

**TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, May 15, 2024, 3:00 p.m.
Courtroom 12 –Hon. Kenneth G. English
600 Administration Dr**

**TO JOIN “ZOOM” ONLINE,
Courtroom 12
Meeting ID: 160 – 377 - 2262
Passcode: 419097**

**TO JOIN “ZOOM” BY PHONE,
By Phone (same meeting ID and password as listed above):
(669) 254-5252 US (San Jose)**

The following tentative rulings will become the ruling of the Court unless a party desires to be heard. If you desire to appear and present oral argument as to any motion, YOU MUST notify the Court by telephone at **(707) 521-6729**, and all other opposing parties of your intent to appear by 4:00 p.m. the court day immediately before the day of the hearing. Parties in motions for claims of exemption are exempt from this requirement.

PLEASE NOTE: The Court WILL NOT provide a court reporter for this calendar. If there are any concerns, please contact the Court at the number provided above.

1. 24CV01822, Rutz v Hernandez

This matter is on calendar for Plaintiff’s Order to Show Cause re: Preliminary Injunction arising out of a Temporary Restraining Order request filed on April 8, 2024. The OSC and TRO were duly served on the Defendants. Defendant Hernandez submitted no opposition, and Defendant King submitted a non-substantive opposition to the issuance of the preliminary injunction. Defendant King notes that she is no longer in control of the subject premises and only holds an ownership interest.

For the reasons stated below the motion is GRANTED in part.

Civil Code § 789.3 (b) provides “a landlord shall not, with intent to terminate the occupancy under any lease or other tenancy or estate at will, however created, of property used by a tenant as his or her residence, willfully: (1) Prevent the tenant from gaining reasonable access to the property by changing the locks or using a bootlock or by any other similar method or device;. . . or (3) (r)emove from the premises the tenant's personal property, the furnishings, or any other items without the prior written consent of the tenant, except when done pursuant to the procedure set forth in Chapter 5 (commencing with Section 1980) of Title 5 of Part 4 of Division 3.” Tenants are generally entitled to injunctive relief to prevent further or continuing violation of these provisions. Civ. Code § 789.3(d).

Plaintiff provides a declaration detailing the circumstances of his preclusion from the room he rents, the removal of his property without his knowledge or permission, and the complete lack of due process in the acts of Hernandez. See, generally, Rutz Declaration.

The court notes that it appears that Hernandez is not exempt from unlawful detainer statutes by attempting to classify Plaintiff as a lodger. Plaintiff provides evidence that there was another renter at the Property at the time that he resided there. This means that Plaintiff was not a lodger as contemplated by Civ. Code § 1946.5. See Civ. Code § 1946.5(d) (A lodger must be the only renter on the property). As such, Defendant is not entitled to the procedures allowed under Civ. Code § 1946.5 (b). That the Lease attempts to categorize Plaintiff as a lodger does not appear legally effective, since lodger status is fully defined by the statute. Even if Plaintiff were a lodger, the time for notice of non-renewal for a lodger is 30 days. Civ. Code § 1946.5 (a). The only evidence before the Court is that Plaintiff received a Notice to Quit on February 8, 2024, and was subsequently excluded from the property on February 11, and again on February 17. Plaintiff's exclusion from the property clearly does not meet the 30-day time period to which lodgers are entitled.

The Lease, however, purports to provide that Defendants may evict Plaintiff "at will" with "no notice." See Rutz Declaration, Exhibit 2, § 8. Any such provision is void as a violation of public policy. See, e.g., *Jordan v. Talbot* (1961) 55 Cal.2d 597, 605. Therefore, the terms of the Lease do not provide a basis for Plaintiff's summary ejection from the Property without the due process of an unlawful detainer.

The court is not, however, inclined to issue a Civil Harassment Restraining Order.

First, this requests relief which is not included in the Complaint, and therefore appears outside the scope of the case. The request for a Civil Harassment Restraining Order ("CHRO") is properly couched within a petition for that relief. See CCP § 527.6(d). An injunction may only grant relief to which Plaintiff is entitled based on the complaint. CCP § 526(a)(1). The operative pleading here contains no request for the relief, and therefore granting the relief on a request for preliminary injunction appears improper.

Second, service of a petition to a Respondent in a Civil Harassment proceeding must be done personally. CCP § 527.6(m)(1). Hernandez was served by substitute service. While the Court notes that Hernandez has been difficult to serve, and the Court's prior order allowed service in the same manner as the service of summons, that order did not undertake the analysis required for CCP § 527.6(m)(2). In considering the gravity of restraining orders under this section, personal service is proper. Moreover, the request for a CHRO must be made on the JCC mandatory forms.

Plaintiff has demonstrated that Defendant Hernandez is in violation of Civil Code § 789.3 subsections (b)(1) and (3). Accordingly, Plaintiff's request for a preliminary injunction is

GRANTED. Defendant Hernandez, her agents, servants, employees, representatives, and any other person acting in concert or participating with her are enjoined and restrained during the pendency of this action from committing, engaging in, or causing, directly or indirectly, each of the following actions:

- (1) Denying Plaintiff access to the premises at 19170 Railroad Drive, Sonoma, CA, at his convenience, for thirty (30) days after the date of issuance of the preliminary injunction to account for and remove all of Plaintiff's personal items (Civil Code §§ 789.3(b)(1) and (d)); and
- (2) Moving, damaging, converting, using, or disposing of any of Mr. Rutz's personal items remaining in or around 19170 Railroad Avenue, Sonoma, CA during the pendency of this action without agreement of the parties or an Order of the Court (Civil Code § 789.3(b)(3); Civil Code § 1940.2(a)(1).

The Plaintiff is to utilize a "Civil Standby" procedure with the appropriate law enforcement agency when availing himself to the relief granted herein.

If the court grants a preliminary injunction, it must require an undertaking or a cash deposit. CCP § 529. The amount must cover any damages to defendant if the court finally determines that plaintiff was not entitled to the injunction. CCP § 529; see *Top Cat Productions, Inc. v. Michael's Los Feliz* (2002) 102 Cal.App.4th 474, 478. The court should thus determine the potential likely harmful effect of the injunction as the basis for the amount. *Abba Rubber Co. v. Seaquist* (1991) 235 Cal.App.3d 1, 14. The court should consider lost profits or other damages as well as costs of defense where trial is necessary to defeat the preliminary injunction but should not consider the strength of plaintiff's case on this point. *Abba Rubber*, supra, 15-16. The court also has the authority to waive the bond requirement if it finds that the plaintiff is indigent or unable to obtain sufficient sureties, but the court must weigh all relevant factors. CCP § 995.240.

Plaintiff has not demonstrated that he is indigent or unable to obtain securities. However, the court notes that he has applied for and received a fee waiver. Further, Defendants have not filed any opposition demonstrating any potential damages that might result from the injunction. Facially, Hernandez still retains Plaintiff's security deposit. Based on these facts, the court is not ordering an undertaking at this time.

Plaintiff's counsel shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).