

FILED
CLERK, U.S. DISTRICT COURT
JUN 20 2005
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

Priority
Send
Enter
Closed
JS-5/JS-6
JS-2/JS-3
Scan Only

MAILED

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

TRIPLE B CLAYS, INC,
Plaintiff,

vs.

COUNTY OF LOS ANGELES;
DEPARTMENT OF ARMY; AND DOES
1-25, INCLUSIVE,

Defendants.

CASE NO.: CV 03-6302 DT (JWJx)

ORDER AND OPINION:

(1) **GRANTING IN PART AND DENYING IN PART** DEFENDANT COUNTY OF LOS ANGELES' MOTION TO DISMISS PURSUANT TO FRCP 12(B)(1); AND

(2) **GRANTING** DEFENDANT COUNTY OF LOS ANGELES' MOTION TO DISMISS PURSUANT TO FRCP 12(C) AND REQUESTED FRCP 56 CONVERSION

ENTERED
CLERK, U.S. DISTRICT COURT
JUN 23 2005
CENTRAL DISTRICT OF CALIFORNIA
DEPUTY

I. Background

A. Factual Summary

This action is brought by Plaintiff, Triple B Clays, Inc. ("Plaintiff"), against Defendants County of Los Angeles ("County of Los Angeles" or "County" or "Defendant"), Department of the Army¹, and Does 1-25, for: (1) Declaratory

¹ The record is unclear as to the status of Defendant Department of the Army. Defendant Department of the Army has not answered or otherwise responded in this action. Additionally, it is unclear whether Defendant Department of the Army was properly served with the Summons and Complaint.

1 Relief and Injunctive Relief for unconstitutional impairment of contract in violation
2 of Article I, § 10, cl. 1 of the United States Constitution ("Contract Clause"); (2)
3 Declaratory Relief and Injunctive Relief for violation of the California
4 Constitution; (2) Deprivation of Civil Rights Under 42 U.S.C. § 1983 ("§ 1983");
5 (3) Breach of Contract; (4) and Interference with Prospective Economic
6 Advantage. (Complaint, p. 12-13).

7 The following facts are alleged in the Complaint:

8 In 1987, the County of Los Angeles entered into a 50 year lease with
9 the Department of the Army for the use of 1,200 acres of land and water areas in
10 the Whittier Narrows Flood Control Basin Project Area. (Id. at ¶ 11). The terms of
11 the lease authorized the County to sublet to third parties. (Id.).

12 In 1988, the County of Los Angeles entered into a sublease agreement
13 with Pachmayr Limited to operate a shooting sports park on a portion of the land
14 leased from the Army. (Id. at ¶ 12). The sublease was for a term of fifteen years,
15 with an option to extend the lease for an additional fifteen years, and allowed for
16 the development of rifle and archery ranges, and for the sale and rental of shooting
17 and archery equipment. (Id. at ¶ 13). The retail sale of guns and ammunition were
18 a significant part of the revenue stream of Pachmayr's operations, exceeding
19 \$1,300,000.00 in fiscal 1995. (Id. at ¶ 14-15).

20 In 1999, Ms. Billie Barsotti ("Ms. Barsotti"), Plaintiff's owner and
21 president, learned that Pachmayr desired to sell its interest in the sublease
22 concession. (Id. at ¶ 16). On April 7, 1999, Ms. Barsotti signed an Asset Purchase
23 Agreement for the Sale of Pachmayr, conditioned on obtaining consent from the
24 County for the assignment of the sublease ("Lease Agreement"). (Id.). In May of
25 1999, Plaintiff took possession of the shooting range and commenced operations.
26 (Id. at ¶ 17). On August 16, 1999, the County, through Rodney Cooper, then

1 Director of the County of Los Angeles Department of Parks and Recreation,
 2 consented to the assignment of the Lease Agreement to Plaintiff. (Id. at ¶ 20).

3 In September of 1999, the County passed Ordinance 13.67, entitled
 4 “Prohibition of the Sale of Firearms and Ammunition on County Property”
 5 (“Ordinance”). (Id. at ¶ 21). Section 13.67.030 of the Ordinance prohibits the sale
 6 of firearms and ammunition on property owned, leased, subleased, or assigned by
 7 the County. (Id. at ¶ 22). Section 13.67.050 of the Ordinance states that Section
 8 13.67.030 shall not apply to the sale of ammunition, or the rental of any firearm, for
 9 on-site recreational use, at the Whittier Narrows Trap and Skeet Range within the
 10 Whittier Narrows Regional Park. (Id. at ¶ 25).

11 In March of 2003, the County advised Plaintiff that it intended to
 12 enforce the Ordinance against it, commencing on April 30, 2003. (Id. at ¶ 27). All
 13 gun sales at Plaintiff have ceased since that date. (Id.).

14 **B. Procedural Summary**

15 On September 4, 2003, Plaintiff filed the Complaint.

16 On October 16, 2003, Defendant County of Los Angeles (“County”)
 17 filed an Answer to the Complaint.

18 On December 29, 2003, this Court issued an Order for Jury Trial
 19 establishing a Discovery cutoff date of July 30, 2004.

20 On July 16, 2004, Defendant filed an Ex Parte Application to Continue
 21 Trial and Final Pre-Trial. On July 26, 2004, this Court granted Defendant’s Ex
 22 Parte Application to Continue trial, final pretrial conference and related dates.

23 On January 13, 2005, Defendant filed an Ex Parte Application to
 24 exclude Plaintiff’s expert testimony or in the alternative to continue the trial in this
 25 matter and all other pretrial deadlines, including the mediation completion date
 26 filed by Plaintiff. On January 14, 2005, this Court granted Defendant’s Ex Parte

SCANNED

1 Application to exclude Plaintiff's expert testimony or in the alternative to continue
2 the trial in this matter and all other pretrial deadlines, including the mediation
3 completion date. The mediation completion date was continued from January 28,
4 2005 to March 4, 2005. The Final Pretrial conference was continued to May 16,
5 2005, and the Trial date was continued to June 27, 2005.

6 On April 19, 2005, a Stipulation and Order was issued by this Court to
7 continue the Final Pretrial Conference to July 25, 2005. The parties pretrial
8 motions were set to be heard on June 20, 2005, and the trial date of June 27, 2005
9 was ordered continued to August 30, 2005.

10 On April 25, 2005, Defendant filed a Motion to Dismiss pursuant to
11 FRCP 12(b)(1), FRCP 12(b)(6), and FRCP 56 (by conversion). On April 26, 2005,
12 the County received the Court's Order of April 19, 2005 continuing the Final
13 Pretrial Conference to July 25, 2005, setting the parties pretrial motions to be heard
14 on June 20, 2005, and continuing the Trial Date to August 30, 2005. On April 28,
15 2005, Defendant withdrew its Motion to Dismiss pursuant to FRCP 12(b)(1), FRCP
16 12(b)(6), and FRCP 56, based upon the new schedule ordered by the Court and
17 pursuant to Local Rule 7-16.

18 On May 31, 2005, Defendant County of Los Angeles filed a Motion to
19 Dismiss pursuant to FRCP 12(b)(1), and a Motion to Dismiss pursuant to FRCP 12
20 (c), and requested conversion to FRCP 56, which are presently before this Court.

21 **II. Discussion of Defendant's Motion to Dismiss Pursuant to FRCP 12(b)(1)**

22 **A. Standard For Motion to Dismiss Under FRCP 12(b)(1)**

23 Federal courts are courts of limited jurisdiction. Federal courts are
24 "presumed to lack jurisdiction in a particular case unless the contrary affirmatively
25 appears." Stock West, Inc. v. Confederated Tribes, 873 F.2d 1221, 1225 (9th Cir.
26 1989). Thus, when a defendant brings a motion to dismiss for lack of subject
27

1 matter jurisdiction pursuant to FRCP 12(b)(1), the plaintiff bears the burden of
2 establishing jurisdiction. See Kokkonen v. Guardian Life Ins., 511 U.S. 375, 378,
3 114 S. Ct. 1673, 1675 (1994).

4 **B. Analysis**

5 Defendant moves for dismissal of Plaintiff's claims for lack of subject
6 matter jurisdiction pursuant to FRCP 12(b)(1). Defendant contends that, although
7 Plaintiff's Complaint includes no mention of a taking claim, Plaintiff's claims for
8 declaratory and injunctive relief for violations of the Contract Clause, and
9 Plaintiff's claim for compensation for deprivation of civil rights under § 1983, are
10 one in the same, and comprise a taking claim unripe for adjudication by this Court.
11 (Motion to Dismiss, p. 4, lines 1-2). Defendant asserts that Plaintiff's Contract
12 Clause claim is merely a veiled attempt to recover taking compensation.
13 (Defendant's Reply to Opposition, p. 2, lines 3-4).

14 Plaintiff contends that the thrust of its claims is neither compensation
15 or damages, but a determination if Ordinance 13.67 is unconstitutional as
16 demonstrated by its request for declaratory and injunctive relief in its first and
17 second causes of action. (Plaintiff's Opposition, p. 3-4, lines 27-28, 1-2)
18 ("Opposition"). Plaintiff states that in the Ninth Circuit, courts deciding issues of
19 unconstitutional impairment of contract have never imposed a prerequisite of state
20 court adjudication. (Opposition, p.4, lines 4-5). This Court agrees with Defendant
21 in part, and with Plaintiff in part.

22 **1. As to its Contract Clause claim, Plaintiff has met its burden**
23 **of establishing subject matter jurisdiction pursuant to FRCP**
24 **12(b)(1)**

25 The district courts shall have original jurisdiction of all civil actions
26 arising under the Constitution, laws, or treaties of the United States. 28 U.S.C. §
27

1 1331 (2005) ("§ 1331"). Under its first claim for relief, Plaintiff requests
2 declaratory and injunctive relief for Defendant's impairment of existing valid
3 contracts in violation of the Contract Clause of the Constitution of the United
4 States. (Complaint, ¶ 30(e)-33). Because Plaintiff's claim arises under the
5 Constitution of the United States, and the district courts are granted original
6 jurisdiction over such claims by § 1331, this Court finds that Plaintiff has met its
7 burden of establishing subject matter jurisdiction pursuant to FRCP 12(b)(1) over
8 the Contract Clause claim.

9 **2. As to its claims under 42 U.S.C. § 1983, Plaintiff has not met**
10 **its burden of establishing subject matter jurisdiction**
11 **pursuant to FRCP 12(b)(1)**

12 As noted above, the County seeks to dismiss Plaintiff's federal claims
13 on the basis that they are "taking" claims. However, as explained, Plaintiff pleads
14 a claim for violation of the Contract Clause. Separately, it sets forth a claim under
15 § 1983 for the loss of revenue and profits in excess of \$13,000,000.00.

16 (Complaint, ¶ 47). It has been recognized that a land use restriction that denies a
17 party an economically viable use of his land effects a taking. Agins v. City of
18 Tiburon, 447 U.S. 255, 260 (1980). Thus, this Court agrees with Defendant that
19 Plaintiff's claim is properly considered a taking claim. Before a taking claim may
20 be filed in federal court, the plaintiff: (1) must obtain a final decision from the
21 governmental authority charged with implementing the regulations; and (2) must
22 pursue compensation through state remedies unless doing so would be futile.
23 Hacienda Valley Mobile Estates v. City of Morgan Hill, 353 F.3d 651, 655 (9th
24 Cir. 2003) (citing Williamson County Reg'l Planning Comm'n v. Hamilton Bank,
25 473 U.S. 172 (1985)). Recourse to state courts cannot be considered futile unless

1 the state courts have specifically heard the cause of action at issue and denied it.

2 Austin v. City of Honolulu, 840 F.2d 678, 681 (9th Cir. 1987).

3 It is not disputed by Defendant that Plaintiff sought, and was denied,
4 relief from the County on May 15, 2003. (Motion to Dismiss pursuant to FRCP
5 12(b)(1), p. 2). Thus, Plaintiff satisfied the first prong of the taking claim test set
6 forth in Williamson. Williamson, 473 U.S. at 194-195. However, Plaintiff fails to
7 show that it sought relief through state remedies, or that an attempt to do so would
8 have been futile. Plaintiff's failure to exhaust state court remedies renders its
9 federal taking claim unripe for adjudication in the district court. Hacienda Valley
10 Mobile Estates, 353 F.3d at 659. Because Plaintiff's federal taking claim is unripe,
11 Plaintiff has failed to meet its burden of establishing subject matter jurisdiction
12 over this claim pursuant to FRCP 12(b)(1).

13 **C. Conclusion**

14 Based on the foregoing discussion, this Court **GRANTS** in part and
15 **DENIES** in part Defendant's motion to dismiss as follows. This Court:

- 16 (1) **DENIES** Defendant's motion to dismiss pursuant to
17 FRCP 12(b)(1) as to Plaintiff's Contract Clause claim;
18 and
19 (2) **GRANTS** Defendant's motion to dismiss pursuant to
20 FRCP 12(b)(1) as to Plaintiff's claim under § 1983.

21 **III. Discussion of Plaintiff's Motion to Dismiss Under FRCP 12(c)**

22 **A. This Court Converts the FRCP 12(c) Motion to a Motion for**
23 **Summary Adjudication under FRCP 56**

24 In this Motion, Defendant requests this Court to consider extrinsic
25 evidence proffered in the declaration of Nick J.G. Sanchez and convert the FRCP
26
27
28

FILED
CLERK
U.S. DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
ST. LOUIS

1 12(c) motion for judgment on the pleadings² to a motion for summary adjudication
2 under FRCP 56.³ In its Opposition, Plaintiff opposes Defendant's request for a
3 FRCP 56 conversion on the basis that Defendant's FRCP 56 motion is untimely
4 pursuant to the Order for Jury Trial issued by this Court on December 29, 2003,
5 which states that no motions for summary judgment may be filed later than 15 days
6 after the discovery cut-off date. The discovery cut-off date, which was originally
7 set for July 30, 2004, was continued to October 31, 2004, making motions for
8 summary judgment due by November 15, 2004.

9 This Court finds that converting the FRCP 12(c) motion to a FRCP 56
10 motion is warranted. The Order for Jury Trial is issued in order to ensure that the
11 cases are litigated in an efficient and orderly manner. By allowing the belated
12 FRCP 56 motion, no delay in the resolution of this case will be experienced, and in
13 fact, it will contribute to the narrowing of issues in this litigation.⁴ Moreover, and

14
15 ²When deciding a motion for judgment on the pleadings pursuant to FRCP
16 12(c), a court must treat the allegations of the nonmoving party as true. See Hal
17 Roach Studios v. Richard Feiner & Co., 896 F.2d 1542, 1550 (9th Cir. 1990).
18 Moreover, all inferences reasonably drawn from the nonmovant's allegations must
19 be construed in favor of nonmovant. See General Conference Corp. of Seventh
20 Day Adventists v. Seventh Day Adventist Cong. Church, 887 F.2d 228, 230 (9th
21 Cir. 1989). Judgment on the pleading is appropriate "when the moving party
22 clearly established on the face of the pleadings that no material issue of fact
23 remains to be resolved and that it is entitled to judgment as a matter of law." See
24 Hal Roach Studios, 896 F.2d at 1542.

25 ³ Defendant asks for "summary judgment"; however, the proper application
26 is "summary adjudication."

27 ⁴ As stated in the Order for Jury Trial, the language is permissive - "no
28 motions for summary judgment *may* be filed later than 15 days" As such, the
proper course for Defendant would have been to seek this Court's permission to
file such a motion beyond the cut-off date. Nonetheless, for the reasons stated,
this Court allows the conversion.

1 of importance, Plaintiff will not suffer any prejudice if this Court treats this motion
2 as a FRCP 56 motion. Discovery is completed; Plaintiff was given proper notice;
3 and in fact, Plaintiff offered extrinsic evidence itself. As such, this Court grants
4 Defendant's request to convert the FRCP 12(c) Motion and will treat this motion as
5 a Motion for Summary Adjudication under FRCP 56.

6 **B. Standard for FRCP 56 – Summary Judgment**

7 Under the Federal Rules of Civil Procedure, summary judgment is
8 proper only where “the pleadings, depositions, answers to interrogatories, and
9 admissions on file, together with affidavits, if any, show that there is no genuine
10 issue as to any material fact and that the moving party is entitled to a judgment as a
11 matter of law.” Fed. R. Civ. P. 56(c). Upon such a showing, the Court may grant
12 summary judgment “upon all or any part thereof.” Fed. R. Civ. P. 56(a), (b).

13 To prevail on a summary judgment motion, the moving party must
14 show that there are no triable issues of fact as to matters upon which it has the
15 burden of proof at trial. See Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986). On
16 issues where the moving party does not have the burden of proof at trial, the moving
17 party is required only to show that there is an absence of evidence to support the
18 nonmoving party's case. See Celotex Corp. v. Catrett, 477 U.S. at 326.

19 To defeat a summary judgment, the non-moving party may not merely
20 rely on its pleadings or on conclusory statements. Fed. R. Civ. P. 56(e). Nor may
21 the non-moving party merely attack or discredit the moving party's evidence. Nat'l
22 Union Fire Ins. Co. v. Argonaut Ins. Co., 701 F.2d 95, 97 (9th Cir. 1983). The non-
23 moving party must affirmatively present specific admissible evidence sufficient to
24 create a genuine issue of material fact for trial. See Celotex Corp v. Catrett, 477
25 U.S. at 324.

26 **C. Analysis**

27

28

SECRET

1 Further, this is supported by the Fair Market Value Study of Plaintiff's business
2 with and without gun sales which Plaintiff commissioned and then submitted to
3 Defendant on January 27, 2005. According to this study, Plaintiff's damages began
4 in December 1999. (Sanchez Decl. In Support of Defendant's Motion to Dismiss ¶
5 3, Exh. B, Jan. 28, 2005 Brad Cashion Expert Report, schedules 3, 7-10, 14, 19, 23,
6 27). In deposition, Plaintiff's expert and the author of the report, Brad Cashion,
7 explained that he included the time when Plaintiff was permitted to sell firearms in
8 his assessment of damages because he was informed by Plaintiff's management that
9 Plaintiff's actual numbers were not reliable because people stopped buying guns
10 from Plaintiff as a result of the passage of the Ordinance (Cashion Dep. at 5,
11 attached to Sanchez Decl. In Support to Defendant's Reply at Ex. D).⁸ In effect,
12 Brad Cashion's report reveals that Plaintiff would have sold more guns from
13 December 1999 to April 2003 had the Ordinance never been passed. Furthermore,
14 once it found out the Ordinance was going to be passed, Plaintiff attended a hearing
15 and lobbied against the passage. (Sanchez Dec., ¶¶ 3, 4; Deposition of Bruce
16 Barsotti (Barsotti Dep.") at pp. 14-17, attached as Exh. B; and Deposition of John
17 Herkowitz ("Herkowitz Dep.") at pp. 67-69, 74, 75, and 77, attached as Exhibit C).
18 As a result of its lobbying, Plaintiff obtained an amendment to the Ordinance which
19 allowed Plaintiff to continue to rent shotguns and sell ammunition. And finally,
20 Plaintiff had executed a lease with a third party to sell guns, but before any attempt
21 to enforce the Ordinance, Plaintiff cancelled the lease based on the belief that the
22 Ordinance would immediately effect the third party's as well as its own ability to

23

24 ⁸To calculate Plaintiff's purported damages, Mr. Cashion valued Triple B as
25 of December 31, 1999 under two scenarios--with the ability to sell firearms and
26 without the ability to sell firearms. To create the former scenario, Mr. Cashion did
27 not use the actual Triple B sales numbers up to April 2003. Instead, he created
28 projections for the pre-April 2003 as well as the post-April 2003 time periods.

28

13
12
11
10
9
8
7
6
5
4
3
2
1

1 sell firearms. (Sanchez Decl., ¶ 6 and Letter dated September 2, 1999, Exhibit E).
2 Thus, in addition to the allegation in the Complaint itself, Plaintiff's acts of
3 lobbying against the Ordinance, breaking a lease due to its concern of violating the
4 Ordinance, and also having its damages assessed from the early date of December
5 1999, demonstrate that Plaintiff either knew or should have known of its injuries
6 upon the passage of the Ordinance. Because the applicable statute of limitations for
7 bringing a Section 1983 claim in 1999 was one-year, Plaintiff's claim expired by
8 September 2000, thereby barring its claim which was brought on September 4,
9 2003.

10 The evidence as discussed above, then, supports a determination that
11 Plaintiff either knew or should have known of its injuries upon the passage of the
12 Ordinance in late August 1999. Nonetheless, this Court notes that even if it looks
13 past this, the evidence reflects two later dates upon which the Impairment of
14 Contract Claim would have accrued. After the Ordinance was passed, Plaintiff was
15 not able to sell guns for nearly four months because Defendant had not issued
16 Plaintiff the proper licenses and permits to do so. Defendant issued the proper
17 licenses and permits on December 17, 1999, two months after an injunction against
18 the Ordinance was put into effect, allowing the sale of guns. (Nick Sanchez Decl.
19 In Support of Defendant's Reply ¶ 4). On August 1, 2002, the injunction against the
20 Ordinance was lifted, once again disallowing the sale of guns. (Nick Sanchez Decl.
21 In Support of Defendant's Motion to Dismiss ¶ 8; Exhibit G). However, Defendant
22 did not enforce the Ordinance against Plaintiff immediately. Two months later, on
23 November 12, 2002, Defendant sent Plaintiff a letter asking Plaintiff to voluntarily
24 comply with the Ordinance within sixty days or to meet with Defendant to discuss
25 the impact of the Ordinance. (Plaintiff's Opposition to Defendant's Motion to
26 Dismiss, p.4, lines 7-12) (citing Oto Decl. at ¶ 3 and exhibit B). In December 2002,

27
28

1 Plaintiff responded to Defendant's letter expressing its preference to meet with
2 Defendant. (Id. at lines 12-14). Plaintiff and Defendant met a few times between
3 February and March of 2003. In March 2003, Defendant told Plaintiff that
4 Defendant intended to enforce the Ordinance against Plaintiff. (Complaint, ¶ 27).
5 The Ordinance was enforced beginning in April 2003.

6 Based on the above, Plaintiff knew or should have known of the
7 alleged injuries on August 1, 2002, when the injunction against the Ordinance was
8 lifted. At this time, the Ordinance was in effect, even if it wasn't completely
9 enforced, clearly breaching the contract between Plaintiff and Defendant. Even if
10 the Court looks at this later date of August 1, 2002, the one-year statute of
11 limitations would again bar Plaintiff's action as Plaintiff would have had until
12 August 1, 2003 to bring its claim. Finally, this Court notes that even if it were to
13 look past both the August 1999 and the August 2002 dates, the latest possible date
14 Plaintiff knew or should have known of its injuries is November 12, 2002, at which
15 time Defendant sent Plaintiff a letter requiring it to voluntarily comply with the
16 Ordinance within 60 days. Thus, the one-year statute of limitations would again bar
17 Plaintiff's action as Plaintiff would have had until November 12, 2003 to bring its
18 claim.

19 **2. Defendant Is Not Estopped From Asserting a Statute of**
20 **Limitations Defense**

21 Plaintiff asks the Court to estop Defendant from asserting a statute of
22 limitations defense by citing Kleinecke v. Montecito, 147 Cal. App. 3d 240 (1983),
23 for authority. In Kleinecke, the plaintiff sued the wrong governmental entity over
24 an easement dispute. Defense counsel, who also represented the proper defendant,
25 was advised not to alert the plaintiff to the error until the statute of limitations could
26 run against the proper defendant. When the statute ran, the error was revealed, and
27

1 the proper defendant obtained summary judgment on a statute of limitations
2 defense. The Court of Appeal reversed summary judgment and held that the proper
3 defendant was estopped from asserting the statute of limitations defense. In doing
4 so; the court ruled that "a defendant would not be permitted to lull his adversary into
5 a false sense of security and cause the bar of the statute of limitations to occur and
6 then plead in defense the delay occasioned by his own conduct." Kleinecke, 147
7 Cal. App. 3d at 245. The court also noted the following elements for a claim of
8 estoppel against a public entity: "(1) the party to be estopped must be apprised of
9 the facts; (2) he must intend that his conduct shall be acted upon, or must so act that
10 the party asserting the estoppel had a right to believe it was so intended; (3) the
11 other party must be ignorant of the true state of facts; and (4) he must rely upon the
12 conduct to his injury." Id. at 245-246.

13 The Kleinecke case is highly distinguishable from this case. In
14 Kleinecke, defense counsel intentionally kept the identity of the proper defendant
15 from the plaintiff. Only after the statute of limitations had lapsed did defense
16 counsel reveal the plaintiff's mistake. In the present case, both Plaintiff and
17 Defendant were aware of the facts of the case. At no time did Defendant
18 misrepresent to Plaintiff whether Plaintiff had a claim. As such, Plaintiff cannot
19 meet the third element of estoppel which requires Plaintiff to be ignorant of the true
20 state of the facts during the time that the statute of limitations was running. Plaintiff
21 was aware that the Ordinance was passed on August 24, 1999 and would be
22 enforced beginning October 7, 1999, thus violating its contract with Defendant and
23 while an injunction was passed on October 21, 1999 preventing the enforcement of
24 the Ordinance, Plaintiff should have known that the injunction would not
25 necessarily be in tact permanently from that point on but was rather a temporary
26 solution to its problem. After the injunction was lifted on August 1, 2002, Plaintiff

27

28

1 once again did not have the right to sell firearms. Rather than bring suit at that
 2 point, Plaintiff, at its own risk, entered negotiations with Defendant.⁹ Thus, this
 3 Court finds that Plaintiff cannot rely on an estoppel argument because Plaintiff
 4 knew of a few different occurrences on different dates up through 2002 which
 5 should have compelled Plaintiff to realize that its claim had accrued and to file suit.

6 **D. Conclusion**

7 Based on the foregoing discussion, this Court **GRANTS** Defendant's
 8 Request to convert the 12(c) Motion to a Motion for Summary Adjudication
 9 pursuant to FRCP 56; and **GRANTS** Defendant's Motion for Summary
 10 Adjudication, finding that Plaintiff's first claim for violation of the Contract Clause
 11 is barred by the relevant statute of limitations.

12 **V. This Court Declines to Exercise Supplemental Jurisdiction Over**
 13 **Plaintiff's State Law Claims**

14 Plaintiff requested that this Court exercise supplemental jurisdiction
 15 over its State law claims for relief including: (1) declaratory and injunctive relief for
 16 violation of the California Constitution; (2) breach of contract; and (3) interference
 17 with prospective economic advantage. In any civil action of which the district
 18 courts have original jurisdiction, the district courts shall have supplemental
 19 jurisdiction over all other claims that are so related to claims in the action within
 20 such original jurisdiction that they form part of the same case or controversy under
 21 Article III of the United States Constitution. 28 U.S.C. § 1367(a) (2005). However,
 22 the district courts may decline to exercise supplemental jurisdiction over a claim if
 23 the district court has dismissed all claims over which it has original jurisdiction. 28

24
 25 ⁹As Defendant correctly points out in its Reply in Support of its Motion to
 26 Dismiss, time spent negotiating a settlement does not automatically toll the statute
 27 of limitations. Had Plaintiff wished to toll the statute of limitations it could have
 asked Defendant to enter into a tolling agreement.

SCANNED

1 U.S.C. § 1367(c)(3). As discussed supra, this Court finds that Plaintiff's disguised
2 taking claim is unripe, and that this Court therefore must dismiss the claim, and
3 concludes that Plaintiff's Contract Clause Claim is barred by the statute of
4 limitations as a matter of law. Thus, because this Court has dismissed all claims
5 over which it may exercise original jurisdiction pursuant to § 1331, this Court
6 declines to exercise supplemental jurisdiction over Plaintiff's state law claims and
7 hereby dismisses these claims without prejudice to allow for refileing in state court¹⁰.

8 **VI. Conclusion**

9 Based on the foregoing discussion this Court:

- 10 (1) **DENIES** Defendant's motion to dismiss pursuant to FRCP
- 11 12(b)(1) as to Plaintiff's Contract Clause Claim;
- 12 (2) **GRANTS** Defendant's motion to dismiss pursuant to FRCP
- 13 12(b)(1) as to Plaintiff's claim under 42 U.S.C. § 1983; and
- 14 (3) **GRANTS** Defendant's Motion to Dismiss pursuant to FRCP
- 15 12(c) upon its conversion, as requested by Defendant, to a FRCP
- 16 56 motion for summary judgment.

17
18 IT IS SO ORDERED.

19
20 DATED: 6/20/05

21 **DICKRAN TEVRIZIAN**

Dickran Tevrizian, Judge
United States District Court

22
23
24
25 ¹⁰ The period of limitations for any claim dismissed at the same time as the
26 dismissal of the claim under subsection (a), shall be tolled while the claim is
27 pending and for a period of 30 days after it is dismissed unless State law provides
28 for a longer tolling period. 28 U.S.C. § 1367(d).