

Tentative Rulings for February 9, 2022

Department PS1

To request oral argument you must notify Judicial Secretary Carol Delfosse-Kidd at (760) 904-5722 and inform all other counsel no later than 4:30 p.m.

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TELEPHONIC APPEARANCES: On the day of the hearing, call into one of the below listed phone numbers, and input the meeting number (followed by #):

- Call-in Numbers: 1 (213) 306-3065 or 1 (844) 621-3956
- Meeting Number: **288-096-409#**
- Press # again

Please **MUTE** your phone until your case is called and it is your turn to speak. It is important to note that you must call twenty (**20**) minutes prior to the scheduled hearing time to check in or there may be a delay in your case being heard.

This court follows California Rules of Court, rule 3.1308 (a) (1) for tentative rulings (see Riverside Superior Court Local rule 3316; and Department PS1 Law & Motion Rules: https://www.riverside.courts.ca.gov/Divisions/Civil/PS1_Law_and_Motion_Rules.pdf?rev=01-28-2022-02:32:16pm). Tentative Rulings for each law and motion matter are posted on the Internet by 3:00 p.m. on the court day immediately before the hearing at: <https://www.riverside.courts.ca.gov/OnlineServices/TentativeRulings/tentative-rulings.php>. If you do not have Internet access, you may obtain the tentative ruling by telephone at (760) 904-5722.

To request oral argument, no later than 4:30 p.m. on the court day before the hearing you must (1) notify the judicial secretary for Department PS1 at (760) 904-5722 and (2) inform all other parties of the request and of their need to appear telephonically, as stated below. If no request for oral argument is made by 4:30 p.m., the tentative ruling **will become the final ruling** on the matter effective the date of the hearing. **UNLESS OTHERWISE NOTED, THE PREVAILING PARTY IS TO GIVE NOTICE OF THE RULING.**

For additional information and instructions on telephonic appearances, visit the court's website at: <https://riverside.courts.ca.gov/PublicNotices/Webex-Appearances-Public-Access.pdf?rev=05-29-2020-09:54:48am>

Department PS1 Trial rules are available at: https://www.riverside.courts.ca.gov/Divisions/Civil/PS1_trialrules.pdf?rev=01-28-2022-02:32:16pm

Effective May 3, 2021, official court reporters will not be available in unlimited civil for any pretrial proceedings, law and motion matters, case management hearings, civil restraining orders, and civil petitions. (See General Administrative Order No. 2021-19-1.)

1.

CVPS2103087	KOSLOW vs DATA TICKET INC	Hearing re: Demurrer by THE STATE BAR OF CALIFORNIA A PUBLIC CORPORATION to 2d Amended Complaint
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Tentative Ruling: Sustain without leave to amend.

Plaintiff's Second Amended Complaint alleges that he is seeking an injunction for violation or threatened violation of California Business and Professions Code section 6155. {SAC ¶¶ 1-2.} Among other things, Plaintiff further alleges that he has filed a complaint with the State Bar of California against Defendant Data Ticket Inc and Defendant Steven Napolitano regarding their alleged violation of section 6155, and that that complaint is being investigated. The same allegations, which appear to be that Data Ticket and Napolitano are operating an illegal Lawyer Referral Service, form the basis of the instant complaint. {SAC ¶¶ 11-13, 15-18.} The complaint also alleges that Cathedral City is a "contractual client of Defendant Data Ticket" and that "[b]y contract, Defendant Data Ticket refers Defendant Cathedral City to attorneys who 'perform' as Hearing Officers in Code Enforcement appeal hearings . . ." {SAC ¶ 24.} It also alleges that Data Ticket and Napolitano were aided and abetted by the City of Cathedral City, and individual defendants McClendon, Rodriguez, and Molina, or that those individuals ratified or were "partners and joint ventures" in violations of section 6155 by Data Ticket and Napolitano. {SAC ¶¶ 26-27, 43-47.} The complaint alleges a June 2013 contract between Cathedral City and Data Ticket and seeks a declaration that the contract is void and unenforceable. {SAC ¶ 51-62.} With respect to demurring party, State Bar, no other facts are alleged. The only "cause of action" purporting to pertain to State Bar is the fifth cause of action "for order compelling the State Bar of California to prosecute this civil action as the real party in interest." {SAC p. 24.} This cause of action essentially asserts that the State Bar has primary responsibility for enforcing section 6155 and, as such, State Bar should be compelled "to transfer into this action as Plaintiff or co-Plaintiff." {SAC ¶ 117.}

State Bar demurrers arguing that the Second Amended Complaint fails to state facts to support any cause of action, that it is not properly joined into this action or a necessary plaintiff, that it is not alleged to have committed any wrongful conduct, and that the action is uncertain. The Court agrees.

To withstand a demurrer the complaint must contain "a statement of the facts constituting the cause of action, in ordinary and concise language." (Code Civ. Proc., § 425.10.) "[T]he complaint need only allege facts sufficient to state a cause of action, each evidentiary fact that might eventually form part of the plaintiff's proof need not be alleged. (*C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal.4th 861, 872.) Generally, a plaintiff need only plead facts necessary "to acquaint a defendant with the nature, source and extent of his claims." (*Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 549-550.) A demurrer on the ground of uncertainty will only be sustained where a defendant cannot reasonably determine what issues must be admitted or denied, or what claims are directed against them. (*Khoury v. Maly's of California, Inc.* (1993) 14 Cal.App.4th 612, 616.)

Here, Plaintiff seeks an order mandating State Bar to intervene in this case and join as co-Plaintiff or to take over the case and prosecute it as against the other named Defendants. Plaintiff has cited no legal authority, and the Court is not aware of any authority, that would empower the Court to compel State Bar to intervene or be joined against its will as a plaintiff. Certainly, Plaintiff has not cited any authority demonstrating that joinder would be proper under Code of Civil Procedure section 378, or that the Court could compel joinder under that section or another. An order joining State Bar is, furthermore, unnecessary because the text of section 6155, which Plaintiff seeks to enforce. That section, setting forth the requirements for lawyer referral services, states among other things that "A violation or threatened violation of this section may be enjoined by any person." (Bus. & Prof. Code, § 6155(e).) In other words, State Bar is not a necessary party. The

operative complaint as pleaded alleges no wrongdoing by State Bar or supports any cause of action against State Bar under any theory. For those reasons, the demurrer is sustained without leave to amend.

2.

CVPS2103087	KOSLOW vs DATA TICKET INC	Hearing re: Demurrer by DATA TICKET INC, STEVEN ANTHONY NAPOLITANO to 2d Amended Complaint
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Tentative Ruling: Sustain with 20 days leave to amend.

Plaintiff's Second Amended Complaint alleges that he is seeking an injunction for violation or threatened violation of California Business and Professions Code section 6155. {SAC ¶¶ 1-2.} Among other things, Plaintiff further alleges that he has filed a complaint with the State Bar of California against Defendant Data Ticket Inc and Defendant Steven Napolitano regarding their alleged violation of section 6155, and that that complaint is being investigated. The same allegations, which appear to be that Data Ticket and Napolitano are operating an illegal Lawyer Referral Service, form the basis of the instant complaint. {SAC ¶¶ 11-13, 15-18.} The complaint also alleges that Cathedral City is a "contractual client of Defendant Data Ticket" and that "[b]y contract, Defendant Data Ticket refers Defendant Cathedral City to attorneys who 'perform' as Hearing Officers in Code Enforcement appeal hearings . . ." {SAC ¶ 24.} It also alleges that Data Ticket and Napolitano were aided and abetted by the City of Cathedral City, and individual defendants McClendon, Rodriguez, and Molina, or that those individuals ratified or were "partners and joint ventures" in violations of section 6155 by Data Ticket and Napolitano. {SAC ¶¶ 26-27, 43-47.} The complaint alleges a June 2013 contract between Cathedral City and Data Ticket and seeks a declaration that the contract is void and unenforceable. {SAC ¶ 51-62.}

With respect to demurring parties Data Ticket and Napolitano, the operative complaint alleges several causes of action: the first cause of action for declaratory relief as against Data Ticket, the second cause of action for injunctive relief against Data Ticket, and the third cause of action for injunctive relief against Napolitano. The complaint further alleges what purports to be a sixth cause of action, but which is actually a prayer, for attorney fees under Code of Civil Procedure section 1021.5. Data Ticket and Napolitano demurrer to these causes of action alleging they are uncertain or fail to state facts sufficient to support any cause of action. The Court agrees.

To withstand a demurrer the complaint must contain "a statement of the facts constituting the cause of action, in ordinary and concise language." (Code Civ. Proc., § 425.10.) "[T]he complaint need only allege facts sufficient to state a cause of action, each evidentiary fact that might eventually form part of the plaintiff's proof need not be alleged. (*C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal.4th 861, 872.) Generally, a plaintiff need only plead facts necessary "to acquaint a defendant with the nature, source and extent of his claims." (*Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 549-550.) A demurrer on the ground of uncertainty will only be sustained where a defendant cannot reasonably determine what issues must be admitted or denied, or what claims are directed against them. (*Khoury v. Maly's of California, Inc.* (1993) 14 Cal.App.4th 612, 616.)

The first cause of action seeks declaratory relief as against Data Ticket and the City of Cathedral City. Specifically, it seeks a declaration that the agreement of June 20, 2013 is void for violation of Business and Professions Code sections 6155 and 17200, Public Contracts Code section 20100 et seq., and multiple portions of the Cathedral City Municipal Code. {SAC ¶ I(1) p. 27.} There are no facts pleaded in support of any breach of these various code sections relative to the June 2013 agreement. {See SAC ¶¶ 63-96.} And there is no legal basis pleaded for voiding the June 2013 contract under any of these code sections. That section permits any person to seek an injunction of "a violation or threatened violation of this section." Here, Plaintiff seeks a

declaration, not an injunction, voiding an agreement to which he is not a party and which, on its face, does not pertain to lawyer referral services. The allegations are conclusory and do not establish the existence of an actual controversy, or state Plaintiff's interest in the contract, as required by Code of Civil Procedure section 1060. This cause of action is insufficiently pleaded.

The second cause of action seeks injunctive relief as against Data Ticket under section 6155. Specifically, it seeks an injunction enjoining Data Ticket "from operating for the direct or indirect purpose, in whole or in part, or referring potential clients to attorneys without having first been certified as a Lawyer Referral Service by The State Bar of California." {SAC ¶¶ 11(1), p. 29, ¶¶ 98-99.} It also seeks to enjoin Data Ticket from holding itself out as a lawyer referral service without "having first been certified" by the State Bar. It also seeks civil penalties for violating section 6155. Section 6155, subdivision (a), provides in pertinent part: "An individual, partnership, corporation, association, or any other entity shall not operate for the direct or indirect purpose, in whole or in part, of referring potential clients to attorneys, and no attorney shall accept a referral of such potential clients, unless all of the following requirements are met..." The purpose of section 6155 is part of the scheme to regulate unlawful solicitation of clients, and prevent "ambulance chasing" type activities. (*Jackson v. LegalMatch.com* (2019) 42 Cal.App.5th 760, 772.) Specifically, this section allows lawyer referral services to connect lawyers and clients but provides limitations on their conduct, which is regulated in accord with standards established by the State Bar. (*Id.* at pp. 772-773.) A "referral" is "the act of directing a potential client to an attorney." (*Ibid.*) The operative complaint does not plead facts suggesting that Data Ticket is acting as a lawyer referral service, meaning that it directs potential clients to an attorney. This cause of action is insufficiently pleaded. The third cause of action directed at Napolitano fails for the same reasons. There are also no facts pleaded suggesting Napolitano can be barred from accepting referrals from Data Ticket, to the extent that is what the Second Amended Complaint alleges. This cause of action also fails for uncertainty as it is not clear what conduct Napolitano is alleged to have engaged in that would subject him to an injunction limiting his ability to accept referrals, nor is it clear what entities Napolitano is alleged to have improperly accepted referrals from. The sixth cause of action as to these Defendant is merely a prayer for damages pleaded in connection with the first through third causes of action.

3.

CVPS2103087	KOSLOW vs DATA TICKET INC	Hearing re: Demurrer by CITY OF CATHEDRAL CITY, CHARLIE MCCLENDON, ROBERT RODRIGUEZ, SANDRA MOLINA to 2d Amended Complaint
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Tentative Ruling: Sustain with 20 days leave to amend.

Plaintiff's Second Amended Complaint alleges that he is seeking an injunction for violation or threatened violation of California Business and Professions Code section 6155. {SAC ¶¶ 1-2.} Among other things, Plaintiff further alleges that he has filed a complaint with the State Bar of California against Defendant Data Ticket Inc and Defendant Steven Napolitano regarding their alleged violation of section 6155, and that that complaint is being investigated. The same allegations, which appear to be that Data Ticket and Napolitano are operating an illegal Lawyer Referral Service, form the basis of the instant complaint. {SAC ¶¶ 11-13, 15-18.} The complaint also alleges that Cathedral City is a "contractual client of Defendant Data Ticket" and that "[b]y contract, Defendant Data Ticket refers Defendant Cathedral City to attorneys who 'perform' as Hearing Officers in Code Enforcement appeal hearings . . ." {SAC ¶ 24.} It also alleges that Data Ticket and Napolitano were aided and abetted by the City of Cathedral City, and individual defendants McClendon, Rodriguez, and Molina, or that those individuals ratified or were "partners and joint ventures" in violations of section 6155 by Data Ticket and Napolitano. {SAC ¶¶ 26-27,

43-47.} The complaint alleges a June 2013 contract between Cathedral City and Data Ticket and seeks a declaration that the contract is void and unenforceable. {SAC ¶¶ 51-62.}

With respect to demurring parties City of Cathedral City McClendon, Rodriguez, and Molina, the operative complaint alleges several causes of action: the first cause of action for declaratory relief as against the City and Data Ticket, the fourth cause of action for injunctive relief against the City, McClendon, Rodriguez, and Molina, and what purports to be a sixth cause of action, but which is actually a prayer, for attorney fees, under Code of Civil Procedure section 1021.5. These defendants demur on the ground that these causes of action are uncertain or fail to state facts sufficient to support any cause of action. The Court agrees.

To withstand a demurrer the complaint must contain “a statement of the facts constituting the cause of action, in ordinary and concise language.” (Code Civ. Proc., § 425.10.) “[T]he complaint need only allege facts sufficient to state a cause of action, each evidentiary fact that might eventually form part of the plaintiff’s proof need not be alleged. (*C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal.4th 861, 872.) Generally, a plaintiff need only plead facts necessary “to acquaint a defendant with the nature, source and extent of his claims.” (*Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 549-550.) A demurrer on the ground of uncertainty will only be sustained where a defendant cannot reasonably determine what issues must be admitted or denied, or what claims are directed against them. (*Khoury v. Maly’s of California, Inc.* (1993) 14 Cal.App.4th 612, 616.)

The first cause of action seeks declaratory relief as against Data Ticket and the City of Cathedral City. Specifically, it seeks a declaration that the agreement of June 20, 2013 is void for violation of Business and Professions Code sections 6155 and 17200, Public Contracts Code section 20100 et seq., and multiple portions of the Cathedral City Municipal Code. {SAC ¶¶ I(1) p. 27, ¶¶ 63-96.} There are no facts pleaded in support of any breach of these various code sections relative to the June 2013 agreement. And there is no legal basis pleaded for voiding the June 2013 contract under any of these code sections. That section permits any person to seek an injunction of “a violation or threatened violation of this section.” Here, Plaintiff seeks a declaration, not an injunction, voiding an agreement to which he is not a party and which, on its face, does not pertain to lawyer referral services. The allegations are conclusory and do not establish the existence of an actual controversy, or state Plaintiff’s interest in the contract, as required by Code of Civil Procedure section 1060. This cause of action is insufficiently pleaded.

The fourth cause of action seeks injunctive relief as against demurring Defendants under section 6155. Specifically, it seeks an injunction enjoining them from operating “for the direct or indirect purpose” of “referring clients (i.e., City appellants) to attorneys (i.e., Defendant Data Ticket’s panel of lawyers).” {SAC ¶¶ 106, p. 24, ¶ IV(1).} It also seeks to enjoin these Defendants from referring potential clients to attorneys without “having first been certified” by the State Bar. {*Ibid.*} It also seeks civil penalties for violating section 6155. Section 6155, subdivision (a), provides in pertinent part: “An individual, partnership, corporation, association, or any other entity shall not operate for the direct or indirect purpose, in whole or in part, of referring potential clients to attorneys, and no attorney shall accept a referral of such potential clients, unless all of the following requirements are met...” The purpose of section 6155 is part of the scheme to regulate unlawful solicitation of clients, and prevent “ambulance chasing” type activities. (*Jackson v. LegalMatch.com* (2019) 42 Cal.App.5th 760, 772.) Specifically, this section allows lawyer referral services to connect lawyers and clients but provides limitations on their conduct, which is regulated in accord with standards established by the State Bar. (*Id.* at pp. 772-773.) A “referral” is “the *act* of directing a potential client to an attorney.” (*Ibid.*) The operative complaint does not plead facts suggesting that the demurring Defendants are acting as a lawyer referral service, meaning that they, or any of them directs potential clients to an attorney. This cause of action is insufficiently pleaded. The sixth cause of action as to these Defendants is merely a prayer for damages pleaded in connection with the first through third causes of action.