

**SUPERIOR COURT OF CALIFORNIA,**

COUNTY OF SAN DIEGO

HALL OF JUSTICE

TENTATIVE RULINGS - October 07, 2020

EVENT DATE: 10/09/2020

EVENT TIME: 09:00:00 AM

DEPT.: C-73

JUDICIAL OFFICER: Joel R. Wohlfeil

CASE NO.: 37-2020-00017100-CU-MC-CTL

CASE TITLE: SUSAN COSTA VS. ROAD RUNNER SPORTS, INC. [E-FILE]

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Misc Complaints - Other

EVENT TYPE: Demurrer / Motion to Strike

CAUSAL DOCUMENT/DATE FILED: Demurrer, 08/20/2020

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The general Demurrer (ROA # 15) of Defendants Road Runner Sports, Inc. and Road Runner Sports Retail, Inc. ("Defendants") to each cause of action in the Complaint filed by Plaintiff Susan Costa ("Plaintiff"), is OVERRULED.

Defendants are ordered to file and serve Answers within 20 days of this hearing. This ruling is based on the analysis set forth below.

Defendants' Request (ROA # 17) for judicial notice is GRANTED IN PART and DENIED IN PART. The Court takes judicial notice of the date on which Plaintiff filed no. 3 with the Bankruptcy Court; otherwise, the Request is DENIED.

**Judicial Estoppel**

"The factors guiding the application of judicial estoppel focus on whether a party has taken totally inconsistent positions in judicial proceedings where the prior position was successfully asserted, and the inconsistency is not the result of ignorance, fraud or mistake." Gottlieb v. Kest (2006) 141 Cal. App. 4th 110, 137. A debtor's assertion in a civil action of legal claims not disclosed in earlier bankruptcy proceedings constitutes an assumption of inconsistent positions. Id. This conclusion stems from the requirement that a debtor seeking the shelter provided by federal bankruptcy laws disclose all legal or equitable property interests to a bankruptcy court. Id. The omission of a cause of action or claim from mandatory bankruptcy filings is tantamount to a representation that no such claim existed. Id. Judicial estoppel focuses on the relationship between the litigant and the judicial system, and is designed to protect the integrity of the judicial process. Jackson v. County of Los Angeles (1997) 60 Cal. App. 4th 171, 183. The gravamen of judicial estoppel is the intentional assertion of an inconsistent position that perverts the judicial machinery. Id. The doctrine applies when the following elements are satisfied: (1) the same party has taken two positions; (2) the positions were taken in judicial or quasi-judicial administrative proceedings; (3) the party was successful in asserting the first position (i.e., the tribunal adopted the position or accepted it as true); (4) the two positions are totally inconsistent; and (5) the first position was not taken as a result of ignorance, fraud, or mistake.

Even if judicial notice of the contents of the bankruptcy filings was proper, this argument lacks merit. Whether the two positions were inconsistent, and whether the failure to disclose this claim in the bankruptcy proceeding was the result of ignorance or mistake are questions of fact that cannot be addressed via a Demurrer. Even if this claim was required to be listed and was not exempt from disclosure, Plaintiff's belief that it was exempt could constitute sufficient ignorance and mistake.

**Whether Plaintiff Knew the Membership Would Automatically Renew / Statute of Limitations Defense**

These arguments also lack merit. Judicial notice of Plaintiff's history of membership renewal is not proper. Even if judicial notice was proper, whether Plaintiff knew the 2015 membership would automatically renew is still be a question of fact beyond the scope of a Demurrer. In addition, although this action was filed more than three years after the 2016 membership renewal charge, the CLRA cause of action may still be valid. As alleged, the renewal charge was part of a secretive process that was not disclosed to Plaintiff. Complaint at ¶¶ 42 - 45. Thus, it can be reasonably inferred that the unauthorized charge was not discovered by Plaintiff until within three years of the filing date of this action. Parenthetically, this limitations period may also have been temporarily suspended by the emergency rules adopted by the Judicial Council due to the COVID-19 pandemic.

**Class Allegations: Adequate and Typical Class Representative and Whether Individualized Issues Predominate**

The decision whether a case is suitable to proceed as a class action ordinarily is made on a Motion for class certification. Tucker v. Pacific Bell Mobile Services (2012) 208 Cal. App. 4th 201, 211. However, the Court is authorized to "weed out" legally meritless class action suits prior to certification by Demurrer. Id. When the substantive theories and claims of a proposed class suit are alleged to be without legal or factual merit, the interests of fairness and efficiency are furthered when the contention is resolved in the context of a formal pleading (Demurrer) or Motion (judgment on the pleadings, summary judgment, or summary adjudication) that affords proper notice and employs clear standards. Id. The Court may decide the question by sustaining a Demurrer to the class action allegations of a Complaint only if it concludes as a matter of law that, assuming the truth of the factual allegations in the Complaint, there is no reasonable possibility that the requirements for class certification will be satisfied. Id. "It is often premature for a trial court to make determinations pertaining to class suitability on demurrer. Rather, all that is normally required for a Complaint to survive Demurrers to the propriety of class litigation is that the complaint allege facts that tend to show: (1) an ascertainable class of Plaintiffs, and (2) questions of law and fact which are common to the class." Arce v. Kaiser Foundation Health Plan, Inc. (2010) 181 Cal. App. 4th 471, 487 (internal citations and quotations omitted). Where there is a reasonable possibility Plaintiff in a class action can establish a community of interest among class members, the preferred course is to defer decision on the propriety of the class action until an evidentiary hearing has been held on the appropriateness of class litigation. Id.

In this action, the Complaint sufficiently alleges facts tending to show both an ascertainable class, and that common questions of law and fact predominate. Complaint at ¶¶ 46 - 55. As discussed above, whether Plaintiff is an adequate and typical class member is dependent on facts beyond the scope of what is pled, such that it is not proper to rule on this issue via a Demurrer.