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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

12/05/2022 at 04:19:00 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

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

Plaintiffs,

vs.

GINA M. AUSTIN, an individual;
AUSTIN LEGAL GROUP, a professional
corporation, LARRY GERACI, an
individual, REBECCA BERRY, an
individual; JESSICA MCELFRISH, an
individual; SALAM RAZUKI, an
individual; NINUS MALAN, an
individual; FINCH, THORTON, AND
BARID, a limited liability partnership;
ABHAY SCHWEITZER, an individual
and dba TECHNE; JAMES (AKA JIM)
BARTELL, an individual; NATALIE
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

**NOTICE OF RULING RE: DEFENDANT
JESSICA MCELFRISH'S DEMURRER TO
PLAINTIFFS' FIRST AMENDED
COMPLAINT; AND MOTION TO STRIKE
PORTIONS OF 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


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TO ALL PARTIES HEREIN AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE, that on December 2, 2022 at 9:00 a.m. in Department C-75 of the above entitled Court, the Honorable James A. Mangione presiding, the demurrer and motion to strike by Defendant JESSICA MCELFRISH (hereinafter “McElfresh”) came on for hearing. Upon consideration of all moving papers, opposition, and reply submitted, and after oral argument, and for good cause shown, the Court confirmed the tentative ruling of December 1, 2022 as the final ruling of the Court, sustaining McElfresh’s demurrer without leave to amend, and denying McElfresh’s motion to strike as moot, as to the First Amended Complaint filed by Plaintiffs AMY SHERLOCK, an individual and on behalf of her minor children, T.S. and S.S., and ANDREW FLORES, an individual. A true and correct copy of the confirmed tentative ruling is attached hereto as **Exhibit “A.”**

DATED: December 5, 2022

WALSH MCKEAN FURCOLO LLP

By: 

Regan Furcolo, Esq.
Laura Stewart, Esq.
Attorneys for Defendant JESSICA
MCELFRISH, an individual

EXHIBIT “A”

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.