Court of Appeal Case No. D081839

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT, DIVISION ONE

AMY SHERLOCK, an individual,

Plaintiff and Appellant,

v.

JESSICA McELFRESH,

Defendant and Respondent.

Appeal From a Judgment of the Superior Court, County of San Diego
Case No. 37-2021-0050889-CU-T-CTL
The Honorable James A. Mangione

RESPONDENT'S BRIEF

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

The following entities or persons have either (1) an ownership interest of 10 percent or more in the party filing this certificate (Cal. Rules of Court, rule 8.208(e)(1)), or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves (Cal. Rules of Court, rule 8.208(e)(2)):

(1) Respondent knows of no entity or person that must be listed under Rule 8.208(e) (1) or (2).

/S/ Laura Stewart

Laura Stewart

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

STATUTES, RULES AND REGULATIONS

I.

INTRODUCTION

Appellant Amy Sherlock (hereinafter "SHERLOCK") appeals from a judgment entered against her and in favor of respondent Jessica McElfresh (hereinafter referred to as "McELFRESH") after the trial court sustained McELFRESH's demurrer to SHERLOCK's First Amended Complaint ("FAC") without leave to amend.

For the reasons stated below, SHERLOCK's FAC did not (and cannot) state a valid cause of action against McELFRESH. The trial court's judgment should therefore be affirmed.

II.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

A. Allegations in SHERLOCK's FAC Relevant to McELFRESH

SHERLOCK sued McELFRESH and a litany of other individuals and entities in the San Diego County Superior Court. The relevant pleading is the FAC (APPELLANT's Request for Judicial Notice or "RJN", Ex. 1). The FAC contained causes of action for: (1) conspiracy to monopolize in violation of the Cartwright Act (*Business & Professions Code* §16700, et seq.); (2) conversion; (3) civil conspiracy; (4) declaratory relief; (5) unfair competition and unlawful business practices (*Business & Professions Code* §17200, et seq.); (6) declaratory relief; and (7) civil conspiracy. Only the causes of action for (1) conspiracy to monopolize in violation of the Cartwright Act (*Business & Professions Code* §16700, et seq.), (5) unfair

competition and unlawful business practices (*Business & Professions Code* §17200, et seq.), and (7) civil conspiracy were alleged against McELFRESH.

In the FAC, SHERLOCK alleged that the defendants are part of a conspiracy to create an unlawful monopoly in the cannabis market in San Diego by ensuring that the limited number of conditional use permits ("CUPs") go to principals of the enterprise. (RJN, Ex. 1 at ¶¶ 1-2). It was alleged that SHERLOCK and her children were deprived of CUPs for properties located at 1210 Olive Street in Ramona ("the Ramona CUP") and 8863 Balboa Avenue in San Diego ("the Balboa CUP") owned by her deceased husband/father. (RJN, Ex. 1 at ¶¶ 64-99). But a majority of the FAC was devoted to discussing how someone named Darryl Cotton was deprived of a CUP for a property located at 6220 Federal Blvd. in San Diego ("the Federal CUP") and the litigation between Mr. Cotton and defendant Larry Geraci which resulted in a judgment against Mr. Cotton. (RJN, Ex. 1 at ¶¶ 116-265). In fact, the sixth cause of action was brought by plaintiff Andrew Flores against Mr. Geraci seeking a judicial declaration that the judgment Mr. Geraci obtained against Mr. Cotton is void. (RJN, Ex. 1 at ¶¶ 324-332). It was alleged that plaintiffs and Mr. Cotton brought two other lawsuits in federal court seeking to have the judgment against Mr. Cotton in the *Geraci* lawsuit declared void, but the Court would not do that for him, so the State court must address it here. (RJN, Ex. 1 at ¶¶ 276-279).

With respect to McELFRESH, it was alleged that she was charged in May 2017 with conspiracy to manufacture a controlled substance and obstruction of justice for her efforts to conceal a client's alleged illegal

marijuana manufacturing operations from government inspectors. (RJN, Ex. 1 at ¶ 54). In July 2018, she entered into a Deferred Prosecution Agreement ("DPA") that would allow her to plead guilty in 12 months. (RJN, Ex. 1 at ¶ 55). The DPA prohibited her from violating any other laws (except for minor infractions) or face resumption of all charges filed against her. (RJN, Ex. 1 at ¶ 56).

It was further alleged that during the *Geraci* litigation, Mr. Cotton acquired a "litigation investor" named Mr. Hurtado. (RJN, Ex. 1 at ¶ 153). In April 2017, Mr. Hurtado consulted with McELFRESH to represent Mr. Cotton and she agreed to do so, but on April 13, 2017, she e-mailed Mr. Hurtado that "upon further reflection" she did "not have the bandwidth" to represent Mr. Cotton and referred Mr. Hurtado to defendant David Demian at Finch, Thornton & Baird. (RJN, Ex. 1 at ¶¶ 154-156). At that time, Mr. Cotton did not know that McELFRESH had shared clients with defendant Gina Austin or that she also worked for defendant Salam Razuki and Mr. Cotton did not understand "the gravity of an attorney who fails to disclose conflicts of interests between clients." (RJN, Ex. 1 at ¶ 182). It was further alleged that the $260,109.28 judgment against Mr. Cotton in the *Geraci* lawsuit included legal fees for McELFRESH's representation of Mr. Geraci in advancing the interests of the Federal CUP application with the City (RJN, Ex. 1 at ¶ 208) and McELFRESH's representation of Mr. Geraci violated her fiduciary duties to Mr. Cotton as her former client, the terms of her DPA as she knew Mr. Geraci could not lawfully own a CUP, and *Penal Code* §115 (RJN, Ex. 1 at ¶ 318).[1]

[1] Exhibit 4 to SHERLOCK's request for judicial notice is an invoice from McELFRESH to Mr. Geraci. Exhibit 4 not a matter which the trial court took judicial notice of and is not the proper subject for judicial notice under California *Evidence Code* § 452 [official acts or records of "[f]acts and propositions that are of common knowledge" or "are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably

It was further alleged that Ms. Austin discouraged someone named Williams from purchasing a property in Lemon Grove because it did not qualify for a CUP. (RJN, Ex. 1 at ¶¶ 267-269). Subsequently, a CUP was issued for the Lemon Grove property and the parties who acquired the CUP were represented by McELFRESH. (RJN, Ex. 1 at ¶¶ 270-271).

B. The Trial Court's Dismissal of SHERLOCK's FAC

McELFRESH responded to the FAC by way of a demurrer and motion to strike. In the demurrer, McELFRESH argued that none of the three causes of action alleged against her in SHERLOCK's FAC (violation of the Cartwright Act, Unfair Business Practices or civil conspiracy) stated a legally valid claim against her. (1 CT 59-79). In her motion to strike, she alleged that SHERLOCK's claim for punitive damages was not warranted and should be striken. (1 CT 80-97).

SHERLOCK filed an opposition to the motion to strike, but no opposition to the demurrer. (1 CT 140-149).

On December 2, 2022, after a hearing, the trial court sustained McELFRESH's demurrer without leave to amend. (1 CT 175). With respect to the first cause of action for violation of the Cartwright Act, the court said:

> "…the complaint must allege, with specificity: 'The formation and operation of the conspiracy; the illegal acts done pursuant thereto; a purpose to restrain trade; and the damage caused by such

indisputable accuracy"]. In any event, it adds nothing to this appeal because the FAC already alleged that McELFRESH represented Mr. Geraci and the facts alleged in the FAC are, for the purposes of McELRESH's demurrer and for the purposes of this appeal, assumed to be true..

> acts.' (G.H.I.I. v. MTS, Inc. (1983) 147 Cal.App.3d 256, 265.) Here, the FAC identifies three 'overt acts' and/or 'concerted action' committed by Defendants in furtherance of the conspiracy: '[1] unlawfully applying for or acquiring CUPs through the use of proxies and/or forged documents, [2] sham litigation, and [3] acts and threats of violence against competitors and/or parties who could threaten or expose their illegal actions in furtherance of the conspiracy.' (FAC, ¶ 283.) The second and third acts are alleged only against Defendant Geraci and Defendants Alexander and Stellmacher, respectively. Furthermore, the FAC does not allege that Defendant McEflresh unlawfully applied for or acquired the CUPs at issue." (1 CT 175).

With respect to the fifth cause of action for Unfair Business Practices, the court said: "Plaintiffs have failed to allege any injury they suffered as a result of Defendant McElfresh's actions. At most, the FAC alleges potential injuries suffered by Mr. Cotton, who is not a party to this case. (1 CT 175-176).

With respect to the seventh cause of action for civil conspiracy, the court said: "the Court understands this cause of action to relate to the purported theft of the Sherlock property. However, there are no allegations against Defendant McElfresh that are in any way related to the Sherlocks, their property, or the Balboa and/or Ramona CUPs." (1 CT 176).

The court denied McELFRESH's motion to strike as moot. (1 CT 176). Judgment was entered against SHERLOCK and in favor of McELFRESH (1 CT 200-203) and this appeal followed (1 CT 186-190).[2]

III.

DISCUSSION

A. Standard of Review

On appeal from a judgment of dismissal after a demurrer is sustained without leave to amend, appellate courts examine the complaint's factual allegations "de novo to determine whether the complaint alleges facts sufficient to state a cause of action under any legal theory." *Morris v. JP Morgan Chase Bank, N.A.* (2022) 78 Cal.App.5th 279, 292 (internal quotes omitted). The courts will not, however, assume the truth of contentions, deductions or conclusions of fact or law (*Jenkins v. JP Morgan Chase Bank, N.A.* (2013) 216 Cal.App.4th 497, 506, disapproved on other grounds in *Yvanova v. New Century Mortg. Corp.* (2016) 62 Cal.4th 919, 939, fn. 13; *Moore v. Regents of Univ. of Calif.* (1990) 51 Cal.3d 120, 125) and may disregard allegations that are contrary to the law or to a fact of which judicial notice may be taken (*Fundin v. Chicago Pneumatic Tool Co.* (1984) 152 Cal.App.3d 951, 955).

Review of the trial court's failure to grant leave to amend is conducted under the abuse of discretion standard. The appellate court will reverse for abuse of discretion if it determines there is a reasonable possibility the pleading can be cured by amendment; otherwise, the trial

[2] The Notice of Appeal only identifies Amy Sherlock as the appellant. SHERLOCK argues in her Opening Brief that based on *Toal v. Tardif* (2009) 178 Cal.App.4th 1208, her minor children and Mr. Flores should also be considered proper appellants here. McELFRESH concedes that SHERLOCK's minor children may have been inadvertently left off the Notice of Appeal and may be considered proper appellants, but not Mr. Flores. In *Toal*, the purported appellants were husband and wife, whereas here, Mr. Flores is of no relation to SHERLOCK and the intent to include him as an appellate is not clear.

court's decision will be affirmed. *Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081; *Morris v. JP Morgan Chase Bank, N.A.* (2022) 78 Cal.App.5th 279, 292-293. The plaintiff-appellant has the burden of demonstrating abuse of discretion by showing how the complaint can be amended to state a cause of action. *Schifando v. City of Los Angeles, supra,* 31 Cal.4th at p. 1081; *LeBrun v. CBS Television Studios, Inc.* (2021) 68 Cal.App.5th 199, 212 [plaintiffs' failure on appeal to suggest how they could amend complaint required affirmance].

B. The Trial Court Properly Sustained McELFRESH's Demurrer to SHERLOCK's FAC without Leave to Amend because None of the Three Causes of Action against Her Stated a Valid Cause of Action

Reviewing the FAC *de novo*, none of the three causes of action alleged against McELFRESH stated a valid cause of action.

1. The First Cause of Action for Violation of the Cartwright Act Did Not State a Valid Cause of Action against McELFRESH

The Cartwright Act is contained in California *Business and Professions Code* § 16700, et seq. Sections 16720 and 16726 generally codify the common law prohibition against restraint of trade. *Corwin v. Los Angeles Newspaper Service Bureau, Inc.* (1971) 4 Cal.3d 842, 852. Recovery is provided under the Cartwright Act where the activities of a combination of capital, skill or acts by two or more persons result in a restraint of trade. *G.H.I.I. v. MTS, Inc.* (1983) 147 Cal.App.3d 256, 265,

citing *Weissensee v. Chronicle Publishing Co.* (1976) 59 Cal.App.3d 728, 729. In order to maintain a cause of action for such combination in restraint of trade, the complaint must allege: The formation and operation of the conspiracy; the illegal acts done pursuant thereto; a purpose to restrain trade; and the damage caused by such acts. *G.H.I.I., supra*, 147 Cal.App.3d 256, 265, citing *Jones v. H.F. Ahmanson & Co.* (1969) 1 Cal.3d 93, 119.

The Supreme Court demands a "high degree of particularity in the pleading of Cartwright Act violations." *Chicago Title Ins. Co. v. Great Western Financial Corp.* (1968) 69 Cal.2d 305, 326–328; *Motors, Inc. v. Times Mirror Co.* (1980) 102 Cal.App.3d 735, 742. Generalized allegations of civil antitrust violations are usually insufficient and the unlawful combination or conspiracy must be alleged with specificity. Thus, general allegations of a conspiracy unaccompanied by a statement of facts constituting the conspiracy and explaining its objectives and impact in restraint of trade will not suffice. Put slightly differently, the lack of factual allegations of specific conduct directed toward furtherance of the conspiracy to eliminate or reduce competition renders the complaint legally insufficient. *G.H.I.I., supra*, 147 Cal.App.3d 256, 265, citing *Jones v. H.F. Ahmanson & Co., supra*, 1 Cal.3d 93, 119.

Applying these legal authorities to the present case, SHERLOCK's FAC did not allege McELFRESH's participation in a conspiracy to restrain trade as required by the Cartwright Act. In the FAC, it was alleged that "Defendants committed overt acts and engaged in concerted action in furtherance of their combination and conspiracy to restrain and monopolize, as described above, including but not limited to unlawfully applying for or

acquiring CUPs through the use of proxies and/or forged documents, sham litigation, and acts and threats of violence against competitors and/or parties who could threaten or expose their illegal actions in furtherance of the conspiracy." (RJN, Ex. 1 at ¶ 283.)

None of these allegations have anything to do with McELFRESH. The allegation that the defendants applied for or acquired CUPs through the use of proxies and/or forged documents is directed towards Mr. Geraci and Mr. Geraci's assistant, Ms. Berry, who SHERLOCK claimed helped Mr. Geraci to prepare and submit the Federal CUP application in her own name. (RJN, Ex. 1 at ¶ 119). The allegation that the defendants acquired CUPs through the use of forged documents is directed towards the individuals who plaintiffs claim assisted Mr. Lake and Mr. Harcourt in defrauding SHERLOCK out of the Ramona and Balboa CUPs by forging Mr. Sherlock's signature on the dissolution form for Leading Edge Real Estate, the owner of the Ramona and Balboa properties. (RJN, Ex. 1 at ¶¶ 64-99 and ¶¶ 285-301). The allegation that the defendants engaged in sham litigation is directed towards Mr. Geraci for bringing the *Geraci* lawsuit. (RJN, Ex. 1 at ¶¶ 147-195). The allegation that the defendants engaged in acts and threats of violence against competitors and/or parties who could threaten or expose their illegal actions is directed towards Mr. Alexander and Mr. Stellmacher, who allegedly threatened Mr. Cotton, and Mr. Magagna who threatened Ms. Young. (RJN, Ex. 1 at ¶¶ 215-224 and ¶¶ 225-238). As SHERLOCK did not allege that McELFRESH had anything to do with any of these incidents, a Cartwright Act violation was not sufficiently pled against Ms. McELFRESH.

In her Opening Brief, SHERLOCK argues that McELFRESH's representation of Mr. Geraci in connection with a CUP application for the Federal Property constituted petitioning for the illegal sale of cannabis. This was not actually alleged in the FAC; in the FAC, it was alleged that the $260,109.28 judgment against Mr. Cotton in the *Geraci* lawsuit included legal fees for McELFRESH's representation of Mr. Geraci in advancing the interests of the Federal CUP application with the City (RJN, Ex. 1 at ¶ 208) and McELFRESH's representation of Mr. Geraci violated her fiduciary duties to Mr. Cotton as her former client, the terms of her DPA as she knew Mr. Geraci could not lawfully own a CUP, and *Penal Code* §115 (RJN, Ex. 1 at ¶ 318).[3] But the "sham litigation," according to the FAC, was the *Cotton I* lawsuit. (See RJN, Ex. 1 at ¶¶147-195 [¶ 195: "there is no factual or legal probable cause for the filing of *Cotton I*"]). SHERLOCK's arguments in her Opening Brief about McELFRESH petitioning for the illegal sale of cannabis as part of Mr. Geraci's CUP application should not be considered as part of her appeal because they were not actually included in the FAC.

But, even if the FAC did include such allegations, it still would not state a Cartwright Act violation because there are no allegations of specific conduct directed toward furtherance of a conspiracy with the other defendants and the only one allegedly injured was Mr. Cotton. Mr. Cotton was not even a plaintiff in this case. Plaintiffs suing under the Cartwright

[3] Exhibit 4 to SHERLOCK's request for judicial notice is an invoice from McELFRESH to Mr. Geraci. Exhibit 4 not a matter which the trial court took judicial notice of and is not the proper subject for judicial notice under California *Evidence Code* § 452 [official acts or records of "[f]acts and propositions that are of common knowledge" or "are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy"]. In any event, it adds nothing to this appeal because the FAC already alleged that McELFRESH represented Mr. Geraci and the facts alleged in the FAC are, for the purposes of McELRESH's demurrer and for the purposes of this appeal, assumed to be true..

Act must be within the "target area" of the antitrust violation to have standing to sue; i.e., they must have suffered direct injury as a result of the anticompetitive conduct. See, *Cal. Bus. & Prof. Code* § 16750(a); *Cellular Plus, Inc. v. Superior Court (U.S. West Cellular)* (1993) 14 Cal.App.4th 1224, 1232; *Vinci v. Waste Management, Inc.* (1995) 36 Cal.App.4th 1811, 1815.

2. The Fifth Cause of Action for Unfair Business Practices Did Not State a Valid Cause of Action against McELFRESH

California *Business & Professions Code* § 17200 (also known as the Unfair Competition Law") defines "unfair competition" as "any unlawful, unfair or fraudulent business act or practice…" The Unfair Competition Law permits a cause of action to be brought if a practice violates some other law. In effect, the "unlawful" prong of § 17200 makes a violation of the underlying or "borrowed" law a violation of § 17200. *Kasky v. Nike, Inc.* (2002) 27 Cal.4th 939, 950; *Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co.* (1999) 20 Cal.4th 163, 180; *Farmers Ins. Exch. v. Sup.Ct.* (1992) 2 Cal.4th 377, 383.

A defense to the "borrowed" law extinguishes the Unfair Competition Law claim. *Ingels v. Westwood One Broadcasting Services, Inc.* (2005) 129 Cal.App.4th 1050, 1060 ["If the underlying claim is dismissed, then there is no unlawful act upon which to base the derivative Unfair Competition claim"]; *Scripps Clinic v. Sup.Ct.* (2003) 108 Cal.App.4th 917, 938-939; *Krantz v. BT Visual Images, L.L.C.* (2001) 89 Cal.App.4th 164, 178 [the viability of an "unlawful" UCL claim "stands or falls" with the underlying claim].

Standing to sue for violations of *Business & Professions Code* § 17200, et seq. (the Unfair Competition Law) is limited to specified public

officials and persons who have sustained "injury in fact and … lost money or property as a result of the unfair competition." *Cal. Bus. & Prof. Code* § 17204.

In the present case, the allegation in the cause of action for unlawful business practices directed towards McELFRESH was the allegation in ¶ 318 of the FAC that her representation of Mr. Geraci in furtherance of the Federal CUP application violated her fiduciary duties to Mr. Cotton as her former client, the terms of her DPA and *Penal Code* § 115.

McELFRESH disputes that she ever represented Mr. Cotton or that she ever owed any duty to Mr. Cotton. But, assuming these allegations are true, as the Court must do for the purposes of a demurrer, Mr. Cotton was not a plaintiff in this case; Mr. Flores was. Representing Mr. Cotton is not the same thing as representing Mr. Flores and a breach of a fiduciary duty to Mr. Cotton is not a breach of a fiduciary duty to Mr. Flores. There is no conceivable theory upon which McELFRESH owed a fiduciary duty to Mr. Flores and, in fact, it is not alleged anywhere in the FAC that McELFRESH did owe a duty of any kind to Mr. Flores. As such, a breach of fiduciary duty to Mr. Flores cannot be the "borrowed" law which serves as the predicate for the "unlawful business act or practice" under *Business & Professions Code* § 17200.

Mr. Flores also lacks standing to sue McELFRESH for a violation of the Deferred Prosecution Agreement ("DPA") between McELFRESH and the government, since Mr. Flores was not a party to the agreement. The violation of the DPA therefore cannot be the "borrowed law," either.

Penal Code § 115 makes it a felony to knowingly procure or offer any false or forged instrument to be filed, registered or recorded in any public office of the state. SHERLOCK alleged that McELFRESH represented Mr. Geraci in connection with the Federal CUP before the City of San Diego and that violated *Penal Code* § 115. But, violation of a criminal statute only gives the government a right to prosecute the offender, it does not create a private right of action for individuals to sue anybody, and even if it did, the individual who would hold that right is Mr. Cotton, who is not a plaintiff in this case. It is inconceivable how Mr. Flores would have standing to maintain an action for violation of *Penal Code* § 115 against McELFRESH.

Since there is no underlying "borrowed" law SHERLOCK could sue McELFRESH for, SHERLOCK did not state a cause of action for violation of the Unfair Competition Law against McELFRESH.

3. The Seventh Cause of Action for Civil Conspiracy Did Not State a Valid Cause of Action against McELFRESH

To allege a conspiracy, a plaintiff must plead: (1) formation and operation of the conspiracy; (2) damage resulting to plaintiff; and (3) from a wrongful act done in furtherance of the common design. *Daniels v. Select Portfolio Servicing, Inc.* (2016) 246 Cal.App.4th 1150.

It is often said that civil conspiracy is not an independent tort, meaning a plaintiff only pleads a cause of action for civil conspiracy if s/he pleads a cause of action for the underlying wrong. *Hege v. Worthington,*

Park & Worthington (1962) 209 Cal.App.2d 670, 678 [the pleaded facts must show that, even without the conspiracy, they give rise to a cause of action]; *Prakashpalan v. Engstrom, Lipscomb and Lack* (2014) 223 Cal.App.4th 1105, 1135 [there is no separate tort of civil conspiracy and no action for conspiracy to commit a tort unless the underlying tort is committed and damage results therefrom].

Applying these legal authorities to the present case, the cause of action for civil conspiracy in SHERLOCK's FAC related to the purported theft of the Sherlock Property. There were no allegations that McELFRESH had anything whatsoever to do with the Sherlocks, the Sherlock Property, or the Balboa or Ramona CUPs.

4. Leave to Amend the FAC Was Properly Denied

Leave to amend a complaint should be denied where there is no possible way for the plaintiff to amend the complaint to change the legal effect of the pleading. *Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349; *Medina v. Safe-Guard Products* (2008) 164 Cal.App.4th 105, 112, fn. 8; *Shaeffer v. Califia Farms, LLC* (2020) 44 Cal.App.5th 1125, 1145 ["onus" on plaintiff to show specific ways in which complaint can be amended, and denial of leave to amend affirmed where plaintiff "proffered no specific amendments to the trial court"]; *Chen v. PayPal, Inc*. (2021) 61 Cal.App.5th 559, 584.

Here, even assuming the truth of the facts alleged in the FAC, SHERLOCK did not state a valid claim against McELFRESH and there was no way she possibly could. SHERLOCK did not claim to have been injured by any of the conduct she attributed to McELFRESH. At most, it

was only alleged that McELFRESH referred Mr. Cotton, who is not even a party to the case, to another attorney. Under these circumstances, leave to amend was properly denied.

IV.
CONCLUSION

For the foregoing reasons, McELFRESH respectfully requests that the trial court's dismissal of SHERLOCK's FAC against her without leave to amend be affirmed.

Respectfully submitted this 19th day of October, 2023.

/S/ Laura Stewart

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CERTIFICATION OF LENGTH

The undersigned counsel hereby certifies that the foregoing RESPONDENT'S BRIEF consists of 4,804 words, which is fewer than the 14,000 permitted pursuant to Cal. Rule of Court 8.204(c), as calculated by the word count of the computer program used to prepare it.

/S/ Laura Stewart

Laura Stewart