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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF MENDOCINO

Ukiah Branch

STATE FARM MUTUAL
AUTOMOBILE INSURANCE
COMPANY, STATE FARM FIRE AND
CASUALTY COMPANY, STATE FARM
LIFE INSURANCE COMPANY, STATE
FARM GENERAL INSURANCE
COMPANY,

Plaintiffs,

v.

JOHN W. WIER and RICHARD L.
PYORRE,

Defendants.

General

No. CV 82819

**NOTICE OF MOTION AND MOTION FOR
JUDGMENT ON THE PLEADINGS AND TO
DISMISS BASED UPON MOOTNESS ON
BEHALF OF RICHARD PYORRE AGAINST
THE STATE FARM PLAINTIFFS**

Date: December 4, 2009
Time: 9:30 a.m.
Dept.: E
Judge: Hon. John A. Behnke
Trial Date: January 4, 2010

1 TO PLAINTIFF AND ITS ATTORNEY OF RECORD:

2 PLEASE TAKE NOTICE THAT on December 4, 2009 at 9:30 a.m., or as soon thereafter as the
3 matter may be heard in Department E of the above-entitled court, located at State & Perkins Streets,
4 Ukiah, California, Defendant Richard Pyorre will, and hereby does move pursuant to Code of Civil
5 Procedure Section 438 for entry of judgment on the pleadings in favor of Defendants and against the
6 State Farm Plaintiffs and further moves to dismiss the case based upon mootness.
7

8 This motion is made on the ground that there is no cause of action or prayer for declaratory
9 relief. Accordingly, State Farm's past contention that it seeks a judicial declaration is barred by State
10 Farm's failure to plead it. The motion will further be made on the grounds that Plaintiff's only
11 remaining remedy (injunctive relief) is barred because due to the passage of time and dismissals and
12 motions filed by State Farm. Hence, all matters previously at issue are now moot. Furthermore, after 11
13 years, there is no imminent likelihood of irreparable harm – a required element of injunctive relief.
14 Therefore, as a matter of law, State Farm's entire action is moot and must be dismissed. Accordingly,
15 State Farm's remaining causes of action should be dismissed as moot. To the extent State Farm's
16 complaint is deemed to allege Declaratory Relief (which it does not), that claim would be barred in any
17 event. There is no current justiciable controversy due to the passage of time and therefore any
18 declaratory relief claim would be moot as well and must be dismissed. CCP § 430.10(e).
19

20
21 This motion is based upon this notice, the attached memorandum of points and authorities, the
22 accompanying Request for Judicial Notice, the files and records of the Court and upon such matters as
23 may be raised by oral argument at the time of the hearing.

24 Dated: November 6, 2009

LAW OFFICES OF WALLACE C. DOOLITTLE

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26 _____
Wallace C. Doolittle, Esq., Attorneys for defendant
RICHARD L. PYORRE

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MEMORANDUM OF POINTS AND AUTHORITIES

1. **INTRODUCTION**

There is no cause of action or prayer for declaratory relief. Accordingly, State Farm's past contention that it seeks a judicial declaration is barred by State Farm's failure to plead it. The motion will further be made on the grounds that Plaintiff's only remaining remedy (injunctive relief) is barred because due to the passage of time and dismissals and motions filed by State Farm. Hence, all matters previously at issue are now moot. Furthermore, after 11 years, there is no imminent likelihood of irreparable harm – a required element of injunctive relief. Therefore, as a matter of law, State Farm's entire action is moot and must be dismissed. Accordingly, State Farm's remaining causes of action should be dismissed as moot. To the extent State Farm's complaint is deemed to allege Declaratory Relief (which it does not), that claim would be barred in any event. There is no current justiciable controversy due to the passage of time and therefore any declaratory relief claim would be moot as well and must be dismissed. CCP § 430.10(e).

This Court previously granted State Farm's motion to strike jury demand, on the ground that State Farm's only remaining remedies –injunctive relief (and purportedly unpled declaratory relief) – do not contain jury-triable claims for damages. In granting Defendants' motion, this Court commented that the remaining claim is potentially stale and therefore may be moot. The bases for this court's ruling that no jury-triable issues remain was:

- a. State Farm's complaint only sought relief under the following causes of action:
 - i. breach of contract;
 - ii. conversion;
 - iii. trade secret infringement; and
 - iv. injunctive relief.
- b. During the pendency of the litigation State Farm abandoned its conversion claim and its

1 damages claim under the breach of contract claim.

2 c. At the hearing on the motion to strike jury demand, this State Farm stated unequivocally
3 that it does not seek damages of any kind, including any restitution remedy, and purportedly seeks
4 declaratory and injunctive relief.

5 Now, defendant PYORRE moves to dismiss the entire action on the ground that the injunctive
6 relief claim is stale because there is no likelihood of irreparable harm that could occur over a decade
7 after the events for which State Farm seeks relief. Furthermore, judgment on the pleadings is also
8 requested because nowhere in the complaint is there any cause of action or prayer for declaratory relief
9 Any unpled declaratory relief claim would be moot because there is no longer an actual and present
10 controversy. Accordingly, this Court should enter judgment in favor of Defendant PYORRE and against
11 Plaintiffs.
12

13
14 **2. SUMMARY OF MATTERS OF WHICH THE COURT IS REQUESTED TO TAKE**
JUDICIAL NOTICE

15 Following this court's granting of the motion to strike jury demand, State Farm contends that
16 only claims for declaratory and injunctive relief remain. [RJN, Exh. E.] However, there is no
17 declaratory relief cause of action in the operative complaint. [RJN, Exh. C.] There is no declaratory
18 relief claim in the prayer. [RJN, Exh. C.] Accordingly, Defendant seeks judgment on the pleadings in
19 his favor on State Farm's purported declaratory relief claim.
20

21 State Farm's original complaint in federal court (the "Federal Action") was dismissed for lack of
22 subject matter jurisdiction. [RJN, Exh. A.] State Farm sought a preliminary injunction in the Federal
23 Action. [RJN, Exh. C.] However, due to the dismissal of the Federal Action, no injunctive relief was
24 accorded to State Farm. The instant state court complaint (the "Mendocino Action") was filed on
25 February 28, 2000. [RJN, Exh. C.] There is no injunctive relief cause of action in the operative
26 Mendocino Action complaint. [RJN, Exh. C.] State Farm does not seek preliminary injunctive relief in
27 the Mendocino Action Complaint. [RJN, Exh. C.] The Mendocino Action seeks injunctive relief
28

1 exclusively in the prayer. [RJN, Exh. C.] State Farm never sought any preliminary injunctive relief in
2 the Mendocino Action. [RJN, Fact B -- Docket.] No injunction was ever entered against defendant
3 PYORRE in either the Federal Action or the Mendocino Action at any time. RJN, Exh. A and Fact B.]

4 The Mendocino Action complaint prayer seeks injunctive relief as follows:

5
6 “WHEREFORE, plaintiffs pray that the Court enter judgment in favor of State
Farm and against defendants as follows:

7 1. Permanently enjoin defendants, their agents, servants, employees,
8 and all persons acting in concert with them, from directly or indirectly obtaining,
using or communicating to any person any trade secrets or confidential
information of State Farm;

9 2. Order defendants, their agents, servants, employees, and all
10 persons acting in concert with them, to return to State Farm all trade secrets and
proprietary information and materials in their possession, including policyholder
11 information printed from State Farm’s computerized database;

12 3. In order to protect State Farm from defendants’ continued
misappropriation of trade secret information, enjoin defendants, their agents,
13 servants, employees, and all persons acting in concert with them, for a period of
one year from the date the injunction is granted from contacting and/or otherwise
14 soliciting any and all State Farm policyholders previously credited to defendants’
State Farm accounts; [RJN, Exh. C.]

15 In support of this motion, defendant RICHARD PYORRE asks this honorable Court to take
16 judicial notice of the following documents and facts, pursuant to Evidence Code §452(d) and (h):

17
18 A. Order Dismissing Action for Lack of Subject Matter Jurisdiction, filed with the United
19 States District Court, Northern District of California on December 17, 1999, in the Action entitled “State
20 Farm Mutual Automobile Insurance Company, et al v. Richard L. Pyorre and John W. Wier, Action No.
21 C 99-4668 MJJ. [RJN, Exh. A.]

22 B. The Docket in the Mendocino Action, demonstrating that never, at any time, has State
23 Farm sought or obtained any preliminary injunctive relief against defendant PYORRE and no injunctive
24 relief has ever been entered against defendant PYORRE in the Mendocino Action at any time. [RJN,
25 Fact B.]

26
27 C. The Complaint in the Mendocino Action, filed on February 28, 2000. [RJN, Exh. C.]

28 D. State Farm’s Motion to Strike Jury Demand and supporting documents filed on or about

1 February 9, 2009 in the Mendocino Action. [RJN, Exh. D.]

2 E. Minute Order on State Farm's Motion to Strike Jury Demand, filed March 12, 2009 in the
3 Mendocino Action.

4 3. **PLAINTIFF'S ONLY REMAINING CLAIMS MUST BE DISMISSED BECAUSE THEY**
5 **ARE MOOT AND/OR STALE**

6 A. **This Motion Should be Granted Because It Is Based Exclusively On The Allegations in**
7 **The Complaint and Facts Upon Which This Court May Take Judicial Notice**

8 The grounds upon which a motion for judgment on the pleadings are based must appear on the
9 face of the challenged pleading or from any matter of which the court may take judicial notice. Code of
10 Civil Procedure section 438(d). In ruling on a motion for judgment on the pleadings, the trial court must
11 accept as true all material facts properly pleaded, but does not consider conclusions of law or fact,
12 opinions, speculation, or allegations contrary to law or facts that are judicially noticed. *Stevenson Real*
13 *Estate Services, Inc. v. CB Richard Ellis Real Estate Services, Inc.*, 138 Cal. App. 4th 1215, 1219-20
14 (2006).

15
16 This motion is based on nothing more than the allegations of the operative complaint in this case
17 as well as documents filed by Plaintiff this Mendocino Action and in the Federal Action, which this
18 Court can and should judicially notice. Accordingly, the instant motion is procedurally proper and this
19 Court should enter judgment in Defendants' favor.

20
21 B. **Plaintiffs' Purported Claim for Declaratory Relief is Barred by the Absence of a Pledaded**
22 **Cause of Action or Prayer for Declaratory Relief and the Absence of An Actual and**
23 **Present Controversy**

24 The California Supreme Court for over a half a century has held that in order to properly plead a
25 cause of action for declaratory relief, the complaint must set forth facts showing the existence of an
26 actual controversy relating to the legal rights and duties of the respective parties and a request that the
27 rights and duties be adjudged. Code Civ. Proc., § 1060. In summary, in order to seek and obtain
28 declaratory relief, the complaint must allege an actual and present controversy over the rights and duties

1 of the parties and seek a judicial declaration as to those rights and duties. Code Civ. Proc., § 1060. If
2 these requirements are met, the court must declare the rights of the parties whether or not the facts
3 alleged establish that the plaintiff is entitled to a favorable declaration. *Maguire v. Hibernia S. & L.*
4 *Soc.*, (1944) 23 Cal.2d 719, 728. However, where a complaint shows on its face that all relief is barred,
5 it is unnecessary for the court to make a declaration of rights, and a general demurrer may be sustained.
6 *Maguire v. Hibernia S. & L. Soc.*, *supra*, at pp. 733-37. As long recognized by California courts, a
7 motion for judgment on the pleadings is analogous to a general demurrer. *Kemptom v. City of Los*
8 *Angeles*, (2008) 165 Cal. App. 4th 1344, 1347.

10 As set forth above, State Farm contends that only claims for declaratory and injunctive relief remain.
11 [RJN, Exh. E.] However, there is no declaratory relief cause of action in the operative complaint.
12 [RJN, Exh. C.] There is no declaratory relief claim in the prayer. [RJN, Exh. C.] There is no required
13 allegations of the actual and present controversy as to the rights and duties of the parties and no request
14 for a judicial declaration as to same. The Mendocino Action complaint does not allege any legally
15 cognizable claim for declaratory relief. Accordingly, pursuant to CCP §430.10(e), defendant PYORRE
16 seeks judgment on the pleadings in his favor on State Farm's purported declaratory relief claim.
17

18 Even if State Farm had asserted the required allegations in its complaint, any properly pled
19 declaratory relief cause of action would be moot, based upon the lack of any present controversy:
20

21 “[A]lthough a case may originally present an existing controversy, if before
22 decision it has, through act of the parties or some other cause, occurring after the
23 commencement of the action, lost that essential character, it becomes a moot case
24 or question which will not be considered by the court.” *Wilson v. Los Angeles*
County Civil Service Comm. (1952) 112 Cal.App.2d 450, 453, 246 P.2d 68
[quoting Corpus Juris Secundum, and dismissing proceeding challenging validity
of civil service eligible list long since expired and superseded by a new list.]

25 Several other cases with factual scenarios analogous to the instant Mendocino Action have ruled
26 that a case may be dismissed on the ground of mootness. In *Campbell v. Superior Court* (1932) 126
27 Cal.App.652, 14 P.2d 925, after a canvass of votes at a primary election, petitioner was declared the
28

1 nominee for Congress. The Plaintiff initiated an election contest in the superior court, charging
2 improper conduct of election officials. While a recount was in progress, petitioner obtained an
3 alternative writ of prohibition to restrain the superior court from making a decision, on the ground that
4 Plaintiff's affidavit was insufficient. The court dismissed the action as moot, holding that the "demands
5 of actual, practical litigation are too pressing to permit the examination or discussion of academic
6 questions." *Campbell*, 126 Cal.App. at 654.

8 In *Coyne v. Superior Court* (1947) 80 Cal.App.2d 898, 183 P.2d 36, the plaintiff brought an
9 unlawful detainer action against defendant in the justice court, which transferred to the superior court for
10 supposed lack of jurisdiction. The superior court issued judgment in favor of the plaintiff and the
11 defendant was evicted. The case was later remanded to the justice court again, which tried the case.
12 The court ruled that this matter was now moot, holding, "[i]t would be a futile and useless gesture to
13 order the superior court to quash its writ of possession and to restore [defendant] possession only to have
14 her immediately evicted under the writ issued by the justice court." *Coyne*, 80 Cal.App.2d at 901.

16 In *Paoli v. California & Hawaiian Sugar Refining Corp.* (1956) 140 Cal.App.2d 854, 296 P.2d
17 31, plaintiff sued for damages and an injunction for breach of collective bargaining contract. The
18 contract expired September 1, 1954, and judgment was not filed until January 10, 1955. The court
19 reversed the injunction, as moot. *Paoli*, 140 Cal.App.2d at 856.

21 In *Pittenger v. Home Savings & Loan Assn. of Los Angeles* (1958) 166 Cal.App.2d 32, 332 P.2d
22 399, defendant Home held plaintiffs' \$25,000 note and deed of trust, which required the debtor to carry
23 fire insurance satisfactory to the holder. Home claimed the right to select the insurer and the form of the
24 policy. Plaintiffs' sued for declaratory and injunctive relief, alleging that they tendered a proper policy,
25 which Home arbitrarily refused. Clearly, a good cause of action for declaratory relief was stated; but,
26 subsequent to the commencement of the action, Home sold to another company, which notified plaintiffs
27 of its acceptance of the tendered policy. The court held that the declaratory relief action was therefore
28

1 moot.

2 In the present case, the Court may review the allegations of the Mendocino action, which alleges
3 trade violations that occurred in 1999. This Mendocino Action complaint alleges allegedly wrongful
4 actions against Pyörre over a decade ago. The trade secrets have long lost their value, the parties have
5 gone on doing business separately for over ten (10) years, and any declaratory relief action would
6 simply fail to seek any presently justiciable controversy. Since no declaratory relief action is pled, then
7 defendant PYORRE is entitled to judgment on the pleadings as to any such claim on which State Farm
8 seeks to proceed. Further, even it was pled, such a declaratory relief claim would be stale and moot.
9 Judgment against State Farm and in favor of defendant PYORRE as a matter of law, based upon the
10 pleadings and judicially noticed matters upon which the court may rely, is therefore appropriate. This
11 motion must be granted.
12

13
14 C. Plaintiffs' Claim for Injunctive Relief is Barred by the Absence of a Plead Cause of
15 Action or Prayer for Injunctive Relief and the Absence of An Actual and Present
Controversy or Imminent Irreparable Harm

16 First, Plaintiff does not plead a separate cause of action for injunctive relief. [RJN, Exh. C.]
17 Second, State Farm failed to plead the necessary elements of injunctive relief. [RJN, Exh. C.] Finally,
18 because State Farm has never obtained any preliminary injunctive relief, and because ten years have
19 passed since the alleged wrongs committed by defendant PYORRE, there is not even the possibility of
20 *imminent irreparable harm*, as required for injunctive relief. Therefore, State Farm's prayer and claims
21 for injunctive relief must be dismissed as well.
22

23 In order to obtain injunctive relief, the threat of irreparable harm must be imminent. *Korean*
24 *Philadelphia Presbyterian Church v. California Presbytery* (2000) 77 Cal.App.4th 1069, 1084, 92
25 Cal.Rptr.2d 275, 285. Injunctive relief is unlikely unless someone will be significantly hurt in a way
26 which cannot later be repaired. *People, ex rel. Gow v. Mitchell Brothers' Santa Ana Theater* (1981) 118
27 Cal.App.3d 863, 870-871, 173 Cal.Rptr. 476, 479.
28

1 Delay in moving for a preliminary injunction may be considered in determining whether the
2 claimed injury is "irreparable." *O'Connell v. Sup.Ct. (Valenzuela)* 141 Cal.App.4th 1452, 1481, 47
3 Cal.Rptr.3d 147,169-170. In the present case, there neither a likelihood of irreparable harm, nor any
4 reasonable explanation for State Farm's failure to obtain injunctive relief in the past ten years. In fact,
5 they never even sought a preliminary injunction at all in the Mendocino Action. State Farm's claim for
6 injunctive relief is stale and moot. Therefore, it must be dismissed.
7

8
9 **4. CONCLUSION**

10 For the reasons set forth above, defendant PYORRE respectfully requests that the Court grant
11 this motion, dismiss Plaintiffs' only remaining causes of action and enter judgment in favor of
12 Defendant PYORRE.

13
14 Dated: November 6, 2009

LAW OFFICES OF WALLACE C. DOOLITTLE

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17 By: _____
18 Wallace C. Doolittle
19 Attorney for Defendant RICHARD PYORRE
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