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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO – CENTRAL DIVISION

SUSAN COSTA, an individual. on behalf of
herself and all others similarly situated,

Plaintiff,

v.

ROAD RUNNER SPORTS, INC., ROAD
RUNNER SPORTS RETAIL, INC., and
DOES 1-50, inclusive,

Defendants.

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

02/16/2021 at 11:28:00 AM

Clerk of the Superior Court
By Maria Acevedo, Deputy Clerk

Case No. 37-2020-00017100-CU-MC-CTL

CLASS ACTION

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

- 1. VIOLATION OF CALIFORNIA
UNFAIR COMPETITION LAW (Cal.
Bus. & Prof. Code §§ 17200, *et seq.*);**
- 2. VIOLATION OF CALIFORNIA
CONSUMERS LEGAL REMEDIES
ACT (Cal. Civ. Code §§ 1750, *et seq.*);
and**
- 3. DECLARATORY RELIEF**

DEMAND FOR JURY TRIAL

1 Plaintiff Michael O'Connor ("Plaintiff"), individually, and on behalf of all others similarly
2 situated, upon personal knowledge of the facts pertaining to himself and on information and belief
3 as to all other matters, by and through undersigned counsel, hereby brings this class action complaint
4 against defendants Road Runner Sports, Inc. and Road Runner Sports Retail, Inc. (collectively,
5 "Road Runner" or "Defendants") and alleges as follows:

6 **INTRODUCTION**

7 1. Road Runner is a running shoe and an athletic apparel company based in San Diego,
8 California with more than 35 retail outlets throughout California and other states. The company
9 derives revenue from the sale of running and walking shoes, athletic apparel, and other related gear
10 and accessories through its retail stores, online store (roadrunnersports.com), and direct mail and
11 online catalogs.

12 2. To enhance sales and increase profits, Road Runner offers customers discounts and
13 rewards through its customer loyalty program which it calls the VIP Family Rewards Membership
14 and VIP Family Rewards Plus Membership (collectively, "VIP Family Membership"). According
15 to Road Runner's website, there are more than 842,500 current VIP Family Membership holders.

16 3. Customers are encouraged to and typically sign up for the VIP Family Membership
17 at the time of checkout. To entice customers, Road Runner initially charges a small amount – right
18 now, just \$1.99 – for the VIP Family Membership. It is an easy sell for Road Runner because
19 customers are told that for just a small charge, they will receive 10% instant savings plus 5% in
20 rewards cash. However, Road Runner fails to disclose the balance of the deal: the VIP Family
21 Membership automatically renews every year for \$39.99 (or more) and will be charged to the
22 customer's credit or debit card on file.

23 4. Road Runner's policy and practice of automatically renewing customers' VIP Family
24 Memberships without obtaining affirmative consent prior to the customers' purchase, without
25 providing the auto-renewal terms in a clear and conspicuous manner prior to purchase, and without
26 providing an acknowledgement identifying an easy and efficient mechanism for customers to cancel
27 their VIP Family Memberships violates California's Automatic Renewal Law ("ARL"), Cal. Bus.
28 & Prof. Code §§ 17600, *et seq.* In further violation of the ARL, Road Runner makes it difficult and

1 confusing for customers to cancel their VIP Family Memberships, often resulting in unsuccessful
2 cancellations and continued membership charges.

3 5. As a direct result of Road Runner's conduct, Plaintiff and all those similarly situated
4 customers (the "Class Members") suffered economic injury in the loss of money paid for their VIP
5 Family Memberships. As such, Plaintiff brings this class action on behalf of himself and all similarly
6 situated Class Members seeking declaratory relief, injunctive relief, equitable relief (including, but
7 not limited to, restitution), damages, and reasonable attorneys' fees and costs pursuant to and under
8 California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200, *et seq.*, and
9 California's Consumers Legal Remedies Act ("CLRA"), Cal. Civ. Code §§ 1750, *et seq.*

10 **THE PARTIES**

11 6. Plaintiff Michael O'Connor is, and at all relevant times hereto was, an individual
12 residing in Los Angeles County, California. At some time prior to 2017, Plaintiff O'Connor visited
13 a Road Runner retail store located at 12113 Ventura Blvd., Studio City, CA 91604 to purchase a
14 pair of shoes. At checkout, Plaintiff was encouraged to and did sign up for the VIP Family
15 Membership. However, neither before nor after signing up was Plaintiff told he was in reality
16 enrolling into a paid subscription agreement with Road Runner, and that his credit card would be
17 automatically charged a fee every year. Plaintiff's credit card was charged the undisclosed renewal
18 fee for his VIP Family Membership without his knowledge or consent. On November 26, 2017, he
19 was charged \$27.99, on November 25, 2018, he was charged \$28.99, on November 26, 2019 he was
20 charged \$39.99, and on November 30, 2020, he was charged \$39.99. Plaintiff paid his credit card
21 bills without noticing that Road Runner had charged him for a VIP Family Membership. Plaintiff
22 would not have agreed to sign up for and purchase the VIP Family Membership had he known at
23 the time of purchase the membership would be automatically renewed each year at a cost of \$27.99
24 to \$39.99. Alternatively, Plaintiff would have cancelled his VIP Family Membership prior to the
25 expiration of the initial membership period so as to avoid being charged any renewal fee had he
26 known at the time of purchase or prior to first being charged an annual renewal fee his membership
27 would be automatically renewed each year at a cost of \$27.99 to \$39.99. Plaintiff has suffered injury
28 in fact and lost money or property as a result of Road Runner's misconduct as alleged herein.

3 8. Defendant Road Runner Sports Retail, Inc. is a California corporation with its
4 principal place of business located at 5549 Copley Drive, San Diego, California 92111.

5 9. Plaintiff is unaware of the true names and capacities of the Defendants sued herein
6 as DOES 1 through 50, inclusive, and therefore sues these Defendants by such fictitious names
7 pursuant to Cal. Civ. Proc. Code § 474. Plaintiff is informed and believes, and based thereon, alleges
8 that each of the Defendants designated herein is legally responsible in some manner for the unlawful
9 acts and occurrences complained of herein, whether such acts were committed intentionally,
10 negligently, recklessly, or otherwise, and that each of the Defendants thereby proximately caused
11 the injuries and damages to Plaintiff and the Class Members as herein alleged. Plaintiff will seek
12 leave of Court to amend this complaint to reflect the true names and capacities of the Defendants
13 when they have been ascertained and become known.

14 10. The agents, servants and/or employees of the Defendants and each of them acting on
15 behalf of the Defendants acted within the course and scope of his, her or its authority as the agent,
16 servant and/or employee of the Defendants, and personally participated in the conduct alleged herein
17 on behalf of the Defendants with respect to the conduct alleged herein. Consequently, the acts of
18 each Defendant are legally attributable to the other Defendants and all Defendants are jointly and
19 severally liable to Plaintiff and other similarly situated employees, for the loss sustained as a
20 proximate result of the conduct of the Defendants' agents, servants and/or employees.

21 **JURISDICTION AND VENUE**

11. This Court has jurisdiction over this action pursuant to Cal. Code of Civ. Proc. § 410.10, Cal. Bus. & Prof. Code §§ 17203-17204, 17604, and Cal. Civ. Code § 1780. This action is brought as a class action on behalf of Plaintiff and all Class Members pursuant to Cal. Code Civ. Proc. § 382.

12. Venue is proper in this Court pursuant to Cal. Code of Civ. Proc. §§ 395 and 395.5, because Plaintiff resides in San Diego County and Road Runner (i) currently maintains and at all relevant times maintained its principal offices and facilities in San Diego County and conducts

1 substantial and regular business in San Diego County; (ii) formulated, implemented, and
2 maintained, in whole or in substantial part, the policies and practices complained of herein in San
3 Diego County; and (iii) committed the wrongful conduct herein alleged in San Diego County. Road
4 Runner operates a distribution center in San Diego, California and at least 13 retail stores in
5 California, with three retail stores located in San Diego County.

6 **FACTUAL BACKGROUND**

7 **A. Road Runner's VIP Family Membership**

8 13. Road Runner owns and operates 39 retail stores across the country, including at least
9 13 stores throughout California, selling running shoes, apparel and accessories. Road Runner also
10 sells products online through its retail website, www.roadrunnersports.com.

11 14. Since at least 2011, Road Runner has marketed and sold its VIP Family Membership.
12 Among the advertised benefits of the VIP Family Membership are 10% off purchases, 5% rewards
13 cash on purchases, a 90-day test run on shoes, free shipping, and access to sales and events.

14 15. According to Road Runner, there are over 842,500 current VIP Family Membership
15 holders.

16 16. Road Runner charges customers a small, one-time fee to purchase the VIP Family
17 Membership. To encourage customers to make the purchase and enroll them in the VIP Family
18 Membership, Road Runner offers an immediate 10% discount on that day's purchase. The amount
19 of this one-time charge varies, but it is typically less than the value of the 10% discount, creating
20 the false appearance that the VIP Family Membership immediately pays for itself.

21 17. Pursuant to Road Runner's policy and practice, when shopping at a Road Runner
22 retail store, customers are encouraged at the time of checkout to purchase the VIP Family
23 Membership for a small, one-time fee – at times, as low as \$1.99 or \$2.99. Customers are then told
24 about the benefits the membership purports to offer – such as the percent discount. No other material
25 terms or conditions are voluntarily disclosed to customers before the VIP Family Membership is
26 purchased.

27 18. In truth, the small, one-time fee mimics that of an initial membership enrollment fee
28 and *only* covers the cost of initial membership enrollment. Road Runner fails to clearly and

1 conspicuously disclose prior to purchase that the VIP Family Membership is a subscription
2 agreement for one-year intervals, which automatically renews at the end of each year unless the
3 consumer affirmatively cancels the membership prior to the end of the annual term. The renewal
4 fees range from \$25.99 to \$59.99 (or more) – substantially more than the initial enrollment/first-
5 year membership fee.

6 **B. Road Runner's Conduct Violates California's Automatic Renewal Law**

7 19. On December 1, 2010, California's Automatic Renewal Law took effect. The
8 Automatic Renewal Law codifies the California Legislature's intent to "end the practice of ongoing
9 charging of consumer credit or debit cards or third party payment accounts without the consumers'
10 explicit consent for ongoing shipments of a product or ongoing deliveries of service." Cal. Bus. &
11 Prof. Code § 17600. The ARL is codified in §§ 17601–17606 of California's Business and
12 Professions Code.

13 20. Cal. Bus. & Prof. Code § 17601(a) defines "automatic renewal" to mean "a plan or
14 arrangement in which a paid subscription or purchasing agreement is automatically renewed at the
15 end of a definite term for a subsequent term."

16 21. Road Runner's VIP Family Membership is an "automatic renewal" plan under Cal.
17 Bus. & Prof. Code § 17601(a).

18 22. Cal. Bus. & Prof. Code § 17602(a)(1) makes it unlawful for any business making an
19 automatic renewal or continuous service offer to a consumer in California to:

20 Fail to present the automatic renewal offer terms or continuous service offer terms in
21 a clear and conspicuous manner before the subscription or purchasing agreement is
22 fulfilled and in visual proximity, or in the case of an offer conveyed by voice, in
temporal proximity, to the request for consent to the offer.

23 23. "Automatic renewal offer terms" means "the following clear and conspicuous
24 disclosures: (1) That the subscription or purchasing agreement will continue until the consumer
25 cancels. (2) The description of the cancellation policy that applies to the offer. (3) The recurring
26 charges that will be charged to the consumer's credit or debit card or payment account with a third
27 party as part of the automatic renewal plan or arrangement, and that the amount of the charge may
28 change, if that is the case, and the amount to which the charge will change, if known. (4) The length

1 of the automatic renewal term or that the service is continuous, unless the length of the term is
2 chosen by the consumer. (5) The minimum purchase obligation, if any.” Cal. Bus. & Prof. Code
3 § 17601(b).

4 24. At all relevant times, Road Runner failed to disclose the “automatic renewal offer
5 terms” defined by Cal. Bus. & Prof. Code § 17601(b) before California consumers purchased their
6 VIP Family Memberships. At no time during the process by which California consumers are
7 presented with and then purchase the VIP Family Membership did Road Runner clearly and
8 conspicuously disclose (i) that the VIP Family Membership is a subscription-based plan that will
9 continue until cancelled; (ii) the entirety of the cancellation policy that applied to the offer; (iii) the
10 amount and nature of the recurring charges that would be charged to the consumer’s credit or debit
11 cards or third party payment accounts; or (iv) the length of the automatic renewal term or that the
12 service was continuous. This conduct violates Cal. Bus. & Prof. Code §17602(a)(1).

13 25. Cal. Bus. & Prof. Code § 17602(a)(2) makes it unlawful for any business that makes
14 an automatic renewal or continuous service offer to a consumer in California to:

15 Charge the consumer’s credit or debit card, or the consumer’s account with a third
16 party, for an automatic renewal or continuous service without first obtaining the
17 consumer’s affirmative consent to the agreement containing the automatic renewal
offer terms or continuous service offer terms.

18 26. At all relevant times, Road Runner charged, and continues to charge, Plaintiff and
19 the Class Members for VIP Family Membership subscriptions. However, Road Runner has done so,
20 and continues to do so, without first obtaining these California consumers’ affirmative consent to
21 the agreement containing the automatic renewal offer terms or continuous service offer terms.
22 Indeed, there is no mechanism during the initial purchase process or at any subsequent point in time
23 that requires California consumers to affirmatively consent to such terms. This conduct violates Cal.
24 Bus. & Prof. Code § 17602(a)(2).

25 27. Cal. Bus. & Prof. Code § 17602(a)(1) makes it unlawful for any business making an
26 automatic renewal or continuous service offer to a consumer in California to:

27 Fail to provide an acknowledgment that includes the automatic renewal offer terms
28 or continuous service offer terms, cancellation policy, and information regarding
how to cancel in a manner that is capable of being retained by the consumer.

1 28. Cal. Bus. & Prof. Code § 17602(b) further provides:

2 A business that makes an automatic renewal offer or continuous service offer shall
3 provide a toll-free telephone number, electronic mail address, a postal address if the
4 seller directly bills the consumer, or it shall provide another cost-effective, timely,
5 and easy-to-use mechanism for cancellation that shall be described in the
6 acknowledgement specified in paragraph (3) of subdivision (a).

7 29. Road Runner fails to provide California consumers with an acknowledgement that
8 satisfies any of the requirements of Cal. Bus. & Prof. Code §§ 17602(a)(3) and 17602(b).

9 30. Cal. Bus. & Prof. Code § 17603 provides:

10 In any case in which a business sends any goods, wares, merchandise, or products to
11 a consumer, under a continuous service agreement or automatic renewal of a
12 purchase, without first obtaining the consumer's affirmative consent as described in
13 Section 17602, the goods, wares, merchandise, or products shall for all purposes be
14 deemed an unconditional gift to the consumer, who may use or dispose of the same
15 in any manner he or she sees fit without any obligation whatsoever on the consumer's
16 part to the business, including, but not limited to, bearing the cost of, or responsibility
17 for, shipping any goods, wares, merchandise, or products to the business.

18 31. As a result of the foregoing, all goods, wares, merchandise, or products sent to
19 Plaintiff and the Class Members as part of and pursuant to the terms of their VIP Family
20 Memberships are deemed to be an "unconditional gift" under Cal. Bus. & Prof. Code § 17603.

21 32. As a result of Road Runner's violations of the ARL, Plaintiff and the Class Members
22 suffered economic injury and are entitled to reimbursement of their VIP Family Membership
23 payments.

24 **C. Consumer Complaints About Injuries Resulting from Road Runner's VIP Family**
25 **Membership**

26 33. Unbeknownst to customers, once their payment information is entered into Road
27 Runner's computer system, the system stores the information indefinitely for the purpose of
28 automatically charging the customers' payment method an annual membership fee without their
29 knowledge or consent.

30 34. The reasonable consumer is likely to be deceived by Road Runner's misleading bait-
31 and-switch-like sales tactics. Consumers throughout the United States have publicly complained

1 about the unwanted and unexpected annual renewal charges associated with their VIP Family
2 Memberships.¹ As one former California member shared with the Yelp community:

3 "I'm another victim of their VIP auto renewal. I recently signed up for credit card
4 mobile alerts on my phone and I was woken up at 1am on a Sunday morning altering
5 me of a charge for \$44.99 from RSS*VIPCLUBROADRUNNER. There was a
6 phone number linked in the text and the perky recording that answered said,
7 'Welcome to the VIP hotline at Road Runner Sports! If you're calling about a recent
8 charge on your credit card statement, it's your annual renewal for your VIP club
9 membership. As our best customer you save...blah blah blah...' so they know people
10 see this charge and say 'What's this?' Then they have to explain it and try to sell it.
11 If it hadn't been for the alert, I might not have even noticed it on my statement. I
12 didn't sign up for auto renew, and I wasn't told about it. I never, ever, ever, sign up
13 for anything that involves an automatic renewal. What I do remember is having the
14 membership pushed on me because I bought a couple of pairs of shoes and was
15 offered a percentage back. If I paid anything for the membership, it was only because
16 I would have come out ahead on that purchase. I've heard others say it's difficult to
17 get them to stop the yearly charges... ...They know that many people don't check
18 their statements carefully and they know people are mad because there are
19 complaints about it online going back years. It's just a smarmy business practice, but
20 they do it anyway and make their employees complicit in the scam. I'm so mad. I
21 will never shop there again."²

22 35. Hundreds of other customers have publicly shared similar complaints about the VIP
23 Family Membership's unauthorized automatic annual renewal charges:

24 "Was a customer for many years until they started helping themselves to my credit
25 card without my approval, billing me \$27.99 for annual membership fee I did not
26 authorize... ...Must be a hot issue as the opening message on their phone line is to
27 explain the membership fee..."³

28 * * *

"This place wouldn't be so bad if it wasn't for the pains in the rear end at the counter
trying to sell you this VIP and that VIP membership. Then they go into your bank
account without your permission and take money for all their VIP memberships. Just
a real pain getting past their register without the hard sell for memberships that you
can't get out of."⁴

* * *

¹ <http://mikeschubert.com/2011/07/21/do-you-watch-your-credit-card-statements/>;
<https://www.yelp.com/biz/road-runner-sports-san-carlos?start=140>;
<https://www.complaintsboard.com/road-runner-sports-b126986>.

² <https://www.yelp.com/biz/road-runner-sports-san-carlos>.

³ <https://www.yelp.com/biz/road-runner-sports-san-carlos>.

⁴ <https://www.yelp.com/biz/road-runner-sports-san-carlos?start=20>.

1 "Beware of fraud!

2 This company will offer you a membership that will give you 10% off and discount
3 on your next purchase. What they don't tell you is that they will keep your credit card
4 information and set up a recurring \$25 charge on your card. They are so stupid, I
would actually buy from this store if it wasn't for their scams."⁵

* * *

5 "What a sleazy store. Last time I was there the clerk tried to sign me up as a "VIP"
6 member where I get special deals. I politely told him no thanks. He told me it was
7 free and that I would receive 10% off. Now it is about a year later and I see they have
charged my debit card 24.99 for a year long VIP membership."⁶

* * *

8 **"VIP program bait & switch**

9 Shopped Columbia MD store and all prices quoted changed at checkout. Told I had
10 to join VIP program for \$25 in order to get quoted prices. Told I would receive a \$10
11 coupon to purchase the socks I was looking at for my next purchase. Found out later
12 I had to spend \$75 in order to get \$10. Did not tell me VIP membership would
13 automatically be renewed (charged to my credit card) each year. Very pushy sales
people obviously well schooled in bait and switch technique. Last dollar I ever spend
in this store."⁷

* * *

14 "If I could give them 0 stars I would. Shady business practices they try to sneak a
15 yearly fee past you without mentioning it, and then merely apologize if you catch
16 it."⁸

17 36. Road Runner trains, coaches, and scripts its employees on how they are supposed to
18 systematically and uniformly sell the VIP Family Membership to customers. In fact, the number of
19 memberships sold is effectively the primary metric by which Road Runner measures the
20 performance of its retail sales employees. Employees who meet or exceed their minimum sales goals
21 are rewarded with bonuses, promotions, and other benefits.

22 37. Road Runner also continues to charge customers even after they request to cancel
23 their membership.

26 ⁵ <https://www.yelp.com/biz/road-runner-sports-san-carlos?start=200>.

27 ⁶ https://www.yelp.com/biz/road-runner-sports-san-carlos?start=100&sort_by=date_asc.

28 ⁷ <https://www.resellerratings.com/user/Tn10>.

⁸ <https://www.yelp.com/biz/road-runner-sports-san-carlos?start=160>.

38. When customers request to cancel their VIP Family Membership and avoid the automatic charges to which they did not consent to in the first place, Road Runner assures customers their membership will be cancelled and that they will not incur any additional charges (beyond the prorated charges for that year). Despite these assurances, Road Runner continues to charge customers without their knowledge or consent.

39. Road Runner fails to provide effective and easy-to-use mechanisms for customers to cancel their VIP Family Memberships. Customer complaints about the difficulty in cancelling the VIP Family Membership and receiving a refund even after requesting cancellation date back several years and are well documented publicly:

Was billed in September 2019 for a VIP membership that I had previously cancelled more than 18 months earlier in April of 2018. I disputed the charge, and Road Runner disputed my dispute, and so the charge stayed on my card. I consider this fraud.

* * *

Roadrunner Sports continues to Bill me from a membership 6years ago. I even called them to cancel and they continue to bill even when my credit card changes through the same banking institution it goes on my new card. I want credit for all charges over the last 6 years. This seems to be a big issue looking at all these complaints at the bbb. Customer service says the membership was never canceled, but I've never lived in Naperville Illinois for the last six years either where I joined nor bought anything from them since. I continue to call and cancel and it still gets charged.

* * *

Even though i canceled my VIP membership years ago they still charged me \$39.99 this year. When I called the first time I was assured it would be credited back to my Paypal account. Some time went by and no credit was received so I called back and was told that for some reason that credit was initiated but somehow suspended. I was promised I would see the credit in a few days. I did not. When I called back the third time I was met with a very rude gentleman who INSISTED that the amount had already been credited and gave me some BS confirmation numbers. Paypal has no record of a credit. The whole thing is a scam. I honestly cannot believe they're able to continue to get away with this.⁹

This is a scam & the only thing I'm surprised at is that authorities are not investigating OR this has not made the news. When you buy shoes, you also agree thru the fine print to a \$24.99 or \$27.99 VIP membership that supposedly you can cancel at any time.

* * *

⁹ <https://www.bbb.org/us/ca/san-diego/profile/sporting-goods-retail/road-runner-sports-inc-1126-5000470/complaints>

1 This is a scam & the only thing I'm surprised at is that authorities are not investigating
2 OR this has not made the news. When you buy shoes, you also agree thru the fine
3 print to a \$24.99 or \$27.99 VIP membership that supposedly you can cancel at any
4 time.

5 So the first surprise is the charge that shows up annually. And RoadRunner is hoping
6 you won't notice & they roll the \$24.99 or \$27.99 charge forever. The fun begins
7 when you do notice and this is how it goes: 1) You call them to cancel &
8 RoadRunner's customer rep says they cannot find any record of any purchase &
9 simply to call your credit card company & cancel through them b/c it must be their
10 error; 2) You call the credit card company & they cancel the charge pending the
11 investigation of the charge; 3) When the Credit card company calls RoadRunner VIP,
12 they actually provide the credit card company with supporting documentation & an
13 explanation of the charge and further state when the membership was purchased, I
14 was advised that it will renew automatically. In addition, when the Credit card
15 company sent me the documentation that RoadRunner sent them supporting the
16 documentation, I noticed that they had changed our address as well as ONE digit in
17 the last 4 digits of our phone number -- likely to make it more difficult to track; 4)
18 FURTHERMORE -- they tell the credit card company that they (I'm reading right
19 off the letter) "do not see any attempt of canceling the membership." An absolute lie.

20 5) The Credit card company then re-instates the charge, attaches proof (complete
21 with incorrect address & phone number); 6) Then you go through the same thing
22 again....and again.

23 It has been said to "just cancel your change the number on your card or have the
24 credit card company place a merchant block on RoadRunner". A friend of ours who
25 went though the same thing did change his credit card number & Roadrunner
26 responded by sending the \$27.99 charge to a collection agency which he is now
27 fighting.¹⁰

28 40. Many customers have made similar complaints about Road Runner's deceptive
conduct on the Better Business Bureau's website. Representative examples of these complaints
include:

Roadrunner Sports continues to Bill me from a membership 6years ago. I even called
them to cancel and they continue to bill even when my credit card changes through
the same banking institution it goes on my new card. I want credit for all charges
over the last 6 years. This seems to be a big issue looking at all these complaints at
the bbb. Customer service says the membership was never canceled, but I've never
lived in Naperville Illinois for the last six years either where I joined nor bought
anything from them since. I continue to call and cancel and it still gets charged

Even though i canceled my VIP membership years ago they still charged me \$39.99
this year. When I called the first time I was assured it would be credited back to my

¹⁰ <https://road-runner-sports.pissedconsumer.com/road-runner-vip-membership-is-a-scam-201702201011231.html>

On March 4th, 2012 I spent \$91.95 on a pair of shoes from Road Runner Sports. This transaction went smoothly and I was pleased with my purchase. However, I recently discovered that without my knowledge or my consent, this company has been charging my credit card an annual fee every March for a membership fee into their VIP program. I neither signed up for this program nor did I consent to their annual charge. I simply bought a pair of shoes from them once in 2012. The charges are as follows: 3/26/18 - \$28.99, 3/25/17 - \$27.99, 3/24/16 - \$26.99, 3/24/15 - \$24.99, 3/23/14 - \$24.99, 3/22/13 - \$24.99 for a grand total of \$158.94. They recently tried to charge me another \$39.99, but thankfully my credit card company caught the charge and flagged it as fraudulent. A quick internet search tells me that I am not the first person to make a complaint about this shady business practice.¹¹

41. Road Runner's marketing and sale of its VIP Family Membership violates the ARL because Road Runner (1) at the time of making the automatic renewal and continuous service offer, fails to present the offer terms in a clear and conspicuous manner before the purchase agreement is fulfilled and in visual proximity to the request for consent to the offer; (2) automatically charges customers' payment cards, or third party payment accounts an annual renewal fee without first obtaining their affirmative consent; and (3) fails to provide a retainable acknowledgement that contains the renewal offer terms, cancellation policy, and an easy-to-use method for cancellation.

42. At some time prior to 2017, Plaintiff O'Connor visited a Road Runner store in Studio City, California to buy a pair of shoes. Prior to purchasing the shoes, a sales representative told him he could receive a discount off his current purchase price if he paid a small fee for a VIP Family Membership.

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43. Prior to his purchasing the VIP Family Membership, Road Runner failed to clearly and conspicuously disclose the VIP Family Membership terms to Plaintiff in visual proximity to the request for consent to the terms. Specifically, Road Runner failed to notify Plaintiff that his membership would automatically renew annually and that his credit card would be charged every year unless and until he successfully cancelled the membership. At no point did Road Runner properly obtain Plaintiff's affirmative consent to an agreement containing the automatic renewal terms or continuous service offer terms.

44. On November 26, 2017, Road Runner charged Plaintiff O'Connor's credit card \$27.99 to automatically renew his membership. Road Runner did this without obtaining Plaintiff's affirmative consent to the automatic renewal offer terms. On three subsequent occasions, so far, Road Runner charged Plaintiff's credit card to renew his membership and without obtaining Plaintiff's affirmative consent: November 25, 2018 (\$28.99), November 26, 2019 (\$39.99), and November 30, 2020 (\$39.99). Plaintiff paid his credit card bills without noticing that Road Runner had charged him for a VIP Family Membership.

45. Had Road Runner complied with its disclosure obligations under the ARL, Plaintiff would not have purchased the VIP Family Membership or he would have cancelled his membership prior to the expiration of the initial subscription period. As a direct result of Road Runner's violations of the ARL, Plaintiff suffered economic injury.

THE CALIFORNIA CLASS ALLEGATIONS

46. Plaintiff brings this action on behalf of himself and all other persons similarly situated, pursuant to the provisions of Cal. Code. Civ. Proc. § 382.

47. The Class that Plaintiff seeks to represent is defined as follows:

All persons within California who purchased a Road Runner VIP Family Membership from Road Runner and who were charged a fee to renew their membership.

48. Excluded from the Class are: (1) Road Runner and its officers, directors, employees, principals, affiliated entities, controlling entities, agents, and other affiliates; (2) the agents, affiliates, legal representatives, heirs, attorneys at law, attorneys in fact, or assignees of such persons

1 or entities described herein; and (3) the Judge(s) assigned to this case and any members of their
2 immediate families.

3 49. Certification of Plaintiff's claims for classwide treatment is appropriate because
4 Plaintiff can prove the elements of his claims on a classwide basis using the same evidence as would
5 be used to prove those elements in individual actions alleging the same claims.

6 50. The Class members are so numerous and geographically dispersed throughout
7 California that joinder of all Class members would be impracticable. While Plaintiff does not know
8 the precise number of Class members, Plaintiff reasonably believes that they number in the
9 thousands and that their identities can be ascertained from Road Runner's records. According to
10 Road Runner's website, there are over 842,500 current VIP Family Membership holders.

11 51. There is a well-defined community of interest in the common questions of law and
12 fact affecting all Class Members. The questions of law and fact common to Class Members
13 predominate over questions affecting only individual Class Members, and include without
14 limitation:

- 15 a. Whether Road Runner's VIP Family Membership loyalty program constitutes an
16 automatic renewal and/or continuous service plan or arrangement for the
17 purposes of Cal. Bus. & Prof. Code § 17601;
- 18 b. Whether the information presented to Plaintiff and Class Members by Road
19 Runner prior to their signing up for the VIP Family Membership contained all
20 the disclosures required by Cal. Bus. & Prof. Code § 17601(b);
- 21 c. Whether the information regarding the VIP Family Membership auto-renewal
22 provided by Road Runner at the point of sale was provided in a "clear and
23 conspicuous manner" as defined by Cal. Bus. & Prof. Code § 17601(c);
- 24 d. Whether Road Runner failed to provide disclosures and acknowledgment to
25 Plaintiff and the Class Members as required by Cal. Bus. & Prof. Code
26 §§ 17602(a)(1)-(3);
- 27 e. Whether Road Runner charged Plaintiff's and Class Members' debit or credit
28 cards for an automatic renewal or continuous service offer without first obtaining

1 their affirmative consent to the agreement containing the automatic renewal or
2 continuous service offer terms in violation of Cal. Bus. & Prof. Code
3 § 17602(a)(2);

4 f. Whether Road Runner failed to present the automatic renewal or continuous
5 service offer terms in a clear and conspicuous manner before the subscription or
6 purchasing agreement was fulfilled and in visual proximity to the request for
7 consent to the offer in violation of Cal. Bus. & Prof. Code § 17602(a)(3);

8 g. Whether Plaintiff and Class Members are entitled to restitution in accordance
9 with Cal. Bus. & Prof. Code § 17603, for money paid by them in circumstances
10 where the goods provided by Road Runner are deemed an unconditional gift;

11 h. Whether Plaintiff and Class Members are entitled to monetary relief;

12 i. Whether Plaintiff and Class Members are entitled to injunctive relief;

13 j. Whether Plaintiff and Class Members are entitled to declaratory relief; and

14 k. Whether Plaintiff and Class Members are entitled to attorneys' fees and costs.

15 52. Plaintiff's claims are typical of the claims of Class Members. Plaintiff, like all Class
16 Members, was deprived of money and/or property rightly belonging to him, and sustained economic
17 injury as a result thereof, arising out of and caused by Road Runner's uniform and systematic course
18 of conduct in violation of California law as alleged herein, in similar or substantially the same ways.
19 Plaintiff and Class Members were and are similarly or identically harmed by the same unlawful,
20 unfair, deceptive, and persuasive pattern of misconduct engaged in by Road Runner.

21 53. Plaintiff is an adequate representative of the Class because his interests do not
22 conflict with the interests of the Class Members he seeks to represent, and he is similarly situated
23 with members of the Class. Plaintiff will fairly, adequately and vigorously represent and protect the
24 interests of the Class and has retained counsel who are competent and experienced in the prosecution
25 of class action litigation.

26 54. A class action is superior to other available means for the fair and efficient
27 adjudication of this controversy. Plaintiff and the members of the Class have suffered and will
28

1 continue to suffer harm as a result of Road Runner's conduct. Road Runner continues to deny
2 wrongdoing or remedy the conduct that is the subject of this complaint.

3 55. Road Runner has have acted or refused to act on grounds generally applicable to the
4 entire Class, thereby making it appropriate for this Court to grant final injunctive and declaratory
5 relief with respect to the Class as a whole.

6 **FIRST CAUSE OF ACTION**

7 **Violation of California's Unfair Competition Law**

8 **(Cal. Bus. & Prof. Code §§ 17200, *et seq.*)**

9 56. Plaintiff repeats and realleges all other paragraphs as if fully set forth herein.

10 57. Defendants are "person[s]" as that term is defined under Cal. Bus. & Prof.
11 Code § 17201.

12 58. The UCL, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, prohibits any "unlawful,"
13 "fraudulent," or "unfair" business act or practice. In the course of business, Defendants committed
14 "unlawful" business practices by, among other things, making the representations and omissions of
15 material facts, as set forth more fully herein, and violating Cal. Bus. & Prof. Code §§ 17600, *et seq.*,
16 and the common law. Plaintiff, individually and on behalf of the other Class Members, reserves the
17 right to allege other violations of the law, which constitute other unlawful business acts or practices.
18 Such conduct is ongoing and continues to this date.

19 59. During the class period, Road Runner made, and continues to make, automatic
20 renewal or continuous service offers to consumers in in California, through its VIP Family
21 Membership program, and (1) at the time of making the automatic renewal or continuous service
22 offers, failed, and continues to fail, to present the automatic renewal or continuous service offer
23 terms in a clear and conspicuous manner before the subscription or purchasing agreement is fulfilled
24 and in visual proximity, . . . , in temporal proximity, to the request for consent to the offer in violation
25 of Cal. Bus. & Prof. Code § 17602(a)(1); (2) charged, and continues to charge, Plaintiff's and Class
26 Members' credit or debit cards, or third party payment accounts, without first obtaining their
27 affirmative consent to the agreement containing the automatic renewal or continuous service offer
28 terms in violation of Cal. Bus. & Prof. Code § 17602(a)(2); and (3) failed, and continues to fail, to

1 provide an acknowledgment that includes the automatic renewal or continuous service offer terms,
2 cancellation policy, and information regarding how to cancel in a manner that is capable of being
3 retained by Plaintiff and the Class Members in violation of Cal. Bus. & Prof. Code § 17602(a)(3).

4 60. Defendants also failed to provide customers the opportunity to cancel their VIP
5 Family Membership in violation of Cal. Bus. & Prof. Code § 17602(b), which requires “business
6 that makes an automatic renewal offer or continuous service offer [] [to] provide a toll-free telephone
7 number, electronic mail address, a postal address if the seller directly bills the consumer, or [] [to]
8 provide another cost-effective, timely, and easy-to-use mechanism for cancellation that shall be
9 described in the acknowledgement specified in paragraph (3) of subdivision (a).”

10 61. Further, as set forth in this Complaint, Plaintiff alleges violations of California’s
11 Automatic Renewal Law, consumer protection and unfair competition laws in California resulting
12 in harm to consumers. Defendants’ acts and omissions also violate and offend the public policy
13 against engaging in unfair competition and deceptive conduct towards consumers, as well as the
14 California Legislature’s intent, codified by the Automatic Renewal Law, “to end the practice of
15 ongoing charging of consumer credit or debit cards or third party payment accounts without the
16 consumers’ explicit consent.” Cal. Bus. & Prof. Code § 17602. This conduct constitutes violations
17 of the unfair prong of the UCL. There were reasonably available alternatives to further Defendants’
18 legitimate business interests other than the conduct described herein.

19 62. The UCL also prohibits any “fraudulent business act or practice.” In the course of
20 business, Defendants committed “fraudulent business act[s] or practices” by, among other things,
21 failing to make the required disclosures under Cal. Bus. & Prof. Code §§ 17600, *et seq.*

22 63. Defendants’ actions, claims, omissions, and misleading statements, as more fully set
23 forth above, were also false or misleading and likely to deceive the consuming public within the
24 meaning of the UCL.

25 64. Plaintiff, in fact, had been deceived as a result of his reliance on Defendants’ material
26 representations and omissions, which are described above. Plaintiff has suffered injury in fact and
27 lost money as a result of Defendants’ acts and omissions. Such injury includes being charged an
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1 annual renewal membership fee for a Road Runner VIP Family Membership, and other damages
2 proximately caused by Defendants' misconduct as alleged herein.

3 65. Unless restrained and enjoined, Defendants will continue to engage in the above-
4 described conduct. Accordingly, injunctive relief is appropriate. Plaintiff, on behalf of himself, all
5 others similarly situated, and the general public, seeks restitution from Defendants of all money
6 obtained from Plaintiff and the other Class Members as a result of unfair competition, an injunction
7 prohibiting Defendants from continuing such practices, and all other relief this Court deems
8 appropriate, consistent with Cal. Bus. & Prof. Code § 17203.

9 **SECOND CAUSE OF ACTION**

10 **Violation of California's Consumers Legal Remedies Act**

11 **(Cal. Civ. Code §§ 1750, *et seq.*)**

12 66. Plaintiff repeats and realleges all other paragraphs as if fully set forth herein.

13 67. Defendants are a "person" under Cal. Civ. Code § 1761(c). Road Runner's VIP
14 Family Membership program is a "good or service" within the meaning of the Act.

15 68. Plaintiff and each of the Class Members are "consumers" as defined by Cal. Civ.
16 Code § 1761(d), because they are individuals who acquired or purchased "goods or services for
17 personal, family, or household purposes" including Road Runner running and walking shoes,
18 athletic apparel, and other related gear and accessories.

19 69. Defendants' conduct, as described herein, which includes its failure to timely and
20 adequately disclose the terms of its automatic renewal and/or continuous service associated with its
21 Road Runner VIP Family Membership program pursuant to Cal. Bus. & Prof. Code §§ 17600, *et*
22 *seq.* violates California's Consumers Legal Remedies Act ("CLRA"), Cal. Civ. Code §§ 1750, *et*
23 *seq.* Specifically, Defendants violated the CLRA by misrepresenting and omitting material facts
24 regarding the automatic renewal and/or continuous service terms of its Road Runner VIP Family
25 Membership program, and by engaging in the following practices proscribed by Cal. Civ. Code
26 § 1770(a) in transactions that were intended to result in, and did result in, the sale of its VIP Family
27 Membership program:
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- a. Advertising goods or services with intent not to sell them as advertised (Civil Code § 1770(a)(9));
- b. Representing that the subject of a transaction has been supplied in accordance with a previous representation when it has not (Civil Code § 1770(a)(16));
- c. Representing that consumers will receive a rebate, discount, or other economic benefit, if the earning of the benefit is contingent on an event to occur subsequent to the consummation of the transaction (Civil Code § 1770(a)(17));
- d. Inserting an unconscionable provision in the contract (Civil Code § 1770(a)(19)).

70. Defendants violated the CLRA by failing to clearly and conspicuously disclose the terms of its automatic renewal and/or continuous service associated with its Road Runner VIP Family Membership program, automatically charging Plaintiff and members of the Class a fee to renew their membership, and failing to cancel the VIP Family Memberships upon request.

71. Pursuant to Cal. Civ. Code § 1782(d), Plaintiff, individually and on behalf of the other Class Members, seeks a Court order enjoining the above-described wrongful acts and practices of Defendants and for restitution and disgorgement.

72. Pursuant to § 1782 of the Act, Road Runner was notified in writing by certified mail of the particular violations of § 1770 of the Act, with a demand that Road Runner rectify the problems associated with the actions detailed above and give notice to all affected consumers of Road Runner's intent to so act. A copy of the letter is attached hereto as Exhibit A.

73. Road Runner has failed to rectify or agree to rectify the problems associated with the actions detailed above and give notice to all affected consumers within 30 days of the date of written notice pursuant to § 1782 of the Act. Therefore, Plaintiff further seeks claims for actual, punitive and statutory damages, as appropriate.

74. Road Runner's conduct is fraudulent, wanton, and malicious.

75. Pursuant to § 1782(d) of the Act, attached as Exhibit B is the affidavit showing that this action was commenced in the proper form.

Declaratory Relief

77. An actual controversy has arisen regarding Road Runner's compliance with California's Automatic Renewal Law, Cal. Bus. & Prof. Code § 17600, *et seq.* Road Runner disputes the allegations.

78. Plaintiff and Class Members continue to suffer damages, other injury or harm as a result of Defendants' failure to comply with California's Automatic Renewal Law, continuing to charge an annual renewal membership fee without timely and adequate disclosures, and Defendants' failure to cancel memberships upon request.

79. Plaintiff and Class Members request a judicial determination of their rights and duties, and ask the Court to enter a judgment declaring, *inter alia*, (i) Road Runner owed (and continues to owe) a legal duty to comply with California's Automatic Renewal Law, (ii) Road Runner breached (and continues to breach) such legal duties by continuing to charge annual renewal membership fees and making it difficult for consumers to cancel their membership and not cancelling memberships upon request, and (iii) Road Runner's breach of its legal duties directly and proximately caused the resulting damages, injury, or harm suffered by Plaintiff and Class Members. A declaration from the Court ordering Road Runner to stop its illegal practices is required. Plaintiff and Class Members will otherwise continue to suffer harm as alleged above.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against each Defendant, jointly and severally, as follows:

A. An Order certifying the proposed Class defined herein, designating Plaintiff as representative of said Class, and appointing the undersigned counsel as Class Counsel;

B. For restitution of all amounts obtained by Road Runner as a result of its wrongful conduct in an amount according to proof at trial, plus pre-judgment and post-judgment interest thereon;

- 1 C. For all recoverable compensatory, consequential, actual, and/or statutory damages in
2 the maximum amount permitted by law;
- 3 D. For punitive and exemplary damages;
- 4 E. For other equitable relief;
- 5 F. For such injunctive relief, declaratory relief, orders, or judgment as necessary or
6 appropriate to prevent these acts and practices;
- 7 G. For payment of attorneys' fees and costs of suit as allowable by law; and
- 8 H. For all such other and further relief as the Court deems just and proper.

9 **DEMAND FOR JURY TRIAL**

10 Plaintiff hereby demands a jury trial on all issues so triable.

11 Respectfully submitted,

12 Dated: February 16, 2021

BLOOD HURST & O'REARDON, LLP
TIMOTHY G. BLOOD (149343)
THOMAS J. O'REARDON II (247952)
JENNIFER L. MACPHERSON (202021)

15 By: s/ Timothy G. Blood

16 TIMOTHY G. BLOOD

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26 *Attorneys for Plaintiff*

Exhibit A

Timothy G. Blood
tblood@bholaw.com

May 22, 2020

VIA CERTIFIED MAIL (RETURN RECEIPT)
(RECEIPT NO. 7018 0040 0000 8022 5474)

Michael Gotfredson, President & CEO
Road Runner Sports, Inc.
Road Runner Sports Retail, Inc.
5549 Copley Drive
San Diego, CA 92111

Dear Mr. Gotfredson:

We represent Susan Costa ("Plaintiff") and all other consumers similarly situated in an action against Road Runner Sports, Inc. and Road Runners Sports Retail, Inc. (collectively, "Road Runner" or "Defendants"), arising out of, *inter alia*, Road Runner's failure to disclose to members of its VIP Family Rewards and VIP Family Rewards Plus loyalty programs (collectively, "VIP Family Memberships") that membership will automatically renew each year at which time Defendants will charge members' debit or credit cards on file an annual membership fee of \$39.99 or more.

Road Runner's practice of automatically renewing customers' VIP Family Memberships without obtaining affirmative consent prior to the customers' purchase, without providing the auto-renewal terms in a clear and conspicuous manner prior to purchase, and without providing an acknowledgement identifying an easy and efficient mechanism for customers to cancel their VIP Family Memberships is deceptive and not truthful. The full claims, including the facts and circumstances surrounding these claims, are detailed in the Class Action Complaint, a copy of which is attached and incorporated by this reference.

These representations and omissions are false and misleading and constitute unfair methods of competition and unlawful, unfair, and fraudulent acts or practices, undertaken by Defendants with the intent to result in the sale of its VIP Family Memberships to the consuming public.

Defendants' practices constitute violations of the Consumers Legal Remedies Act, California Civil Code §§ 1750, *et seq.* Specifically, Defendants' practices violate California Civil Code § 1770(a) under, *inter alia*, the following subdivisions:

- (9) Advertising goods or services with intent not to sell them as advertised.

* * *

- (16) Representing that the subject of a transaction has been supplied in accordance with a previous representation when it has not.

* * *

- (17) Representing that consumers will receive a rebate, discount, or other economic benefit, if the earning of the benefit is contingent on an event to occur subsequent to the consummation of the transaction.

Michael Gotfredson, President & CEO
Road Runner Sports, Inc.
Road Runner Sports Retail, Inc.
May 22, 2020
Page 2

* * *

(19) Inserting an unconscionable provision in the contract.

As detailed in the attached Complaint, Defendants' practices also violate California Business and Professions Code §§ 17200, *et seq.* and California's Automatic Renewal Law, Cal. Bus. & Prof. Code §§ 17600 *et seq.*

While the Complaint constitutes sufficient notice of the claims asserted, pursuant to California Civil Code § 1782, we hereby demand on behalf of our client and all others similarly situated that Defendants immediately correct and rectify these violations by ceasing the misleading marketing campaign, ceasing dissemination of false and misleading information as described in the enclosed Complaint, and initiating a corrective advertising campaign to re-educate consumers regarding the truth of the products at issue. In addition, Road Runner must offer to refund the annual renewal fee charged to all consumer purchasers of its VIP Family Membership programs, plus provide reimbursement for interest, costs, and fees.

We await your response.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Timothy G. Blood', written over a horizontal line.

TIMOTHY G. BLOOD

TGB:jk

Enclosure

Exhibit B

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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO – CENTRAL DIVISION

SUSAN COSTA, an individual. on behalf of
herself and all others similarly situated,

Plaintiff,

v.

ROAD RUNNER SPORTS, INC., ROAD
RUNNER SPORTS RETAIL, INC., and
DOES 1-50, inclusive,

Defendants.

Case No.

CLASS ACTION

**AFFIDAVIT OF TIMOTHY G. BLOOD
PURSUANT TO CALIFORNIA CIVIL
CODE § 1780(d)**

1 I, TIMOTHY G. BLOOD, declare as follows:

2 1. I am an attorney duly licensed to practice before all of the courts of the State of
3 California. I am the managing partner of the law firm of Blood Hurst & O'Reardon LLP, one of the
4 counsel of record for plaintiff in the above-entitled action.

5 2. Defendants Road Runner Sports, Inc. and Road Runner Sports Retail, Inc., Inc. have
6 done, and are doing, business in California, including San Diego County. Such business includes
7 the marketing, promotion, distribution, and sale of running shoes, athletic apparel, and VIP Family
8 Rewards Memberships. Road Runner's corporate headquarters is also located in San Diego County.

9 3. Plaintiff Susan Costa is a resident of San Diego County, California, and purchased
10 the VIP Family Rewards Membership in San Diego County, California.

11 I declare under penalty of perjury under the laws of the State of California that the foregoing
12 is true and correct. Executed this 22nd day of May, 2020, at San Diego, California.

13
14 *s/ Timothy G. Blood*

15 _____
16 TIMOTHY G. BLOOD
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CERTIFICATE OF SERVICE

Susan Costa v. Road Runner Sports, Inc., et al.
Case No. 37-2020-00017100-CU-MC-CTL

I hereby certify that on February 16, 2021, I electronically filed the foregoing with the Clerk of the Court using One Legal Online Court Services, and electronically served the foregoing upon the attorney(s) of record for each party in this case at the e-mail address(es) registered for such service through One Legal Online Court Services, addressed as follows:

Attorneys for Defendants Road Runner Sports, Inc.; and Road Runner Sports Retail, Inc.

THE WEITZ LAW OFFICE
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shonmorgan@quinnemanuel.com
jackbaumann@quinnemanuel.com

Parties may access this filing through the Court's website.

I certify under penalty of perjury that the foregoing is true and correct. Executed on February 16, 2021.

s/ Janet Kohnenberger

Janet Kohnenberger
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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Road Runner Sports Settlement Resolves VIP Rewards Membership Renewal Class Action Lawsuit](#)
