us be clear: Women athletes should have an opportunity to compete for equal prize money in a multi-heat women's division. It will be good for women, for the Mavericks legacy, and it will ensure fair and equal access to coastal waters. Please provide the oversight necessary to stop decades of gender-based discrimination at the Mavericks surf competition.

Read our attached paper on California civil rights law and see the attached photos that depict gender-based discrimination.

Please provide this letter to the SMC Harbor Commission at the next regular board meeting on Wednesday, August 15, 2018. Please include this letter as a comment on Agenda Item 5 and attach it to Harbor District's August meeting minutes.

Respectfully submitted,

Karen Tynan

Counsel for the Committee for Equity in Women's Surfing

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COMMITTEE FOR EQUITY IN WOMEN'S SURFING

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July 9, 2018

The World Surf League's Discrimination Against Women Athletes Violates Civil Rights Law

California's Unruh Civil Rights Act provides harsh penalties, including attorney's fees, for any California business that discriminates against individuals based on a broad list of protected categories including gender. California Civil Code Sections 51 through 52.1 provide broad protections and severe penalties for those businesses that discriminate in the accommodations, advantages, facilities, privileges, or services of the business establishment.

Below is a compendium of important California civil rights cases:

- The Department of Alcoholic Beverage Control properly determined to revoke the license of a business establishment licensed to sell liquor on public premises based on a finding that the licensee had engaged in a sexually discriminatory admittance policy. Apart from testimony of the licensee's own personnel which chronicled their conceded attempts to dissuade potential male customers, the testimony of the department investigators and the licensee's advertisements placed in a newspaper clearly constituted substantial evidence upon which to base a finding of a sexually discriminatory admittance policy. Such discrimination having been established, the department's authority to revoke the liquor license was clear. The apposite public policy is set forth in CC §51 (the Unruh Civil Rights Act), which provides that "all persons within the jurisdiction of this state are free and equal, and no matter what their sex ... are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever." *Easebe Enterprises, Inc. v. Alcoholic Bev. etc. Appeals Bd.* (Cal. App. 2d Dist. Apr. 18, 1983), 141 Cal. App. 3d 981.
- "Ladies Day" and "Ladies Night" discounts offered by various car wash facilities and nightclubs violate the provisions of the Unruh Civil Rights Act (CC §§51, 51.5). The Legislature established that arbitrary sex discrimination by business is per se injurious and that differential pricing based on sex may be generally detrimental to both men and women, because it reinforces harmful stereotypes. *Reese v. Wal-Mart Stores, Inc.* (Cal. App. 3d Dist. Aug. 3, 1999), 73 Cal. App. 4th 1225.

- Text of the Unruh Civil Rights Act, CC §51 et seq., does not support the assertion that, in order to recover under the Act, plaintiffs who are discriminated against when they present themselves at a business establishment and pay the price of admission also must demand equal treatment and be refused. It is not consistent with the policy of the Act, or with California case law, to read such a requirement into the language of the Act. *Angelucci v. Century Supper Club (Cal. May 31, 2007), 41 Cal. 4th 160.*
- By passing the Unruh Civil Rights Act (CC §§51, 52) the Legislature established that arbitrary sex discrimination by businesses is per se injurious: §51 provides that all patrons are entitled to equal treatment, and § 52 provides for minimum statutory damages of \$250 for every violation of §51, regardless of the plaintiff's actual damages. *Koire v. Metro Car Wash (Cal. Oct. 17, 1985), 40 Cal. 3d 24, 219.*
- The Unruh Civil Rights Act (CC §51, prohibiting arbitrary discrimination by business establishments) proscribed not only the direct discrimination against women by an international organization of local professional and businessmen's clubs but also discrimination by the organization against a local member club on account of its having admitted women to its membership. *Rotary Club of Duarte v. Board of Directors (Cal. App. 2d Dist. Mar. 17, 1986), 178 Cal. App. 3d 1035.*
- In an action by a woman who was in the business of procuring and selling scrap metal to scrap metal processing and distribution centers against the owners and operators of a scrap metal processing and distribution facility, in which plaintiff alleged defendants retaliated against her by denying her access to their property due to her previous gender discrimination lawsuit against them (which was settled), the trial court erred in sustaining defendants' general demurrer to her cause of action for violation of the Unruh Civil Rights Act (CC §§51 et seq.). The act is not restricted to persons who have been identified as members of a particular class; an individual has the right to be free from discrimination by business establishments. The act must be liberally construed with a view to effecting its object and to promote justice, and allowing defendants to discriminate against plaintiff because of her gender discrimination suit would be contrary to the primary purpose of the act, which is to compel recognition of the equality of all persons and the right to the particular service offered by an organization or entity covered by the act. Further, permitting defendants to discriminate against plaintiff in retaliation for exercising a statutory right would be contrary to public policy. *Vaughn v. Hugo Neu Proler International (Cal. App. 2d Dist. Sept. 25, 1990), 223 Cal. App. 3d 1612.*
- Defendants' motion to dismiss plaintiff student's claim under Civ C §§51, 51.5, and 52(a) was denied, in an action against the school district, superintendent, and principal for sex discrimination after plaintiff, a female junior high school student, was harassed by male students. Public schools are business establishments under the Unruh Act. Allegations of inadequate action on the part of a school district and its officials can rise to the level of

intentional discrimination. *Nicole M. v. Martinez Unified Sch. Dist.* (N.D. Cal. Apr. 14, 1997), 964 F. Supp. 1369.

- In a case alleging sexual orientation discrimination in violation of the Unruh Civil Rights Act, physicians at a medical clinic who refused to perform an intra-uterine insemination for a lesbian patient could not assert affirmative defense based on the free exercise of religion and free speech. *North Coast Women's Care Medical Group, Inc. v. Superior Court* (Cal. Aug. 18, 2008), 44 Cal. 4th 1145.

Puerto Escondido Cup first place winner, Bianca Valenti earned \$1,750 while her counterpart in the men's division took home \$7,000.





Bianca Valenti earned 75% less than Lucas (Chumbo) Chianca.



Meet the 2018 Billabong Junior Series Ballito Pro Junior winners, Rio Waida (Indonesia) and Zoe Steyn (East London, SA) who claimed their victory on June 24, 2018 in medium sized onshore conditions at Willard Beach, Ballito.

Zoe Steyn earned 50% less than Rio Waida. The WSL paid the top male athlete double what they paid the top female athlete. This is gender-based discrimination.



SURFER | The WSL's Gender Prize Money Gap Sparks Controversy and Donations

The event organizers and sponsor, Billabong, were quick to realize the public relations issue they had on their hands-and they were equally quick to toss that hot potato squarely into the WSL's hands.

"Billabong has always been actively invested in and supportive of women's surfing in South Africa," wrote Chad D Arcy, event license holder of the Billabong Junior Series in a statement. "We've proudly watched women's surfing grow over the years, in part thanks to the host of women's events we've run. For many years, we've sponsored a team of female athletes, nurturing their careers in surfing from an early age....*In order for any professional surf event to be internationally accredited, it has to be sanctioned*

by the WSL. The WSL also determines the allocation of prize money and points for each event.“

San Mateo County Harbor District

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Special Use Permit

(5-Year term: 2016/2017 through 2020/2021)

Permit Number: 2016-01

- 2.2 The term of this Permit shall be for Five (5) “seasons,” each “season” being defined as the period from November 1 through March 31, and specifically November 1, 2016 through March 31, 2017, November 1, 2017 through March 31, 2018, November 1, 2018 through March 31, 2019, November 1, 2019 through March 31, 2020, and November 1, 2020 through March 31, 2021.
- 2.3 Each Event will be a paddle-in event and will take place on one day. The exact date will be determined by Permittee but must be between November 1 and March 31 for each season, as defined in 2.2 above, and as set forth more fully in Section 4.10.
- 4.11 This Permit shall be the sole Permit issued for the purpose of using the Property in connection with holding a Surfing Event(s) at Mavericks surf break during the term of this Permit.