

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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VIJAY SINGH,	:	Index No.: _____
	:	
Plaintiff,	:	
	:	
v.	:	<u>SUMMONS</u>
	:	
PGA TOUR, INC.,	:	Plaintiff designates New York County as
	:	the place of trial pursuant to C.P.L.R. §
Defendant.	:	503
	:	
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To the above-named Defendant:

You are hereby summoned to answer the Complaint in this action, and to serve a copy of your answer on the plaintiffs’ attorneys, within 20 days after the service of this Summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York). In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the accompanying Complaint.

The venue designated is based on Civil Practice Law & Rules § 503.

Dated: May 8, 2013
New York, New York

PETER R. GINSBERG LAW, LLC

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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VIJAY SINGH,	:	Index No.: _____
	:	
Plaintiff,	:	
	:	
v.	:	<u>COMPLAINT</u>
	:	
PGA TOUR, INC.,	:	
	:	
Defendant.	:	<u>JURY TRIAL DEMANDED</u>
	:	
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Plaintiff Vijay Singh, by his undersigned attorneys, for his Complaint against Defendant PGA TOUR, Inc. (“PGA TOUR”), alleges as follows:

NATURE OF THE ACTION

1. Singh seeks damages for the PGA TOUR’s reckless administration and implementation of its Anti-Doping Program. After exposing Singh, one of the PGA TOUR’s most respected and hardest working golfers, to public humiliation and ridicule for months, and forcing Singh to perform the type of scientific analyses and review that the PGA TOUR was responsible for performing, the PGA TOUR finally admitted that the grounds on which it sought to impose discipline were specious and unsupportable.

THE PARTIES

2. Singh is an individual residing in the State of Florida with a residence in New York, New York, and a professional golfer on, and lifetime member of, the PGA TOUR.

3. The PGA TOUR is a Maryland not-for-profit corporation with offices located at 126 East 56th Street, Suite 1600, New York, New York 10022, and in Ponte Vedra, Florida. The PGA TOUR is the organizer of the main men’s professional golf tours and events in North America. The PGA TOUR does continuous and systematic business in New York, employs

personnel in New York and hosts events in New York, including but not limited to the 2013 PGA Championship, one of the PGA TOUR's most prestigious event.

BACKGROUND

Vijay Singh The Person

4. Singh, born in Fiji, fell in love with golf at an early age and worked tirelessly at the game. Singh turned professional in 1982 and joined the PGA TOUR in 1993. Since joining the PGA TOUR, Singh has established himself as one of the hardest working and best golfers of his generation.

5. Singh has won 58 tournaments in his career, including 34 on the PGA TOUR. He won the 1998 and 2004 PGA Championships and the 2000 Masters. In 2004, Singh became the #1 golfer in the world, a position he held for a total of 32 weeks.

6. In addition to winning three majors, Singh's career highlights include winning the PGA TOUR Rookie of the Year in 1993, being inducted into the World Golf Hall of Fame in 2006, being top of the PGA TOUR earnings list three times, in 2003, 2004 and 2008, winning Player of the Year honors from both the PGA TOUR and PGA of America in 2004, and winning the FedEx Cup in 2008. He currently holds the title for the most wins after the age of 40, a record previously held by Sam Snead, and is third on the PGA TOUR career money list.

7. Singh has also designed golf courses around the world and is a contributor to several charitable causes. Of particular note, Singh has a long-standing relationship with the St. Jude's Children's Research Hospital and was a founding member of the Eagles for St. Jude program, designed to help children struggling with life-threatening illnesses.

The PGA TOUR's Anti-Doping Program

8. Beginning in 2008, the PGA TOUR implemented its Anti-Doping Program

purportedly to “protect the integrity that is inherent in the sport of golf and to ensure the health and safety of all players.”

9. The Anti-Doping Program Manual includes a list of “Prohibited Substances and Methods List.”

10. The Prohibited Substances and Methods List lists substances PGA TOUR golfers are prohibited from using.

11. The Prohibited Substances and Methods List essentially is identical to the “Prohibited Substances” list created by the World Anti-Doping Agency (“WADA”).

12. The PGA TOUR adopted, and continues to rely upon, WADA’s Prohibited Substances List for its own Prohibited Substances and Methods List without any independent review, analysis or assessment of the substances, including but not limited to whether the substances actually provide any performance enhancing effect, the chemical, biological or other physical effects of the substances, how the substances are used, how the substances must be used to have the intended physiological effect, and the relevance of the substances to the game of golf. In other words, the PGA TOUR attempts to avoid, and otherwise shirks, all responsibility with regard to prohibitions imposed upon its members.

13. As a result of the PGA TOUR’s failure to conduct any independent assessment of substances or products, the PGA TOUR lacks the knowledge, skill and sophistication to determine whether it is appropriate to ban particular substances and is otherwise incapable of administering the Anti-Doping Program.

14. Each year, Singh reaffirms his membership by completing a Membership Renewal Form, on which Singh agrees to be bound by the Anti-Doping Program. Every golfer who wishes to play PGA TOUR events is forced to execute the Membership papers.

15. As one requirement of being a Member, a Member is subject to the Anti-Doping Program and subject to random drug and substance testing.

16. Singh has been subjected to random drug and substance testing administered by the PGA TOUR.

17. Singh has passed every drug and substance test administered under the Anti-Doping Program.

The Sports Illustrated Article

18. On January 29, 2013, Sports Illustrated's website, SI.com, posted an article ("SI Article") written by David Epstein and George Dohrmann and entitled "The Zany Story of Two Self-Ordained Sports Science Entrepreneurs," and reprinted in Sports Illustrated Magazine on February 4, 2013, and entitled "Snake Oil for Sale and the Athletes Who, Science be Damned, Think it Might Work."

19. The SI Article describes the efforts of a company known as Sports with Alternatives to Steroids ("SWATS") to create and market products which could legally assist athletes' physical condition.

20. Among SWATS' products is a product identified in the SI Article as "deer antler spray."

21. The "deer antler spray" was contained in a product called The Ultimate Spray ("Spray").

22. The SI Article lists professional athletes who have allegedly used SWATS products, including Singh.

23. The timing and emphasis of the SI Article make clear that it centered around the rumor that Ray Lewis, a key player for the Super Bowl-bound Baltimore Ravens, used the Spray.

The Truth About Singh's Alleged Use of the Spray

24. In late 2012, Singh's current caddie, Tony Shepherd, recommended Singh try the Spray to address knee and back problems.

25. Shepherd, a longtime and well-respected caddie for many professional golfers, told Singh that the Spray was an all-natural product that he had personally used and knew other professional golfers were also using.

26. Shepherd arranged for Singh to meet SWATS owner Mitch Ross, who confirmed to Singh that all of SWATS' products were all-natural and did not contain any banned substances.

27. Singh, prior to consuming the Spray, compared the ingredients listed on the Spray bottle to the Anti-Doping Program's banned substance list to ensure that the Spray did not contain any banned substances.

28. Having confirmed that the label on the bottle did not identify any banned substances, Singh sprayed the Spray into his mouth at times for approximately one month in the offseason.

29. In January 2013, Ross asked Singh if he would give an interview to a reporter from Sports Illustrated who was writing a story about Ross and SWATS.

30. Singh agreed to the interview believing that the SI Article was intended to highlight SWATS' "good work."

PGA TOUR's Response to the SI Article

31. After the Sports Illustrated internet story was released, Singh immediately telephoned a PGA TOUR representative to discuss the allegation in the SI Article that Singh had used a banned substance.

32. Singh in all manner cooperated fully with the PGA Tour.

33. The next day, Singh delivered a bottle of the Spray to a PGA TOUR representative.

34. At the PGA TOUR's request, Singh had also submitted a urine sample for testing the prior week. Mr. Singh's urine sample was negative for any banned substance.

35. The PGA TOUR sent the bottle of the Spray to the UCLA Olympic Analytical Laboratory ("UCLA Lab") for analysis.

36. In a report dated February 14, 2013 ("UCLA Report"), the UCLA Lab determined that "[t]he material in the bottle is negative for anabolic androgenic steroids." Although the UCLA Lab identified one of the materials in the bottle as "IGF-1," it did not do any analysis to determine whether the IGF-1 material was the same substance that WADA banned, whether it was active or inactive, whether it was an ingredient which by its chemical make-up fell within the category of any substance banned by the PGA TOUR, or whether Singh "used" or consumed the substance in a way prohibited by the Anti-Doping Program. In other words, as events eventually proved, the UCLA Lab wholly failed to provide any analysis that Singh had used a banned substance. Likewise, the PGA TOUR wholly failed to request the UCLA Lab to perform an appropriate analysis before deciding to discipline Singh.

37. Despite having no foundation on which to determine that Singh had used a banned substance, in a letter dated February 14, 2013, the PGA TOUR Anti-Doping Program Administrator, informed Singh that the UCLA Report results had determined that Singh had violated the Anti-Doping Program by using the Spray, something which is now known not to be true and which should have been determined before the PGA TOUR took action to suspend Singh.

38. The February 14, 2013 letter provided Singh with the opportunity to submit a written explanation within seven days.

39. By email dated February 15, 2013, Singh provided the PGA TOUR with his written explanation.

The PGA TOUR's Premature and Baseless Suspension

40. In a letter dated February 19, 2013 ("Suspension Letter"), the PGA TOUR informed Singh of his discipline. The disciplinary aspect of the Suspension Letter reads:

After considering all of the information in this case, the Commissioner has concluded that your conduct is a violation of the Program rules. The sanction imposed on you for your clear violation of the Program rules is ineligibility to participate in PGA TOUR or Web.com TOUR competitions and any related activities for a period of **90 days**. Given that your earnings have been held in escrow since your participation in the AT&T Pebble Beach National Pro-Am, your suspension will begin retroactively to February 4, 2013 and will conclude May 11, 2013. Your results, earnings and FedExCup points from both the 2013 AT&T Pebble Beach National Pro-Am and the 2013 Northern Trust Open will be redistributed.

(Emphasis in original.)

41. By letter dated February 25, 2013, and pursuant to the Anti-Doping Program Manual, Singh timely appealed the PGA TOUR's discipline.

42. By letter dated February 26, 2013, the PGA TOUR informed Singh that he would be permitted to play pending his appeal but that the PGA TOUR would hold Singh's prize money in escrow – as it had already been doing without authority or legal support – pending resolution of the appeal. The PGA TOUR warned Singh that he risked forfeiture of his earnings from this time period if he exercised his right to appeal and did not prevail even though the threatened 90-day suspension would not commence until an adverse decision was rendered by the Arbitration Panel.

43. Threatening forfeiture of Singh's earnings while being allowed to play, and then imposing a suspension after the Arbitration, would effectively punish Singh for exercising his right to challenge the discipline imposed by risking lost earnings plus suspension.

44. The PGA TOUR had never previously disciplined other golfers in this manner for engaging in the same activity as Singh.

45. For example, in or about 2011, PGA TOUR golfer Mark Calcavecchia admitted that he had been using the Spray and actively promoted the product on behalf of SWATS.

46. The PGA TOUR did not discipline Calcavecchia, but instead merely told Calcavecchia, an admitted habitual and intentional user of the Spray, to stop using the Spray. Moreover, the PGA TOUR told Calcavecchia to stop using the Spray without doing any testing of the product to determine whether its use was prohibited under the Anti-Doping Program. If the PGA TOUR had done responsible testing of the product in 2011, it would have known that its consumption was not prohibited and Singh would have been spared this injurious treatment. Alternatively, if the PGA TOUR had simply treated Singh the same way it treated Calcavecchia (and perhaps others), he likewise would have been spared this injurious treatment.

47. Upon information and belief, the PGA TOUR is aware of other golfers who have used the Spray but has not attempted to discipline those other golfers.

The Truth About IGF-1

48. IGF-1 is an abbreviation for Insulin-Like Growth Factor-1.

49. IGF-1 is a hormone naturally produced by the human body and is essential to childhood growth.

50. For that reason, children suffering from growth failure may be prescribed a drug known as Increlex, which is a recombinant form of IGF-1.

51. The IGF-1 in Increlex is biologically active.

52. The substance misnamed IGF-1 in the Spray is biologically inactive.
53. Increlex must be given through injection in order to be effectively absorbed in the human body.
54. The Spray, of course, is not injected.
55. Further, the concentration level of IGF-1 in Increlex is 10 mg/ml (10 million nanograms per milliliter).
56. The UCLA Report determined that the Spray contains 60 nanograms of IGF-1 per milliliter, which is .00006 the strength of the IGF-1 in Increlex and the substance on the banned list. The Spray does not contain enough IGF-1 to be anything more than a placebo, as the UCLA Laboratory confirmed and the PGA TOUR was well aware.
57. Scientists have compared the amount of IGF-1 contained in the Spray to the amount contained in a dose of Increlex as pouring a shot of bourbon into an Olympic sized swimming pool and then taking a shot of the pool water compared to taking a straight shot of bourbon.
58. The speciousness of the PGA TOUR decision to discipline Singh is all the more evident because cow's milk contains IGF-1.
59. Obviously no athlete has ever been disciplined for consuming milk.
60. Also, as the PGA TOUR knew or should have known, IGF-1 could only have had an effect on Singh if the substance in the Spray were biologically active. The substance that the PGA TOUR identified as "IGF-1" in the Spray is a biologically inactive protein. A biologically inactive protein can have no effect on a person.
61. The PGA TOUR failed even to ask the UCLA Lab to run tests to determine if the IGF-1 protein allegedly contained in the Spray were active.

62. In fact, basic scientific tests prove that the protein in the Spray is inactive, meaning it was not capable of having any physiological effect on Singh and, more importantly, was not the same substance as the IGF-1 banned by the PGA TOUR.

63. Also, as the PGA TOUR knew, or should have known, the manner in which Singh allegedly consumed IGF-1 precludes its presence in his body.

64. As the Food and Drug Administration has reported, IGF-1 can only be introduced into the body through injection.

65. There is no scientific evidence that IGF-1 can enter the blood stream by squirting it into the mouth or otherwise consuming it orally.

66. The PGA TOUR knew or should have known all relevant facts before it wrongfully accused Singh of violating the Anti-Doping Program.

Singh Did Not Use a Banned Substance

67. The PGA TOUR has only banned the use of growth hormones which “affect[] muscle, tendon or ligament protein synthesis/degradation, vascularization, energy utilization, regenerative capacity or fiber type switching.”

68. This limited ban, of course, makes sense. If the ban on IGF-1 were not limited by the PGA TOUR’s own definition of substances to be banned, the PGA TOUR (and WADA) would have to punish every golfer (and athlete) who consumes milk.

69. The product found in the Spray, misnamed as “IGF-1,” could not possibly have any of the biological, chemical or physiological effects necessary to be considered the substance IGF-1 which the PGA TOUR bans.

70. The PGA TOUR knew, or otherwise ignored, basic and readily available scientific information that the misnamed IGF-1 found in the Spray is not a substance that the Anti-Doping Program bans.

The Appeal Process

71. Following Singh's appeal and pursuant to the Anti-Doping Program Manual, Singh commenced an Arbitration proceeding under the auspices of the American Arbitration Association ("AAA").

72. The Arbitration was scheduled to be heard before a three-person Panel on May 7 and 8, 2013, in Jacksonville, Florida.

73. At every step, including on April 16, 2013, when the PGA TOUR submitted its Initial Brief in the Arbitration, the PGA TOUR knowingly and conveniently ignored all relevant scientific information concerning IGF-1 and the make-up of the Spray.

74. On April 24, 2013, Singh submitted an Answering Brief in opposition to the PGA TOUR's Initial Brief, addressing the scientific realities of IGF-1 and other issues.

75. Upon information and belief, WADA and the PGA TOUR communicated immediately after the PGA TOUR realized that Singh had accurately unveiled the speciousness of the proposed ban. Less than two days later, WADA informed the PGA TOUR that WADA could no longer ban the use of the Spray and was no longer including the Spray on its prohibited list.

76. The PGA TOUR did not disclose these events to Singh for several days. During that time, as the PGA TOUR clearly knew, Singh and his representatives were working full time preparing for the May 7, 2012 Arbitration.

77. Finally, on April 30, 2013, the day the PGA TOUR was required to submit its Reply Brief in the Arbitration, the PGA TOUR announced that it was dropping its case and would not seek to impose any discipline against Singh.

78. Singh was forced to expend thousands of dollars for scientific studies that the

PGA TOUR should have performed and had an obligation to perform, expert fees, attorney's fees and Arbitration costs.

The PGA TOUR Wrongfully Held Singh's Earnings

79. The PGA TOUR held Singh's earnings in escrow.

80. The below chart summarizes Singh's earnings held in escrow during the appeal process:

Date	Event	Earnings
February 7-10	AT&T Pebble Beach National Pro-Am	\$15,184
February 14-17	Northern Trust Open	\$15,444
March 14-17	Tampa Bay Championship	\$23,650
March 21-25	Arnold Palmer Invitational	\$13,702
April 11-14	Masters Tournament	\$32,000
	TOTAL	\$99,980

Singh's Public Humiliation

81. As a result of the PGA TOUR's action, Singh has been labeled by the PGA TOUR, media, some fellow golfers and fans as someone who intentionally took a banned substance in an effort to gain a competitive advantage.

82. Because of the PGA TOUR's actions, media and fans focused on Singh's alleged violation of the Anti-Doping Program rather than on Singh's play.

83. As a result of the harassment – and the PGA TOUR's wrongdoing – Singh's professional career has been compromised.

84. Golf is undeniably a mental game. Faced with an unjust blemish on his personal and professional record, Singh struggled to keep his focus and play at the level that has made him one of the game's all-time greats.

85. The PGA TOUR did nothing to rectify its flawed investigation and specious proposed discipline.

FIRST CLAIM FOR RELIEF

(Negligence)

86. Singh repeats and re-alleges the allegations set forth in paragraphs 1 to 85 as if fully set forth at length herein.

87. The PGA TOUR owed Singh a duty to determine which substances were necessary to ban “to protect the integrity that is inherent in the sport of golf and to ensure the health and safety of all players.”

88. The PGA TOUR breached its duty to Singh by failing to determine in a responsible way, and without any scientific examination, whether the Spray in fact fell within the Anti-Doping Program’s definition of “banned substance” and whether the substance ostensibly identified by the UCLA Lab was in fact “used” as defined by the Anti-Doping Program and was thus banned by its own Anti-Doping Program.

89. The PGA TOUR failed competently and responsibly to administer its own Anti-Doping Program.

90. The PGA TOUR breached its duty of care owed to Singh.

91. As a direct and proximate result of the PGA TOUR’s actions, Singh has been damaged in an amount to be determined at trial.

SECOND CLAIM FOR RELIEF

(Negligence)

92. Singh repeats and re-alleges the allegations set forth in paragraphs 1 to 91 as if fully set forth at length herein.

93. The PGA TOUR owed Singh a duty to determine whether the substance it alleged Singh consumed via the Spray was actually a substance banned by the Anti-Doping Program.

94. The PGA TOUR breached its duty to Singh by imposing discipline against him without having tested whether the substance contained in the Spray was anything more than an ineffective placebo, without determining whether the substance in the Spray was active, and without analyzing whether the substance in the Spray had the ability to “affect[] muscle, tendon or ligament protein synthesis/degradation, vascularization, energy utilization, regenerative capacity or fibre type switching,” as required by the Anti-Doping Program before discipline could be imposed on a golfer.

95. As a direct and proximate result of the PGA TOUR’s actions, Singh has been damaged in an amount to be determined at trial.

THIRD CLAIM FOR RELIEF
(Negligence)

96. Singh repeats and re-alleges the allegations set forth in paragraphs 1 to 95 as if fully set forth at length herein.

97. The PGA TOUR owed Singh a duty to determine whether Singh “used” IGF-1, as required in order to impose discipline under the Anti-Doping Program.

98. The PGA TOUR breached its duty to Singh by imposing discipline against him even though it knew that Singh had never tested positive for a banned substance, knew that IGF-1 from the Spray could not possibly be present in Singh’s body, knew that Singh never had any intention to take a banned substance, and knew that Singh had not “used” a banned substance according to the terms and conditions of the Anti-Doping Program.

99. As a direct and proximate result of the PGA TOUR’s actions, Singh has been damaged in an amount to be determined at trial.

FOURTH CLAIM FOR RELIEF

(Breach of the Implied Covenant of Good Faith and Fair Dealing)

100. Singh repeats and re-alleges the allegations set forth in paragraphs 1 to 99 as if fully set forth at length herein.

101. The PGA TOUR, as a result of Singh's Membership, owed to Singh an implied covenant of good faith and fair dealing.

102. The implied covenant of good faith and fair dealing required the PGA TOUR to honor the reasonable expectations of the parties, to protect the rights of Singh to receive the benefits and protections of Membership, and to act in a responsible and rational manner.

103. Singh complied with all of his obligations to the PGA TOUR.

104. The PGA TOUR materially breached its obligations by, *inter alia*, failing to conduct a thorough and fair investigation before wrongfully accusing Singh of a violation, failing to analyze the nature of the substance that the PGA TOUR identified as "IGF-1" before wrongfully accusing Singh of a violation, disciplining Singh without regard to the Anti-Doping Program's own policies and procedures, failing to provide Singh the substantive and procedural protections afforded by the Anti-Doping Program Manual and depriving him of fundamental fairness, subjecting Singh to public ridicule and humiliation and then delaying its announcement that Singh could not be disciplined.

105. Singh has incurred, and will continue to incur, significant damage as a direct result of the PGA TOUR's breach in an amount to be determined at trial.

FIFTH CLAIM FOR RELIEF

(Breach of Fiduciary Duty)

106. Singh repeats and re-alleges the allegations set forth in paragraphs 1 to 105 as if fully set forth at length herein.

107. Singh reposed trust and confidence in the PGA TOUR to act in the best interests of the game and him. Singh agreed to the Anti-Doping Program Manual based on the PGA TOUR's advice, superior knowledge and expertise. Singh also provided the PGA TOUR a sample of the Spray and cooperated with the PGA TOUR's investigation based on his trust and confidence in the PGA TOUR.

108. The PGA TOUR breached its fiduciary duty to Singh by failing to develop and administer the Anti-Doping Program in a responsible manner and by intentionally exposing Singh to public ridicule.

109. As a direct result of the PGA TOUR's breach of its fiduciary duty, Singh has been damaged in amount to be proven at trial.

SIXTH CLAIM FOR RELIEF
(Intentional Infliction of Emotional Distress)

110. Singh repeats and re-alleges the allegations set for in paragraphs 1 through 109 as if fully set forth herein.

111. As described herein, the PGA TOUR acted in an outrageous and extreme manner.

112. As a direct and proximate result of the PGA TOUR's actions, Singh has been humiliated, ashamed, ridiculed, scorned and emotionally distraught. The conduct of the PGA TOUR demonstrated the intent to cause, or disregard of a substantial probability of causing, Singh severe emotional distress.

113. The actions of the PGA TOUR were a direct and proximate cause of Singh's severe emotional distress.

114. As a result of Singh's severe emotional distress, Singh has been damaged in an amount to be determined at trial.

SEVENTH CLAIM FOR RELIEF
(Conversion)

115. Singh re-alleges and incorporates the allegations set forth in paragraphs 1 through 114 above.

116. Singh has a possessory interest in his earnings held in escrow during the appeal process.

117. The PGA TOUR took possession of Singh's earnings and refused to release those funds to Singh or interest on those funds.

118. Singh is entitled to an award for the loss of use of the property taken, with interest, and other damages in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Singh respectfully requests that this Court enter judgment in Singh's favor, granting the following relief:

1. damages in an amount to be determined at trial;
2. punitive damages and attorney's fees; and
3. such other relief as the Court finds just and proper.

Dated: New York, New York
May 8, 2013

Respectfully submitted,

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