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8 **SUPERIOR COURT OF CALIFORNIA**
9 **COUNTY OF SAN DIEGO, HALL OF JUSTICE**
10

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

13 Plaintiffs,

14 vs.

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

27 Defendants.
28

Case No. **37-2021-0050889-CU-AT-CTL**

**NOTICE OF DEMURRER,
DEMURRER, AND POINTS AND
AUTHORITIES IN SUPPORT OF
DEMURRER TO COMPLAINT**

Hearing Date: August 19, 2022
Hearing Time: 9:00 a.m.

Case Filed: December 3, 2021
Department: C-73
Judge: Hon. James Mangione
Trial Date: N/A

1 **TO THE COURT, ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that on August 19, 2022 at 9:00 a.m., or as soon thereafter as this
3 matter may be heard before the Honorable James A. Mangione in Department C-75 of the County
4 of San Diego Superior Court, Central Division, located at 330 West Broadway, San Diego, CA
5 92101, Defendant STEPHEN LAKE (“Defendant” or “LAKE”) will and hereby does demurrer to
6 the First Amended Complaint (“FAC”) of Plaintiffs AMY SHERLOCK, an individual and on behalf
7 of her minor children, T.S. and S.S.) (“Plaintiff” or “SHERLOCK”) and ANDREW FLORES
8 (“FLORES”) (SHERLOCK and FLORES shall hereinafter be collectively referred to as
9 “Plaintiffs”)¹ pursuant to *CCP* § 430.10 et seq. on the following grounds:

10 1. The First Cause of Action for Conspiracy to Monopolize in Violation of the
11 Cartwright Act (Bus. & Prof. Code § 16700, *et seq.*) fails to state facts sufficient to constitute a cause
12 of action. *Code Civ. Proc.* section 430.10(e).

13 2. The Second Cause of Action for Conversion fails to state facts sufficient to constitute
14 a cause of action. *Code Civ. Proc.* section 430.10(e).

15 3. The Third Cause of Action for Civil Conspiracy fails to state facts sufficient to
16 constitute a cause of action. *Code Civ. Proc.* section 430.10(e).

17 4. The Fourth Cause of Action for Declaratory Relief fails to state facts sufficient to
18 constitute a cause of action. *Code Civ. Proc.* section 430.10(e).

19 5. The Fifth Cause of Action for Violation of the Unfair Competition Law pursuant to
20 Cal. Bus. & Prof. Code § 17200 *et seq.* fails to state facts sufficient to constitute a cause of action.
21 *Code Civ. Proc.* section 430.10(e).

22 6. The Seventh Cause of Action for Civil Conspiracy fails to state facts sufficient to
23 constitute a cause of action. *Code Civ. Proc.* section 430.10(e).

24 This Demurrer is based upon this notice of motion and motion, the accompanying
25 memorandum of points and authorities, declaration of Andrew E. Hall, Esq., all pleading and papers
26

27
28 ¹ Though the FAC is styled as being brought on behalf of the Plaintiffs, the claim against LAKE seem to drive from
claims by SHERLOCK and not FLORES.

1 on file in the above-captioned action, and any argument or evidence that may be presented to or
2 considered by the Court prior to its ruling.

3 Dated: July 8, 2022

BLAKE LAW FIRM



4
5
6 By: _____

7 STEVEN W. BLAKE, ESQ.
8 ANDREW E. HALL, ESQ.
9 Attorneys for Defendant,
10 STEPHEN LAKE

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 As the old adage goes, no good deed goes unpunished. SHERLOCK is the sister-in-law of
4 LAKE. LAKE and SHERLOCK’s late husband, Michael “Biker” Sherlock (“BIKER”), were long-
5 time friends and companions. When BIKER began encountering financial troubles, LAKE provided
6 financial assistance to BIKER to help him get back on his feet and to keep the entire SHERLOCK
7 family in San Diego. After BIKER’s untimely passing, the LAKE and SHERLOCK families were
8 left to pick up the pieces and wrap up BIKER’s affairs. It is here where the relationship between
9 LAKE and SHERLOCK takes an unfortunate turn.

10 Whether through being fed bad facts or bad advice, or both, SHERLOCK has bought into
11 wild and untenable conspiracy theories regarding LAKE and what SHERLOCK apparently believes
12 is LAKE’s role in monopolizing the San Diego cannabis market. Nothing could be further from the
13 truth. In reality, LAKE was nothing more than a lender to BIKER and had no role, nor any interest
14 in, becoming involved with the cannabis market.

15 Even taking the allegations in the FAC as true for the purposes of this demurrer,
16 SHERLOCK cannot possibly maintain any of her claims against LAKE. The underpinning of each
17 of SHERLOCK’s causes of action against LAKE is his purported violation of the Cartwright Act.
18 However, fatal to her claim under that Act is SHERLOCK’s lack of standing to bring a claim nor,
19 even if she had standing to bring a claim, is the cause of action sufficiently pled. SHERLOCK
20 apparently agrees as she did nothing to address the legal issues raised by LAKE in his meet and confer
21 on these blatant deficiencies. Without sufficiently stating a Cartwright Act violation, SHERLOCK
22 cannot maintain her claims against LAKE relying on the same including causes of action for
23 conspiracy, declaration relief, and unfair business practices. Moreover, SHERLOCK’s conversion
24 cause of action is flawed as it is premised on LAKE’s alleged conversion of BIKER’s property. The
25 issue, however, is that BIKER never *owned* the property in question.

26 Even construing these largely inaccurate facts and allegations in a light most favorable to
27 SHERLOCK, she cannot maintain a claim against LAKE, even through amendment. As such, LAKE
28 requests the demurrer be sustained without leave to amend.

1 **II. STATEMENT OF FACTS**

2 LAKE and SHERLOCK’s husband, BIKER, were long-time friends and companions, in
3 addition to being brothers-in-law. LAKE viewed BIKER as family. BIKER’s business, Dregs
4 skateboards, was hit hard by the recession and he began experiencing financial issues. This created
5 stress on BIKER on many levels – on him personally, on his relationship with his parents, and on his
6 relationship with SHERLOCK. At the same time, LAKE observed BIKER becoming increasingly
7 depressed and anxious. His prior abundance of confidence shrunk, he began having fainting spells
8 and seizures, and became generally confused, all of which contributed to his inability to find
9 meaningful employment. LAKE believed, however, that BIKER was an entrepreneur at heart and,
10 more importantly, was his friend and brother, so LAKE encouraged BIKER to “think big” and to look
11 for what the next big opportunity might be.

12 As such, LAKE, on multiple occasions, offered financial assistance to BIKER to fund various
13 business ventures, including BIKER’s foray into the San Diego medical marijuana market. Notably,
14 and contrary to the allegations in the FAC, LAKE and BIKER were never “partners.”

15 *A. The Ramona Property*

16 In July 2014, BIKER approached LAKE about a property he was looking at in Ramona –
17 1210 Olive Street, Ramona, CA 92065 (“Ramona Property”). At the time BIKER was unemployed
18 and struggling to find a job, which created stress on BIKER personally and on his relationship with
19 SHERLOCK. While LAKE initially balked at becoming involved in the Ramona Property, the
20 foregoing coupled with the fact that BIKER was family eventually overrode his reservations. LAKE
21 eventually purchased the Ramona Property, *as his sole and separate property*, on or about January 8,
22 2015. The Ramona Property remains to this day in LAKE’s name and has not been transferred out of
23 LAKE’s name since he acquired ownership.

24 One of the reasons for LAKE’s reconsideration of his purchase of the Ramona Property was
25 due to the involvement of Renny Bowden (“Bowden”), who was part of a group also interested in the
26 Ramona Property. Bowden and LAKE have a longstanding relationship and LAKE found Bowden’s
27 potential involvement as such an unlikely coincidence that it made LAKE feel more comfortable with
28 his decision to move forward with the purchase. Because neither Bowden nor BIKER had the capital

1 to purchase the Ramona Property and the prior owner was not interested in leasing the property,
2 BIKER and Bowden approached LAKE with the idea that LAKE would purchase the Ramona
3 Property, build it out, and then lease the property back to them as part of a larger business they
4 intended to pursue.

5 After closing, LAKE considered how to proceed as this was all new to him. His discomfort
6 with the industry and lack of knowledge thereof fueled his decision to proceed as a landlord. At some
7 point thereafter, Bowden sought and received the Conditional Use Permit (“CUP”) for the Ramona
8 Property, which was issued in the name of Bowden. BIKER never had an interest in the Ramona
9 Property nor, to the best of LAKE’s knowledge, did BIKER ever have an interest in the Ramona
10 CUP.

11 *B. The Balboa Property*

12 Prior to April 24, 2015, David Chadwick (“Chadwick”) formed Leading Edge Real Estate,
13 LLC (“LERE”), for which he served as CEO. At some point unknown to LAKE, Chadwick, BIKER,
14 BIKER’s partner, Brad Harcourt (“Harcourt”), all partnered up to pursue the purchase of 8863 Balboa
15 Avenue, Unit E, San Diego, CA 92123 (“Balboa Property”). On or about June 30, 2015, Chadwick
16 resigned as CEO of LERE, at which point BIKER, on information and belief, was appointed as CEO.

17 Chadwick’s resignation occurred after several events pertinent to this dispute. On June 9,
18 2015, LAKE made a \$289,560.68 loan to BIKER as a two-week bridge loan. The loan was
19 memorialized via a promissory note. The loan was to be used to purchase 8863 Balboa Avenue, Unit
20 E, San Diego, CA 92123 (“Balboa Property”). Notably, LAKE and BIKER had a clear, direct
21 conversation of the importance of the loan being paid back in a timely manner; BIKER agreed and
22 pledged that if the loan were not timely paid back, the Balboa Property would be deeded to LAKE as
23 payment with the intent that LAKE would sell the Balboa Property to recoup his investment. BIKER
24 was adamant in pledging the Balboa Property as collateral for LAKE’s loan.

25 There were immediate problems with the Balboa Property. One such problem had to do with
26 the HOA at the premises, which had recently amended its governing documents to prohibit the
27 operation of any marijuana dispensaries. On June 16, 2015, BIKER, Chadwick, and Harcourt received
28 a legal opinion advising that any attempts to overturn this amendment would be very unlikely. Thus,

1 BIKER and the others were unable to legally use the Balboa Property for its intended use.

2 On September 9, 2015, the promissory note went into default. LAKE discussed the default
3 with both BIKER and Harcourt and made it clear that they needed to make good on the terms of the
4 note and security agreement. LAKE conveyed to both that he had no desire to be a part of the business
5 and simply wanted the loan proceeds repaid. BIKER and Harcourt pledged to follow through as they
6 agreed. Given these reassurances, LAKE allowed BIKER and HARCOURT more time to procure
7 financing to pay off the LAKE bridge loan.

8 By October 26, 2015, BIKER and Harcourt still had not procured financing. LAKE, BIKER,
9 and Harcourt all went to lunch to discuss solutions. Their primary solution was to transfer the Balboa
10 Property over to LAKE's company, High Sierra Equity LLC ("High Sierra") in an effort to pay off
11 the defaulted loan. After some thought, LAKE agreed to the proposal.

12 On December 2, 2015, LAKE gave BIKER a call to check in on him, which is something he
13 did regularly during that time due to some changes that LAKE observed in BIKER's demeanor and
14 behavior. After a few minutes on the call, LAKE realized that BIKER was having a tough morning
15 and cancelled his meetings so he could be with BIKER. When LAKE arrived at the house, Harcourt
16 was there with BIKER. The two were reviewing paperwork and signing documents. LAKE
17 subsequently learned that one of the documents was the LERE cancellation. LAKE did not witness
18 BIKER signing the cancellation but knows for certain that it was the intent of BIKER and Harcourt,
19 in furtherance of the October 26 proposal, to cancel LERE and transfer the Balboa Property to High
20 Sierra. On December 3, 2015, BIKER took his own life.

21 **III. MEET AND CONFER**

22 Counsel for SHERLOCK and LAKE have met and conferred to discuss the deficiencies
23 outlined herein. Across eight pages, counsel for LAKE laid out the factual and legal deficiencies with
24 the claims against LAKE in the FAC. In response, SHERLOCK submitted what amounts to a one-
25 page letter merely regurgitating SHERLOCK's recount of the facts without addressing even an iota
26 of the legal deficiencies outlined in LAKE's letter. Thus, LAKE had no alternative but to file this
27 motion. *See Declaration of Andrew Hall ("Hall Dec")*.

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1 **IV. LEGAL STANDARD**

2 A demurrer tests the sufficiency of the allegations contained within the complaint. (*Pacifica*
3 *Homeowners' Assn. v. Wesley Palms Retirement Community* (1986) 178 Cal.App.3d 1147, 1151.)

4 California Code of Civil Procedure section 430.10 states in pertinent part:

5 The party against whom a complaint or cross-complaint has been filed may
6 object, by demurrer or answer as provided in Section 430.30 to the pleading on
7 any of or more of the following grounds:

- 7 (e) The pleading does not state facts sufficient to constitute a cause of action.
8 (f) The pleading is uncertain. As used in this subdivision, "uncertain" includes
8 ambiguous and intelligible.

9 Though the court must acknowledge the facts as pled, the contentions, conclusions,
10 assumptions, and deductions of law or fact raised in the complaint should be disregarded. (*Blank v.*
11 *Kirwan* (1985) 39 Cal.3d 311, 318.) Further, it is well settled law that the presumptions are always
12 against the pleader, and all doubts are to be resolved against him/her, for it is to be presumed that
13 he/she stated his case as favorably as possible. (*Curci v. Palo Verde Irrigation Dist.* (1945) 69
14 Cal.App.2d 583, 585.) As detailed below, even if the Court assumes the "facts" alleged in the
15 Complaint are true, Plaintiff fails to state facts sufficient to constitute a cause of action for
16 Negligence (Premises Liability).

17 “If a fact necessary to the pleader's cause of action is not alleged, it must be taken as having
18 no existence.” (*Ibid.*) The court may sustain a demurrer without leave to amend following repeated
19 attempts if it concludes that the defect is caused by an absence of facts, rather than a lack of skill in
20 stating them. (*Loeffler v. Wright* (1910) 13 Cal.App. 224, 232; *Banerian v. O'Malley* (1974) 42
21 Cal.App.3d 604, 616.) The burden is on the plaintiff to show in what manner she can amend her
22 complaint, and how the amendment would change the legal effect of her pleading. (*Goodman v.*
23 *Kennedy* (1976) 18 Cal 3d. 335.) Plaintiff has had two opportunities to adequately plead her case. It
24 is apparent that the requisite facts to show causation simply do not exist. Accordingly, Defendants
25 respectfully request that the demurrer be sustained without leave to amend.

26 **V. LEGAL ARGUMENT**

27 SHERLOCK asserts causes of action against LAKE for 1) Violation of the Cartwright Act, 2)
28 Conversion, 3) Civil Conspiracy (apparently, two counts), 4) Declaratory Relief, and 5) Unfair

1 Competition. None of the claims can be maintained against LAKE and each are subject to demur.

2 *A. SHERLOCK Fails To State A Viable Claim For Violation Of The Cartwright Act*

3 SHERLOCK cannot maintain a cause of action against LAKE for violation of the Cartwright
4 Act because 1) she lacks standing to assert the claim and 2) the claim is not sufficiently pled.

5 A plaintiff suing under the Cartwright Act must be within the “target area” of the antitrust
6 violation to have standing; i.e., they must have suffered direct injury as a result of the anticompetitive
7 conduct. *Cellular Plus, Inc. v. Sup. Ct. (U.S. West Cellular)* (1993) 14 Cal.App.4th 1224, 1232; *Vinci*
8 *Waste Mgmt., Inc.* (1995) 36 Cal.App. 4th 1811, 1815. An “antitrust injury” is the “type of injury the
9 antitrust laws were intended to prevent, and which flows from the invidious conduct which renders
10 defendants’ act unlawful.” *Kolling v. Dow Jones & Co.* (1982) 137 Cal.App.3d 709, 723. Courts
11 interpreting the Cartwright Act’s antitrust standing requirement have consistently followed the
12 “market participant rule,” requiring the plaintiff to “show an injury within the area of the economy
13 that is endangered by a breakdown of competitive conditions.” *In re Napster, Inc. Copyright Litig.*
14 (N.D. Cal.2005) 354 F.Supp.2d 1113, 1125-26 (citing *MGM Studios, Inc. v. Grokster, Ltd.* (C.D.Cal.
15 2003) 269 F.Supp.2d 1213, 1224; *Kolling v. Dow Jones & Company, Inc.* (1982) 137 Cal.App.3d
16 709, 724. “Any person who is injured in his or her *business* or *property* by reason of anything
17 forbidden or declared unlawful by this chapter....” *Bus & Prof Code* § 16750.

18 SHERLOCK lacks standing to bring a claim. First and foremost, SHERLOCK is not a “market
19 participant”. The FAC is unclear as to what “market” SHERLOCK claims to have participated it but
20 assuming *arguendo* that she is referring to the medical marijuana industry, there is no showing of an
21 injury in that area. Put simply, SHERLOCK, a private individual with no ties to the medical marijuana
22 industry, is not within the “target area” of the alleged antitrust violation.

23 Standing issues aside, even if SHERLOCK were able to overcome this threshold issue, her
24 cause of action is not sufficiently pled. To state a cause of action for conspiracy, a complaint must
25 allege (1) the formation and operation of the conspiracy, (2) the wrongful act or acts done pursuant
26 thereto, and (3) the damage resulting from such act or acts. *Chicago Title Ins. Co. v. Great Western*
27 *Financial Corp.* (1968) 69 Cal.2d 305, 316. It is incumbent on the complaining party to allege and
28 prove that the party’s business or property has been injured by the very fact of the existence and

1 prosecution of the unlawful trust or combination; that is, to establish an actual injury attributable to
2 something the statutory provisions were designed to prevent. *Kaiser Cement Corp. v. Fischbach and*
3 *Moore, Inc.* (9th Cir. 1986) 793 F.2d 1100.

4 A high degree of particularity is required in the pleading of violations prescribed by the
5 statutory provisions governing combinations in restraint of trade. *DeCambre v. Rady Children’s*
6 *Hospital-San Diego* (2015) 235 Cal.App.4th 1; *Motors, Inc. v. Times Mirror Co.* (1980) 102
7 Cal.App.3d 735, 742. The complaint must allege a purpose to restrain trade and a nexus to the injury
8 traceable to actions in furtherance of that purpose. *Id.* “General allegations of the existence and
9 purpose of the conspiracy are insufficient, and the appellants must allege specific overt acts in
10 furtherance thereof.” *Id.* at p. 318. Plaintiff must allege certain facts in addition to the elements of an
11 alleged unlawful act so that the defendant can understand the nature of the alleged wrong and so that
12 discovery is not merely a blind fishing expedition for some unknown wrongful acts. *Quelimane Co.*
13 *v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26.

14 Other than owning the land that the CUPs flowed from, the FAC is utterly devoid of any facts
15 tying LAKE to the alleged conspiracy. There are no allegations that LAKE was even involved in the
16 medical marijuana industry – because he was not – let alone that he conspired with these other
17 defendants to prevent competition within the industry. Nor is there any allegation or indication that
18 SHERLOCK, herself, was engaged in the industry or was even contemplating entering the industry.
19 SHERLOCK has also failed to adequately allege damage to business or property. Again, there is no
20 allegation that SHERLOCK had a business within the cannabis industry.

21 Moreover, SHERLOCK cannot allege damage to property. As it relates to LAKE, the facts
22 and pleadings clearly establish that LAKE purchased the Ramona Property, which he owns to this
23 day, and that LERE purchased the Balboa Property. (*FAC* ¶¶ 67, 70). There are no allegations that
24 BIKER ever had any interest in either property. In addition, the CUPs are not, and were not, the
25 “property” of BIKER or SHERLOCK. A conditional use permit is a *property* right that runs with the
26 *land, not to the individual permittee.* *Imperial v. McDougal* (1977) 19 Cal.3d 505; *Malibu Mountains*
27 *Recreation v. Los Angeles* (1998) 67 Cal.App.4th 359, 368; *Anza Parking Corp. v. City of Burlingame*

1 (1987) 195 Cal.App.3d 855, 858. Without a showing of injury to business or property, SHERLOCK
2 cannot maintain her first cause of action against LAKE.

3 *B. LAKE's Demur To The Conversion Cause Of Action Should Be Sustained*

4 SHERLOCK's conversion cause of action is similarly flawed as it is premised on the
5 conversion of property by LAKE that SHERLOCK never owned. The "Sherlock Property" allegedly
6 converted is defined to include BIKER's "interest in the Partnership Agreement, LERE, and the
7 Balboa and Ramona CUPs." (FAC ¶ 71). "Conversion is the wrongful exercise of dominion over the
8 property of another. The elements of a conversion claim are: (1) the plaintiff's ownership or right to
9 possession of the property; (2) the defendant's conversion by a wrongful act or disposition of property
10 rights; and (3) damages." *Lee v. Hanley* (2015) 61 Cal.4th 1225, 1240. To prove a cause of action for
11 conversion, the plaintiff must show the defendant acted intentionally to wrongfully dispose of the
12 property of another." *Duke v. Superior Court* (2017) 18 Cal.App.5th 490, 508. It is generally
13 acknowledged that conversion is a tort that may be committed only with relation to personal property
14 and not real property. *Munger v. Moore* (1970) 11 Cal.App.3d 1, 7.

15 As it relates to the Balboa Property and Ramona Property, neither can be the subject of a
16 conversion cause of action as each is real property. That notwithstanding, there has been no showing
17 of any interest held by BIKER in either property. LAKE purchased the property as his sole and
18 separate property and currently owns the property as such; thus, it is unclear how LAKE could convert
19 his own property. The Balboa Property was purchased by LERE, not BIKER, and was sold with
20 SHERLOCK's consent in an effort to repay LAKE's loan. Similarly, SHERLOCK cannot maintain
21 a claim for conversion of the CUPs. As referenced above, a conditional use permit is a *property* right
22 that runs with the *land*, not to the *individual permittee*. *Imperial v. McDougal* (1977) 19 Cal.3d 505;
23 *Malibu Mountains Recreation v. Los Angeles* (1998) 67 Cal.App.4th 359, 368; *Anza Parking Corp. v.*
24 *City of Burlingame* (1987) 195 Cal.App.3d 855, 858. In other words, both CUPs belonged to the *land*,
25 not to BIKER or any other individual. Put another way, SHERLOCK has failed to meet the first prong
26 of her conversion claim – her ownership or right to possession of any of the property allegedly
27 converted.

28 As it relates to the alleged conversion of BIKER's interest in LERE, the FAC alleges that

1 LERE was formed by BIKER and Harcourt. (*FAC* § 69). Moreover, the FAC goes on to allege that
2 LERE was later dissolved. (*FAC* § 78). There is no allegation that that LAKE ever had an interest in
3 LERE, that he was responsible for the dissolution of LERE, or that he ever received any benefit from
4 the dissolution of LERE. Likewise, it is unclear what SHERLOCK is referring to when she references
5 the “Partnership Agreement” (*see FAC* ¶ 71). The term is not defined anywhere in the FAC and there
6 is no specificity as to what this alleged partnership entailed.

7 *C. SHERLOCK Fails To Maintain A Claim Against Lake For Either Count Of Conspiracy*

8 SHERLOCK’s Third and Seventh Causes of Action both allege a “civil conspiracy” against
9 LAKE. Though not entirely clear, both causes of action are seemingly based on SHERLOCK’s faulty
10 conversion and Cartwright Act claims.

11 For there to be a conspiracy, there must be an unlawful agreement, an overt act committed in
12 furtherance of the conspiracy, and damage from that act. *Applied Equipment Corp. v. Litton Saudi*
13 *Arabia Ltd.* (1994) 7 Cal.4th 503. Conspiracy is not itself a substantive basis for liability. *Favila v.*
14 *Katten Muchin Rosenman LLP* (2010) 188 Cal.App.4th 189. Civil conspiracy is not an independent
15 tort under California law. *Pavicich v. Santucci* (2000) 85 Cal.App.4th 382; *Everest Investors 8 v.*
16 *Whitehall Real Estate Limited Partnership XI* (2002) 100 Cal.App.4th 1102. There is no separate tort
17 of civil conspiracy, and there is no civil action for conspiracy to commit a recognized tort unless the
18 wrongful act itself is committed and damage results therefrom. *Richard B. LeVine, Inc. v. Higashi*
19 (2005) 131 Cal.App.4th 566; *Mehrtash v. Mehrtash* (2001) 93 Cal.App.4th 75. When a plaintiff asserts
20 the existence of a civil conspiracy among the defendants to commit the tortious acts, the source of
21 any substantive liability arises out of an independent duty running to the plaintiff and its breach; tort
22 liability cannot arise vicariously out participate in the conspiracy itself. *Ferris v. Gatke Corp* (2003)
23 107 Cal.App.4th 1211.

24 Here, there can be no conspiracy by LAKE to commit conversion since there was no
25 conversion by LAKE. A conspiracy cause of action cannot survive on its own and without adequately
26 pleading the existence of any underlying tort, i.e., conversion, SHERLOCK cannot maintain either
27 of her conspiracy causes of action against LAKE.

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1 *D. The FAC Fails To Sufficiently Allege Unfair Business Practices*

2 Though SHERLOCK asserts a cause of action pursuant to § 17200 of the California Business
3 and Professions Code (“UCL”), it is unclear how these allegations relate to LAKE. Indeed, LAKE is
4 not specifically referenced anywhere in the cause of action. In construing the FAC in a light most
5 favorable to SHERLOCK, LAKE will assume that the unfair competition relates to the Cartwright
6 Act violations found in SHERLOCK’s first cause of action.

7 California’s unfair competition law permits civil recovery for “any unlawful, unfair, or
8 fraudulent business act or practice and unfair, deceptive, untrue, or misleading advertising. *Cal. Bus.*
9 *& Prof. Code* § 17200. A private person may assert a UCL claim only if she (1) has suffered injury
10 in fact and (2) has lost money or property as a result of the unfair competition. *Hall v. Time, Inc.*
11 (2008) 158 Cal.App.4th 847, 852. The second prong of this standing test “imposes a causation
12 requirement. The phrase ‘as a result of’ in its plain and ordinary sense means ‘caused by’ and requires
13 a showing of a causal connection or reliance on the alleged misrepresentation.” *Id.*

14 As with her claims related to the alleged Cartwright Action violation, there is nothing in the
15 FAC that gives any indication that SHERLOCK was a market participant, or even attempted to
16 become a market participant, in the San Diego cannabis market. There is no ascertainable injury in
17 fact nor has SHERLOCK lost money or property, as more fully discussed above, by way of the facts
18 alleged in the FAC. Moreover, SHERLOCK’s failure to plead a Cartwright Act violation bars her
19 from asserting a UCL claim on the same grounds.

20 *E. Declaratory Relief*

21 As it relates to LAKE, SHERLOCK asserts a cause of action for declaratory relief seeking a
22 judicial determination that the transfers of BIKER’s interests in LERE and the Balboa CUP are void.
23 For the reasons discussed above, BIKER did not have an interest in the Balboa CUP and there is
24 nothing in the FAC that alleges that LAKE either had an interest in LERE or was otherwise involved
25 in the dissolution of LERE. Thus, the cause of action is merely repetitive of SHERLOCK’s other
26 prior claims.

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VI. CONCLUSION

LAKE requests that its demurrer be sustained without leave to amend and that it be dismissed from the action.

Dated: July 8, 2022

BLAKE LAW FIRM



By: _____

STEVEN W. BLAKE, ESQ.
ANDREW E. HALL, ESQ.
Attorneys for Defendant,
STEPHEN LAKE