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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

JUDITH SHEINDLIN (p/k/a JUDGE JUDY), an individual,

Plaintiff,

v.

RICHARD LAWRENCE, an individual; REBEL ENTERTAINMENT PARTNERS, INC., a California corporation; and DOES 1 through 10, inclusive,

Defendants.

Case No. 20STCV31700
Hon. Richard J. Burdge, Dept. 37

NOTICE OF DEMURRER AND DEMURRER TO COMPLAINT OF DEFENDANTS RICHARD LAWRENCE AND REBEL ENTERTAINMENT PARTNERS, INC.; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF; DECLARATION OF SEAN M. HARDY

[*Request for Judicial Notice filed concurrently herewith*]

Date: February 24, 2021
Time: 8:30 a.m.
Dept: 37

Reservation ID: 993971020419

Complaint Filed: August 19, 2020
Trial Date: None

Deadline

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on February 24, 2021, at 8:30 A.M. in Department 37 of the above-entitled Court, located at 111 North Hill Street, Los Angeles, CA 90012, Defendants Richard Lawrence and Rebel Entertainment Partners, Inc. will and hereby do demur under Code of Civil Procedure § 430.30(a) to Plaintiff Judith Sheindlin's Complaint on the grounds set forth in the attached Demurrer to the Complaint and incorporated herein by this reference.

This Demurrer will be based upon this Notice, the Demurrer to the Complaint and supporting Memorandum of Points and Authorities attached hereto, the concurrently filed Request for Judicial Notice, upon the pleadings, records and papers on file in this action and on such other evidence as may be presented at the time of the hearing on the Demurrer.

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Dated: November 5, 2020

FREEDMAN+TAITELMAN, LLP

Bryan J. Freedman, Esq.
Sean M. Hardy, Esq.
Attorneys for Defendants Richard Lawrence and Rebel Entertainment Partners, Inc.

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DEMURRER TO COMPLAINT

Defendants Richard Lawrence and Rebel Entertainment Partners, Inc. will and hereby do demur under Code of Civil Procedure § 430.30(a) to Plaintiff Judith Sheindlin's Complaint on each of the following grounds:

Demurrer to First Cause of Action

1. The First Cause of Action for declaratory relief fails to state facts sufficient to constitute a cause of action. Code of Civil Procedure § 430.10(e).
2. The First Cause of Action fails as Plaintiff Judith Sheindlin does not have the legal capacity to sue. Code of Civil Procedure § 430.10(b).
3. The First Cause of Action fails as there is a defect or misjoinder of parties. Code of Civil Procedure § 430.10(d).

Demurrer to Second Cause of Action

4. The Second Cause of Action for Unlawful/Unfair Practices (Violation of California Business and Professions Code §§ 17200, *et seq.*) fails to state facts sufficient to constitute a cause of action. Code of Civil Procedure § 430.10(e).
5. The Second Cause of Action for Unlawful/Unfair Practices (Violation of California Business and Professions Code §§ 17200, *et seq.*) fails as Plaintiff Judith Sheindlin does not have the legal capacity to sue. Code of Civil Procedure § 430.10(b).
6. The Second Cause of Action for Unlawful/Unfair Practices (Violation of California Business and Professions Code §§ 17200, *et seq.*) fails as there is a defect or misjoinder of parties. Code of Civil Procedure § 430.10(d).

Demurrer to Third Cause of Action

7. The Third Cause of Action for Unjust Enrichment fails to state facts sufficient to constitute a cause of action. Code of Civil Procedure § 430.10(e).
8. The Third Cause of Action for Unjust Enrichment fails as Plaintiff Judith Sheindlin does not have the legal capacity to sue. Code of Civil Procedure § 430.10(b).

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9. The Third Cause of Action for Unjust Enrichment fails as there is a defect or misjoinder of parties. Code of Civil Procedure § 430.10(d).

Dated: November 5, 2020

FREEDMAN+TAITELMAN, LLP

Bryan J. Freedman, Esq.
Sean M. Hardy, Esq.
Attorneys for Defendants Richard Lawrence and Rebel Entertainment Partners, Inc.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Judith Sheindlin has not been a real judge for a long time. Now she just plays one on television. Sheindlin has been away from an actual courtroom for so long that she's clearly forgotten the most bedrock legal principles. For one, she forgot that she needs an actual case to get past the starting gate. Sheindlin doesn't have one. For another, Sheindlin forgot that a lawsuit is not a license to engage in the tactics of personal destruction by maliciously and falsely disparaging innocent people. By filing this frivolous action, "Judge Judy" Sheindlin has shown her true colors: she is a cruel, petty, and vindictive person, without an ounce of empathy, decency, or tact. This isn't a lawsuit. It is an insult.

Sheindlin filed her hit-and-run Complaint for seemingly no other reason than to engage in the baseless character assassination of Richard Lawrence. Lawrence is a respected and long-standing figure in the entertainment industry, and completely undeserving of Sheindlin's vicious personal attacks. Lawrence has worked as a talent agent since 1968. Today, he sits on the board of directors of the Association of Talent Agents. Lawrence is also civically engaged and serves as President of the Malibu Township Council. In 1984, Lawrence became president and owner of the talent agency Abrams-Rubaloff & Lawrence ("ARL"). His leadership helped turn ARL's focus from representing talent for television commercials to packaging television shows for producers, directors, and production companies. Over the past 25 years, ARL, now known as Rebel Entertainment Partners, Inc. ("Rebel"), has packaged and sold over 100 television shows.

In 1995, ARL, through Lawrence, packaged the perennially successful syndicated television series *Judge Judy*. ARL, through Lawrence, represented writer-producer-actor Doug Llewelyn, and writer-producers Sandi Spreckman and Kaye Switzer. The three of them had seen Sheindlin, then a New York state judge, on an episode of *60 Minutes* and believed she could potentially star in a new courtroom program. However, Llewelyn, Spreckman and Switzer realized they needed representation in order to sell their concept. They engaged ARL to package a new courtroom show starring Sheindlin with the three of them attached as producers. On June 18, 1995, Lawrence met with

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Sheindlin at the Helmsley Palace Hotel in New York. Lawrence believed that Sheindlin had the wit, charisma, and star-power to carry her own courtroom television series. At the time, the format was defunct, as the last courtroom show, *The People's Court*, went off the air in 1993. In 1995, Lawrence arranged for Sheindlin, Llewelyn, Spreckman and Switzer to meet with approximately 13 potential buyers, including Big Ticket Television, Inc. ("Big Ticket"), to pitch a courtroom show featuring Sheindlin, Llewelyn, Spreckman, and Switzer. Big Ticket bought the pitch and decided to move forward with a new television series starring Sheindlin, eventually titled *Judge Judy*. ARL, through Lawrence, was thus instrumental in packaging the key elements of *Judge Judy* and successfully selling the program to Big Ticket. On or about August 22, 1995, Big Ticket and ARL entered into a written agreement concerning ARL's compensation for packaging of the Show, which was amended on or about October 10, 1995, and again in 2005 and 2009.

Contrary to Sheindlin's outrageous allegations, Lawrence scrupulously represented Switzer and Spreckman (who has since passed away) in connection with the *Judge Judy* program. Both of them became profit participants on the show and garnered a lucrative income stream which continues to this day. In fact, both Switzer and the Estate of Spreckman have sued Sheindlin for breaching her contractual obligations to them, which are estimated to be in the range of millions of dollars. In short, there is not an ounce of truth in Sheindlin's Complaint. It should be promptly dismissed.

II. LEGAL STANDARD

A general demurrer searches the complaint "for any and every failure to state a material fact. In other words, the absence of any allegation essential to the cause of action makes the complaint vulnerable to a general demurrer. The ruling on a general demurrer is thus a method of deciding the case on the merits of assumed facts (those alleged) without a trial." (5 Witkin, *California Procedure, Pleadings* § 905, p. 366; *Banerian v. O'Malley* (1974) 42 Cal.App.3d 604).

III. ARGUMENT

A. The First Cause Of Action For Declaratory Relief Fails

1. Plaintiff Lacks Standing To Attack A Contract To Which She Is Not A Party

Every action must be prosecuted in the name of the real party in interest. Civ. Proc. Code, §

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367. "Generally, '[a] litigant's standing to sue is a threshold issue to be resolved before the matter can be reached on the merits.'" *Blumhorst v. Jewish Family Services of Los Angeles* (2005) 126 Cal.App.4th 993, 1000. Because standing goes to the existence of a cause of action, lack of standing may be raised by demurrer. *Id.* "Where the complaint shows the plaintiff does not possess the substantive right or standing to prosecute the action, 'it is vulnerable to a general demurrer on the ground that it fails to state a cause of action.'" *Schauer v. Mandarin Gems of Cal., Inc.* (2005) 125 Cal.App.4th 949, 955; *see also Carsten v. Psychology Examining Com.* (1980) 27 Cal.3d 793, 796. "Someone who is not a party to the contract has ***no standing*** to enforce the contract or to recover extra-contract damages for wrongful withholding of benefits to the contracting party." *Hatchwell v. Blue Shield of California* (1988) 198 Cal.App.3d 1027, 1034.

Here, Plaintiff Judith Sheindlin ("Plaintiff") seeks an order voiding and setting aside the ARL Agreement. Compl. ¶¶ 20, 23-24. However, Plaintiff admits she is ***not a party*** to the ARL Agreement. Compl. ¶ 18. The plain language of the ARL Agreement and its subsequent amendments makes clear that the only parties to the contract are Big Ticket and ARL/Rebel. Request for Judicial Notice ("RJN"), Ex. 4 at pp. 73-75, 87-88, 101-120, 122-133. Indeed, Plaintiff admits that "[a]t no time did Sheindlin have any business relationship with Lawrence, nor did he or anyone else at ARL ever represent her as a talent agent or in any capacity whatsoever." Compl. ¶ 17.

A plaintiff has no standing to seek declaratory relief on a contract to which she is not a party. *See Fladeboe v. American Isuzu Motors Inc.* (2007) 150 Cal.App.4th 42, 54-55. For instance, in *Schauer,* the court held the owner of a wedding ring was not entitled to rescind the sales contract on the ring that was entered into by her former husband given the lack of a valid assignment of his contractual rights to her: "[The plaintiff/ ring owner], not having participated in the agreement, not having undertaken any duty or given any consideration, is a stranger to the agreement, with ***no legitimate interest in voiding it***." *Schauer,* 125 Cal.App.4th at 959– 960 (emphasis added). The court held that, as a matter of law, "plaintiff cannot rescind the sales contract to which she was not a party." *Id.* at 960. *See also Fladeboe,* 150 Cal.App.4th at 55 (plaintiff lacked standing to assert declaratory relief claim under contract where he "was not a party to the Dealer Agreement with Isuzu or the Asset

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Purchase Agreement with Fladeboe VW."); *Lafferty v. Wells Fargo Bank* (2013) 213 Cal.App.4th 545, 570 ("Because the dealer agreement was not made for the benefit of the Laffertys, they lack standing to seek declaratory and injunctive relief under that agreement."). Pursuant to this black letter law, as Plaintiff is not a party to the ARL Agreement, she lacks standing to seek a judicial declaration attacking this contract. The Demurrer should be sustained without leave to amend for this fundamental reason.

2. The First Cause Of Action Is Time-Barred

"All civil actions, including actions for declaratory relief, are subject to statutes of limitations." *Snyder v. California Ins. Guarantee Assn.* (2014) 229 Cal.App.4th 1196, 1208. The statute of limitations that governs a request for declaratory relief is the one applicable to an ordinary legal or equitable action based on the same claim. *Abbott v. City of Los Angeles* (1958) 50 Cal. 2d 438, 463-64; *Maguire v. Hibernia Savings & Loan Soc.* (1944) 23 Cal. 2d 719, 734. This is because the nature of the substantive right sued on, and not the procedural form of action or relief demanded, determines the applicability of the statute. *Tostevin v. Douglas* (1958) 160 Cal. App. 2d 321, 330. "In other words, the statute of limitations cannot be circumvented by using the form of a declaratory action." 3 Witkin, Cal. Proc. 5th Actions § 685 (2008), at p. 904**;** *Robertson v. Superior Court* (2001) 90 Cal.App.4th 1319, 1322.

Plaintiff seeks an order invalidating the ARL Agreement. The four-year statute of limitations set forth in Code of Civil Procedure § 343 applies to a cause of action for cancellation of written instruments. *See,.e.g., Costa Serena Owners Coalition v. Costa Serena Architectural Com.* (2009) 175 Cal.App.4th 1175, 1195 (declaratory relief action seeking order that amendments were void was time-barred); *Ferguson v. Yaspan* (2014) 233 Cal.App.4th 676, 682; *Zakaessian v. Zakaessian* (1945) 70 Cal.App.2d 721, 725.

Here, Plaintiff complains of events that occurred **24 years ago**. Plaintiff admits the ARL Agreement was executed in August 1995. Compl. ¶ 18. The allegations on which Plaintiff seeks to invalidate the ARL Agreement are likewise alleged to have occurred in 1995. Compl. ¶¶ 16-20, 23. Plaintiff was required to bring any action seeking to set aside the ARL Agreement by August 1999 at

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the latest. The first cause of action is facially time-barred, and the Demurrer should be sustained on this additional basis.

3. Plaintiff Has Failed To Join Indispensable Parties

Additionally, Plaintiff's declaratory relief claim seeks to invalidate and set aside a contract but has failed to join all parties to that contract. "In an action for rescission of a contract, all parties to the contract are indispensable to the action." *Holder v. Home Sav. & Loan Ass'n of Los Angeles* (1968) 267 Cal.App.2d 91, 107. "The absence of an indispensable party is a jurisdictional defect." *Id. See also Patrick v. Alacer Corp.* (2008) 167 Cal.App.4th 995, 1015 (demurrer to declaratory relief action properly sustained where all parties to the contract not joined). Big Ticket is an indispensable party to Plaintiff's first cause of action.[1] Plaintiff specifically alleges that the only parties to the ARL Agreement are ARL and Big Ticket. Compl. ¶ 18. Nevertheless, Plaintiff seeks an order declaring the contract to be unconscionable, unlawful, unenforceable, void and of no force and effect, or voidable. Compl. ¶ 24. The ARL Agreement is subject to judicial notice as it is a court record and has been already been passed on by courts in prior cases. RJN Ex. 4 at pp. 73-75, 87-88, 101-120, 122-133; Ex. 5.

The decision in *Martin v. City of Corning* (1972) 25 Cal.App.3d 165 is directly on point. In *Martin,* the plaintiff brought a declaratory relief action seeking an order declaring the city's contract with a local contractor, Frank Willis, to be void. *Id.* at 169. On appeal, the Court of Appeal reversed the defense judgment on the ground that Willis, the other party to the contract, had not been joined as a party to the action. *Id.* "Willis, as a party to the contract, was an indispensable party to the action, since his interests would inevitably be affected by a judgment rendering the contract void or enjoining

[1] "Indispensable parties" are those persons "whose interests, rights, or duties will inevitably be affected by any decree which can be rendered in the action." *Bank of California v. Superior Court* (1950) 16 Cal. 2d 516, 521. "If [indispensable] persons are not before the court, the court is without jurisdiction to adjudicate their rights because the failure to join an indispensable party constitutes a jurisdictional defect." *Fraser-Yamor Agency, Inc. v. County of Del Norte* (1977) 68 Cal. App. 3d 201, 214; *Bank of California*, 16 Cal. 2d at 522-523; Cal. Code Civ. Proc. § 389.

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further payment to him thereunder." *Id.* Since Willis was an "unjoined indispensable party," the court was without jurisdiction to render the contract between Willis and the city to be void. *Id.* at 170. *See, e.g., Holt v. College of Osteopathic Physicians and Surgeons (*1964) 61 Cal.2d 750, 761; *Miracle Adhesives Corp. v. Peninsula Tile Contractors' Ass'n of San Mateo, Santa Clara and San Benito Counties* (1958) 157 Cal.App.2d 591, 593.

So too here. Plaintiff seeks a court judgment that would render the ARL Agreement void and unenforceable – a judgment that would clearly implicate the rights and duties of non-party Big Ticket. Big Ticket is an indispensable party to this action. "[I]f the person is found to be essential, or '***indispensable***,' to the action, then the action ***must be dismissed***." *Bianka M. v. Superior Court* (2018) 5 Cal.5th 1004, 1019 (emphasis added). Plaintiff has glaringly failed to name Big Ticket as a defendant in this action. Precedent empowers this Court to grant Defendants' Demurrer without leave to amend. *Covarrubias v. James* (1971) 21 Cal.App.3d 129, 134–135 (complaint dismissed without leave to amend due to failure to join indispensable parties); *Beresford Neighborhood Assn. v. City of San Mateo* (1989) 207 Cal.App.3d 1180, 1191 (proper to deny leave to amend to belatedly name indispensable party known to plaintiffs). As discussed above, the Company is an indispensable party to all causes of action, and the claim for declaratory relief in particular. As Big Ticket is known to Plaintiff, but was intentionally not named as a defendant and cannot feasibly be joined, the action is subject to dismissal.

4. The First Cause Of Action Fails Due To The Doctrines Of Release And Preclusion

Plaintiff bases her claims on rights that are ***not*** personal to her. Rather, she bases her claims on rights that belong either to Big Ticket or Switzer and Spreckman. Compl., ¶¶ 2-5, 17-20, 23. First, Plaintiff claims that Defendants allegedly breached their fiduciary duties to Switzer and Spreckman, and this somehow entitles Plaintiff to challenge the ARL Agreement. Compl., ¶¶ 3, 5, 20, 23. However, Spreckman and Switzer asserted these claims on their own behalf in an action filed against Defendants and Big Ticket in 1997, Los Angeles Superior Court Case No. BC179394. RJN Ex. 1. That action was ***dismissed with prejudice*** on October 23, 2000. RJN Ex. 2. The doctrine of issue preclusion bars Plaintiff from seeking to reassert these issues in this action. *Lucido v. Superior Court* (1990) 51 Cal.3d 335, 341, 272.

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Second, Plaintiff claims that Big Ticket was somehow misled into entering into the ARL Agreement, and that the ARL Agreement is otherwise unenforceable for reasons that existed in 1995. Compl., ¶¶ 2, 5, 23. However, Big Ticket subsequently entered into two separate settlement agreements with Rebel, ***containing broad releases*** of all known and unknown claims. *See* RJN, Ex. 4 at pp. 102-103 (2005 release), 125-127 (2009 release). To the extent these claims existed at all, they were personal to Big Ticket, the only other party to the ARL Agreement. Big Ticket unambiguously released any such claims against Defendants. When an action is based on claims that were released in a prior settlement agreement, it is proper to sustain a demurrer without leave to amend. *Shine v. Williams-Sonoma, Inc.* (2018) 23 Cal.App.5th 1070, 1076. The Demurrer should be sustained on this additional ground.

5. Plaintiff Fails To Allege A Cause Of Action Against Lawrence

The Complaint fails to allege a claim for declaratory relief against Lawrence for the simple reason that he is not a party to the ARL Agreement. The ARL Agreement and its several amendments are between ARL (and its successor Rebel) and Big Ticket. Lawrence clearly signed the contract in his capacity as the "President" of ARL and Rebel. RJN, Ex. 4 at pp. 75, 133. "Any breach of contract that is alleged in the complaint is that of the corporation and not of its agents, and ***they are not personally liable by reason thereof***." *Oppenheimer v. General Cable Corp.* (1956) 143 Cal.App.2d 293, 297 (emphasis added); *see also Gordon Bldg. Corp. v. Gibraltar Sav. & Loan Asso.* (1966) 247 Cal.App.2d 1, 6. In *Byrne v. Harvey* (1962) 211 Cal. App. 2d 92, 98-100, a contract action based on a letter agreement, the defendant was sued in his individual capacity. *Id.* at 98. The operative letter agreement was directed to and accepted by defendant in his representative capacity as the administrator of two probate estates. *Id.* at 102. Defendant's demurrer was sustained without leave to amend, and the court of appeal affirmed. *Id.* at 118.

Byrne is controlling here. Just as in that case, the ARL Agreement was signed by Lawrence in his capacity as President of ARL/Rebel. Further, Plaintiff's agency and joint venturer allegations are conclusory and the Complaint does not allege any supporting facts. Compl., ¶¶ 11-12. Such factually-deficient allegations have been derided by our Supreme Court as "***egregious*** examples of generic boilerplate." *Moore v. Regents of University of California* (1990) 51 Cal.3d 120, 134, fn. 12

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(emphasis added); *see also Simmons v. Ware* (2013) 213 Cal.App.4th 1035, 1049 (complaint did not plead issue of joint venture liability where it contained no facts to support a joint venture theory of liability aside from a generic boilerplate allegation that "'each [d]efendant was the agent and employee of every other [co-d]efendant,'" insufficient.) The Demurrer should be sustained on this additional ground.

B. The Second Cause of Action Fails As A Matter Of Law

Business and Professions Code Section 17200 et seq. (known in California as the Unfair Competition Law or "UCL") is a consumer protection statute that prohibits different types of wrongful conduct: (1) an "unlawful . . . business act or practice"; (2) and "unfair . . . business act or practice;" (3) a "fraudulent business act or practice;" (4) "unfair, deceptive, or untrue or misleading advertising;" and (5) "any act prohibited by [Bus. & Prof. Code §§ 17500-17577.5]." Cal. Bus. & Prof. Code § 17200. Our Supreme Court has made clear that the UCL "is ***not*** an all-purpose substitute for a tort or contract action." *Cortez v. Purolator Air Filtration Products Co.* (2000) 23 Cal.4th 163, 173 (emphasis added). "Instead, the act provides an equitable means through which both public prosecutors and private individuals can bring suit to prevent unfair business practices and restore money or property to ***victims*** of these practices." *Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1150 (emphasis added). To that end, "[a]ctual direct victims of unfair competition may obtain restitution as well." *Id.* at 1152.

Here, Plaintiff has conclusorily alleged that Defendants engaged in unlawful and/or unfair business practices. Compl. ¶¶ 26-34. As a preliminary matter, Plaintiff has not alleged any cognizable business practice whatsoever. On the contrary, Plaintiff has stridently disclaimed ***any*** relationship with Defendants by judicially admitting that "[a]t no time did Sheindlin have any business relationship with Lawrence, nor did he or anyone else at ARL ever represent her as a talent agent or in any capacity whatsoever." Compl. ¶ 17. Rather, at most Plaintiff has alleged a private, arms-length relationship between two parties: Rebel and non-party Big Ticket. *Hewlett v. Squaw Valley Ski Corp.* (1997) 54 Cal.App.4th 499, 519 ("The use of the phrase "business practice" in section 17200 indicates that the statute is directed at ongoing wrongful conduct. . . As the California Supreme Court explained: '[T]he 'practice' requirement envisions something more than a single

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transaction ...; it contemplates a 'pattern of conduct' [citation], 'on-going ... conduct' [citation], 'a pattern of behavior' [citation], or 'a course of conduct.'"). Here, in contravention of this fundamental principle, Plaintiff has alleged the existence of a single contractual relationship and not any pattern of ongoing business conduct or behavior – specifically with respect to Plaintiff herself.

1. Plaintiff Cannot Seek Restitution As She Is Not An "Actual Direct Victim"

Plaintiff cannot allege that Defendants directly took something from Plaintiff – i.e., something in which Plaintiff had a vested ownership interest – which is a requisite element of a claim for restitution. As the California Supreme Court explained, "an order for restitution is one compelling a UCL defendant to return money obtained through an unfair business practice to those persons in interest from whom the property was taken, that is, to persons who had an ownership interest in the property." *Korea Supply Co. v. Lockheed Martin Corp*. (2003) 29 Cal.4th 1134, 1144–1145. In *Korea Supply*, the plaintiff was a company that represented manufacturing businesses trying to win government contracts. *Id.* at 1140-1141. The plaintiff alleged that its competitor engaged in unfair competition by bribing Korean officials with sexual favors to obtain government contracts. *Id.* The plaintiff further alleged that, had the competitor not bribed government officials, the manufacturer it represented would have had the low bid and received the contract, resulting in a substantial commission for plaintiff. *Id.* The Court found that although the plaintiff could not recover the commission it would have received for obtaining the contract because the competitor had not directly taken anything that originally belonged to it. *Id.*. at 1149 ("Any award that plaintiff would recover from defendants would not be restitutionary as it would not replace any money or property that defendants took directly from plaintiff."). At best, the court reasoned, the plaintiff had an "expectancy" interest in receiving the contract but for the wrongful conduct, which was unrecoverable under the statute. *Id.*

The Supreme Court determined that "[t]he remedy sought by plaintiff in this case is not restitutionary in this case because plaintiff does not have an ownership interest in the money it seeks to recover from defendants. . . it is clear that plaintiff is not seeking the return of money or property that was once in its possession. KSC has not given any money to Lockheed Martin; instead, it was from the Republic of Korea that Lockheed Martin received its profits. Any award that plaintiff would

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recover from defendants would not be restitutionary as it would not replace any money or property that defendants took directly from plaintiff." *Id.* The Supreme Court noted that "[a]llowing the plaintiff in this case to recover nonrestitutionary disgorgement under the UCL would enable it to obtain tort damages while bypassing the burden of proving the elements of liability under its traditional tort claim for intentional interference with prospective economic advantage" and that "[g]iven the UCL's liberal standing requirements and relaxed liability standards, were we to allow nonrestitutionary disgorgement in an individual action under the UCL, plaintiffs would have an incentive to recast claims under traditional tort theories as UCL violations" "without having to meet the more rigorous pleading requirements of a negligence action or a breach of contract suit." *Id.* at 1151.

In determining what fits into this narrow category of restitution, the object is "to restore the status quo by returning to the [actual direct victim] funds in which he or she has an ownership interest." *Feitelberg v. Credit Suisse First Boston, LLC* (2005) 134 Cal. App. 4th 997, 1012. Thus, "in the UCL context . . . restitution means the return of money to those persons from whom it was taken or who had an ownership interest in it." *Id.* at 1013 (quoting *Madrid v. Perot Systems Corp.* (2005) 130 Cal. App. 4th 440, 455. In *Feitelberg,* the Court of Appeal affirmed the trial court's sustaining of a demurrer to a UCL claim on the ground that the plaintiff improperly sought to recover nonrestitutionary disgorgement. 134 Cal. App. 4th at 1016-1017. The plaintiff has sought to recover the defendant's "ill-gotten gains" it received by allegedly issuing biased stock research reports that constituted unfair competition in violation of the UCL, and that the defendant had entered into a settlement agreement with state regulators as a result of its unlawful activities. *Id.* at 1004-1005. As the plaintiff did not seek to recover money he had actually paid to the defendant, his UCL claim failed as a matter of law. *Id.* at 1020.

Similarly, in *Madrid,* the Court of Appeal affirmed the sustaining of a demurrer without leave in a UCL action. 130 Cal. App. 4th at 445. The plaintiff alleged the defendant, a corporation involved in restructuring California's electricity market, engaged in unlawful business practices under the UCL. *Id.* at 446. Although the plaintiff allegedly sought "restitution" under the UCL, he did not seek the return of monies he had directly paid to the defendant. *Id.* at 453. The court held he was not

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entitled to recover as restitution the money corporation received from third parties from the alleged sale of insider information, as such money was not taken from the plaintiff. *Id.* at 455-456 ("We also reject plaintiff's apparent position that he could recover money Perot received from third parties.").

Here, Plaintiff's UCL claim seeks to recover nonrestitutionary disgorgement of profits from Defendants – which is clearly prohibited by California law. Compl. ¶¶ 1,6, 7, 26-34; Prayer, ¶ 3. Plaintiff does not seek the return of any money she paid to Defendant – i.e., actual restitution. Indeed, Plaintiff admits she has never had any business dealings with Defendants. Compl. ¶ 17. Instead, Plaintiff seeks to "disgorge" Defendants' allegedly "ill-gotten gains." Compl. ¶¶ 1,7. However, any such monies were paid by Big Ticket to Rebel. Recovery of such monies is expressly prohibited by the Supreme Court. *Korea Supply Co.,* 29 Cal.4th at 1149. The alleged actual, direct victims of the conduct at issue are Big Ticket, Switzer, and Spreckman – ***not*** Plaintiff.

2. Plaintiff Has Failed To Plead "Unlawful" Conduct

In order to allege "unlawful" business conduct, Plaintiff must allege that Defendants engaged in a business practice "forbidden by law, be it civil or criminal, federal, state, or municipal, statutory, regulatory, or court-made." *Saunders v. Superior Court* (1994) 27 Cal.App.4th 832, 838–839. "In other words, a common law violation such as breach of contract is insufficient." *Shroyer v. New Cingular Wireless Services, Inc.* (9th Cir. 2010) 622 F.3d 1035, 1044. "Contractual duties are voluntarily undertaken by the parties to the contract, not imposed by state or federal law." *Smith . Wells Fargo Bank, N.A.,* (2005) 135 Cal.App.4th 1463, 1484. A claim for violation of the UCL stands or falls depending on the fate of antecedent substantive causes of action. *Krantz v. BT Visual Images* (2001) 89 Cal. App. 4th 164, 178. A court may not allow a plaintiff to "plead around an absolute bar to relief simply by recasting the claim as one for unfair competition." *Chabner v. United of Omaha Life Ins. Co.* (9th Cir. 2000) 225 F.3d 1042, 1048. Plaintiff has not alleged any facts demonstrating that Defendants are liable for any unlawful business practice on the public. The UCL is a ***consumer*** protection statute. The conduct alleged here, a dispute between sophisticated private parties over a contract has no implications for consumers or the public at large. *See, e.g., Rosenbluth Internat., Inc. v. Superior Court* (2002) 101 Cal.App.4th 1073, 1075 ("Fortune 1000 corporations that have individually negotiated written contracts with the defendant, are not the 'general public' for purposes

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of the UCL.").

3. Plaintiff Has Failed To Plead "Unfair" Conduct

The next type of "wrong" proscribed by the UCL is "unfair" business acts or practices. "Unfair" means "conduct that threatens an incipient violation of an antitrust law, or violates the policy or spirit of one of those laws because its effects are comparable to or the same as a violation of the law, or otherwise significantly threatens or harms competition." *Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co.* (1999) 20 Cal.4th 163, 187. Here, Plaintiffs do not allege an incipient violation of an antitrust law, nor do they allege violation of a policy of an antitrust law.

As stated, Plaintiff has only alleged an arms-length contractual relationship between two entities. This conduct does not fall within the ambit of "unfair" conduct contemplated by the UCL. To proceed under the unfair prong, Plaintiff is required to allege, among other things, how the harm caused by the conduct claimed to be unfair outweighs any benefits said conduct may have, and Plaintiff has failed to do so. *Motors, Inc. v. Times Mirror Co.* (1980) 102 Cal.App.3d 735, 740. Furthermore, a UCL claim based upon unfairness will not lie where the claimed unfair conduct has either expressly been shown to not be unlawful or where the conduct sought by the plaintiff is not required by law. *Lazar v. Hertz Corp.* (1999) 69 Cal. App. 4th 1494; *Kunert v. Mission Financal Services Corp.* (2003) 110 Cal.4th 242.

4. Plaintiff Has Not Pleaded Her UCL Claim With Reasonable Particularity

"A plaintiff alleging unfair business practices under these statutes must state with reasonable particularity the facts supporting the statutory elements of the violation." *Khoury v. Maly's of California, Inc.* (1993) 14 Cal.App.4th 612, 619; *Gutierrez v. Carmax Auto Superstores California* (2018) 19 Cal.App.5th 1234, 1261. In *Khoury v. Maly's of California, Inc.* (1993) 14 Cal.App.4th 612, the Court of Appeal upheld the dismissal of the plaintiff's UCL claim following the sustaining of defendant's demurrer without leave to amend on the grounds that the complaint "fail[ed] to describe with any reasonable particularity the facts supporting [a UCL] violation." *Id.* at 619. The Court of Appeal stated, "[a] plaintiff alleging unfair business practices under [the UCL] ***must state with reasonable particularity the facts supporting the statutory elements of the violation***." *Id.* (Emphasis added); see also *Perdue v. Crocker Nat'l. Bank* (1985) 38 Cal.3d 913, 929 (demurrer

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properly sustained to the UCL claim when the allegations were not "clear and precise" because "the complaint should set out the challenged representations or practices."). Here, Plaintiff has only alleged legal conclusions. She has failed to allege her UCL claim with reasonable particularity.

5. Plaintiff Has Failed To Plead Reliance Under The UCL

In *In re Tobacco II Cases* (2009) 46 Cal.4th 298, the California Supreme Court held that the UCL's "as a result" terminology "imposes an actual reliance requirement on plaintiffs prosecuting a private enforcement action under the UCL's fraud prong." *Id.* at 326. The reasoning in *Tobacco II* applies to the UCL's "unlawful" prong where "the predicate unlawfulness is misrepresentation and deception." *Durell v. Sharp Healthcare* (2010) 183 Cal. App. 4th 1350, 1363. "[A]ctual reliance is an element of the claim." *Id.* at 1355. ***Reliance*** is required under the UCL to establish that the Plaintiff suffered an injury that is compensable under the UCL; otherwise, the action becomes a private attorney general action that is barred by Proposition 64. *Hall v. Time Inc.* (2008) 158 Cal.App.4th 847, 855. Plaintiff has failed to plead actual reliance. Plaintiff's claim is fatally flawed because Plaintiff has not pled that she ***relied*** upon any purported representations of Defendants. Nor can Plaintiff do so, as she specifically disclaims any business dealings with Defendants whatsoever.

6. Plaintiff Has Not Alleged A UCL Claim Against Lawrence

In *Emery v. Visa Internat. Serv. Ass'n* (2002) 95 Cal. App. 4th 952, 960, the Court of Appeal upheld a defense judgment, reminding the "plaintiff that his unfair practices claim under section 17200 cannot be predicated on vicarious liability" and "[a] defendant's liability must be based on his personal 'participation in the unlawful practices' and 'unbridled control' over the practices that are found to violate section 17200 or 17500." *Id.* at 960. This limiting principle is significant because the UCL's purpose is to punish acts of unfair competition by the corporate entities who engage in that competition, not the individual officers and directors who simply approved a corporate entity's activities. Plaintiff alleges no facts to support a UCL claim against Lawrence individually.

7. Plaintiff Is Not Entitled To An Injunction

Under California law, to plead injunctive relief a plaintiff must show: (1) a tort or other wrongful act constituting a cause of action; and (2) irreparable injury, i.e., a factual showing that the wrongful act constitutes an actual or threatened injury to property or personal rights which cannot be

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compensated by an ordinary damage award." *Brownfield v. Daniel Freeman Marina Hospital* (1989) 208 Cal.App.3d 405, 410. "Facts concerning the irreparable injury which, it is asserted, will result to the complainant unless protection is extended to him ***must be pleaded*** in order that the court may consider whether his apprehensions are well founded." *E.H. Renzel Co. v. Warehousemen's Union I.L.A. 38-44* (1940) 16 Cal.2d 369, 373 (emphasis added). Moreover, to establish standing for prospective injunctive relief, a plaintiff must demonstrate that "he has suffered or is threatened with a "concrete and particularized' legal harm...coupled with a 'sufficient likelihood that he will again be wronged in a similar way.'" *See Bates v. United Parcel Service, Inc.*, 511 F.3d 974, 985 (9th Cir. 2007), (quoting *City of Los Angeles v. Lyons*, 461 U.S. 95, 111 (1983).)

To obtain an injunction under the UCL, Plaintiff must make the traditional requisite showing under Code of Civil Procedure section 526. *Redding v. State Francis Medical Center* (1989) 208 Cal.App.3d 98, 107. As part of this showing, Plaintiff must establish that she has no adequate remedy at law for damages available. *Philpott v. Superior Court* (1934) 1 Cal.2d 512, 517; *Knox v. Phoenix Leasing Inc.* (1994) 29 Cal.App.4th 1357 (statutory right to monetary damages precludes the recovery of equitable relief); *Bush v. California Conservation Corp.* (1982) 136 Cal.App.3d 194, 204 (holding that sustaining of demurrer to cause of action for injunctive relief was proper when plaintiffs had an adequate remedy at law); *Thayer Plymouth Center, Inc. v. Chrysler Motor Corp.* (1967) 255 Cal.App.2d 300, 306. Plaintiff has not shown that there is no remedy at law to make her whole. *In Re Marriage of Van Hook* (1983) 147 Cal.App.3d 970, 984. Plaintiff has likewise failed to allege what specific irreparable harm she has suffered and how that harm is likely to continue unabated.

C. The Third Cause Of Action For Unjust Enrichment Fails As A Matter Of Law

California courts, including the Second District Court of Appeal, have overwhelmingly held that "there is no cause of action in California for unjust enrichment." *Everett v. Mountains Recreation and Conservancy Authority* (2015) 239 Cal.App.4th 541, 553. For this fundamental reason, Plaintiff's common law claim for "unjust enrichment" should be dismissed because "there is no cause of action in California for unjust enrichment." *Melchior v. New Line Prods., Inc.* (2003) 106 Cal.App.4th 779, 794 (affirming trial court's dismissal of "unjust enrichment" claim on the ground that California law does not recognize such a cause of action); *Jogani v. Superior Court* (2008) 165

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Cal.App.4th 901, 911 (same); *Levine v. Blue Shield of Cal*.,189 Cal.App.4th 1117, 1138 (2010) (same); *De Havilland v. FX Networks, LLC* (2018) 21 Cal.App.5th 845, 870 (same).

Plaintiff's Third Cause of Action flouts California law, as there "no cause of action in California for unjust enrichment." *Durell v. Sharp Healthcare* (2010) 183 Cal.App.4th 1350, 1370; *Lauriedale Assoc., Ltd. v. Wilson* (1992) 7 Cal.App.4th 1439, 1448 ("The phrase 'unjust enrichment' does not describe a theory of recovery, but an effect: the result of a failure to make restitution under circumstances where it is equitable to do so."). In other words, unjust enrichment is ***not*** a cause of action itself, but a "general principle, underlying various legal doctrines and remedies." *Dinosaur Dev., Inc. v. White* (1989) 216 Cal.Appl.3d 1310, 1315.) Accordingly, the Demurrer to the Third Cause of Action should be sustained without leave to amend.

D. Leave To Amend Should Be Denied

Leave to amend should be denied where the plaintiff cannot make a sufficient offer of proof demonstrating that the complaint can be cured through a truthful amendment. *See Taxpayers for Improving Pub. Safety v. Schwarzenegger* (2009) 172 19 Cal.App.4th 749, 781; *see also Vaillette v. Fireman's Fund Insurance Co.* (1993) 18 Cal.App.4th 680, 685 (leave to amend should not be granted when "in all probability, amendment would be futile"). Here, Plaintiff cannot truthfully plead any facts which would cure the fundamental deficiencies in her Complaint. No leave to amend should be given.

IV. CONCLUSION

For the foregoing reasons, Defendants respectfully requests that the Court sustain the Demurrer in its entirety, without leave to amend, and enter a judgment of dismissal.

Dated: November 5, 2020

FREEDMAN+TAITELMAN, LLP

Bryan J. Freedman, Esq.
Sean M. Hardy, Esq.
Attorneys for Defendants Richard Lawrence and Rebel Entertainment Partners, Inc.

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DECLARATION OF SEAN M. HARDY, ESQ.

I, SEAN M. HARDY, declare:

1. I am an attorney at law duly admitted to practice before all courts of the State of California and an associate in the law firm of Freedman + Taitelman, LLP ("F+T"), attorneys of record for Defendants Richard Lawrence and Rebel Entertainment Partners, Inc. (collectively, "Defendants") in the action entitled Judith Sheindlin v. Richard Lawrence, et al., LASC Case No. 20STCV31700 (the "Action"). I have personal knowledge of the facts stated herein and, if called upon, could and would testify competently thereto. I submit this declaration pursuant to *Code of Civil Procedure* section 430.41(a)(3)(B).

2. On September 18, 2020, pursuant to *Code of Civil Procedure* section 430.41, I sent a meet and confer letter to Todd S. Eagan, counsel of record for Plaintiff Judith Sheindlin in the Action. In this letter, I identified all of the specific causes of action in Plaintiff's Complaint that I believe are subject to demurrer and identified the grounds for the demurrer.

3. On September 28, 2020, I held a telephone conference with Mr. Eagan and Melissa Lerner, also counsel for Plaintiff Judith Sheindlin, to discuss the issues raised in my meet and confer letter.

4. On October 9, 2020, I held a further telephone conference with Mr. Eagan and Ms. Lerner, to discuss the issues raised in my meet and confer letter. During this call, counsel stipulated to extend Defendants' time to respond to the Complaint in the Action to November 5, 2020.

5. Despite these good faith meet and confer efforts, the parties failed to reach an agreement concerning Defendants' objections to the Complaint.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on the 5th day of November, 2020 at Los Angeles, California.

Sean M. Hardy, Esq.

Deadline

PROOF OF SERVICE

STATE OF CALIFORNIA]
] ss.
COUNTY OF LOS ANGELES]

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 1901 Avenue of the Stars, Suite 500, Los Angeles, California 90067.

On **November 5, 2020**, I served the foregoing document(s) described as **NOTICE OF DEMURRER AND DEMURRER TO COMPLAINT OF DEFENDANTS RICHARD LAWRENCE AND REBEL ENTERTAINMENT PARTNERS, INC.; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF; DECLARATION OF SEAN M. HARDY** on the interested parties in this action as follows:

Martin D. Singer, Esq.
Todd S. Eagan, Esq.
Melissa Y. Lerner, Esq.
Lavely & Singer
2049 Century Park East, Suite 2400
Los Angeles, CA 90067-2906
MDSinger@lavelysinger.com
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Attorneys for Plaintiff

☒ **By United States Mail:** by placing a true copy of the document(s) listed above in a sealed envelope(s), with postage thereon fully prepaid, addressed as set forth below. I am "readily familiar" with the firm's practice for collection and processing of correspondence and other materials for mailing with the United States Postal Service. On this date, I sealed the envelope(s) containing the above materials and placed the envelope(s) for collection and mailing at the address above following our office's ordinary business practices. The envelope(s) will be deposited with the United States Postal Service on this date, in the ordinary course of business.

☒ **By E-Mail Or E-Service:** (Code Civ. Proc. § 1010.6, Cal. Rules of Court, rule 2.251) by transmitting via electronic mail the document(s) listed above to the addresses set forth above on this date from **cpuello@ftllp.com**.

☒ **State**. I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on **November 5, 2020** at Los Angeles, California.

Christina Puello

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Make a Reservation

JUDITH SHEINDLIN vs RICHARD LAWRENCE, et al.

Case Number: 20STCV31700 Case Type: Civil Unlimited Category: Other Contract Dispute (not breach/insurance/fraud/negligence)
Date Filed: 2020-08-19 Location: Stanley Mosk Courthouse - Department 37

Reservation

Case Name: JUDITH SHEINDLIN vs RICHARD LAWRENCE, et al.	Case Number: 20STCV31700
Type: Demurrer - without Motion to Strike	Status: RESERVED
Filing Party: Richard Lawrence (Defendant)	Location: Stanley Mosk Courthouse - Department 37
Date/Time: 02/24/2021 8:30 AM	Number of Motions: 1
Reservation ID: 993971020419	Confirmation Code: CR-GMTVEW25CQKKTAODZ

Fees

Description	Fee	Qty	Amount
First Paper Fees (Unlimited Civil)	435.00	1	435.00
Credit Card Percentage Fee (2.75%)	11.96	1	11.96
TOTAL			**$446.96**

Payment

Amount: $446.96	Type: Visa
Account Number: XXXX8867	Authorization: 053793

Print Receipt + Reserve Another Hearing

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