

**Tentative Rulings for April 5, 2022**  
**Department 502**

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There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).)

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The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

21CECG01140      *Hussein Ali v. Quick Quack Car Wash Holding, LLC* is continued to  
Wednesday, May 4, 2022 at 3:30 p.m. in Dept. 502

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(Tentative Rulings begin at the next page)

# **Tentative Rulings for Department 502**

Begin at the next page

(03)

**Tentative Ruling**

Re: ***Arana v. K. Hovnanian at Valle Del Sol, LLC***  
Superior Court Case No. 19CECG04240

Hearing Date: April 5, 2022 (Dept. 502)

Motion: Defendants' Demurrer to First Amended Complaint

**Tentative Ruling:**

To overrule defendants' demurrer to the first amended complaint. To order defendants to file and serve their answer within ten days of the date of service of this order.

**Explanation:**

Defendants demur to the second cause of action for breach of contract, contending that it is barred by the exclusive provisions of the Right to Repair Act, Civil Code section 896 *et seq.* They argue that the Right to Repair Act provides the sole and exclusive remedy for construction defect claims, so any cause of action that alleges construction defects is barred. Here, they point out that the plaintiffs' breach of contract claim simply repackages their construction defect claim as a breach of contract, and thus the second cause of action fails to state a valid cause of action.

However, under the express terms of the Right to Repair Act, claims for breach of contract are exempted from the Act's exclusive coverage. "Except as provided in this title, no other cause of action for a claim covered by this title or for damages recoverable under Section 944 is allowed. In addition to the rights under this title, *this title does not apply to any action by a claimant to enforce a contract or express contractual provision, or any action for fraud, personal injury, or violation of a statute.*" (Civ. Code, § 943, subd. (a), italics added.)

In *McMillin Albany v. Superior Court* (2018) 4 Cal.5th 241, the California Supreme Court explained that, "the statute here leaves the common law undisturbed in some areas, *expressly preserving actions for breach of contract, fraud, and personal injury.* In other areas, however, the Legislature's intent to reshape the rules governing construction defect actions is patent." (*McMillin Albany LLC v. Superior Court* (2018) 4 Cal.5th 241, 249, internal citations omitted, italics added.)

Thus, the Supreme Court's holding in *McMillin*, as well as the express language of section 943(a), are not consistent with defendants' position that breach of contract claims based on construction defects are barred by the Right to Repair Act, and indeed section 943(a) and *McMillin* both state that breach of contract claims are *not* covered by the Act.

Nevertheless, defendants argue that *McMillin* stands for the proposition that, where plaintiffs allege a common claim for breach of contract that is based on

construction defects and seek the same types of relief that they seek in their Right to Repair Act claim, the breach of contract claim is barred and the Right to Repair Act claim is their sole and exclusive remedy. However, *McMillin* was not decided on demurrer and did not address the issue of whether plaintiffs could state a claim for breach of contract based on allegations of construction defects.

In *McMillin*, the issue was whether the plaintiffs, who were alleging construction defect claims couched as common law causes of action rather than claims under the Right to Repair Act, were still required to comply with the Act's prelitigation procedures and thus had to give the developer notice and an opportunity to repair the defects before filing suit. (*Id.* at p. 247.) The Supreme Court held that the prelitigation procedures under the Act applied regardless of whether plaintiffs brought their claims under the Act or under common law theories, and thus defendant was entitled to a stay of the litigation until the parties complied with the Act's procedures. (*Ibid.*)

"In holding that claims seeking recovery for construction defect damages are subject to the Act's prelitigation procedures regardless of how they are pleaded, we have no occasion to address the extent to which a party might rely upon common law principles in pursuing liability under the Act. *Nor does our holding embrace claims such as those for breach of contract, fraud, or personal injury that are expressly placed outside the reach of the Act's exclusivity.* That limit does not help the [homeowners'] position here, for while the complaint includes breach of contract and breach of warranty claims, it also includes claims for strict liability and negligent failure to construct defect-free homes, to which no statutory exception applies. Accordingly, the [homeowners] must comply with the Act's prelitigation procedures before their suit may proceed. Because the [homeowners] have not yet done so, *McMillin* is entitled to a stay." (*Id.* at p. 259, internal citations omitted, italics added.)

Thus, defendants' argument overstates the Supreme Court's holding. *McMillin* said nothing about whether a plaintiff can state a claim for breach of contract based on construction defects. It merely held that the fact that plaintiffs couched their construction defect claims as common law causes of action does not allow them to avoid complying with the prelitigation procedures under the Act. (*Ibid.*) Nor did it hold that the plaintiffs' common law causes of action were invalid as pled because they were barred by the Act. It simply found that plaintiffs needed to comply with the Act's prelitigation procedures by giving the developer notice and an opportunity to repair the defects. (*Ibid.*)

Defendants argue that section 943(a) only exempts claims to "enforce" a contract or contractual clause, and thus other types of breach of contract claims are still barred. In other words, they contend that only claims for specific performance of a contract would be exempted from the Act's provisions. However, the *McMillin* court specifically stated that the Act exempts "breach of contract" causes of action, and did not interpret the Act to exclude only specific performance claims. Defendants have not cited any authorities that hold that the Act only exempts specific performance claims. The Act's exemption under section 943(a) covers any claim related to contract enforcement, including the plaintiffs' claims here, which allege breach of express warranties related to their homes. (FAC, ¶¶ 18-27.) Therefore, the court finds that plaintiffs' breach of contract claim is not barred by the Right to Repair Act.

Defendants also argue in the alternative that plaintiffs have not alleged sufficient facts to support their contract claim and that the claim is uncertain because the plaintiffs have not attached or incorporated the written contracts to their complaint or alleged the terms of the contract verbatim, and they have not alleged what portions of the contract were breached. However, while a plaintiff may attach or incorporate a contract into the complaint or allege the contract's terms verbatim in order to state a claim for breach of contract, the plaintiff may also allege the contract by its legal effect. (*Miles v. Deutsche Bank National Trust Co.* (2015) 236 Cal.App.4th 394, 401-402.) "The correct rule is that 'a plaintiff may plead the legal effect of the contract rather than its precise language.'" (*Miles v. Deutsche Bank National Trust Co.* (2015) 236 Cal.App.4th 394, 402, quoting *Construction Protective Services, Inc. v. TIG Specialty Ins. Co.* (2002) 29 Cal.4th 189, 199 and disagreeing with *Otworth v. Southern Pac. Transportation Co.* (1985) 166 Cal.App.3d 452, 459.)

Here, plaintiffs have alleged that there were written agreements between them and defendants, and they allege the legal effect of the written warranties that they allege defendants breached here. (FAC, ¶¶ 18-27.) Specifically, they allege that the developer defendants expressly warranted that the subject properties would be built in accordance with applicable building codes and in conformance with specific standards and tolerances, as specified in the purchase documents. (*Id.* at ¶ 19.) They also warranted that generally accepted local building practices and standards shall apply. (*Ibid.*) They also allege that the developers provided warranties of 10 years from the date the first owner took possession of the subject properties, and that the warranties transferred to the new owners when they took over the properties. (*Id.* at ¶¶ 21, 22.) Plaintiffs allege that they performed all of their duties under the sales contracts, and that defendants breached the contracts by failing to repair the defects that plaintiffs later discovered in their homes, which caused plaintiffs to suffer damages. (*Id.* at ¶¶ 23-26.) Thus, plaintiffs have sufficiently alleged their claim for breach of contract, and the court intends to overrule the demurrer.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

**Tentative Ruling**

Issued By: RTM on 3/29/2022.  
(Judge's initials) (Date)



(36)

**Tentative Ruling**

Re: ***In re Gurpartap Singh Hayer***  
Superior Court Case No. 22CECG00747

Hearing Date: April 05, 2022 (Dept. 502)

Motion: Petition to Compromise Claim of Minor

**Tentative Ruling:**

To deny, without prejudice. Petitioner must file an amended petition, with appropriate supporting papers and proposed orders, and obtain a new hearing date for consideration of the amended petition. (Super. Ct. Fresno County, Local Rules, rule 2.8.4.)

**Explanation:**

**Medical Diagnosis and Recovery:**

The petition fails to describe the minor's injuries, treatment and recovery. In Item 6, the minor's injuries are simply described as "Claimant was taken by ambulance to the Community Regional Center. See Medical records." (Petrn., Item 6.) No medical records are attached, and the "Injury-Related Services Paid by the Medi-Cal Program" attached do not adequately provide the requisite information. Item 7, the minor's treatment, is left blank and nothing is attached for Item 8 to show the extent of the minor's injuries and recovery. Although the petition indicates that the minor has fully recovered, nothing is provided to substantiate this claim.

An original or a photocopy of any doctor's report containing a diagnosis of the claimant's injuries or a prognosis for the claimant's recovery, and a report of the claimant's current condition, must be attached to [the] petition as Attachment 8.

(Petrn., Item 8.)

**Medical Liens:**

The petition indicates that the total amount of medical expenses paid was \$16,318 and that \$12,318 was paid by Medi-Cal. It is unknown whether the remaining amount is paid. Further, that Medi-Cal has agreed to accept \$9,375 in full satisfaction of its lien; however, the Medi-Cal Reimbursement Letter attached to the petition does not substantiate this amount. Rather, the letter indicates \$12,239.01 is required to satisfy the lien. (Attachment 12b(4).) The petition cannot be granted until the accurate information is provided.

**Diligent Investigation:**

The petition must show that petitioner has made a careful and diligent inquiry and investigation into the assets of the defendant, which petitioner has not done.

**Dated Signature Required**

The signatures of both the petitioner and counsel on page 10 of the petition must be dated.

**Attorney's Fees:**

If attorney fees are requested, a declaration from the attorney explaining the basis for the request, including a discussion of applicable factors listed in California Rules of Court, rule 7.955, subd. (b), must be attached to the petition. (Cal. Rules of Court, rule, 7.955, subd. (c).) Moreover, "[t]he court must give consideration to the terms of any representation agreement made between the attorney and the representative of the minor..." (Cal. Rules of Court, rule 7.955, subd. (a)(2).)

The petition requests that 25% of the gross settlement, \$6,250, be awarded to counsel, but fails to include the attorney's declaration as required by California Rule of Court, rule 7.955. Additionally, while the petition indicates that the parties are bound by an attorney-client fee agreement, the petition fails to attach any such agreement.

**Blocked Account:**

The petition is missing the mandatory Judicial Council form, Order to Deposit Funds in Blocked Account (form MC-355).

Pursuant to California Rules of Court, Rule 3.1312 and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

**Tentative Ruling**

Issued By: RTM on 4/1/2022  
(Judge's initials) (Date)

(36)

**Tentative Ruling**

Re: ***In re Shivraj Singh***  
Superior Court Case No. 22CECG00748

Hearing Date: April 05, 2022 (Dept. 502)

Motion: Petition to Compromise Claim of Minor

**Tentative Ruling:**

To deny, without prejudice. Petitioner must file an amended petition, with appropriate supporting papers and proposed orders, and obtain a new hearing date for consideration of the amended petition. (Super. Ct. Fresno County, Local Rules, rule 2.8.4.)

**Explanation:**

**Medical Diagnosis and Recovery:**

Although the petition indicates that the minor has fully recovered, nothing is provided to substantiate this claim. Item 8 provides:

An original or a photocopy of any doctor's report containing a diagnosis of the claimant's injuries or a prognosis for the claimant's recovery, and a report of the claimant's current condition, must be attached to [the] petition as Attachment 8.

(Petn., Item 8.)

No medical records are attached.

**Diligent Investigation:**

The petition must show that petitioner has made a careful and diligent inquiry and investigation into the assets of the defendant, which petitioner has not done.

**Dated Signature Required**

The signatures of both the petitioner and counsel on page 10 of the petition must be dated.

**Attorney's Fees:**

If attorney fees are requested, a declaration from the attorney explaining the basis for the request, including a discussion of applicable factors listed in California Rules of Court, rule 7.955, subdivision (b), must be attached to the petition. (Cal. Rules of Court, rule, 7.955, subd. (c).) Moreover, "[t]he court must give consideration to the terms of any representation agreement made between the attorney and the representative of the minor..." (Cal. Rules of Court, rule 7.955, subd. (a)(2).)

The petition requests that 25% of the gross settlement, \$2,083, be awarded to counsel, but fails to include the attorney's declaration as required by California Rule of Court, rule 7.955. Additionally, while the petition indicates that the parties are bound by an attorney-client fee agreement, the petition fails to attach any such agreement.

**Blocked Account:**

The petition is missing the mandatory Judicial Council form, Order to Deposit Funds in Blocked Account (form MC-355).

Pursuant to California Rules of Court, Rule 3.1312 and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

**Tentative Ruling**

**Issued By:** RTM **on** 4/1/2022 .  
(Judge's initials) (Date)



(24)

**Tentative Ruling**

Re: **Baltazar v. Bragg**  
Superior Court Case No. 20CECG01313

Hearing Date: April 5, 2022 (Dept. 502)

Motion: Petitions for Compromise of Minors' Claims (Three Minors)

**Tentative Ruling:**

To grant. Orders signed. No appearances necessary.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

**Tentative Ruling**

**Issued By:** RTM on 4/1/2022.  
(Judge's initials) (Date)

(24)

**Tentative Ruling**

Re: **Rodriguez v. Delta Airlines, Inc.**  
Superior Court Case No. 19CECG00453

Hearing Date: April 5, 2022 (Dept. 502)

Motion: Motion by Defendants Delta Air Lines, Inc., Skywest Airlines, Inc., and the City of Fresno to Strike Portions of the Second Amended Complaint

**Tentative Ruling:**

To continue the motion to Wednesday, April 27, 2022, at 3:30 p.m. in Department 502, in order to allow the parties to meet and confer in person or by telephone, as required. If this resolves the issues, defendants shall call the court to take the motion off calendar. If it does not resolve the issues, defense counsel shall file a declaration, on or before April 21, 2022, stating the efforts made.

**Explanation:**

Code of Civil Procedure section 435.5 makes it very clear that meet and confer must be conducted "in person or by telephone. (*Id.*, subd. (a).) Sending written communication first, as defense counsel did here, can be helpful to the process, but this does not shift the burden for meeting and conferring to the plaintiff. Likewise, an exchange of emails does not satisfy the meet and confer requirement, since the Legislature specified in-person or telephone contact. The moving party is not excused from this requirement unless they show that the plaintiff failed to respond to the meet and confer request or otherwise failed to meet and confer in good faith. (*Id.*, subd. (a)(3)(B).) The evidence did not show a bad faith refusal to meet and confer on plaintiff's part that would excuse defendant from complying with the statute.

The parties must engage in good faith meet and confer, in person or by telephone, as set forth in the statute. The court's normal practice in such instances is to take the motion off calendar, subject to being re-calendared once the parties have met and conferred. However, given the extreme congestion in the court's calendar currently, the court will instead continue the hearing to allow the parties to meet and confer, and only if efforts are unsuccessful will it rule on the merits.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

**Tentative Ruling**

Issued By: RTM on 4/1/2022.  
(Judge's initials) (Date)

(35)

**Tentative Ruling**

Re: ***Consolidated Electrical Distributors, Inc. v. Cable Links Construction Group, Inc. et al.***  
Superior Court Case No. 20CECG02434

Hearing Date: April 5, 2022 (Dept. 502)

Motion: by Defendant/Cross-Complainant Western Surety Company for an Order to Deposit; Discharge; and Request for Attorney Fees and Costs

**Tentative Ruling:**

To grant the request for an order to deposit. To discharge Western Surety Company of its surety. To grant the request for attorney fees and costs in the amount of \$2,000. The court intends to sign the proposed order upon confirmation of deposit of \$5,500.

**Explanation:**

On August 19, 2020, plaintiff filed the instant action against, among others, defendant Western Surety Company. Against Western Surety, plaintiff sought only a claim on a statutory bond. On October 11, 2020, Western Surety filed a verified cross-complaint in the present action seeking, among other things, an interpleader to deposit the sum amount held in surety under applicable statutory bond, and to disclaim any interest in such amount. Western Surety now seeks an order to deposit and discharge its bond, and for attorney fees and costs therefrom.

Deposit and Discharge of Western Surety Company

Where the only relief sought against a defendant is the payment of a stated amount of money alleged to be wrongfully withheld, upon affidavit that it is merely a stakeholder with no interest in the amount or any portion thereof and that conflicting demands have been made upon him for the amount by parties to the action, upon such notice to such parties, such defendant may apply to the court for an order discharging it from liability and dismissing it from the action on deposit with the clerk of the court of the amount in dispute. (Code Civ. Proc. § 386.5.)

In the present motion, Western Surety presents no evidence of its surety agreement with defendant Cable Links Construction Group, Inc. pursuant to Business and Professions Code section 7071.6. However, the verified cross-complaint declared that Cable Links so applied for the surety in question on or about May 2008, and that such a surety was issued. (Cross-Complaint, ¶¶ 5-6.) The verified cross-complaint alleges that as to Western Surety, the maximum liability owed is \$15,000 if a homeowner is a claimant, and \$7,500 if no homeowners are claimants. (Cross-Complaint, ¶ 17.)



(20)

**Tentative Ruling**

Re: **County of Fresno v. Gill**  
Superior Court Case No. 21CECG02474

Hearing Date: April 5, 2022 (Dept. 502)

Motion: Plaintiff's Motion for Preliminary Injunction

**Tentative Ruling:**

To grant in limited part as discussed below. Plaintiff is directed to submit a revised proposed order consistent with this tentative ruling.

**Explanation:**

Plaintiff County of Fresno moves for a preliminary injunction following a series of extremely disruptive, and sometimes dangerous, parties thrown by defendant at his residence. The worst and most disruptive of the parties took place during summer 2021, though large and disruptive parties continued through October 2021. The motion for preliminary injunction was filed early December 2021. Since then two more apparently large and disruptive parties have been thrown at defendant's residence – one by defendant's nephew while defendant was out of town, and another just last week in which police were called to the residence because two people were fighting in front of the residence at 4:20 a.m.

"A preliminary injunction may be granted at any time before judgment upon a verified complaint, or upon affidavits if the complaint in the one case, or the affidavits in the other, show satisfactorily that sufficient grounds exist therefor." (Code Civ. Proc., § 527.)

An injunction may be granted in the following cases:

(1) When it appears by the complaint that the plaintiff is entitled to the relief demanded, and the relief, or any part thereof, consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually.

(2) When it appears by the complaint or affidavits that the commission or continuance of some act during the litigation would produce waste, or great or irreparable injury, to a party to the action.

(3) When it appears, during the litigation, that a party to the action is doing, or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the rights of another party to the action respecting the subject of the action, and tending to render the judgment ineffectual.

(Code Civ. Proc., § 526, subd. (a).)

An injunction in this case is also authorized pursuant to section 731 of the Code of Civil Procedure, which authorizes county attorneys to bring an action on behalf of the people of the State of California to abate a nuisance. Public nuisances are the proper subject of such relief. (See e.g., *IT Corp. v. County of Imperial* (1983) 35 Cal.3d 63, 68-69, fn. 3; *People ex rel. Gallo v. Acuna* (1997) 14 Cal.4th 1090, 1108-1109, 1120 ["public nuisances are enjoicable ... from their inherent tendency to injure or interfere with the community's exercise and enjoyment of rights common to the public"].) Civil Code section 3494 provides that "[a] public nuisance may be abated by any public body or officer authorized thereto by law."

Accordingly, there is ample statutory authority abating a public nuisance.

"[P]ublic nuisances are offenses against, or interferences with, the exercise of *rights common to the public*." (*People ex rel. Gallo v. Acuna* (1997) 14 Cal.4th 1090, 1103, 60 Cal.Rptr.2d 277, 929 P.2d 596, original italics.) "Of course, not every interference with collective social interests constitutes a public nuisance. To qualify, and thus be enjoicable [or abatable], the interference must be both *substantial* and *unreasonable*." (*People ex rel. Gallo v. Acuna* (1997) 14 Cal.4th 1090, 1105, 60 Cal.Rptr.2d 277, 929 P.2d 596 (*Acuna*).) It is substantial if it causes significant harm and unreasonable if its social utility is outweighed by the gravity of the harm inflicted. (*Acuna*, at p. 1105, 60 Cal.Rptr.2d 277, 929 P.2d 596.) (*County of Santa Clara v. Atlantic Richfield Co.* (2006) 137 Cal.App.4th 292, 305.)

The court finds that defendant's use of his property has constituted a public nuisance due to his violation of zoning ordinances prohibiting commercial uses of the property (operating the property like a nightclub and charging entry fees in violation of Zoning Ordinance §§ 822.4, 823.4), violation of the Unruh Act and Unfair Competition Law (charging male patrons more than female patrons; see *Angelucci v. Century Supper Club* (2007) 41 Cal.4th 160, 164), and flagrant disregard for the serious health, safety, and quality of life issues he has created for the neighborhood.

[T]he propriety of an injunction must be judged by the following standard. Where a governmental entity seeking to enjoin the alleged violation of an ordinance which specifically provides for injunctive relief establishes that it is reasonably probable it will prevail on the merits, a rebuttable presumption arises that the potential harm to the public outweighs the potential harm to the defendant. If the defendant shows that it would suffer grave or irreparable harm from the issuance of the preliminary injunction, the court must then examine the relative actual harms to the parties.

Once the defendant has made such a showing, an injunction should issue only if—after consideration of both (1) the degree of certainty of the outcome on the merits, and (2) the consequences to each of the parties of granting or denying interim relief—the trial court concludes that an injunction is proper. At this stage of the analysis, no hard and fast rule dictates which consideration must be accorded greater weight by the trial court. For example, if it appears fairly clear that the plaintiff will prevail on the merits, a trial court might legitimately decide that an injunction should

issue even though the plaintiff is unable to prevail in a balancing of the probable harms. On the other hand, the harm which the defendant might suffer if an injunction were issued may so outweigh that which the plaintiff might suffer in the absence of an injunction that the injunction should be denied even though the plaintiff appears likely to prevail on the merits.

The ultimate goal of any test to be used in deciding whether a preliminary injunction should issue is to minimize the harm which an erroneous interim decision may cause. (See Leubsdorf, *The Standard for Preliminary Injunctions* (1978) 91 Harv.L.Rev. 525, 541.) (See fn. 6.) This important function is well served by application of the principles set forth above. (*IT Corp. v. County of Imperial* (1983) 35 Cal.3d 63, 72–73, footnotes omitted.)

While the court finds defendant's use of his property, through the parties he has thrown and continues to throw, to constitute a public nuisance, the injunction sought by the County is overbroad.

First, the court notes that plaintiff has not submitted any evidence of violation of the social host ordinance by permitting underage drinking. (Ordinance Code § 10.16.050.) The only evidence submitted is that at one party three attendees were identified as being under 21 years of age, and that alcohol is served at defendant's parties. There is no evidence, however, that any underage person has consumed alcohol at any of defendant's parties. The court cannot grant an injunction based on assumptions about what may have occurred.

Second, plaintiff submits no statutory basis for restricting defendant from having more than persons 10 at his property or for the 8:00 p.m. limitation. To the extent these proposed restrictions are based on the order in the divorce proceeding, if defendant has violated that order, the matter can be taken up with the Family Court. But plaintiff does not show that the Family Court order should set the parameters of the injunction in this matter.

Third, plaintiff includes in the proposed injunction a prohibition from renting out rooms or parts of the residence. There is no evidence that such activity has occurred, or discussion of this component of the requested injunction.

Accordingly, the court is inclined to grant an injunction, but significantly limiting the scope from what plaintiff has requested, as follows:

**IT IS ORDERED AS FOLLOWS:**

1. Defendant is enjoined and restrained from the following:
  - a. ~~Having more than ten (10) individuals at one time at the Property between the hours of 8:00 p.m. on a given day, and 8:00 a.m. the subsequent day.~~
  - b. Causing music, noise or any other sounds emanating from the Property between the hours of ~~8:00~~ 10:00 p.m. on a given day and 8:00 a.m. the subsequent day that can be heard from the street and/or outside the curtilage of the Property.

c. Causing any strobing lights, flashing lights, lasers or other pulsing luminating devices, other than lighting commonly used for residential purposes, to emanate from the Property between the hours of ~~8:00~~ 10:00 p.m. on a given day and 8:00 a.m. the subsequent day.

~~d. Allowing or permitting individuals under the age of twenty one years old at the Property for any reason to consume alcoholic beverages.~~

e. Charging of entry fees of any kind to enter the Property.

f. Defendant shall obey all Federal, State, and local laws, statutes, regulations, and ordinances applicable to his and all other permitted persons' occupation, use and/or enjoyment of the Property.

**THE COURT FURTHER ORDERS AS FOLLOWS:**

~~1. Notwithstanding any other lawful reasons for a response and or other actions at the Property by law enforcement personnel, upon reasonable suspicion of a violation of this Order by Defendant and upon a refusal by Defendant, or individuals acting on Defendant's behalf or pursuant to his direction, to allow entry into the Property by Fresno County Sheriff's Office personnel, said sworn officials with the Fresno County Sheriff's Office, without first having to obtain a warrant or other orders from this Court, are authorized to make forcible entry into the Property by removing and/or defeating any barriers, to include locks, gates, doors, walls, windows, fences, and other obstructions, that impede or prevent entry by law enforcement personnel to enter the Property.~~

~~2. The County of Fresno, the Fresno County Sheriff's Office, and their agents, employees, officers, directors, managers, the Sheriff, and members of the Fresno County Board of Supervisors shall not be liable for reasonable damages caused to Defendant's Property if forcible entry is required.~~

~~3. In addition to the actions described above, upon confirmation of any violations of this Order by Defendant, personnel with the Fresno County Sheriff's Office are authorized to locate and remove any number of guests or other persons not lawfully residing on the property exceeding the number of ten (10) guests authorized by this Order.~~

~~4. Any purported leasee(s) renting a room or other accommodations from Defendant to reside on the Property must have a written and enforceable lease and a true and correct copy of said lease must be disclosed to Plaintiff in writing within 5 days of the execution thereof or the date of this order.~~

5. A willful violation of this Order is a misdemeanor pursuant to California Penal Code section 166, subdivision (a)(4), and any other applicable law providing for the enforcement of valid orders issued by this Court.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

**Tentative Ruling**

Issued By: RTM on 4/4/2022.  
(Judge's initials) (Date)