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Judge decertifies class action over restaurant surcharge

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After certifying a class of restaurant customers two years ago who said a surcharge to cover employee health costs was akin to price fixing, a Los Angeles judge has now decertified it.

Superior Court Judge Maren E. Nelson said Monday decertification was warranted because the lead plaintiff, Margaret Imhoff, was going through bankruptcy at the time she certified the class. Therefore, she lacked standing and was not a real party in interest because her claims could only be asserted by the bankruptcy trustee.

Nelson granted a motion to decertify brought by a group of high-end restaurant owners who are being sued for instituting a 3% and 3.5% surcharge on diners' bills to offset costs they had to pay for employee health benefits under the Affordable Care Act. The lawsuit alleged Los Angeles-area chefs for establishments, such as Rustic Canyon, Huckleberry, Lucques and Hungry Cat, engaged in anti-competitive practices by secretly getting togeth-

er and instituting the surcharge.

The plaintiff sought to institute a new plaintiff and asked for leave to amend.

Defense attorneys argued the lead plaintiff concealed her bankruptcy proceedings, causing the class to be certified under false pretenses.

"In fact, the court should have never reached the class certification issue at all in light of Imhoff's bankruptcy," wrote Gregory L. Sabo of Chapman Glucksman Dean & Roeb APC, an attorney for defendants. "If certification had been considered with the true facts before the court, defendant's arguments against certification would have been very different than they actually were given that, at the time the matter was heard, Imhoff was concealing her bankruptcy from defendants such that defendants could not use that to challenge Imhoff's adequacy."

Defense attorneys asked to dismiss the action.

The owners have argued customers could ask for the surcharge to be removed. Some owners who were did not adopt the charge, defendants said. They also said the agreement was not done in secret because it was mentioned in a restaurant newslet-

ter. The class said secret or not, the charge was price fixing.

At the time of certification in January 2018, Nelson said that whether an antitrust violation existed or not was a question that could be answered by proof. *Imhoff v. Goin et al.*, BC593161 (L.A. Super. Ct., filed Sept. 1, 2015).

Daniel R. Sterrett of Sterrett Law in San Francisco, an attorney for the class, did not respond to a request for comment. Nor did Sabo.

The class action was filed in 2014 against 17 restaurants, including prominent city chefs Suzanne Goin, Josh Loeb and David Lentz. The complaint alleged Loeb reached out to chefs to levy the surcharge so it would appear normal. Josiah Citrin, co-owner of Melisse, was quoted in the complaint as saying, "We decided it would be a good thing to do it as a group . . . Usually when lots of people do things it's easier to make changes."

The class consisted of anyone with a receipt showing they paid the employee benefits surcharge, save for defendants' employees.

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