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**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego

**11/23/2022** at 03:32:00 PM

Clerk of the Superior Court  
By E- Filing, Deputy Clerk

Attorneys for Defendant JESSICA MCELFRISH, an individual

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO - CENTRAL DIVISION, HALL OF JUSTICE

11 AMY SHERLOCK, an individual and on  
12 behalf of her minor children, T.S. and S.S.,  
13 ANDREW FLORES, an individual

Plaintiffs,

vs.

15 GINA M. AUSTIN, an individual;  
16 AUSTIN LEGAL GROUP, a professional  
17 corporation, LARRY GERACI, an  
18 individual, REBECCA BERRY, an  
19 individual; JESSICA MCELFRISH, an  
20 individual; SALAM RAZUKI, an  
21 individual; NINUS MALAN, an  
22 individual; FINCH, THORTON, AND  
23 BARID, a limited liability partnership;  
24 ABHAY SCHWEITZER, an individual  
25 and dba TECHNE; JAMES (AKA JIM)  
26 BARTELL, an individual; NATALIE  
27 TRANG-MY NGUYEN, an individual,  
AARON MAGAGNA, an individual;  
BRADFORD HARCOURT, an  
individual; SHAWN MILLER, an  
individual; LOGAN STELLMACHER, an  
individual; EULENTIAS DUANE  
ALEXANDER, an individual; STEPHEN  
LAKE, an individual, ALLIED  
SPECTRUM, INC., a California  
corporation, PRODIGIOUS  
COLLECTIVES, LLC, a limited liability  
company, and DOES 1 through 50,  
inclusive,

Defendants.

**CASE NO. 37-2021-00050889-CU-AT-CTL**

**REPLY BRIEF IN SUPPORT OF JESSICA  
McELFRISH'S DEMURRER TO THE  
FIRST AMENDED COMPLAINT**

**[IMAGED FILE]**

JUDGE: Hon. James A. Mangione  
DEPT.: C-75

DATE: December 2, 2022  
TIME: 9:00 a.m.  
DEPT.: C-75

COMPLAINT FILED: December 3, 2021  
TRIAL DATE: Not Set

1 **I. INTRODUCTION**

2 Defendant Jessica McElfresh demurred to the causes of action in the *Sherlock* First  
3 Amended Complaint for violation of the Cartwright Act (*Business and Professions Code* §  
4 16700, et seq.), Unfair Business Practices in violation of *Business & Professions Code* § 17200  
5 and civil conspiracy. Plaintiffs filed an opposition to Ms. McElfresh’s motion to strike punitive  
6 damages, not an opposition to Ms. McElfresh’s demurrer. But, even assuming plaintiffs’  
7 opposition is an opposition to Ms. McElfresh’s demurrer as well, the First Amended Complaint  
8 still does not state a valid cause of action against Ms. McElfresh and should therefore be  
9 dismissed.

10 **II. THE ALLEGATIONS IN THE FIRST AMENDED COMPLAINT DO NOT**  
11 **STATE A VALID CAUSE OF ACTION AGAINST MS. McELFRESH**

12 In their opposition, plaintiffs argue that Ms. McElfresh violated her fiduciary duty to Mr.  
13 Cotton by representing Mr. Geraci in furtherance of the Federal CUP application and that breach  
14 of fiduciary duty is the basis for the claim for conspiracy to violate the Cartwright Act.

15 Even assuming these allegations are true, as we must for the purposes of the demurrer,  
16 Mr. Cotton is not a plaintiff in this case. We know that the goal of this lawsuit is to overturn the  
17 judgment against Mr. Cotton in the *Geraci* case and that Mr. Flores represented Mr. Cotton at  
18 one time in the *Geraci* case. But, Mr. Flores cannot seriously contend he was injured somehow  
19 because he represented Mr. Cotton and Mr. Cotton should have won the *Geraci* lawsuit and any  
20 alleged breach of fiduciary duty to Mr. Cotton cannot form the basis of plaintiffs’ claim for  
21 conspiracy to eliminate or reduce competition and free trade in violation of the Cartwright Act.  
22 Plaintiffs suing under the Cartwright Act must be within the “target area” of the antitrust  
23 violation to have standing to sue; i.e., they must have suffered direct injury as a result of the  
24 anticompetitive conduct. See, *Cal. Bus. & Prof. Code* § 16750(a); *Cellular Plus, Inc. v. Superior*  
25 *Court (U.S. West Cellular)* (1993) 14 Cal.App.4th 1224, 1232; *Vinci v. Waste Management, Inc.*  
26 (1995) 36 Cal.App.4th 1811, 1815.

27 Since none of the plaintiffs in this case even claim to have been injured by any conduct  
28 they attribute to Ms. McElfresh, the First Amended Complaint against her should be dismissed.


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**III. CONCLUSION**

The first cause of action in plaintiffs’ First Amended Complaint for violation of the Cartwright Act (*Business and Professions Code* § 16700, et seq.), the fifth cause of action for Unfair Business Practices in violation of *Business & Professions Code* § 17200 and the seventh cause of action for civil conspiracy cannot be amended to state a valid cause of action against Ms. McElfresh. Ms. McElfresh respectfully requests that the Court sustain this demurrer without leave to amend.

DATED: November 23, 2022

WALSH MCKEAN FURCOLO LLP

By:   
\_\_\_\_\_  
Laura Stewart, Esq.  
Attorneys for Defendant JESSICA  
MCELFRISH, an individual