UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

KATHY WU, Plaintiff, v. SUNRIDER CORPORATION, et al. Defendants.	Case No.: 17-4825 DSF (SSx) GRANTING Defendants' Motion for Summary Judgment (Dkt. 60)

Defendants Sunrider Corporation, d/b/a Sunrider International (Sunrider), Tei Fu Chen, and Oi-Lin Chen (collectively, Defendants) move for summary judgment on the claims in Plaintiff Kathy Wu's First Amended Complaint (FAC).

I. UNDISPUTED FACTS

In 2007, Plaintiff reached out to Sunrider about becoming a Sunrider Independent Business Owner (IBO).[1] UF ¶ 5.[2] Sunrider put her in touch with Julie Tat, an existing IBO, and the two met to discuss the Sunrider opportunity. UF ¶¶ 6, 7. On November 1, 2007, Plaintiff applied to become an IBO, with Tat as her sponsor

[1] The FAC uses "IBO" and "distributor" interchangeably. E.g., FAC ¶¶ 3, 80.

[2] UF refers to Defendants' Statement of Uncontroverted Facts. Dkt. 60-1. This Order also cites to Plaintiff's Additional Statement of Disputed Facts (DF). Dkt. 66. To the extent the Court finds a fact undisputed, it has overruled any objection to the evidence supporting that fact.

and "upline,"[3] and elected to purchase Sunrider's "Starter Pack #1" of products for $140.00 plus tax. UF ¶¶ 10, 20, Ex. I-A-3 (Sunrider Application). Based on Tat's advice, Plaintiff placed a second order on November 2, 2007 for $540.08 in Sunrider products. UF ¶ 26, Ex. I-A-17 (November 2, 2007 Order Inquiry). On December 7, 2007, someone placed a $1,934.29 product order from Plaintiff's Sunrider account. Id. ¶ 31, Ex. I-A-18 (December 7, 2007 Order Inquiry). Based on the order, Plaintiff was paid a $143.30 bonus in January 2008. UF ¶ 32.

Although Plaintiff was not having success selling Sunrider products, she placed a $1,519.67 product order on April 1, 2009. UF ¶ 36, Ex. I-A-20 (April 1, 2009 Order Form). Based on that order, Sunrider paid her a $95.24 bonus. Id. ¶ 47. Plaintiff struggled to sell the products, and discarded most of them. UF ¶¶ 43-45. After the April 1 order, Plaintiff did not pay anything to Sunrider until her next purchase on April 25, 2014. UF ¶ 48. The only activity in Plaintiff's account between 2009 and 2014 was a small order made and paid for by Tat on January 4, 2011. Id. ¶ 50. Due to the extended period without any orders, Plaintiff's IBO account was demoted to "Customer 500," then "Customer," then deemed inactive. Id. ¶ 52, Ex. II (Jeyakumar Decl.) ¶ 20.

Despite Plaintiff's trouble succeeding as an IBO, she decided to try again in 2014. Id. ¶¶ 54-55. After speaking with Tat, on

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[3] The Court previously summarized how the IBO hierarchy works:

> If an IBO recruits another IBO, the recruit becomes a "downline" IBO and the recruiter becomes an "upline" IBO. Upline IBOs receive revenue whenever a downline IBO makes purchases or recruits a new IBO. IBOs earn points, which are significant because they make the IBO eligible for greater discounts on Sunrider products.

Dkt. 41 at 2.

April 25, 2014, Plaintiff purchased the "Fortune Delight Business Pack" containing different teas for $112.27. UF ¶ 65, Ex. I-A-7 (April 25, 2014 Invoice). A few days later, Tat placed an order in Plaintiff's account totaling $821.40, using Tat's own credit card. UF ¶ 69, Jeyakumar Decl. ¶ 21. Sunrider credited Plaintiff with a $13.83 bonus based on this order. Id.

Plaintiff disputed the April 25 order with her credit card company. UF ¶ 70, Ex. I-A-12 (First Chargeback). Sunrider's records reflect that on July 29, 2014, Plaintiff returned the Fortune Delight Business Pack, although Plaintiff does not recall doing so. Id. ¶ 72. Sunrider thereafter allowed the credit card dispute to be resolved in Plaintiff's favor and placed a credit balance of $5.80 in her account for shipping charges incurred by the return. Id. ¶ 73.

Plaintiff placed her final order on May 13, 2014. Id. ¶ 79, Ex. I-A-8 (May 13, 2014 Invoice).[4] Plaintiff personally picked up the order from Sunrider's headquarters in Torrance, California. UF ¶ 81, Ex. I-A-9 (May 16, 2014 Log). She then disputed the May 13 order with her credit card company, claiming it was a fraudulent charge. UF ¶ 82, Ex. I-A-13 (Second Chargeback). Sunrider provided the credit card company with the May 16, 2014 Log showing Wu had personally received the order, and the dispute was resolved in its favor. UF ¶ 83, Second Chargeback at 13-6. Plaintiff then disputed the May 13 order again. UF ¶ 84, Ex. I-A-14 (Third Chargeback).

Sunrider told Plaintiff it would initiate legal proceedings against her if she did not pay for the May 13 order. UF ¶ 87, Jeyakumar Decl. ¶33. Plaintiff paid Sunrider via money order on October 24, 2014. UF ¶ 88, Ex. I-A-10 (October 24, 2014 Money

[4] Plaintiff disputes this because there might be "other payments," but nothing in the record indicates otherwise.

Order). Sunrider then blocked Plaintiff's account, which prevented her from using credit cards to purchase Sunrider products. UF ¶ 90, Jeyakumar Decl. ¶ 35.

Sometime in January of 2017, Plaintiff's friend encouraged her to research whether Sunrider was a "pyramid scheme." UF ¶ 110, Ex. I-A (Wu Dep. Tr.) at 143:15-144:11. Plaintiff did some online research and learned about "pyramid schemes" and "Ponzi schemes." UF ¶ 111-12, Wu Dep. Tr. at 144:15-146:1.

In June 2017, after Plaintiff filed this lawsuit, Sunrider sent her a check in the amount of $19.63 reflecting the outstanding credit balance in her account. UF ¶ 102, Ex. II-B (June 23, 2017 Check). Plaintiff could have claimed the credit balance at any time, but it is Sunrider's practice and policy not to send bonus checks in an amount less than $25.00. UF ¶ 105, Jeyakumar Decl. ¶ 39. Plaintiff did not cash the check, which has now expired, and Sunrider has no intention of reissuing it. UF ¶ 108.

II. LEGAL STANDARD

"A party may move for summary judgment, identifying each claim or defense – or the part of each claim or defense – on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "This burden is not a light one." In re Oracle Corp. Sec. Litig., 627 F.3d 376, 387 (9th Cir. 2010). But the moving party need not disprove the opposing party's case. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Rather, if the moving party satisfies this burden, the party opposing the motion must set forth specific facts, through affidavits or admissible discovery materials, showing that there exists a genuine issue for trial. Id. at 323-24; Fed. R. Civ. P. 56(c)(1).

The "mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986). An issue of fact is a genuine issue if it reasonably can be resolved in favor of either party. Id. at 250-51. "The mere existence of a scintilla of evidence in support of the [non-movant's] position will be insufficient; there must be evidence on which the jury . . . could find by a preponderance of the evidence that the [non-movant] is entitled to a verdict . . . ." Id. at 252. "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." Id. at 248.

"[A] district court is not entitled to weigh the evidence and resolve disputed underlying factual issues." Chevron Corp. v. Pennzoil Co., 974 F.2d 1156, 1161 (9th Cir. 1992).

III. DISCUSSION[5]

Defendants move for summary judgment on statute of limitations grounds on Plaintiff's remaining causes of action for violation of California's Endless Chain Law (ECL), Cal. Penal Code § 327 and Cal. Civ. Code § 1689.2; violation of California's Unfair Competition Law (UCL)[6], Cal. Bus. & Prof. Code § 17200 et

[5] Plaintiff states that summary judgment is premature because significant discovery remains, but does not explain what she hopes to undercover that would impact the statute of limitations inquiry. This is insufficient. See Fed. R. Civ. P. 56(d).

[6] Plaintiff states that "[w]hile the fraudulent prong of Plaintiff's claim was dismissed, the other two prongs of the UCL remain in tact [sic]." Dkt. 65 (Opp'n) at 18. This is not accurate: "Defendants' motion to dismiss is GRANTED . . . as to . . . the UCL claim to the extent it is predicated on 'fraudulent' or 'unfair' conduct." Dkt. 41 at 8.

seq.; and unjust enrichment. Statute of limitations disputes involve two questions: (1) when the claim accrued, and (2) whether anything tolled the limitations period after the claim accrued.

On summary judgment, Defendants bear the initial burden to demonstrate Plaintiff's claims are time barred. See Celotex, 477 U.S. at 323. If Defendants meet their burden, the burden shifts to Plaintiff as the non-moving party to establish that there is sufficient evidence in the record from which a reasonable trier of fact could conclude that her claims are not time barred. See Nissan Fire & Marine Ins. Co. v. Fritz Companies, Inc., 210 F.3d 1099, 1103 (9th Cir. 2000).

A. ECL and UCL Claims

1. Applicable Statute of Limitations

Defendants argue the limitation period for an ECL claim is three years; Plaintiff says four. Defendants are correct.

California Code of Civil Procedure section 338 provides a three-year statute of limitations for any "action upon a liability created by statute, other than a penalty or forfeiture." Cal. Civ. Proc. Code § 338(a). "An obligation is created by statute if the liability would not exist but for the statute, and the obligation is created by law in the absence of an agreement." Winick Corp. v. Gen. Ins. Co., 187 Cal. App. 3d 142, 145 (1986). The ECL claim derives from California Penal Code § 327 and California Civil Code § 1689.2, and therefore is subject to section 338(a)'s three-year limitation.

At the hearing, Plaintiff argued that because she is entitled to rescission, the ECL limitations period is four years under section 337. "Courts . . . apply the three-year 'statutory' statute of limitations in situations in which the statute itself . . . serves as

the source of the court's rule of decision if the court reaches the merits." County of San Diego v. Sanfax Corp., 19 Cal. 3d 862, 877 (1977). "Similarly, courts commonly apply 'contract' statutes of limitations (e.g., Code Civ. Proc., § 337, subd. 1) in cases in which they would treat a contract as the source of the substantive rights or duties of the litigants." Id. Plaintiff's ECL claim is premised on Defendants' violations of two statutes, and does not arise from contract. See FAC ¶¶ 125-26. The three-year limitations period applies.

The UCL provides that "[a]ny action to enforce any cause of action pursuant to this chapter shall be commenced within four years after the cause of action accrued." Cal. Bus. & Prof. Code § 17208. The four year statute of limitations applies even if the borrowed statute has a shorter limitations period: "[T]he language of section 17208 admits of no exceptions. *Any* action on *any* UCL cause of action is subject to the four-year period of limitations created by that section." Cortez v. Purolator Air Filtration Prods. Co., 23 Cal. 4th 163, 178-79 (2000) (emphasis in original). The "general rule is that a UCL cause of action borrows the substantive portion of the borrowed statute to prove the 'unlawful' prong of that statute, but not the limitations procedural part of the borrowed statute." Blanks v. Shaw, 171 Cal. App. 4th 336, 363 (2009).

Because Plaintiff filed her original complaint on May 31, 2017, her ECL claim must have accrued after May 31, 2014, and her UCL claim must have accrued after May 31, 2013, or the applicable limitations periods must have been tolled.

2. Accrual of the Claims

Under California law, "a cause of action accrues when [it] is complete with all of its elements—those elements being wrongdoing, harm, and causation." Aryeh v. Canon Bus.

Solutions, Inc., 55 Cal. 4th 1185, 1191 (2013) (citations omitted). "This is the 'last element' accrual rule: ordinarily, the statute of limitations runs from the occurrence of the last element essential to the cause of action." Id. (citations omitted); see also 3 Witkin, Cal. Proc. 5th (2008) Actions, § 493, p. 633 ("The cause of action ordinarily accrues when, under the substantive law, the wrongful act is done and the obligation or liability arises, i.e., when an action may be brought.").

Here, Plaintiff bases her ECL and UCL claims on Defendants' operation of an endless chain scheme whereby Plaintiff paid valuable consideration for the opportunity to receive compensation for introducing additional persons in the scheme. That conduct occurred in 2007 or, at the latest, in 2009. It is undisputed Plaintiff first became a Sunrider IBO in November 2007 by completing the Distributor Agreement and purchasing a Sunrider starter pack. UF ¶ 20. By becoming an IBO, Plaintiff was entitled to receive commissions from her "downlines," i.e., anyone she recruited. It is also undisputed Plaintiff placed an order for products on April 1, 2009, which may have been necessary to keep her IBO account active. Id. ¶¶ 23, 36. Plaintiff was unsuccessful in either selling the products or recruiting others. Plaintiff then placed no orders until 2014,[7] when she purchased another starter pack (which she returned) and some inventory. UF ¶¶ 48, 52, 70, 72.

Plaintiff's claims thus accrued no later than 2009—at that point, she had paid consideration to be a participant in an endless chain scheme, and was not successful. That Plaintiff may have

[7] Plaintiff's inactivity caused Sunrider to demote her account. Specifically, Plaintiff was demoted from IBO to "Customer 500" on August 3, 2011; demoted from Customer 500 to "Customer" on September 9, 2012; and finally deemed "inactive" on March 20, 2014. UF ¶ 52, Jeyakumar Decl. ¶ 20.

been injured once more in 2014, when she purchased additional Sunrider products based on nothing other than a desire to "give it a try again," UF ¶ 54, does not restart the limitations period. See Spellis v. Lawn, 200 Cal. App. 3d 1075, 1080 (1988) (referring to the "fundamental rule that the statute [of limitations] begins to run from the time conduct becomes actionable").

Plaintiff argues her claims did not accrue until 2017, when she ceased to be a participant in the scheme. On this point, Plaintiff analogizes the ECL to the law of open accounts, in which the cause of action does not accrue until the last entry in the account. The analogy is not useful, however, because open accounts accrual is governed by statute: "In an action brought to recover a balance due upon a mutual, open, and current account,. . . the cause of action is deemed to have accrued from the time of the last item proved in the account on either side." Cal. Civ. Proc. Code § 344. No similar statute exists for ECL claims.

More fundamentally, Plaintiff's suggested accrual date is incompatible with the purpose underlying statutes of limitations. Plaintiff acknowledges she became a Sunrider IBO in 2007, but asserts her injury continued through 2017 because she persisted as a participant. If continuing injury from a completed act generally extended the limitations periods, those periods would lack meaning. Parties could file suit at any time, as long as their injury persisted.[8] This is not the law. The time bar starts running when the plaintiff first learns of actionable injury, even if the injury persists:

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[8] The same is true of Plaintiff's alternative accrual date of October 28, 2014, when she paid Sunrider via money order after it threatened to take her to court over nonpayment of the May 13 order. Her position would enable a plaintiff to delay the statute of limitations indefinitely by unjustly delaying payment, which cannot be correct.

> [W]here an injury, although slight, is sustained in consequence of the wrongful act of another, and the law affords a remedy therefor, the statute of limitations attaches at once. It is not material that all the damages resulting from the act shall have been sustained at that time, and the running of the statute is not postponed by the fact that the actual or substantial damages do not occur until a later date.

Spellis, 200 Cal. App. 3d at 1081 (quoting Martinez-Ferrer v. Richardson-Merrell, Inc., 105 Cal. App. 3d 316, 323 (1980)) (emphasis in original). In short, the statute of limitations started to run when the wrongful act was done and the liability arose. See Aryeh, 55 Cal. 4th at 1191. The gravamen of the claims is that Defendants operated an endless chain scheme. If true, Plaintiff's cause of action accrued when she became a participant in the scheme in 2007, not when she quit in 2017. Because the Complaint was filed on May 31, 2017, her ECL and UCL claims are barred unless saved by tolling, estoppel, or another limitations-avoiding doctrine.

B. Unjust Enrichment Claim

Though the parties seem to agree that unjust enrichment generally has a three-year limitations period, Defendants suggest in a footnote that a two-year period may apply here. See Mot. at 24 n.3 (citing Cal. Civ. Proc. Code § 339(1)).

The limitations period for unjust enrichment depends on the statute of limitations governing the underlying claim. Typically, unjust enrichment is based on a quasi-contract theory, and is governed by the two-year limitations period for actions "upon a contract, obligation or liability not founded upon an instrument of writing." Cal. Civ. Proc. Code § 339(1); see also H. Russell Taylor's Fire Prevention Serv., Inc. v. Coca Cola Bottling Corp., 99

Cal. App. 3d 711, 721 n.5 (1979) (statute of limitations for unjust enrichment claim is two years under § 339(1)). However, "[a]n unjust enrichment or quasi-contract action in the form of a common count to recover money or other benefit obtained by [fraud or] mistake is governed by [a] three-year statute of limitations." F.D.I.C. v. Dintino, 167 Cal. App. 4th 333, 348 (2008) (citing § 338(d)).

The FAC describes three categories of unjustly-obtained gains: (1) Individual Defendants made "contractual agreements with each other and with other third-parties" that enabled them to obtain payouts "under the contracts"; (2) Individual Defendants were enriched by the "compensation plan implemented by Sunrider," and (3) Tei-Fu and Oi-Lin were compensated based on their executive positions. FAC ¶¶ 208-10. Plaintiff does not suggest the Individual Defendants were enriched via fraud or mistake, nor could she, considering all of her fraud claims were dismissed.

Plaintiff's unjust enrichment claim is thus subject to a two-year limitations period. Compare Boon Rawd Trading Int'l Co. v. Paleewong Trading Co., 688 F. Supp. 2d 940, 955-56 (N.D. Cal. 2010) (applying two-year limitations period to plaintiff's unjust enrichment claim in the absence of facts indicating that fraud or mistake applied), and Aberdeen v. Toyota Motor Sales, U.S.A., No. CV 08-1690 PSG (VBKx), 2008 WL 11336173, at *8-9 (C.D. Cal. Aug. 22, 2008) (same), with ChinaCast Educ. Corp. v. Chen Zhou Guo, No. CV 15-05475-AB (Ex), 2016 WL 6645792, at *5 (C.D. Cal. June 3, 2016) (applying § 338(d)'s three-year limitations period where plaintiff's unjust enrichment claim sought to recover money obtained by fraud).

Plaintiff acknowledges she last made a payment no later than October 2014, more than two years before she filed the Complaint. See Wu Decl. ¶ 10; Opp'n at 19. Her unjust

enrichment claim is barred unless saved by a limitation-avoiding doctrine.

C. Limitation-Avoiding Doctrines

Plaintiff invokes two limitation-avoiding doctrines, beginning with the discovery rule. The discovery rule, where applicable, "postpones accrual of a cause of action until the plaintiff discovers, or has reason to discover, the cause of action." Norgart v. Upjohn Co., 21 Cal. 4th 383, 397 (1999). A plaintiff relying on the discovery rule must plead "(1) the time and manner of discovery *and* (2) the inability to have made earlier discovery despite reasonable diligence." Fox v. Ethicon Endo-Surgery, Inc., 35 Cal. 4th 797, 808 (2005) (citation omitted; emphasis in original). The Court "do[es] not take a hypertechnical approach to the application of the discovery rule," but rather "look[s] to whether the plaintiff[] ha[d] reason to at least suspect that a type of wrongdoing ha[d] injured them." Id. at 807.

Plaintiff avers she first discovered Defendants were operating a pyramid scheme in January 2017, when she spoke with a friend and did some online research. DF ¶ 8, Wu Decl. ¶ 15; FAC ¶ 99. Under California law, however, "[s]o long as a suspicion exists, it is clear that the plaintiff must go find the facts; she cannot wait for the facts to find her." Jolly v. Eli Lilly & Co., 44 Cal. 3d 1103, 1111 (1988). Here, the undisputed facts detail Plaintiff's awareness of information that gave her a "reason to suspect an injury and some wrongful cause" by 2008. Fox, 35 Cal. 4th at 803.

Specifically, Plaintiff admits that in 2007, Tat gave her "opportunity pamphlets" and said she would make money from recruiting her friends and family. See Wu Dep. Tr. at 26:13-27:8 ("So recruiting will earn the money, not – not selling. Mostly recruiting."). Another woman in Hong Kong also told Plaintiff

that "by recruiting, you automatically get a lot of commission; and if your downline, you know, also recruits, you get more on top, like duplicating." Id. at 27:13-18. Plaintiff also viewed or had access to the Sunrider Business Guide, videos, and income graphics. Id. at 20:1-21:13, 22:22-23:19.

When Plaintiff tried to sell the products to friends, she was told they were "mediocre" and "overpriced." Id. at 127:9-19. It also is undisputed Plaintiff was not successful in making money—in fact, over the course of her ten years of involvement, Plaintiff did not recruit a single person or sell a single product.

Plaintiff's contention that the parties were in a relationship of "special trust" does not change the Court's conclusion. The existence of a "special relationship" does not negate the discovery rule, but rather reinforces the principle that statutes of limitations "should not be interpreted so as to bar a victim of wrongful conduct from asserting a cause of action before he could reasonably be expected to discover its existence." E-Fab, Inc. v. Accountants, Inc. Servs., 153 Cal. App. 4th 1308, 1318 (2007) (citation omitted). That risk does not exist here. Plaintiff's available information sufficiently established a basis for reasonable suspicion of wrongdoing. In sum, this is not an appropriate case for application of the discovery rule.

Plaintiff also invokes the continuing violation doctrine. "The continuing violation doctrine aggregates a series of wrongs or injuries for purposes of the statute of limitations, treating the limitations period as accruing for all of them upon commission or sufferance of the last of them." Aryeh, 55 Cal. 4th at 1192. The doctrine recognizes that "[s]ome injuries are the product of a series of small harms, any one of which may not be actionable on its own. Those injured in such a fashion should not be handicapped by the inability to identify with certainty when harm has occurred or has risen to a level sufficient to warrant action."

Id. at 1197-98 (citation omitted). "[T]he plaintiff has the burden of proof to show his or her claims are timely under the continuing violation doctrine." Jumaane v. City of Los Angeles, 241 Cal. App. 4th 1390, 1402 (2015).

Nothing in Plaintiff's opposition warrants application of the continuing violation doctrine. This is not a case in which a wrongful course of conduct became apparent only through the accumulation of a series of harms. Instead, as described previously, Plaintiff paid consideration for the opportunity to receive compensation for recruiting others—a discrete act for which Plaintiff could have filed suit. Put simply, Plaintiff's harm is not the result of small harms that would not have been actionable on their own. Rather, each was an independently actionable act, and so the continuing violation doctrine does not apply.[9]

IV. CONCLUSION

For the reasons discussed above, Plaintiff's ECL, UCL, and unjust enrichment claims are time barred. Defendants' motion for summary judgment is GRANTED in its entirety.

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[9] Plaintiff cites employment cases that are easily distinguishable and inapplicable. For example, in Yanowitz v. L'Oreal USA, Inc., 36 Cal. 4th 1028 (2005), the court applied the continuing violation doctrine in a case involving retaliatory conduct because "a series of separate retaliatory acts collectively may constitute an 'adverse employment action' even if some or all of the component acts might not be individually actionable." Id. at 1058. Unlike Yanowitz, Defendants' wrongdoing here was individually actionable: Plaintiff could have brought suit once she found herself a participant in Defendants' alleged scheme. Instead, she sat on her claim, which the continuing violation doctrine does not protect.

IT IS SO ORDERED.

Date: May 22, 2018

Dale S. Fischer
United States District Judge