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6 STEPHEN LAKE

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego  
**11/01/2022** at 10:22:00 AM  
Clerk of the Superior Court  
By Regina Chanez, Deputy Clerk

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8 **SUPERIOR COURT OF CALIFORNIA**  
9 **COUNTY OF SAN DIEGO, HALL OF JUSTICE**  
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11 AMY SHERLOCK, an individual and on  
behalf of her minor children, T.S. and S.S.,  
12 ANDREW FLORES, an individual;

13 Plaintiffs,

14 vs.

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

26 Defendants.  
27  
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Case No. **37-2021-0050889-CU-AT-CTL**

**DEFENDANT STEPHEN LAKE'S  
NOTICE OF EX PARTE APPLICATION  
AND APPLICATION FOR ORDER  
DISMISSING STEPHEN LAKE FROM  
THE FIRST CAUSE OF ACTION FOR  
VIOLATION OF THE CARTWRIGHT  
ACT; MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT  
THEREOF**

**Hearing Date: November 2, 2022**  
**Hearing Time: 8:30 am**

Case Filed: December 3, 2021  
Department: C-75  
Judge: Hon. James A. Mangione  
Trial Date: None

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**TO THIS HONORABLE COURT AND TO ALL PARTIES HEREIN:**

PLEASE TAKE NOTICE that on November 2, 2022, at 8:30 a.m., or as soon thereafter as the matter may be heard in Department C-75 of the above-entitled Court, located at 330 West Broadway, San Diego, CA 92101, Defendant STEPHEN LAKE, an individual, (“Defendant” or “LAKE”) will, and hereby does, apply to the Court *ex parte* for an order dismissing Defendant from the first cause of action for violation of the Cartwright Act, after Plaintiffs AMY SHERLOCK, an individual and on behalf of her minor children, T.S. and S.S (“PLAINTIFFS” or “SHERLOCK”) failed to amend the First Amended Complaint within 20 days, as ordered by the court.

Good cause exists pursuant to CCP § 581(f)(2) to dismiss the First Cause of Action for Violation of the Cartwright Act on the grounds that after LAKE’s demur to the cause of action was sustained with 20 days leave to amend on August 19, 2022, Plaintiff has filed to amend the cause of action. As such, LAKE is entitled to a dismissal of the cause of action for Plaintiff’s failure to amend within the time allowed by the Court. Further, under California Rules of Court, Rule 3.1320(h), LAKE may seek the relief sought herein via *ex parte* application.

Plaintiffs have been provided timely and proper notice of this Application. It is not known as of the filing of this Application whether Plaintiffs will appear or oppose this Application.

This Application is based upon this Notice of Ex Parte Application and Application, the below supporting Memorandum of Points and Authorities, the concurrently filed supporting Declaration of Andrew E. Hall and exhibits, the complete files and records in this action, and upon such other and further argument and evidence as may be presented at hearing.

Dated: November 1, 2022

**BLAKE LAW FIRM**

By: \_\_\_\_\_  
STEVEN W. BLAKE, ESQ.  
ANDREW E. HALL, ESQ.  
Attorneys for Defendant  
STEPHEN LAKE

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 On August 19, 2022, this Court sustained LAKE’s demur to Plaintiffs’ first cause of action  
4 for Violation of the Cartwright Act. As Plaintiffs acknowledged in the Notice of Ruling that they  
5 served on LAKE, Plaintiffs were granted 20 days leave to amend their first cause of action. As of  
6 the date of filing of this Application – *75 days after being provided leave to amend* – Plaintiff still  
7 have not filed their amended pleading as ordered by the Court. LAKE requests that he be dismissed  
8 from Plaintiffs’ First Cause of Action for Violation of the Cartwright Act as a result of Plaintiffs’  
9 failure to amend as ordered by the Court.

10 **II. BACKGROUND**

11 On August 19, 2022, the Court entertained LAKE’s Demurrer to the First Amended  
12 Complaint (“FAC”) of Plaintiffs AMY SHERLOCK and minors T.S. and S.S. (“PLAINTIFFS”). At  
13 the hearing, the Court confirmed its tentative ruling with one amendment: it granted PLAINTIFFS  
14 20 days leave to amend their First Cause of Action for Violation of the Cartwright Act. *Declaration*  
15 *of Andrew Hall (“Hall Dec”)* ¶ 3. On August 25, 2022, PLAINTIFFS served a Notice of Ruling on  
16 the August 19, 2022 Demurrer. Attached hereto and incorporated by reference as Exhibit “1” is a  
17 true and correct copy of PLAINTIFFS’ Notice of Ruling. *Hall Dec* ¶ 4. As of the date of filing of  
18 this *Ex Parte* Application, PLAINTIFFS have not filed their Second Amended Complaint. *Hall Dec*  
19 ¶ 5.

20 **III. EX PARTE NOTICE**

21 LAKE provided notice of this *ex parte* application to counsel for PLAINTIFFS and co-  
22 Defendants on November 1, 2022. *Hall Dec* ¶ 6. As of the date of submission of this application,  
23 counsel for Larry Geraci and Rebecca Berry have confirmed that they do not oppose our request and  
24 will not be appearing. LAKE is unsure as to whether PLAINTIFFS or the other co-defendants. intend  
25 on opposing the requested relief. *Id.*

26 **IV. ARGUMENT AND AUTHORITIES**

27 *A. Ex Parte Relief Is Proper*

28 It is not necessary for a party to move for dismissal on a noticed basis; indeed, a motion to

1 dismiss for failure to amend may be made by *ex parte* application under CCP § 581(f)(2). Cal. Rules  
2 of Ct., Rule 3.1320(h). The rationale is that the losing party already had a hearing with regard to  
3 leave to amend. *Oppenheimer v. Deutchman* (1955) 132 Cal.App.2d Supp. 875, 879; *Willburn v.*  
4 *Oakland Hosp.* (1989) 213 Cal.App.3d 1107, 1110.

5 The relief contemplated in CCP § 581(f)(2) and California Rules of Court, Rule 3.1320(h) is  
6 precisely the relief sought by LAKE here; thus, a noticed motion is unnecessary and LAKE’s request  
7 may be granted on an *ex parte* basis.

8 Moreover, *ex parte* relief is warranted given the lapse of time between the ruling on the  
9 demurrer and this application – a whopping 75 days. LAKE is unable to move forward with the  
10 filing of his answer and preparing his defense when an operative pleading is not on file. Given the  
11 impacted calendars that courts are facing, it is unlikely that a noticed motion would be heard for  
12 several months, which is far too long for this case to be lacking an operative pleading. Granting the  
13 relief requested on an *ex parte* basis will lock in the First Amended Complaint as the operative  
14 pleading and permit LAKE to immediately file his Answer. Finally, PLAINTIFFS were ordered to  
15 submit a Second Amended Complaint within 20 days of the Court’s ruling on LAKE’s demurrer.  
16 Now, 75 days later, that amended pleading still has not been submitted and PLAINTIFFS have  
17 exhibited no apparent intent on filing the pleading any time soon. PLAINTIFFS should not be  
18 permitted to disregard Court orders to make filings at their leisure.

19 *B. PLAINTIFFS Have Failed To File An Amended Complaint; Thus, The Cartwright Act*  
20 *Violation Claim Must Be Dismissed*

21 If a demurrer is sustained with leave to amend, the plaintiff has a duty to amend. 5 *Cal. Proc.*  
22 (6<sup>th</sup>), *Pleading*, § 987. Under CCP § 581(f)(2), the court may dismiss where “after a demurrer to the  
23 complaint is sustained with leave to amend, the plaintiff fails to amend it within the time allowed by  
24 the court.” If the plaintiff elects not to amend or fails to file an amended pleading within the  
25 prescribed time, a final judgment of dismissal will be rendered against plaintiff on motion by either  
26 party. *Leader v. Health Industries of America* (2001) 89 Cal.App.4<sup>th</sup> 603, 613.

27 LAKE’s demurrer to the first cause of action for violation of the Cartwright Act was  
28 sustained with 20 days leave to amend on August 19, 2022. On August 25, 2022, PLAINTIFFS


1 served a notice of the ruling and specifically highlighted the change in the court’s tentative providing  
2 the 20 days leave to amend. Despite this, now some 75 days later and counting, PLAINTIFFS have  
3 failed to file the amend pleading. The implication of PLAINTIFFS’ failure to file the amended  
4 pleading is that they have abandoned the Cartwright Act claim against LAKE. As such, LAKE is  
5 entitled to a judgment – if not a judgment of dismissal of the entire action as was the case in *Leader*,  
6 then at the very lease a dismissal of the first cause of action for Violation of the Cartwright Act.

7 **V. CONCLUSION**

8 For these reasons, Plaintiff requests that the Court issue an order to dismissing the first cause  
9 of action for Violation of the Cartwright Act as to LAKE.

10  
11 Dated: November 1, 2022

**BLAKE LAW FIRM**

12  
13 By:   
14 STEVEN W. BLAKE, ESQ.  
15 ANDREW E. HALL, ESQ.  
16 Attorneys for Defendant  
17 STEPHEN LAKE  
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# *EXHIBIT 1*

1 ANDREW FLORES, ESQ (SBN:272958)  
LAW OFFICE OF ANDREW FLORES  
2 427 C Street, Suite 220  
San Diego CA, 92101  
3 P:619.356.1556  
4 F:619.274.8053  
Andrew@FloresLegal.Pro

5 Plaintiff *in Propria Persona*  
6 and Attorney for Plaintiffs  
7 Amy Sherlock, Minors T.S.  
and S.S.

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **FOR THE COUNTY OF SAN DIEGO**

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

12 Plaintiffs,

13 vs.

14 GINA M. AUSTIN, an individual; )  
AUSTIN LEGAL GROUP APC, a California )  
Corporation; GERACI, an individual;; )  
15 REBECCA BERRY, an individual; JESSICA )  
MCELFRESH, an individual; SALAM )  
16 RAZUKI, an individual; )  
NINUS MALAN, an individual; )  
17 FINCH, THORTON, and BAIRD, a Limited )  
Liability Partnership, JAMES D. CROSBY, an )  
18 individual; ABHAY SCHWEITZER, an )  
individual and dba TECHNE; JAMES (AKA )  
19 JIM) BARTELL, a California Corporation; )  
NATALIE TRANG-MY NGUYEN, an )  
20 individual, AARON MAGAGNA, an individual; )  
BRADFORD HARCOURT, an individual; )  
21 EULENTIAS DUANE ALEXANDER, an )  
individual; ALLIED SPECTRUM, INC, a )  
22 California corporation, PRDIGIOUS )  
COLLECTIVES, LLC a California Limited )  
23 Liability Company; and DOES 1 through 50, )  
inclusive, )

24 Defendants. )  
25 )  
26 )  
27 )  
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Case No.: 37-2021-00050889-CU-AT-CTL

**NOTICE OF RULING RE:  
DEFENDANT STEVEN LAKE'S  
DEMURRER AND MOTION TO  
STRIKE PLAINTIFF'S FRIST  
AMENDED COMPLAINT**

Dept: C-75

Judge: Hon. James A Mangione

Filed December 3, 2021

Trial: Not Set.

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**TO ALL PARTIES AND THEIR ATTORREYS OF RECORD:**

PLEASE TAKE NOTICE THAT on August 19, 2022, after hearing the arguments of counsel, the Honorable James A Mangione confirmed the August 18, 2022 tentative ruling overruling in part and granting in part Defendant STEVEN LAKE’S Demurrer to Plaintiff’s First Amended Complaint. The court however did deviate from the tentative ruling in the following respect: Plaintiffs are given 20 days to amend the First Amended complaint with respect to Plaintiff’s First Cause of Action (Cartwright Act).

A true and correct copy of the confirmed tentative ruling is attached hereto as Exhibit “A” and is incorporated by reference hereto.

DATED: August 25, 2022

Respectfully submitted,  
**LAW OFFICE OF ANDREW FLORES**

  
\_\_\_\_\_  
ANDREW FLORES,ESQ  
Plaintiff *in Propria Persona*  
and Attorney for Plaintiffs  
Amy Sherlock, Minors T.S.  
and S.S.



# **Exhibit A**

**SUPERIOR COURT OF CALIFORNIA,**

COUNTY OF SAN DIEGO

HALL OF JUSTICE

TENTATIVE RULINGS - August 18, 2022

EVENT DATE: 08/19/2022

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: Demurrer / Motion to Strike

CAUSAL DOCUMENT/DATE FILED:

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Defendant Steven Lake's Demurrer to Plaintiffs' First Amended Complaint is overruled in part and sustained without leave to amend in part.

*Cartwright Act (First Cause of Action)*

The Cartwright Act prohibits combinations in restraint of trade. (Bus. & Prof. Code, § 16720.) Under the act, "[a]ny person who is injured in his or her business or property by reason of anything forbidden or declared unlawful by this chapter, may sue therefor . . . ." (Bus. & Prof. Code, § 16750, subd. (a).) Antitrust standing is required under the Cartwright Act. (*See Kolling v. Dow Jones & Co.* (1982) 137 Cal.App.3d 709, 723.) To establish such standing, a plaintiff must show: (1) the existence of an antitrust violation with resulting harm to the plaintiff; (2) an injury of a type which the antitrust laws were designed to redress; (3) a direct causal connection between the asserted injury and the alleged restraint of trade; (4) the absence of more direct victims so that the denial of standing would leave a significant antitrust violation unremedied; and (5) the lack of a potential for double recovery." (*Vinci v. Waste Management, Inc.* (1995) 36 Cal.App.4th 1811, 1814 (footnotes removed).)

Here, Plaintiffs have not shown that the injuries caused by Defendant-the alleged theft of Mr. Sherlock's interests in the Partnership Agreement, LERE, and the Balboa and Ramona CUPs ("the Sherlock Property")-constitute the type of antitrust injury required to establish standing. Furthermore, to the extent Plaintiffs are relying on the alleged "Proxy Practice" to establish the Cartwright Act violations, they have failed to demonstrate any connection between their injuries and the Proxy Practice, as the FAC alleges that Mr. Sherlock obtained the Ramona and Balboa CUPs legally, outside of any such practice. Finally, Plaintiffs have not alleged sufficient facts to establish Defendant's participation in the Proxy Practice. Therefore, the demurrer on this cause of action is sustained without leave to amend.

*Conversion (Second Cause of Action)*

"Conversion is the wrongful exercise of dominion over the property of another. The elements of a conversion claim are: (1) the plaintiff's ownership or right to possession of the property; (2) the defendant's conversion by a wrongful act or disposition of property rights; and (3) damages." (*Lee v. Hanley* (2015) 61 Cal.4th 1225, 1240 (alterations and quotation marks omitted).) Plaintiffs allege that Defendant and Harcourt worked together to illegally obtain ownership of the Sherlock Property, which Plaintiffs were entitled to under probate law after Mr. Sherlock's death. Specifically, Plaintiffs allege that Defendant and Harcourt falsified documents dissolving LERE and transferring Mr. Sherlock's interest in the CUPs. These are personal property rights, subject to a claim of conversion. (*See Malibu Mountains Recreation, Inc. v. County of Los Angeles* (1998) 67 Cal.App.4th 359, 367-368 ("A CUP creates a property right which may not be revoked without constitutional rights of due process."); *Holistic*

Supplements, L.L.C. v. Stark (2021) 61 Cal.App.5th 530, 542 ("Kersey's membership interest in the LLC was personal property belonging to her as an individual.") (citing Corp. Code, § 17701.02(r).) Plaintiffs have sufficiently pled that Defendant wrongfully dispossessed them of their personal property rights. Therefore, the demurrer on this cause of action is overruled.

Civil Conspiracy (Third and Seventh Causes of Action)

"The elements of an action for civil conspiracy are the formation and operation of the conspiracy and damage resulting to plaintiff from an act or acts done in furtherance of the common design." (*Richard B. LeVine, Inc. v. Higashi* (2005) 131 Cal.App.4th 566, 574 (quotation marks omitted).) "There is *no separate tort* of civil conspiracy, and there is *no civil action* for conspiracy to commit a recognized tort unless the *wrongful act* itself is committed and damage results therefrom." (*Id.* (quotation marks and alterations omitted).)

Here, the third cause of action appears to allege a civil conspiracy between Defendant and Harcourt to steal the Sherlock Property. As discussed above, the FAC alleges that Defendant and Harcourt worked together to illegally obtain ownership of the Sherlock Property through, among other things, submitting falsified documents. This is sufficient to allege a civil conspiracy claim between Defendant and Harcourt. Therefore, the demurrer to this cause of action is overruled.

However, the seventh cause of action appears to be either duplicative of the third cause of action or allege Defendant was a member of the conspiracy engaged in the "Proxy Practice." As discussed above, Plaintiffs' allegations fail to tie Defendant to the alleged Proxy Practice. Therefore, the seventh cause of action is either duplicative or fails to state a claim upon which relief can be granted. Regardless, the demurrer to this cause of action is sustained without leave to amend.

Declaratory Relief (Fourth Cause of Action)

Defendant demurs to this cause of action based on the claim that Mr. Sherlock "did not have an interest in the Balboa CUP" and that Defendant did not have "an interest in LERE" or participate in its dissolution. However, this argument is directly contradicted by facts pled in the FAC, which the Court must accept as true when ruling on a demurrer. Therefore, the demurrer to this cause of action is overruled.

Unfair Competition (5th Cause of Action)

"California's unfair competition law permits civil recovery for any unlawful, unfair, or fraudulent business act or practice and unfair, deceptive, untrue, or misleading advertising. Cal. Bus. & Prof. Code § 17200. A private person may assert a UCL claim only if she (1) has suffered injury in fact and (2) has lost money or property as a result of the unfair competition." (*Golden State Seafood, Inc. v. Schloss* (2020) 53 Cal.App.5th 21, 39, *reh'g denied* (Aug. 6, 2020), *review denied* (Oct. 28, 2020) (citations and quotation marks omitted).) Here, Plaintiffs allege that "[t]he filing of all documents with public offices effectuating the transfer of the Sherlock Property after the death of Mr. Sherlock are based on forged documents and violate Penal Code § 115." (FAC ¶ 313.) This is sufficient to state a claim under Business and Professions Code section 17200. Therefore, the demurrer to this cause of action is overruled.

The minute order is the order of the Court.

Plaintiffs are directed to serve notice on all parties within five (5) court days.