ONLINE SERVICES

Tentative Rulings

DEPARTMENT 85 LAW AND MOTION RULINGS

Case Number: 19STCV26724 **Hearing Date:** October 08, 2019 **Dept:** 85

SHE Beverage Company v. Hydro Brand Inc., et al., 19STCV26724

Tentative decision on application for preliminary injunction: granted

Plaintiff SHE Beverage Company ("SHE") applies for a preliminary injunction against Defendants Hydro Brand Inc. ("Hydro"), Anthony Todd Farmer ("Farmer"), Legends IPTV LLC ("Legends"), Chyanne Jacomini ("Jacomini"), and Legends Basketball League, LLC ("LBL")[1], enjoining them from soliciting any individuals or entities to invest in SHE, disposing of funds received for the purpose of investing in SHE, or issuing any shares of Hydro.

The court has read and considered the moving papers and reply (no opposition was filed), and renders the following tentative decision.

A. Statement of the Case

1. Complaint

Plaintiff SHE commenced this proceeding on July 30, 2019. The operative pleading is the First Amended Complaint ("FAP") filed on August 15, 2019, which alleges causes of action for (1) unfair competition (Bus. & Prof. Code §17200), (2) breach of contract, (3) fraud in the sale of securities, (4) interference with prospective business relationships, and (5) imposition of constructive trust. The FAP alleges in pertinent part as follows.

SHE is a California corporation that produces and markets alcoholic and non-alcoholic beverages. Farmer and Jacomini became associated with SHE when SHE agreed to acquire Legends, of which Farmer was Chief Executive Officer ("CEO"). Under the terms of

the acquisition, memorialized in a September 3, 2018 Acquisition and Stock Exchange Agreement (“Legends Agreement”), Legends agreed to exchange its outstanding membership interests for the right to receive one million shares of SHE Preferred B stock ("Acquisition").

In turn, Legends had the right to convert the preferred SHE shares to SHE common stock at a 1:5 ratio, limited to the conversion of 250,000 preferred shares every six months, commencing six months after the close of the Acquisition. Had the Acquisition been consummated in February 2019, Legends would have received one million shares of preferred B stock with the right to convert those shares into five million shares of SHE common shares over a period of two years beginning in or around August 2019.

On February 3, 2019, SHE canceled the Acquisition based on Legends' failure to comply with the conditions precedent for closure. In addition, SHE became aware of information that cast doubt on the truthfulness of the representations made by Legends. Before SHE canceled the acquisition of Legends, on October 11, 2018 Farmer, on behalf of LBL, entered into an agreement to purchase 750,000 shares of SHE common stock. That transaction also was eventually canceled because neither Farmer nor LBL tendered the consideration required to purchase the shares.

Prior to the execution of the Legends Agreement, on August 20, 2018, Farmer and Jacomini each executed a Bilateral Confidentiality and Non-Circumvention Agreement, ("Confidentiality Agreement"). SHE also appointed Farmer to the Board of SHE and gave him the title of President, a position he held until his termination on February 6, 2019. As set forth in the Confidentiality Agreements, Farmer and Jacomini agreed that they would be exposed to SHE's confidential information and they agreed not to share or use that information either directly or indirectly for a period of five years.

Pursuant to the terms of the Confidentiality Agreement, Farmer and Jacomini were given access to SHE's confidential information and trade secrets including: its proprietary beverage formulations, and the research that supported those formulations; its marketing and branding strategies; its distribution, pricing, and sales models; and its product development plans ("Trade Secrets"). The Trade Secrets to which Farmer and Jacomini were given access specifically included the formulations of, research behind, and marketing strategies surrounding SHE's line of non-alcoholic water-based beverages marketed under the "SIP" beverage line, and including: Enhanced Electrolyte Water; Enhanced Alkaline Water: Young Alkaline Water; Moms Prenatal Water; and CBD Water.

Upon, and possibly before, SHE terminated the Legends Agreement, Farmer and Jacomini started Hydro, markets all of the same enhanced water beverages, excepting CBD water, marketed by SHE. Hydro may be a shell corporation designed to hide the misappropriation of investor funds. Hydro’s website states that it has no investors, no representatives, no distribution partners, and no customers. SHE is informed and believes that Hydro used SHE trade secrets to formulate its beverages and to create the marketing strategy for these products. Hydro’s marketing materials indicate that it intends to offer essentially the same products, using the same formulations, and produced by the same sources, using all of SHE’s pricing and marketing knowledge. Doing so directly violates the terms of the Farmer and Jacomini’s Confidentiality Agreements.

Although he was not authorized to do so, on at least 13 occasions Farmer solicited investors to purchase SHE shares of stock that neither Legends nor Farmer owned. Farmer appears to have taken the investment funds and either not provided any shares of stock

to the investors or attempted to assuage these investors by providing them with Hydro stock. SHE did not receive any invested funds from the solicited investors and did not issue stock to the solicited investors. Neither Legends nor LBL owned any shares of SHE common stock and never have. None of Legends, LBL, and Farmer had the authority to sell shares of SHE common stock.

2. Course of Proceedings

On August 15, 2019, SHE amended the FAP to identify LBL as a Defendant.

On August 19, 2019, the court granted SHE's *ex parte* application for a temporary restraining order ("TRO") and order to show cause re: preliminary injunction ("OSC") restraining Defendants from soliciting persons to invest in SHE stock, disposing of funds from those who paid funds to purchase SHE stock, and issuing shares of Hydro to persons who executed contracts to buy SHE stock. SHE was directed to amend the Complaint to allege constructive trust remedy and file supplemental evidence showing that investors wanted SHE to have their investment monies in exchange for SHE stock. Counsel for Defendants accepted service of the FAP, Summons, and moving papers on behalf of his clients.

On September 6, 2019, the court continued the OSC hearing to the instant date upon the parties' stipulation.

B. Applicable Law

1. Preliminary Injunction

An injunction is a writ or order requiring a person to refrain from a particular act; it may be granted by the court in which the action is brought, or by a judge thereof; and when granted by a judge, it may be enforced as an order of the court. CCP §525. An injunction may be more completely defined as a writ or order commanding a person either to perform or to refrain from performing a particular act. *See* Comfort v. Comfort, (1941) 17 Cal.2d 736, 741. McDowell v. Watson, (1997) 59 Cal.App.4th 1155, 1160.[2] It is an equitable remedy available generally in the protection or to prevent the invasion of a legal right. Meridian, Ltd. v. City and County of San Francisco, et al., (1939) 13 Cal.2d 424.

The purpose of a preliminary injunction is to preserve the *status quo* pending final resolution upon a trial. *See* Scaringe v. J.C.C. Enterprises, Inc., (1988) 205 Cal.App.3d 1536. Grothe v. Cortlandt Corp., (1992) 11 Cal.App.4th 1313, 1316; Major v. Miraverde Homeowners Assn., (1992) 7 Cal.App.4th 618, 623. The *status quo* has been defined to mean the last actual peaceable, uncontested status which preceded the pending controversy. Voorhies v. Greene (1983) 139 Cal.App.3d 989, 995, quoting United Railroads v. Superior Court, (1916) 172 Cal. 80, 87. 14859 Moorpark Homeowner's Assn. v. VRT Corp., (1998) 63 Cal.App.4th 1396. 1402.

A preliminary injunction is issued after hearing on a noticed motion. The complaint normally must plead injunctive relief. CCP §526(a)(1)-(2).[3] Preliminary injunctive relief requires the use of competent evidence to create a sufficient factual showing on the grounds for relief. *See e.g.* Ancora-Citronelle Corp. v. Green, (1974) 41 Cal.App.3d 146, 150. Injunctive relief may be granted based on a verified complaint only if it contains sufficient evidentiary, not ultimate, facts. *See* CCP §527(a). For this reason, a pleading alone

rarely suffices. Weil & Brown, California Procedure Before Trial, 9:579, 9(ll)-21 (The Rutter Group 2007). The burden of proof is on the plaintiff as moving party. O'Connell v. Superior Court, (2006) 141 Cal.App.4th 1452, 1481.

A plaintiff seeking injunctive relief must show the absence of an adequate damages remedy at law. CCP §526(4); Thayer Plymouth Center, Inc. v. Chrysler Motors, (1967) 255 Cal.App.2d 300, 307; Department of Fish & Game v. Anderson-Cottonwood Irrigation Dist., (1992) 8 Cal.App.4th 1554, 1565. The concept of "inadequacy of the legal remedy" or "inadequacy of damages" dates from the time of the early courts of chancery, the idea being that an injunction is an unusual or extraordinary equitable remedy which will not be granted if the remedy at law (usually damages) will adequately compensate the injured plaintiff. Department of Fish & Game v. Anderson-Cottonwood Irrigation Dist., (1992) 8 Cal.App.4th 1554, 1565.

In determining whether to issue a preliminary injunction, the trial court considers two factors: (1) the reasonable probability that the plaintiff will prevail on the merits at trial (CCP §526(a)(1)), and (2) a balancing of the "irreparable harm" that the plaintiff is likely to sustain if the injunction is denied as compared to the harm that the defendant is likely to suffer if the court grants a preliminary injunction. CCP §526(a)(2); 14859 Moorpark Homeowner's Assn. v. VRT Corp., (1998) 63 Cal.App.4th 1396. 1402; Pillsbury, Madison & Sutro v. Schectman, (1997) 55 Cal.App.4th 1279, 1283; Davenport v. Blue Cross of California, (1997) 52 Cal.App.4th 435, 446; Abrams v. St. Johns Hospital, (1994) 25 Cal.App.4th 628, 636. Thus, a preliminary injunction may not issue without some showing of potential entitlement to such relief. Doe v. Wilson, (1997) 57 Cal.App.4th 296, 304. The decision to grant a preliminary injunction generally lies within the sound discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion. Thornton v. Carlson, (1992) 4 Cal.App.4th 1249, 1255.

A preliminary injunction ordinarily cannot take effect unless and until the plaintiff provides an undertaking for damages which the enjoined defendant may sustain by reason of the injunction if the court finally decides that the plaintiff was not entitled to the injunction. *See* CCP §529(a); City of South San Francisco v. Cypress Lawn Cemetery Assn., (1992) 11 Cal.App.4th 916, 920.

C. Statement of Facts

SHE is a California corporation that produces and markets alcoholic and non-alcoholic beverages. Dirden Decl. ¶2. On September 3, 2018, SHE agreed to acquire Legends, a television streaming company in which Farmer was CEO and Jacomini was a member and manager. Dirden Decl. ¶2, Ex. 1.

Pursuant to the Legends Agreement, Legends agreed to exchange its outstanding membership interests for the right to receive one million shares of SHE Preferred B stock and in turn had the right to convert the preferred SHE shares to SHE common stock at a 1:5 ratio, limited to the conversion of 250,000 preferred shares every six months, commencing six months after the close of the Acquisition. Dirden Decl. ¶3, Ex. 1.

Had the Acquisition been consummated in February 2019, Legends would have received one million shares of preferred B stock with the right to convert those shares into five million shares of SHE common shares over a period of two years beginning in or around August 2019. Dirden Decl. ¶3, Ex. 1.

On February 3, 2019, SHE canceled the Acquisition and terminated the Legends Agreement, based on Legends' failure to comply with the conditions precedent for closure as well as SHE becoming aware of information that cast doubt on the truthfulness of the representations Legends made in the Legends Agreement. Dirden Decl. ¶4. As a result of the termination, Legends did not receive any shares of SHE stock. Dirden Decl. ¶4.

Prior to the execution of the Legends Agreement, on August 20, 2018, Farmer and Jacomini ach executed the Confidentiality Agreements. Dirden Decl. ¶5, Exs. 2, 3. Around the same time, SHE also appointed Farmer to its Board of Directors and gave him the title of President, which he held until his termination on February 6, 2019. Dirden Decl. ¶6.

Pursuant to the Confidentiality Agreements, Farmer and Jacomini agreed that they would be exposed to SHE's confidential information and agreed not to share or use that information either directly or indirectly for a period of five years. Dirden Decl. ¶7, Ex. 2, 3. Accordingly, Farmer and Jacomini were given access to SHE's confidential information and trade secrets including, without limitation, the Trade Secrets. Dirden Decl. ¶7. The value of the Trade Secrets is substantial, and a competitor could use that information to save years of research and development necessary to bring a product to market. Dirden Decl. ¶7. The Trade Secrets to which Farmer and Jacomini had access specifically included the formulations of, research behind, and marketing strategies surrounding SHE's line of non-alcoholic water-based beverages marketed under the "SIP" beverage line and including: Enhanced Electrolyte Water; Enhanced Alkaline Water: Young Alkaline Water; Moms Prenatal Water; and CBD Water. Dirden Decl. ¶7.

Farmer and Jacomini incorporated and began Hydro, which markets the same enhanced water beverages that SHE markets (other than CBD water). Dirden Decl. ¶8, Ex. 4. Hydro appears to be a shell corporation with no actual business and has no investors, representatives, distribution partners, or customers. Dirden Decl. ¶14. Hydro's Form D, filed with the U.S. Securities and Exchange Commission ("SEC") states that no shares of Hydro stock have been sold as of June 19, 2019. Dirden Decl. ¶14, Ex. 6.

SHE believes that Hydro is using SHE's Trade Secrets to formulate its water beverages and is mimicking SHE's marketing with specificity, such as pretending to sponsor a NASCAR car (which did not occur) because SHE previously sponsored one. Dirden Decl. ¶9, Ex. 5. The formulations of Hydro beverages also mimic those of SHE, with Hydro offering the same beverages that SHE developed based upon a substantial amount of research and testing to which Farmer and Jacomini had access. Dirden Decl. ¶10.

None of Farmer, Jacomini, or Legends were authorized or entitled to sell shares of SHE stock or to accept investment funds on SHE's behalf, either during their affiliation with SHE or afterwards. Dirden Decl. ¶11. SHE recently learned that on at least five occasions beginning around October 2018, Farmer solicited investors to purchase shares of SHE stock from Legends directly. Dirden Decl. ¶12. Individual investors whom Farmer solicited include, but are not limited to, Deborah Di Bennedetto, Denae Di Bennedetto, Richard Figueroa, Mike Fenimore, John Spark, Alisha Morcate, and Gene Tenczar. Dirden Decl. ¶12; Dirden Supp. Decl. ¶4; *see* Debbie Decl., Figueroa Decl., Denae Decl., Fenimore Decl., Miller Decl., Crista Decl., White Decl., Matthew Decl., Plante Decl., Larry Decl., Morcate Decl., Gene Decl.

Farmer contacted each of the solicited individuals, holding himself out as the President of SHE, and solicited investment funds in exchange for shares of SHE common stock. Farmer never delivered any shares of stock to the solicited individuals, who later learned

from SHE that Farmer is no longer SHE's president and he was never authorized to sell shares of SHE. *See* Debbie Decl., Figueroa Decl., Denae Decl., Fenimore Decl., Miller Decl., Crista Decl., White Decl., Matthew Decl., Plante Decl., Larry Decl., Morcate Decl., Gene Decl.

SHE has not received any investment funds from these individuals and there is no record of them in SHE's present shareholder ledger. Dirden Decl. ¶13; Dirden Supp. Decl. ¶5. Each of Deborah Di Benedetto, Denae Di Benedetto, Richard Figueroa, Mike Fenimore, and John Sparks, the five investors who gave Farmer funds, would qualify to invest in SHE stock, and SHE would transfer shares of its common stock to them upon receipt of their funds. Dirden Supp. Decl. ¶3. Eight other investors solicited by Farmer to purchase SHE stock from Legends have contacted SHE, and SHE has no record of any of them as shareholders. Dirden Supp. Decl. ¶4. Farmer attempted to assuage the concerns of some solicited individuals by providing them with shares of Hydro stock instead of SHE stock. Dirden Decl. ¶13.

Many of Farmer's contracts with solicited individuals used LBL as a party, but LBL does not own any shares of SHE stock. Dirden Supp. Decl. ¶6. Farmer did sign an agreement to purchase shares of SHE common stock, identifying the investor as LBL, but this agreement was canceled when LBL failed to pay for the shares. Dirden Supp. Decl. ¶6. The California Secretary of State lists Farmer and Jacomini as two of the three managers of LBL. Dirden Supp. Decl. ¶6.

Farmer has contacted several of the solicited individuals to try and persuade either not to sign or to withdraw their declarations, accusing SHE of being a Ponzi scheme or a fraud, and assuring them that he has secured shares of SHE stock for them. Dirden Supp. Decl. ¶8.

Following the initial hearing in this matter on August 28, 2019, Farmer attempted to enter the SHE meeting room on its "Zoom" database, which is a secure website that contains She information. Dirden Supp. Decl. ¶7, Ex. E. Farmer previously knew the access password, which was changed after his termination. Dirden Supp. Decl. ¶7.

SHE entered into Private Placement Subscription Agreements with LBL and Chyanne Eve LLC, ("Chyanne Eve") pursuant to which LBL agreed to purchase 750,000 shares of SHE stock and Chyanne Eve agreed to purchase 745,000 shares of SHE stock. Dirden 2nd Supp. Decl. ¶3. Neither LBL nor Chyanne Eve tendered any funds pursuant to the agreements and SHE terminated both agreements with neither LBL nor Chyanne Eve receiving any shares of SHE stock. Dirden 2nd Supp. Decl. ¶3. LBL, Legends, and Chyanne Eve have never owned any shares of SHE stock. Dirden 2nd Supp. Decl. ¶5.

Although Farmer signed a number of different contracts to purchase SHE stock, only one was partly fulfilled. Farmer owns 20,000 shares of SHE stock pursuant to a $25,000 wire transfer from a company called Real Run LLC, controlled by Farmer's friend, Lamond Murray. Dirden 2nd Supp. Decl. ¶4. While Farmer purports to own another 70,000 shares of SHE stock, he never received those shares because he became President of SHE and was disqualified from the Advisory Committee and from holding Advisory Committee shares. Dirden 2nd Supp. Decl. ¶4. Farmer never acquired any SHE stock beyond his 20,000 shares, and yet he has purported to sell more than 400,000 shares of SHE stock. Dirden 2nd Supp. Decl. ¶5.

Farmer's 20,000 shares of SHE common stock were obtained under SEC Regulation D and therefore are subject to transfer

restrictions set forth in SEC Rule 144. Dirden 2nd Supp. Decl. ¶6, Ex. 7. Farmer's attempts to transfer his shares of SHE common stock would violate SEC Rule 144 because he was required to hold the stock for at least one year before selling them. Dirden 2nd Supp. Decl. ¶6a, Ex. 7, pp. 1-2. SEC Rule 144 also requires that adequate current information about an issuer of restricted securities, including its financial statements, must be publicly available before an investor can sell those securities, and there is very limited publicly available, current information about SHE, and its financial statements are not publicly available. Dirden 2nd Supp. Decl. ¶6b, Ex. 7, p. 2. An issuer of restricted securities under SEC Rule 144 must also file a Form 144 notice with the SEC if the sale involves more than 5,000 shares, and Farmer has not filed a Form 144 notice disclosing any of his purported sales. Dirden 2nd Supp. Decl. ¶6c, Ex. 7, p.2.

Even if an investor meets all of the conditions of SEC Rule 144, he or she cannot sell restricted securities to the public until a transfer agent has removed a restrictive legend from the respective share certificates, which requires an investor to contact the issuer of the securities or the issuer's transfer agent. Dirden 2nd Supp. Decl. ¶6d, Ex. 7, p.3. Assuming Farmer possessed share certificates for his SHE common stock, he has never contacted SHE or SHE's transfer agent to have any restricted legend removed from any share. Dirden 2nd Supp. Decl. ¶6d.

D. Analysis

Plaintiff SHE moves for a preliminary injunction restraining Defendants from soliciting persons to invest in SHE stock, disposing of funds from those who paid funds to purchase SHE stock, and issuing shares of Hydro to persons who executed contracts to buy SHE stock. Although the OSC hearing was continued by stipulation, Defendants do not oppose.

1. Probability of Success

The elements of an action for fraud are: (1) misrepresentation of a past or existing material fact, knowing it to be untrue; (2) made with the intent to induce another's reliance; (3) ignorance of the true facts and justifiable reliance by the plaintiff; and (4) damages. *See, e.g.,* Wilkins v. National Broadcasting Co., (1999) 71 Cal.App.4th 1066, 1081.

A constructive trust is an equitable remedy. It is an involuntary equitable trust created by operation of law as a remedy to compel the transfer of property from the person wrongfully holding it to the rightful owner. The essence of the theory of constructive trust is to prevent unjust enrichment and to prevent a person from taking advantage of his or her own wrongdoing. Under Civ. Code sections 2223 and 2224 and the case law applying them, a constructive trust may only be imposed where the following three conditions are satisfied: (1) the existence of a *res* (property or an interest in property); (2) the right of a complaining party to that *res*; and (3) some wrongful acquisition or detention of the *res* by another party who is not entitled to it. Communist Party v. Valencia, Inc., (1995) 35 Cal.App.4th 980, 990. Thus, a constructive trust is a remedy imposed by a court of equity to compel a person who has property to which he is not justly entitled to transfer it to the person entitled to it. The trust is passive and imposes a duty to convey. Burger v. Superior Court, (1984) 151 Cal.App.3d 1013, 1017-18 (constructive trust not available where plaintiff's money used to improve

property already owned by defendant).

To be entitled to a constructive trust, SHE is required to prove (a) facts showing fraud, breach of fiduciary duty, or breach of a promise to buy property, and (b) specific identifiable property to which SHE has title. Witkin, California Procedure (4th ed.), vol. 5, §796; Glue-Fold, Inc. v. Slautterback Corp., (2000) 82 Cal.App.4th 1018, 1023.

SHE has provided evidence demonstrating that Farmer has, without authority, held himself out as President of SHE and solicited investment in SHE stock from several individuals. The investors intended to purchase SHE stock. Farmer never delivered any shares of stock to the solicited individuals, who later learned from SHE that Farmer is no longer SHE's president and he was never authorized to sell shares of SHE. SHE has not received any investment funds from these individuals and there is no record of them in SHE's present shareholder ledger. Each of Deborah Di Benedetto, Denae Di Benedetto, Richard Figueroa, Mike Fenimore, and John Sparks, the five investors who gave Farmer funds, would qualify to invest in SHE stock, and SHE would transfer shares of its common stock to them upon receipt of their funds.

Eight other investors solicited by Farmer to purchase SHE stock from Legends have contacted SHE, and SHE has no record of any of them as shareholders. Farmer attempted to assuage the concerns of some solicited individuals by providing them with shares of Hydro stock instead of SHE stock.

These facts support a *prima facie* case of fraud by Farmer on the investors. Given that the investors still want their funds to go to SHE for the purchase of its stock, Farmer holds these funds in constructive trust for SHE. SHE has shown a probability of success on the merits of its claims.

b. Balance of Hardships

In determining whether to issue a preliminary injunction, the second factor which a trial court examines is the interim harm that plaintiff is likely to sustain if the injunction is denied as compared to the harm that the defendant is likely to suffer if the court grants a preliminary injunction. Donahue Schriber Realty Group, Inc. v. Nu Creation Outreach, (2014) 232 Cal.App.4th 1171, 1177. This factor involves consideration of the inadequacy of other remedies, the degree of irreparable harm, and the necessity of preserving the status quo. Id.

If a preliminary injunction does not issue, SHE will suffer monetary harm from the loss of investor funds as well as harm to its reputation. Defendants have not shown any harm, but it is obvious that they will suffer monetary harm from a preliminary injunction restraining them from using investor funds. The balance of hardships favors SHE.

E. Conclusion

The application for a preliminary injunction is granted. The court must set a bond for the injunction. The purpose of a bond is to cover the defendant's damages from an improvidently issued injunction. CCP §529(a). In setting the bond, the court must assume that the

preliminary injunction was wrongly issued. Abba Rubber Co. v. Seaquist, ("Abba") (1991) 235 Cal.App.3d 1, 15. The damages include any lost profits resulting from the injunction. *See* Allen v. Pitchess, (1973) 36 Cal.App.3d 321, 327-28. The attorney's fees necessary to successfully procure a final decision dissolving the injunction also are damages that should be included in setting the bond. Abba, *supra*, 235 Cal.App.3d at 15-16. The greater the likelihood of the plaintiff prevailing, the less likely the preliminary injunction will have been wrongly issued, which is a relevant factor for setting the bond. Oiye v. Fox, (2012) 211 Cal.App.4th 1036, 1062. SHE requests a nominal bond not to exceed $500. App. at 15-16. The court will discuss the amount of bond with counsel at hearing.

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[1] LBL was added to the Complaint by amendment as Doe 1 on August 15, 2019.

[2] The courts look to the substance of an injunction to determine whether it is prohibitory or mandatory. Agricultural Labor Relations Bd. v. Superior Court, (1983) 149 Cal.App.3d 709, 713. A mandatory injunction — one that mandates a party to affirmatively act, carries a heavy burden: "[t]he granting of a mandatory injunction pending trial is not permitted except in extreme cases where the right thereto is clearly established." Teachers Ins. & Annuity Assoc. v. Furlotti, (1999) 70 Cal.App.4th 187, 1493.

[3] However, a court may issue an injunction to maintain the *status quo* without a cause of action in the complaint. CCP §526(a)(3).
