

SUPERIOR COURT OF CALIFORNIA,

COUNTY OF SAN DIEGO

HALL OF JUSTICE

TENTATIVE RULINGS - December 01, 2022

EVENT DATE: 12/02/2022

EVENT TIME: 09:00:00 AM

DEPT.: C-75

JUDICIAL OFFICER: James A Mangione

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

CASE TITLE: SHERLOCK VS AUSTIN [EFILE]

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Antitrust/Trade Regulation

EVENT TYPE: SLAPP / SLAPPback Motion Hearing

CAUSAL DOCUMENT/DATE FILED:

Defendant Jessica McElfresh's Demurrer is sustained without leave to amend.

As to the first cause of action for violation of the Cartwright Act, 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 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 McElfresh unlawfully applied for or acquired the CUPs at issue.

As to the fifth cause of action for violation of the Unfair Competition Law, 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.

As to the seventh cause of action for civil conspiracy, 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.

Defendant's Motion to Strike is denied as moot.

The minute order is the order of the Court.

Defendant is directed to provide notice on all parties within five (5) court days.