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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 15-6457-GHK (JEMx)	Date	April 22, 2016
Title	*Rachel Cody v. SoulCycle Inc.*		

Presiding: The Honorable **GEORGE H. KING, CHIEF U.S. DISTRICT JUDGE**

Beatrice Herrera	N/A	N/A
Deputy Clerk	Court Reporter / Recorder	Tape No.

Attorneys Present for Plaintiff:	Attorneys Present for Defendant:
None	None

Proceedings: **(In Chambers) Order re:** Motion to Dismiss Second Amended Class Action Complaint [Dkt. 36]

This matter is before us on Defendant SoulCycle Inc.'s ("Defendant" or "SoulCycle") Motion to Dismiss the Second Amended Class Action Complaint ("Motion"). We have considered the papers filed in support of and in opposition to the Motion and deem this matter appropriate for resolution without oral argument. L.R. 7-15. As the Parties are familiar with the facts, we will repeat them only as necessary. Accordingly, we rule as follows:

I. Background

On October 9, 2015, Plaintiff Rachel Cody filed a First Amended Class Action Complaint in this action ("FAC"), which set forth the following claims against SoulCycle: (1) "Violations of the Credit Card Accountability [Responsibility] [a]nd Disclosure Act [("CARD Act")] and the Electronic Funds Transfer Act [("EFTA")], 15 U.S.C. § 1693 *et seq.*"; (2) "Violation of California Civil Code § 1749.5 *et seq.*"; (3) "Violation of California's Unfair Competition Law [("UCL")], Cal. Bus[.] & Prof. Code § 17200 *et seq.*"; (4) "Violation of the Consumers Legal Remedies Act [("CLRA")], Cal[.] [Civ.] Code § 1750 *et seq.*"; (5) "Declaratory Relief"; (6) "Unjust Enrichment"; (7) "Breach of Implied Covenant of Good Faith and Fair Dealing." [Dkt. 12.]

SoulCycle moved to dismiss the FAC on October 30, 2015. [Dkt. 24.] On January 11, 2016, we issued an order granting in part and denying in part this motion (the "FAC Order"). [Dkt. 30.] We denied SoulCycle's motion with respect to (1) the EFTA claim; (2) the § 1749.5 claim; (3) the UCL claim; and (4) the declaratory relief claim. We dismissed with prejudice Cody's claims for unjust enrichment and breach of the implied covenant of good faith and fair dealing, and we dismissed the CLRA claim without prejudice because Cody had failed to state a claim on which relief could be granted. On February 10, 2016, Cody filed a Second Amended Class Action Complaint ("SAC"). [Dkt. 33.]

The SAC did not attempt to cure the defects of the dismissed CLRA claim; instead the SAC set forth only four claims, all of which had previously survived the motion to dismiss the FAC: (1) the

EFTA claim; (2) the § 1749.5 claim; (3) the UCL claim; and (4) the declaratory relief claim. While Cody remained a named Plaintiff on the SAC, the SAC also added an additional Plaintiff, Lindsey Knowles.[1] The allegations pertaining to Knowles are nearly identical to those pertaining to Cody. Aside from removing the dismissed claims and adding Knowles, the SAC included only minor additions and modifications not relevant to the present Motion. The factual allegations in the SAC largely mirror those in the FAC. SoulCycle filed the present Motion on March 11, 2016, [Dkt. 36], and Plaintiffs timely opposed, [Dkt. 37].

II. Legal Standard

To state a claim for relief, a pleading must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). To survive a motion to dismiss for failure to state a claim upon which relief can be granted, a complaint must set forth "more than labels and conclusions," and a "formulaic recitation of the elements of a cause of action will not do." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). The complaint must contain factual allegations sufficient to "state a claim to relief that is plausible on its face." *Id.* at 570. "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). If a complaint alleges facts that are "merely consistent with a defendant's liability, it stops short of the line between possibility and plausibility of entitlement to relief." *Id.*

In considering a motion to dismiss, we must accept the complaint's allegations as true and construe them in a light most favorable to the plaintiff. *Cousins v. Lockyer*, 568 F.3d 1063, 1067 (9th Cir. 2009). We need not accept as true, however, legal conclusions "cast in the form of factual allegations." *W. Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981). "In sum, for a complaint to survive a motion to dismiss, the non-conclusory 'factual content,' and reasonable inferences from that content, must be plausibly suggestive of a claim entitling the plaintiff to relief." *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009). We must consider the complaint in its entirety, materials incorporated into the complaint by reference, and matters of which we may take judicial notice. *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322-23 (2007).

III. Law of the Case

The Parties dispute the propriety of SoulCycle's present Motion given our ruling on SoulCycle's prior Motion to Dismiss the FAC. Plaintiffs contend that SoulCycle's SAC Motion merely rehashes arguments already resolved in the FAC Motion, and that the "law of the case" doctrine bars reconsideration of such arguments. SoulCycle responds that review of this Motion is proper because the SAC supersedes the FAC and should be subject to a fresh motion to dismiss.

[1] We refer to Cody and Knowles collectively as "Plaintiffs."

We decline to conclude that SoulCycle's present Motion is prohibited as a matter of law. However, we note that this is not the typical case where a motion to dismiss an amended complaint is brought after a complaint is substantively amended. Here, the SAC merely set forth claims that were previously challenged and upheld. We granted leave to amend the FAC primarily to give Cody the opportunity to cure the CLRA claim. Instead Cody dismissed that claim. While Cody added Knowles to the SAC, the allegations regarding Knowles are virtually identical to those pertaining to Cody. Accordingly, SoulCycle's present Motion appears to be nothing more than an attempt to get a second bite at the apple. While our consideration of the merits of SoulCycle's Motion will not be foreclosed, we strongly disfavor SoulCycle's apparent attempt to circumvent the rules for a motion for reconsideration. To the extent that SoulCycle repeats its arguments from its Motion to Dismiss the FAC, we reject them for the reasons explained in our FAC Order. Arguments not raised in the FAC Motion are addressed as follows[2]:

IV. EFTA Claim

SoulCycle argues that the EFTA claim should be dismissed because (1) its class "Series" cannot be "applied toward [a] purchase" of anything and thus do not fall within the definition of a "gift certificate" under the EFTA, (Mot. at 12); and (2) its class "Series" are reloadable and are not marketed as gift cards or gift certificates and are thus excluded from the EFTA's definition of a "gift certificate," (Mot. at 16).[3]

A. The "Applied Toward the Purchase" Language

The Official Staff Interpretations of Regulation E—the federal regulation implementing the EFTA—state that "if [a] card, code, or other device is issued in a specified or denominated amount that can be applied toward the purchase of a specific good or service, such as a certificate or card redeemable for a spa treatment up to $50, the card, code, or other device is subject to this section, unless [an exception applies]." 12 C.F.R., Pt. 205, Supp. I. SoulCycle argues that the "applied toward the purchase of a specific good or service" language requires "two purchase events: the purchase of a gift card, and then a later purchase of a good or service that the gift card can be 'applied toward.'" (Mot. at

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[2] Because of the overwhelming similarity between the factual allegations of the FAC and the SAC, SoulCycle could have—and should have—brought any of these new arguments in the Motion to Dismiss the FAC. Nevertheless, we decline to preclude such arguments on this ground.

[3] Additionally, SoulCycle superficially echos the standing arguments advanced in the Motion to Dismiss the FAC—that Cody lacks standing because SoulCycle offered to honor her expired class "Series" and that the SAC fails to allege that Knowles asked to use her expired class "Series" and was refused. (Mot. at 18 n.4.) We reject these standing arguments pertaining to Cody for the same reasons explained in our FAC Order. Because the SAC's allegations for Knowles are substantively similar to those for Cody, we also reject the standing arguments pertaining to Knowles for the reasons explained in our FAC Order.

12.) SoulCycle claims that its class "Series" do not fulfill this requirement because (1) there is no "second purchase" when a customer buys a class "Series," instead the purchasing is complete when the customer initially buys the class "Series"; and (2) class "Series" "cannot be 'applied toward' the purchase of a more expensive specified good or service." (*Id.*) We address each of these arguments in turn.

1. The "Two-Purchase System"

SoulCycle's assumption that a device must involve a two-purchase system to qualify as a gift certificate is incorrect. Regardless of the language used in the Staff Interpretations to Regulation E, the EFTA itself uses a form of the word "purchase" only once when defining a "gift certificate": when it provides that a gift certificate must be "purchased on a prepaid basis in exchange for payment." 15 U.S.C. § 1693*l*-1(a)(2)(B)(iii).[4] This clearly refers to the initial point-of-sale purchase of the certificate. When referring to subsequent exchanges of the gift certificate for goods and services, the EFTA does not mention a purchase. It states that certificates must merely be "*redeemable* at a single merchant or an affiliated group of merchants . . .," *id.* § 1693*l*-1(a)(2)(i) (emphasis added), and "*honored* upon presentation by such single merchant or affiliated group of merchants for goods or services," *id.* § 1693*l*-1(a)(2)(iv) (emphasis added). Thus, the plain language of the EFTA requires only one initial purchase of a gift certificate.[5] Customers then redeem the gift certificate with merchants who honor the gift certificate for goods and services. No two-purchase system is required.

The Staff Interpretations of Regulation E support this interpretation notwithstanding the use of the "applied toward the purchase" language. The Interpretations provide a specific example of a certificate "issued in a specified or denominated amount that can be applied toward the purchase of a specific good or service"—a "certificate or card *redeemable* for a spa treatment up to $50." *See* 12 C.F.R., Pt. 205, Supp. I (emphasis added). As with the language of the EFTA itself, this example shows that a "gift certificate" need not be used for a second purchase of goods or services.

Accordingly, dismissal is not warranted on the grounds that SoulCycle's class "Series" do not involve a two-purchase system.

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[4] The entirety of 15 U.S.C. § 1593*l*-1(a)(2)(B) states, "The term 'gift certificate' means an electronic promise that is—(i) redeemable at a single merchant or an affiliated group of merchants that share the same name, mark, or logo; (ii) issued in a specified amount that may not be increased or reloaded; (iii) purchased on a prepaid basis in exchange for payment; and (iv) honored upon presentation by such single merchant or affiliated group of merchants for goods or services."

[5] SoulCycle does not dispute that its classes involve a point-of-sale purchase by consumers. (*See* Mot. at 12-13 (noting that both Plaintiffs "repeatedly admit that they each purchased the Series Certificate when they paid their $30" (internal quotation marks omitted)).)

2. The "Applied Toward" Language

SoulCycle is also incorrect to assume that, for a device to be considered a "gift certificate," consumers must be able to apply it toward the purchase of more expensive goods and services. SoulCycle selectively cites the "issued in a specified or denominated amount that can be applied toward the purchase of a specific good or service" language of the Staff Interpretations to support its argument. (Mot. at 13-14.) But SoulCycle ignores the specific example of such a device that the Staff Interpretations provide: "a certificate or card redeemable for a spa treatment up to $50." *See* 12 C.F.R., Pt. 205, Supp. I. This example does not require that customers must also be able to apply this "certificate . . . redeemable for a spa treatment up to $50" toward the purchase of more expensive spa treatments. Thus, SoulCycle's argument is unpersuasive, and does not compel dismissal of the EFTA claim.

SoulCycle reiterates its argument from the Motion to Dismiss the FAC that *Hughes v. CorePower Yoga, LLC*, 2013 WL 1314456 (D. Minn. Mar. 28, 2013), "compels a finding that the EFTA is not applicable." (Mot. at 15.) We distinguished *Hughes* in our FAC Order and, for the same reasons, distinguish it here. Unlike the devices in *Hughes*, which were redeemable for yoga classes regardless of the price of the classes, SoulCycle's class "Series" are only redeemable for classes up to a certain specified value—much like the "certificate or card redeemable for a spa treatment up to $50" that the Staff Interpretations classify as a gift certificate under the EFTA. SoulCycle claims that, in our discussion of *Hughes*, we "erroneously focused upon the phrase 'up to' to the exclusion of the statutory language 'applied toward the purchase of' a specific good or service." (*Id.*) We disagree. In distinguishing *Hughes* in our FAC Order, we did not overly-focus on the phrase "up to," we merely utilized the example of "applied toward the purchase of a specific good or service" that the Regulation E Interpretations expressly provide—the "certificate or card redeemable for a spa treatment up to $50." *See* 12 C.F.R., Pt. 205, Supp. I. This is the very example that *Hughes* itself applied. *See Hughes*, 2013 WL 1314456, at *6 ("Defendant's Class Pack cards are not store gift cards because they are redeemable for yoga classes and not for a 'specific amount,' such as a $50 spa card."). Thus, as explained in our FAC Order, SoulCycle's arguments involving *Hughes* are unpersuasive.

B. The "Reloadable" Language

The EFTA specifically excludes from its definition of "gift certificate" an "electronic promise, plastic card, or payment code or device that is . . . reloadable and not marketed or labeled as a gift card or gift certificate." 15 U.S.C. § 1693*l*-1(a)(2)(D)(ii). As argued in the Motion to Dismiss the FAC, SoulCycle contends that this exception applies. Soulcycle reasons that (1) a customer's account page constitutes the "electronic promise" redeemable for cycling classes, (2) this customer account page is reloadable, as additional class "Series" purchases refill the account, and (3) no part of this system is marketed as a gift card or gift certificate. (Mot. at 16-18.)

For the same reasons set forth in our FAC Order, we reject SoulCycle's argument. The customer account is not the "electronic promise" redeemable for SoulCycle classes. When a customer purchases a single class or a "Series" of bundled classes, the purchase is displayed on a customer's "My Series" page. (*See* SoulCycle's Request for Judicial Notice ("RJN"), Ex. 7 at 203.)[6] Each purchased class or bundle of classes appears as a different redeemable entry. (*Id.*) Whether each entry is labeled a "Series Certificate," a "Series," or otherwise, the material fact is the same—each "Series" constitutes a separate "electronic promise" that is honored by SoulCycle for cycling classes. As we stated in our FAC Order, "[T]he customer account page merely constitutes an accounting of the various electronic promises that a customer has purchased"—this page is not itself the electronic promise. [Dkt. 30 at 6.] And, as our FAC Order reasoned, the class "Series" are not reloadable. Thus, SoulCycle's classes do not fall under the 15 U.S.C. § 1693*l*-1(a)(2)(D)(ii) exception to "gift certificate[s]."[7]

In sum, SoulCycle's arguments that the EFTA claim should be dismissed are unavailing, and SoulCycle's Motion is **DENIED** as to the EFTA claim.

V. California Civil Code § 1749.5 Claim

SoulCycle argues that Plaintiffs' independent claim for violation of California Civil Code § 1749.5 should be dismissed because this statute does not provide a private right of action. Plaintiffs do not concede that this argument is correct, but choose to "withdraw their independent cause of action under § 1749.5." (Opp'n at 7; *see also id.* at 25.) We accordingly **GRANT** SoulCycle's Motion with respect to the to the § 1749.5 claim and **DISMISS** this claim.

VI. UCL Claim

As unfair competition includes "unlawful" business practices, the UCL "permits violations of other laws to be treated as unfair competition that is independently actionable." *Kasky v. Nike, Inc.*, 27 Cal. 4th 939, 949 (2002). "[A] private plaintiff may bring a UCL action even when the conduct alleged to constitute unfair competition violates a statute for the direct enforcement of which there is no private right of action." *Smith v. Wells Fargo Bank, N.A.*, 135 Cal. App. 4th 1463, 1480 (2005) (internal quotation marks omitted).

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[6] SoulCycle requests that we take judicial notice of this document, which is a screenshot of a customer's "My Series" page that displays the customer's purchased class "Series." The SAC references this "My Series" page, (SAC, Figs. 2-6), and the authenticity of this document is not in dispute. Thus, under the "incorporation by reference" doctrine, we **GRANT** SoulCycle's request and judicially notice this document. *See Knievel v. ESPN*, 393 F.3d 1068, 1076 (9th Cir. 2005) (noting that the "incorporation by reference" doctrine "permits [a court] to take into account documents whose contents are alleged in a complaint and whose authenticity no party questions, but which are not physically attached to the [plaintiff's] pleading" (internal quotation marks omitted)).

[7] SoulCycle again relies on *Hughes*, stating "[e]ven if the Court views the 'Series Certificates' as the 'electronic promise,' they are reloadable in the same manner as the Class Packs at issue in *Hughes*." (Mot. at 18.) We reject this argument for the reasons set forth in our FAC Order.

SoulCycle asserts that the UCL claim fails because "Plaintiffs predicate their claims that SoulCycle acted 'unlawfully' upon alleged violations of the EFTA and California's gift card law," and "those laws do not apply." (Mot. at 23.) As previously explained, Plaintiffs have stated a plausible claim for violation of the EFTA. (*See supra* Section IV.) Thus, Plaintiffs have sufficiently stated a UCL claim based on unlawful business practices. SoulCycle's Motion is **DENIED** with respect to the UCL claim.[8]

VII. Declaratory Relief Claim

SoulCycle argues that this claim fails because it is "wholly derivative of [Plaintiffs'] other causes of action, each of which fails." (Mot. at 25.) As explained above, all of Plaintiffs' claims survive except for the independent claim for violation of California Civil Code § 1749.5. Thus, an actual controversy between the Parties exists, and Plaintiffs have not failed to state a claim for declaratory relief. Soulcycle's Motion is **DENIED** with respect to the declaratory relief claim.

VIII. Conclusion

We **GRANT** SoulCycle's Motion with respect to the independent claim for violation of California Civil Code § 1749.5. The § 1749.5 claim is **DISMISSED**. We **DENY** SoulCycle's Motion with respect to all remaining claims.[9] SoulCycle **SHALL** answer the remaining claims in the SAC **within 14 days hereof**.

IT IS SO ORDERED.

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[8] Plaintiffs alternatively base their UCL claim on SoulCycle's alleged violation of California Civil Code § 1749.5. But, for the purposes of the present Motion, we need not reach the issue of whether SoulCycle violated § 1749.5, as Plaintiffs have plausibly stated a UCL claim based on violation of the EFTA. To the extent a determination on this § 1749.5 issue later becomes necessary, we will determine it at that time.

[9] SoulCycle's remaining requests for judicial notice are also **DENIED**, as they are unnecessary for our resolution of this Motion.