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E-FILED
12/19/2023 5:47 PM
Clerk of Court
Superior Court of CA,
County of Santa Clara
23CV428070
Reviewed By: B. Roman-Antunez

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SANTA CLARA, UNLIMITED JURISDICTION

10
11 “JANINE” CHUN LU, an individual,
12 Plaintiff,

13 v.

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

Case No. 23CV428070

COMPLAINT FOR:

-Abatement of Public Nuisance
-Abatement of Private Nuisance
-Nuisance Per Se
-Negligence
-Negligence – Parental Liability
-Statutory Liability of Parents for Torts
of Minor
-Negligent Infliction of Emotional
Distress

FOR PRELIMINARY AND
PERMANENT INJUNCTIVE RELIEF
AND MONETARY DAMAGES

[Demand for Jury Trial]

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22 Plaintiff “JANINE” CHUN LU (hereinafter as “Plaintiff”) complains against Defendants
23 MARC GOUBERT, an individual; SAM ARVAYO, an individual; SERENA ARVAYO, an
24 individual; J.D. a minor; and DOES 1 to 25, inclusive, as follows:

25 **PRELIMINARY ALLEGATIONS**

26 1. Plaintiff “JANINE” CHUN LU (hereinafter as “Plaintiff”) is an individual over the age of
27 eighteen years.

28 2. Defendant MARC GOUBERT is an individual over the age of eighteen years.

1 of this Court.

2 **FACTUAL BACKGROUND**

3 11. At all times relevant to this Complaint, Plaintiff is the next-door neighbor of Defendants
4 SAM ARVAYO, SERENA ARVAYO, and J.D. Both Plaintiff and Defendants SAM ARVAYO,
5 SERENA ARVAYO, J.D share fence line between their respective homes.

6 12. Plaintiff, Defendants SAM ARVAYO, SERENA ARVAYO, and J.D. reside in the City
7 of San Jose.

8 13. Defendants SAM ARVAYO, SERENA ARVAYO, and J.D. are related to one another and
9 reside together. SERENA ARVAYO is the mother of J.D. SAM ARVAYO is the father of
10 SERENA ARVAYO and the grandfather of J.D.

11 14. Defendant MARC GOUBERT is the owner of the real property that is being leased to
12 Defendants SAM ARVAYO, SERENA ARVAYO, and J.D. The tenancy began about two years
13 ago.

14 15. Upon information and belief, J.D. has a developmental disorder. J.D. has been left in the
15 backyard almost daily to wail and scream for hours, often without adult supervision.

16 16. Furthermore, Defendants SAM ARVAYO and SERENA ARVAYO frequently hold loud
17 parties, oftentimes weekly, with amplified music and noise that often go into the late night and
18 early morning hours.

19 17. Due to plethora of guests that attend these parties, Defendants SAM ARVAYO, SERENA
20 ARVAYO, and/or their numerous guests illegally park their vehicles next to a red curb and the
21 unpaved lawn of the ARVAYO residence during these parties.

22 18. Plaintiff is a remote worker and primarily works from home. Furthermore, she also has a
23 real estate business that she operates out of her home office. The disturbances and nuisance have
24 harmed Plaintiff, caused her great emotional distress, adversely affected her career and business,
25 and caused loss of enjoyment of her home.

26 19. Plaintiff has provided notice about the aforementioned disturbances to Defendants SAM
27 ARVAYO and SERENA ARVAYO and expressed her concern about J.D. being left unattended
28 to wail and yell for hours alone in the backyard on a daily or near daily basis. Not only did

1 Plaintiff's request for the conduct to be abated and concern went unheeded, Defendant SERENA
2 ARVAYO became hostile and aggressive towards Plaintiff.

3 20. Plaintiff has provided notice about the aforementioned disturbances to Defendant MARC
4 GOUBERT and has informed him of his duty as the landlord to remedy the nuisance. Not only has
5 Defendant MARC GOUBERT taken no action, he has "gas lighted" Plaintiff by claiming that
6 Plaintiff is over exaggerating the nuisance and is overly sensitive.

7 21. Past tenants of Defendant MARC GOUBERT have not caused any disturbances, harm, or
8 issues to Plaintiff.

9 22. Other neighbors have expressed that they have been harmed and have suffered loss of
10 enjoyment of their property from the same disturbances.

11 23. The conduct complained of is tortious, unwelcome, and has caused harm to both the
12 Plaintiff and the neighborhood at large.

13 24. Plaintiff and the neighborhood at large are concerned that the course of unabated conduct
14 over the years now creates an obligation to disclose to prospective purchasers should Plaintiff and
15 the neighbors wish to sell their homes pursuant to Civil Code section 1102.6 et seq. and the holding
16 of *Alexander v. McKnight* (1992) 7 Cal.App.4th 973 and subsequent case law. The unabated
17 conduct has created a damaging effect on the high property values of the booming Bay Area real
18 estate market because Plaintiff and the neighbors fear that the value and marketability of their
19 home has been reduced due to the unabated nuisances.

20 25. Plaintiff is thus induced to act for the class of neighbors who are affected by the unabated
21 and continuing nuisances.

22 **FIRST CAUSE OF ACTION**

23 **Abatement of Public Nuisance Against All Defendants**

24 26. Plaintiff re-allege and incorporate by reference the allegations set forth above as though
25 fully set forth herein.

26 27. At all times relevant herein, the behavior of Defendant J.D. as permitted and ratified by
27 his parent SERENA ARVAYO and guardian SAM ARVAYO constitutes a nuisance within the
28 meaning of Civil Code section 3479 in that the behavior was and continues to be indecent and

1 offensive to the senses, has caused emotional distress, and interferes with the free use and quiet
2 enjoyment of the real property of Plaintiff and her neighbors.

3 28. The frequently held parties are rambunctious, loud with amplified music and other noise
4 that often go into the late night and early morning hours. Due to plethora of guests that attend these
5 parties, Defendants SAM ARVAYO, SERENA ARVAYO, and/or their numerous guests illegally
6 park their vehicles next to a red curb and the unpaved lawn of the ARVAYO residence during
7 these parties The behavior of Defendants SAM ARVAYO, SERENA ARVAYO, and/or their
8 numerous guests constitute a public nuisance under Civil Code 3479 and 3480.

9 29. An ordinary person would be reasonably annoyed or disturbed by the conduct of
10 Defendants J.D., SERENA ARVAYO, SAM ARVAYO and the ratifying conduct of Defendants
11 SERENA ARVAYO and SAM ARVAYO.

12 30. As the landlord, Defendant MARC GOUBERT is liable for the conduct of Defendants
13 J.D., SERENA ARVAYO, SAM ARVAYO as he has been placed on notice about the nuisance
14 and conduct yet refuses to abate the nuisance.

15 31. The seriousness of the harm suffered outweighs the public utility of the conduct.

16 32. Plaintiff did not consent to the conduct of the Defendants.

17 33. Plaintiff suffered harm that was different form the type of harm suffered by the general
18 public.

19 34. Plaintiff is entitled to a temporary restraining order, preliminary injunction, and permanent
20 mandatory injunction against all Defendants providing for the abatement of the public nuisance.

21 WHEREFORE Plaintiff request relief as hereinafter provided.

22 **SECOND CAUSE OF ACTION**

23 **Abatement of Private Nuisance Against All Defendants**

24 35. Plaintiff re-allege and incorporate by reference the allegations set forth above as though
25 fully set forth herein.

26 36. At all times relevant herein, the behavior of Defendant J.D. as permitted and ratified by
27 his parent SERENA ARVAYO and guardian SAM ARVAYO constitutes a nuisance within the
28 meaning of Civil Code section 3479 in that the behavior was and continues to be indecent and

1 offensive to the senses, has caused emotional distress, and interferes with the free use and quiet
2 enjoyment of the real property of Plaintiff and the neighbors.

3 37. The frequently held parties are rambunctious, loud with amplified music and noise that
4 often go into the late night and early morning hours. Due to the plethora of guests that attend these
5 parties, Defendants SAM ARVAYO, SERENA ARVAYO, and/or their numerous guests illegally
6 park their vehicles next to a red curb and the unpaved lawn of the ARVAYO residence. The
7 behavior of Defendants SAM ARVAYO, SERENA ARVAYO, and/or their numerous guests
8 constitute a private nuisance under Civil Code sections 3480 and 3481.

9 38. An ordinary person would be reasonably annoyed or disturbed by the conduct of
10 Defendants J.D., SERENA ARVAYO, SAM ARVAYO and the ratifying conduct of Defendants
11 SERENA ARVAYO and SAM ARVAYO.

12 39. As the landlord, Defendant MARC GOUBERT is liable for the conduct of Defendants
13 J.D., SERENA ARVAYO, SAM ARVAYO as he has been placed on notice about the nuisance
14 and conduct yet refuses to abate the nuisance.

15 40. The conduct of Defendants substantially interfered with Plaintiff's use and/or enjoyment
16 of her land and home.

17 41. Plaintiff did not consent to the conduct of Defendants.

18 42. Plaintiff is entitled to a temporary restraining order, preliminary injunction, and permanent
19 mandatory injunction against all Defendants providing for the abatement of the private nuisance.

20 WHEREFORE Plaintiff request relief as hereinafter provided.

21 **THIRD CAUSE OF ACTION**

22 **Nuisance Per Se Against All Defendants**

23 43. Plaintiff re-allege and incorporate by reference the allegations set forth above as though
24 fully set forth herein.

25 44. At all times relevant herein, the behavior of Defendant J.D. as permitted and ratified by
26 his parent SERENA ARVAYO and guardian SAM ARVAYO constitutes a nuisance per se
27 pursuant Chapter 10.16 et seq. of the San Jose Municipal Code.

28 45. The frequently held parties are rambunctious, loud with amplified music and noise that

1 often go into the late night and early morning hours are in violation of Ch. Chapter 10.16 et seq.
2 of the San Jose Municipal Code and therefore nuisance per se.

3 46. Due to the plethora of guests that attend these parties, Defendants SAM ARVAYO,
4 SERENA ARVAYO, and/or their numerous guests illegally park their vehicles next to a red curb
5 and the unpaved lawn of the ARVAYO residence. The behavior of Defendants SAM ARVAYO,
6 SERENA ARVAYO, and/or their numerous guests constitute nuisance per se under Chapter 10.16,
7 11.51, 17.72 et seq. of the San Jose Municipal Code and California Vehicle Code section 21458.

8 47. The existence of the nuisance in of itself in violation of the statute, ordinance, or law
9 establishes nuisance per se and no ill effects need be shown. (*McClatchy v. Laguna Lands, Ltd.*
10 (1917) 32 Cal.App. 718, 725.)

11 48. As the landlord, Defendant MARC GOUBERT is liable for the conduct of Defendants
12 J.D., SERENA ARVAYO, SAM ARVAYO as he has been placed on notice about the nuisance
13 and conduct yet refuses to abate the nuisance.

14 49. Plaintiff is entitled to a temporary restraining order, preliminary injunction, and permanent
15 mandatory injunction against all Defendants providing for the abatement of the nuisance.

16 WHEREFORE Plaintiff request relief as hereinafter provided.

17 **FOURTH CAUSE OF ACTION**

18 **Negligence Against All Defendants**

19 50. Plaintiff re-allege and incorporate by reference the allegations set forth above as though
20 fully set forth herein.

21 51. Defendants owed a duty to exercise reasonable care toward to Plaintiff relative to their
22 respective relationships, especially as neighbors.

23 52. Defendants breached this duty of care by the above acts and omissions.

24 53. The breach on the part of the Defendants was the proximate cause of damage which
25 Plaintiffs in fact suffered.

26 WHEREFORE Plaintiff request relief as hereinafter provided.

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1 **FIFTH CAUSE OF ACTION**

2 **Negligence – Parental Liability Against Defendants SAM ARVAYO and SERENA**
3 **ARVAYO**

4 54. Plaintiff re-allege and incorporate by reference the allegations set forth above as though
5 fully set forth herein.

6 55. At all times relevant herein, the behavior of Defendant J.D. as permitted and ratified by
7 his parent SERENA ARVAYO and guardian SAM ARVAYO constitutes a nuisance within the
8 meaning of Civil Code section 3479 in that the behavior was and continues to be indecent and
9 offensive to the senses, has caused emotional distress, and interferes with the free use and quiet
10 enjoyment of the real property of Plaintiff and the neighbors.

11 56. Defendants SAM ARVAYO and SERENA ARVAYO knew of J.D.’s proclivities to yell
12 and wail in their backyard for hours but took no action to comfort him or any other actions to stop
13 him from yelling and wailing for hours.

14 57. At all relevant times herein, Defendants SAM ARVAYO and SERENA ARVAYO had
15 physical and legal custody of J.D. and the ability to control him.

16 58. At all relevant times herein, Defendants SAM ARVAYO and SERENA ARVAYO failed
17 to exercise reasonable care to prevent the nuisance caused by J.D. and failed to take reasonable
18 steps to protect Plaintiff and their neighbors from the harm and nuisance.

19 59. All of the harms and nuisance alleged were entirely foreseeable as Defendants SAM
20 ARVAYO and SERENA ARVAYO were put on notice regarding J.D.’s behavior and were
21 otherwise aware of his behavior.

22 60. Not only did Plaintiff’s request for the conduct to be abated and concern went unheeded,
23 Defendants SERENA ARVAYO became hostile and aggressive towards Plaintiff.

24 61. The failure of Defendants SAM ARVAYO and SERENA ARVAYO to exercise
25 reasonable care is the proximate and actual cause of the harm complained of.

26 WHEREFORE Plaintiff request relief as hereinafter provided.
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1 **SIXTH CAUSE OF ACTION**

2 **Statutory Liability (Civil Code § 1714.1 et seq.) against Defendants SAM ARVAYO and**
3 **SERENA ARVAYO**

4 62. Plaintiff re-allege and incorporate by reference the allegations set forth above as though
5 fully set forth herein.

6 63. Under California Civil Code section 1714.1, any act of willful misconduct of a minor that
7 results in injury to another person or in any injury to property of another is imputed to their parents
8 in the amounts up to \$39,300.00 for each act of misconduct.

9 64. Defendants SAM ARVAYO and SERENA ARVAYO as the guardian and parent having
10 custody of control of J.D. are thus jointly and severally liable for his misconduct as described
11 herein.

12 WHEREFORE Plaintiff request relief as hereinafter provided.

13 **SEVENTH CAUSE OF ACTION**

14 **Negligent Infliction of Emotional Distress Against All Defendants**

15 65. Plaintiff re-allege and incorporate by reference the allegations set forth above as though
16 fully set forth herein.

17 66. At all times relevant herein, the behavior of Defendant J.D. is permitted and ratified by his
18 parent SERENA ARVAYO and guardian SAM ARVAYO. The behavior was and continues to be
19 indecent and offensive to the senses, has caused emotional distress, and interferes with the free use
20 and quiet enjoyment of the real property of Plaintiff and the neighbors.

21 67. As the guardian and parent of J.D., Defendants SAM ARVAYO and SERENA ARVAYO
22 had a duty to Plaintiff, the neighbors and the public at large to control J.D. and to prevent the
23 foreseeable harmful behavior of J.D.

24 68. The frequently held parties of Defendants SAM ARVAYO and SERENA ARVAYO are
25 rambunctious, loud with amplified music and noise that often go into the late night and early
26 morning hours. Due to plethora of guests that attend these parties, Defendants SAM ARVAYO,
27 SERENA ARVAYO, and/or their numerous guests illegally park their vehicles next to a red curb
28 and the unpaved lawn of the ARVAYO residence.

1 69. Plaintiff has provided notice about the aforementioned disturbances to Defendant MARC
2 GOUBERT and has informed him of his duty as the landlord to remedy the nuisance. Not only has
3 Defendant MARC GOUBERT taken no action, he has “gas lighted” Plaintiff by claiming that
4 Plaintiff is over exaggerating her claims of emotional distress, damages, and harm and accused
5 Plaintiff of being overly sensitive.

6 70. As landlord, Defendant MARC GOUBERT had a duty to ensure that his tenants do not
7 annoy, disturb, distress or harm Plaintiff or the neighbors.

8 71. The acts and omissions of Defendants were negligent, Plaintiff has suffered emotional
9 distress, and Defendants’ negligence was a substantial factor in causing Plaintiff’s emotional
10 distress.

11 WHEREFORE Plaintiff request relief as hereinafter provided.

12 **DEMAND FOR TRIAL BY JURY**

13 Plaintiff hereby demand a trial by jury of her peers.

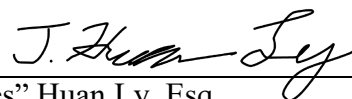
14 **PRAYER FOR RELIEF**

15 WHEREFORE Plaintiff pray for judgment as follows:

- 16 1. For a temporary restraining order, preliminary injunction, and permanent mandatory
17 injunction against all Defendants for the abatement of the public and private nuisance.
18 2. For damages according to proof.
19 3. For attorney fees under Code of Civil Procedure section 1021.5 insofar as Plaintiff is
20 seeking to vindicate an important right affecting the public interest.
21 4. For costs of suit incurred herein.
22 5. For such further relief as the court deems just and proper.

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24 Dated: December 19, 2023

LY LAW OFFICES

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27 “James” Huan Ly, Esq.
28 Attorney for Plaintiff “JANINE” CHUN LU