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Case #23CV428070
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7 Attorneys for Cross-Complainants
8 SAMUEL ARVAYO, SERENA ARVAYO, and EZEKIEL ARVAYO, by and through his
9 Guardian Ad Litem, Serena Arvayo

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF SANTA CLARA

12 “JANINE” CHUN LU, an individual,
13 Plaintiff,

14 v.

15 MARC GOUBERT, an individual; SAM
16 ARVAYO, an individual; SERENA
17 ARVAYO, an individual, J.D., a minor;
18 and DOES 1-25, inclusive,

19 Defendants.

Case No.: 23CV428070

CROSS-COMPLAINT FOR

- 1. **Civil Harassment**
- 2. **Intrusion into Private Affairs**
- 3. **Intentional Infliction of Emotional Distress; and**
- 4. **Abuse of Process**

Demand for Jury Trial

20 SAMUEL ARVAYO, an individual; SERENA
21 ARVAYO, an individual, EZEKIEL
22 ARVAYO, a minor, by and through his
23 Guardian Ad Litem, Serena Arvayo,

24 Cross-Complainants,

25 vs.

26 “JANINE” CHUN LU, an individual, and
27 ROES 1-25, inclusive,

28 Cross-Defendants.

Action Filed: 12/19/2023
Trial Date:

1 Cross-Complainants SAMUEL ARVAYO, SERENA ARVAYO, and EZEKIEL S.
2 ARVAYO, a minor, by and through his Guardian Ad Litem, Serena Arvayo (hereinafter “Cross-
3 Complainants”) allege against Cross-Defendant “JANINE” CHUN LU and ROES 1-25
4 (hereinafter all together “Cross-Defendants”) as follows:

5 1. Cross-Complainant SAMUEL ARVAYO (“SAMUEL”) is an individual who at all
6 times herein mentioned was and is a resident Santa Clara County, California. SAMUEL is the
7 father of SERENA ARVAYO and grandfather of EZEKIEL ARVAYO.

8 2. Cross-Complainant SERENA ARVAYO (“SERENA”) is an individual who at all
9 times herein mentioned was and is a resident Santa Clara County, California. SERENA is also
10 the mother of and guardian ad litem for Cross-Complainant and minor EZEKIEL ARVAYO.

11 3. Cross-Complainant EZEKIEL ARVAYO (“EZEKIEL”) is a minor and an
12 individual who at all times herein mentioned was and is a resident Santa Clara County,
13 California. EZEKIEL’s Guardian Ad Litem is his mother, SERENA.

14 4. Cross-Defendant “JANINE” CHUN LU (“JANINE”) is an individual who at all
15 times herein mentioned was and is a resident Santa Clara County, California.

16 5. The true names and capacities of Cross-Defendants sued as ROES 1-25 are
17 unknown to Cross-Complainants. Cross-Complainants will amend this Cross-Complaint to
18 allege the true names and capacities when ascertained. Cross-Complainants are informed and
19 believes that each of the fictitiously named Cross-Defendants is responsible in some manner for
20 the occurrences alleged herein, and that Cross-Complainants’ damages as herein alleged were
21 proximately caused by Cross-Defendants.

22 6. Cross-Complainants incorporate by reference the Complaint on file herein, solely
23 for the purpose of reference, and without admitting the truth of any of the allegations contained
24 therein.

25 7. Cross-Complainants are informed and believe that Cross-Defendants, and each of
26 them, were the agents, servants, employees, or alter egos of their co-cross-defendants, and each
27 of them, and were joint venturers with, co-partners with, and/or sureties for their co-cross-
28

1 defendants, and each of them, and were at all times mentioned herein acting within the course
2 and scope of said agency, employment, and/or other relationship.

3 **FACTUAL ALLEGATIONS**

4 8. Marc Goubert is the owner of that real property commonly known as 1183
5 Boynton Avenue, San Jose, CA 95117 (hereinafter “Goubert Property.”) Mr. Goubert purchased
6 the Goubert Property on or about 1999.

7 9. Cross-Defendant JANINE” CHUN LU, based on information and belief, is and at
8 all times mentioned herein was the owner of that real property commonly known as 1189
9 Boynton Avenue, San Jose, CA 95117 (hereinafter “Lu Property”) which is adjacent to the
10 Goubert Property and shares a common boundary and fence in between the properties.

11 10. In or about March 2021, Mr. Goubert entered into a lease agreement with
12 SERENA, SAMUEL, and SAMUEL’s wife, Vilma Arvayo, to lease the Goubert Property. As
13 such, SERENA and her young son, EZEKIEL, agreed to reside with her parents, SAMUEL and
14 Vilma Arvayo, and would contribute \$1,000 towards the rental expenses. EZEKIEL was
15 approximately 9 years old at the time.

16 11. EZEKIEL is SERENA’s son and SAMUEL’s grandson. EZEKIEL is, and at all
17 times mentioned herein was, a non-verbal 11-year-old boy who suffers from Level 3 autism, a
18 severe form of autism. EZEKIEL was first diagnosed around the age of two years old and, as a
19 result of his condition, he has the developmental age of approximately that of a two (2) or three
20 (3) year old child. Additionally, EZEKIEL also suffers from attention-deficit/hyperactivity
21 disorder (ADHD). Consequently, he has difficulty communicating and suffers from sensory
22 challenges which require 24-hour supervision.

23 12. SERENA is a single mother who has dedicated her life to caring for her son,
24 EZEKIEL, given his condition and needs.

25 13. During SAMUEL’s tenancy, EZEKIEL’s weekday routine included going to
26 school Monday through Friday followed by afternoon behavioral therapy. As such, he was often
27 away from the home from approximately 8:00 a.m. to 6:00 p.m.

28 14. Given EZEKIEL’s ADHD, he found being confined to indoors difficult and

1 enjoyed the freedom and sensory changes that being outdoors provided. As such, on weekends,
2 EZEKIEL was often allowed to venture into the backyard where he enjoyed chasing around and
3 playing with bubbles. This often resulted in him expressing his joy through vocal stimming, a
4 form of vocalization and self-stimulatory behavior. Given his condition and need for supervision,
5 EZEKIEL was never left unsupervised. If an adult was not physically present with EZEKIEL
6 outside, he was being observed by an adult within the home through the large kitchen windows
7 that provided a comprehensive view of the backyard and EZEKIEL.

8 15. Occasionally, SAMUEL and SERENA chose to host family gatherings in their
9 home to celebrate holidays or watch sporting events. These gatherings were always conducted on
10 weekends during daylight hours and often were inside the home. While children were allowed to
11 play in the backyard, no excessive noise was ever made, and the gatherings usually concluded by
12 approximately 8:00 p.m.

13 16. At no point were any children, including EZEKIEL, ever left unattended or
14 unobserved in the backyard, nor were any children, including EZEKIEL, allowed to remain
15 outdoors beyond nightfall.

16 17. On or about May 28, 2022, SERENA was preparing to leave the Goubert Property
17 and go to the park with EZEKIEL when she was approached for the first time by Cross-
18 Defendant JANINE. By this point, SERENA and EZEKIEL had resided at the Goubert Property
19 for well over a year. JANINE introduced herself and immediately began to list out her
20 complaints with EZEKIEL. JANINE requested SERENA not allow EZEKIEL to play in the
21 backyard or, in the alternative, to only allow him to go outside during short periods of time.
22 Shocked, SERENA began to explain that EZEKIEL was a young child who suffered from a
23 severe form of autism and was completely non-verbal. As such, the noises JANINE was
24 complaining about were EZEKIEL's attempt to communicate emotions and were uncontrollable.

25 **Instead of being understanding, JANINE asked SERENA, directly in front of EZEKIEL, if**
26 **there was a cure for his condition.** JANINE's offensive and callous comments were deeply
27 hurtful, offensive, and upsetting to SERENA and EZEKIEL given that they were said for the
28 sole purpose of causing humiliation and shame and targeted towards his disability.

1 18. In hopes of retaining an amicable relationship with her neighbor, SERENA
2 offered JANINE her phone number and asked that next time JANINE was being disturbed by
3 EZEKIEL she should call or message SERENA. Begrudgingly, JANINE accepted SERENA’s
4 contact information.

5 19. The following day on or about May 29, 2022, JANINE and SERENA exchanged
6 a series of text messages regarding JANINE’s escalating the situation to SERENA’s landlord,
7 Marc Goubert. In her complaints, JANINE alleged other neighbors were equally disturbed as she
8 was and had also made complaints. However, to date, no other neighbors have come forth to
9 SERENA, SAMUEL, or Mr. Goubert to complain about EZEKIEL or any other issues related to
10 the tenants of the Goubert Property.

11 20. Throughout the following months, JANINE repeatedly made complaints to Mr.
12 Goubert regarding EZEKIEL and the tenants of the Goubert Property, many of which were false
13 and/or exaggerated.

14 21. In particular, on or about June 3, 2022, JANINE messaged Mr. Goubert and
15 complained that EZEKIEL was “playing in the background by himself and making strange
16 noises, and no adults [were] with him. **It is so disgusting!**” (emphasis added.) Not only is this
17 offensive, but it is untrue and implies child neglect. EZEKIEL has never been left unsupervised
18 and the noises JANINE noted as “strange” are vocal stimming, a condition over which EZEKIEL
19 has no control.

20 22. Mr. Goubert had no interest in evicting SAMUEL, SERENA, or EZEKIEL given
21 that they had been model tenants for well over a year. Mr. Goubert instead tried to explain to
22 JANINE, just as SERENA had, that EZEKIEL suffered from a disability. JANINE would hear
23 none of it.

24 23. In or about June 2022, and as a direct result of the continued complaints and
25 harassment by JANINE, SERENA felt she had no choice but to vacate the Goubert Property and
26 moved into a new home with EZEKIEL. The ongoing harassment severely impacted the
27 emotional state of SERENA to such a degree that she felt the only option was to move out of the
28 Goubert Property. This has resulted in an increase in rental expenses for herself as well as an

1 increase in expenses for SAMUEL and his wife, Vilma Arvayo.

2 24. Since moving out of the Goubert Property, SERENA and EZEKIEL primarily
3 only visit SAMUEL at the Goubert Property occasionally on weekends for a few hours at a time,
4 or on weekdays after school with the short visit wrapping up by early evening. Despite this,
5 JANINE has continued to harass Cross-Complainants and continued to make false allegations,
6 including by filing a Complaint in Superior Court as her latest method of harassment. As a result,
7 SERENA, EZEKIEL, and SAMUEL suffer tremendous distress and anxiety in relation to these
8 visits, for fear of further harassment and shaming by JANINE.

9 25. Since moving in to the Goubert Property, JANINE has repeatedly made it known
10 that she has an issue with EZEKIEL residing at or even visiting the Goubert Property due to his
11 condition and the side effects that has.

12 **FIRST CAUSE OF ACTION**
13 **(Civil Harassment Against All Defendants)**

14 26. Cross-Complainants incorporate by reference the allegations of Paragraphs 1
15 through 25 as though set forth in full herein.

16 27. California Code of Civil Procedure § 527.6(a)(1) states, “A person who has
17 suffered harassment as defined in subdivision (b) may seek a temporary restraining order and an
18 order after hearing prohibiting harassment as provided in this section.”

19 28. CCP § 527.6(b)(3) states, “‘Harassment’ is unlawful violence, a credible threat of
20 violence, or a knowing and willful course of conduct directed at a specific person that seriously
21 alarms, annoys, or harasses the person and serves no legitimate purpose.”

22 29. As outlined above, Cross-Defendant JANINE has continually, repeatedly, and
23 overtly attempted to intimidate and harass all Cross-Complainants both in person and over phone
24 calls and text messages with unreasonable demands, and heinous false accusations of child
25 neglect and abuse. Further, JANINE’s harassment has added financial burden to Cross-
26 Complainants SAMUEL, SERENA and EZEKIEL as a result of SERENA and EZEKIEL having
27 no choice but to move out of the Goubert Property. Cross-Defendant JANINE has undertaken a
28 knowing and willful course of conduct directed at Cross-Complainants for the purpose of

1 alarming, annoying, and harassing them, which has served no legitimate purpose.

2 30. Cross-Complainants hereby seek declaratory relief indicating a restraining order
3 is necessary and warranted in this situation, as noted further below.

4 WHEREFORE, Cross-Complainants pray for relief as hereinafter set forth.

5 **SECOND CAUSE OF ACTION**
6 **(Intrusion into Private Affairs Against All Defendants)**

7 31. Cross-Complainants incorporate by reference the allegations of Paragraphs 1
8 through 30 as though set forth in full herein.

9 32. Cross-Complainants SAMUEL, SERENA, and EZEKIEL had and have a
10 reasonable expectation of privacy in the Goubert Property, their primary residence.

11 33. Cross-Defendant JANINE intentionally and repeatedly intruded on Cross-
12 Complainants as set forth above, specifically by taking audio recordings of Cross-Complainant
13 EZEKIEL, a minor, while he was on his property playing in the backyard, where he had a
14 reasonable expectation of use of that property. Cross-Complainants are informed and believe and
15 thereon allege that JANINE has also taken video recordings of Cross-Complainants, including
16 EZEKIEL.

17 34. Cross-Defendant JANINE's intrusion would be highly offensive to a reasonable
18 person, especially given that the recordings were taken of a minor with a disability, and without
19 consent.

20 35. Cross-Complainants SAMUEL, SERENA, and EZEKIEL have and continue to be
21 harmed by the repeated intrusions, harassment, and spying on their activities while on the
22 Goubert property.

23 36. Cross-Defendant JANINE's conduct and actions were a substantial factor in
24 causing Cross-Complainants' harm.

25 WHEREFORE, Cross-Complainants pray for relief as hereinafter set forth.

26 **THIRD CAUSE OF ACTION**
27 **(Intentional Infliction of Emotional Distress Against All Defendants)**

28 37. Cross-Complainants incorporate by reference the allegations of Paragraphs 1
through 36 as though set forth in full herein.

1 38. Cross-Defendant JANINE has harassed and intimidated Cross-Complainants for
2 nearly two years. Cross-Defendant JANINE’s harassment has been consistent and outrageous, to
3 the point where Cross-Complainant SERENA and EZEKIEL were forced to move out of the
4 Goubert Property.

5 39. Despite the fact that Cross-Complainant SERENA and EZEKIEL no longer reside
6 on the premises, Cross-Defendant JANINE has continued her harassing efforts by way of
7 contacting the landlord of the Goubert Property, Marc Goubert. As a result of this harassment,
8 Cross-Complainant SERENA and EZEKIEL have been forced to refrain from visiting their
9 family – SERENA’S own parents and EZEKIEL’s grandparents – and Cross-Complainant
10 SAMUEL is unable to enjoy spending time with his grandchild.

11 40. Further, on multiple occasions when Cross-Complainant SAMUEL and his family
12 host any sort of gathering within the Goubert Property, Cross-Defendant JANINE has taken
13 offense and made false complaints against them.

14 41. Cross-Defendant JANINE’s consistent complaints have included vulgar and
15 uncalled for insults and prevented Cross-Complainants’ enjoyment of their own property, as any
16 guests that visit the Goubert Property provokes their anxiety and distress.

17 42. Cross-Defendant JANINE’s conduct was and continues to be, by all accounts and
18 by any reasonable standard, outrageous.

19 43. It is clear from her actions that Cross-Defendant JANINE intended to cause
20 Cross-Complainants’ emotional distress, or at the very least acted with reckless disregard of the
21 probability that Cross-Complainants would suffer emotional distress, knowing that Cross-
22 Complainants were being deprived of their peace of mind and full use and enjoyment of their
23 property as a direct result of her conduct.

24 44. In particular, Cross-Defendant JANINE’s comments referring to EZEKIEL as
25 “disgusting” and questioning if there is a “cure” for him, were outrageous and intended to inflict
26 emotional distress upon SERENA, EZEKIEL and SAMUEL.

27 45. Cross-Complainants SERENA and EZEKIEL have, as a direct result of Cross-
28 Defendant JANINE’s actions, sought and expended significant financial resources including

1 have to obtain new housing and defend against a meritless lawsuit filed by Cross-Defendant.

2 46. Cross-Complainant SAMUEL has, as a direct result of Cross-Defendant
3 JANINE's actions, sought and expended significant financial resources including an increase in
4 his lease obligations given that SERENA and EZEKIEL were forced to vacate due to the ongoing
5 harassment by JANINE.

6 47. Cross-Complainants have and continue to suffer severe emotional distress, and
7 Cross-Defendant JANINE's conduct was a substantial factor in causing Cross-Complainants'
8 severe emotional distress.

9 48. As a direct and proximate result of said acts by Cross-Defendant, Cross
10 Complainants suffered general and special damages, including, severe emotional distress, and
11 Cross-Defendant's actions were malicious and oppressive, carried out with conscious disregard
12 of Cross-Complainants' rights, Cross-Complainants pray for punitive damages pursuant to
13 California Code of Civil Procedure section 3294.

14 WHEREFORE, Cross-Complainants pray for relief as hereinafter set forth.

15
16 **FOURTH CAUSE OF ACTION**
(Abuse of Process Against All Defendants)

17 49. Cross-Complainants incorporate by reference the allegations of Paragraphs 1
18 through 57 as though set forth in full herein.

19 50. Cross-Defendant JANINE filed the Complaint against Cross-Complainants on or
20 about December 19, 2023 and has continued to pursue this claim. Cross-Defendant intentionally
21 used these legal procedures to retaliate against Cross-Complainants for: their appropriate use of
22 their property despite Cross-Defendants' attempts to get them to limit their use of the property;
23 their refusal to submit to Cross-Defendant's unreasonable demands to prevent EZEKIEL from
24 being allowed outside; and, for Mr. Goubert's refusal to end the tenancy of the Goubert Property
25 which appears to be the outcome that Cross-Defendant hopes for given that SERENA and
26 EZEKIEL have already vacated the Goubert Property and only sporadically visit the property.

27 51. Cross-Complainants have been harmed by the filing and subsequent pursuit of
28 this malicious, reckless, and spiteful Complaint as they have been forced to pay unnecessary

1 attorney fees defending against the false and discriminatory claims, have been forced to expend
2 countless hours in preparing and participating in their defense of same, and have been subjected
3 to the added stress, and anxiety of an unfounded lawsuit in addition to the Cross-Defendant's
4 harassment.

5 52. Cross-Defendant has demonstrated malice, recklessness, ill will or spite in the
6 filing of their Complaint such that punitive damages are warranted under C.C.P. § 3294.

7 53. Cross-Defendant's conduct was a substantial factor in causing Cross-
8 Complainants harm, as noted above.

9 WHEREFORE, Cross-Complainants pray for relief as hereinafter set forth.

10 **PRAYER**

11 WHEREFORE, Cross-Complainants pray for

12 1. For declaratory relief indicating a restraining order is appropriate in this case, and
13 ordering the restraining be granted;

14 2. If no restraining order can be granted through this vehicle, a declaratory
15 judgement that a temporary restraining order is appropriate until the matter can be heard at a
16 future hearing date;

17 3. General and special damages according to proof;

18 4. For punitive and exemplary damages in an amount according to proof given the
19 malice, recklessness, ill will or spite demonstrated by Cross-Defendant; and

20 5. Such other and further relief as the Court deems just.

21 Dated: March 1, 2024

ROSSI, HAMERSLOUGH, REISCHL & CHUCK

22 BY: /s/ Missy M. Cornejo

23 RONALD R. ROSSI

MISSY M. CORNEJO

24 RUBY PALOMARES

25 Attorneys for Cross-Complainants SAMUEL
ARVAYO, SERENA ARVAYO, and EZEKIEL
ARVAYO, by and through his Guardian Ad
26 Litem, Serena Arvayo

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SANTA CLARA:

I, the undersigned, state that I am a citizen of the United States and am employed in the County of Santa Clara; that I am over the age of eighteen (18) years and not a party to the within action; and that my business address is 1960 The Alameda, Suite 200, San Jose, CA 95126-1493. On the date set forth below, I served the following documents:

CROSS-COMPLAINT

on the person(s) listed below:

Huan "James" Ly
Ly Law Offices
1550 The Alameda, Suite 160
San Jose, CA 95126

Attorney for "Janine" Chun Lu

(BY ELECTRONIC TRANSMISSION) Pursuant to C.C.P. §1010.6, by my contemporaneous submission herewith to a Court-approved electronic filing service provider, I caused said document(s) to be transmitted by electronic transmission on this date to the electronic service address(es) of the addressee(s). A true and correct copy of said provider's electronic notification of service [C.C.P. §1010.6(a)(1)(C)] will be produced if requested by any party to the within action or the Court.

(BY ELECTRONIC TRANSMISSION) I caused said document(s) to be transmitted by electronic mail service on this date to the offices of addressee(s), using the email addresses noted above. My email address is dominique@rhrc.net

(STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 1, 2024 at San Jose, California.

/s/ Dominique Flores
Dominique Flores