



October 9, 2020

Rivendell Bicycle Works
2040 N. Main St. #19
Walnut Creek, CA 94596

Via email:

Press liaison: john@rivbike.com

General Manager: will@rivbike.com

Re: Racial Discriminatory Pricing

Dear Rivendell Bicycle Works,

The Center for American Liberty writes concerning your recent implementation of Black Reparations Pricing (BRP), as stated in your October 6, 2020 website announcement. (<https://www.rivbike.com/pages/black-reparations-pricing>).

Your policy offering a 45% discount to only one class of persons, based solely on race, runs afoul of federal and state anti-discrimination laws. Favoring one class of persons, while excluding other classes, violates 42 U.S.C. § 1981 and California's Unruh Civil Rights Act, which mandate equal treatment for all persons regardless of race, along with other classifications such as sex and gender. In particular, California law provides "All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color... are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever." Cal. Civ. Code § 51. California's Unruh Civil Rights Act further provides that the law "shall not be construed to confer any right or privilege on a person that is conditioned or limited by law or that is applicable alike to persons of every sex, color, race...".

Unequal treatment resulting from a business practice is illegal, and your policy providing a discount based on racial classification is discriminatory *per se*. See, e.g., *Koire v. Metro Car Wash*, 40 Cal. 3d 24, 35-36 (1985) (gender-based discount for “Ladies Night” is illegal) (“This sort of class-based generalization as a justification for differential treatment is precisely the type of practice prohibited by the Unruh Act”). See also *Winchell v. English*, 62 Cal. App. 3d 125 (Ct. App. 1976) (discrimination against white people for associating with black people was illegal, based on classifications under Unruh). Business practices such as admittance, prices, or services offered based on the customers’ sex, race, color, religion, ancestry, national origin, disability, medical condition, marital status, or sexual orientation is illegal under the Unruh Civil Rights Act. See Cal. Att’y. Gen. Op. 8 (Jan. 18, 2008).

Even a subjective belief or statement that your business policy is acceptable is not sufficient to overcome its illegality. (“BRP is an example of *positive discrimination*. *Positive* because it doesn't hurt anybody the way classical discrimination did and still does. White people are not hurt by BRP. Nobody is hurt by it. You might not like or agree with the points of view that led to it, but it hurts nobody.”). Businesses and governments may “never act to the detriment of a person solely because of that person’s race” and discrimination is not “any different when the persons injured by a racially biased law are not members of a racial minority.” *Fullilove v. Klutznick*, 448 U.S. 448, 525-26 (1980) (Stewart, J., dissenting). And like business discounts based on sex, race-based discounts will be strictly scrutinized under the same class-based analysis. “The legality of sex-based price discounts cannot depend on the subjective value judgments about which types of sex-based distinctions are important or harmful. The express language of the Unruh Act provides a clear and objective standard by which to determine the legality of the practices at issue. The

Legislature has clearly stated that business establishments must provide “*equal* ... advantages ... [and] privileges” to all customers “no matter what their sex.” *Koire* at 39.

Federal law also prohibits race-based classifications in the making, enforcing, performance, and enjoyment in contractual relationships. 42 U.S.C. § 1981. § 1981 prohibits racial discrimination against all persons, both white and non-white. *McDonald v. Santa Fe Trail Transp. Co.*, 427 U.S. 273, 287 (1976). § 1981 also regulates both private conduct and government action. *Runyon v. McCrary*, 427 U.S. 273, 287-93 (1976) (in discussing the legislative history underlying § 1981, the language “secures to citizens of the United States equality in the exemptions of the law. . . . Whatever exemptions there may be shall apply to all citizens alike. One race shall not be more favored in this respect than another”). Additionally, § 1981 violations entitle victims to equitable and legal relief, including compensatory and punitive damages. *Johnson v. Railway Exp. Agency, Inc.*, 421 U.S. 454, 460 (1975).

For these reasons, Rivendell Bicycle Work’s Black Reparations Pricing is illegal. Favoring one class of persons over another class is discriminatory – every customer is entitled to pricing on non-discriminatory terms. We demand you discontinue this policy immediately, or legal action may ensue.

Regards,



Harmeet K. Dhillon, Esq.
Founder, Center for American Liberty