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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TIMOTHY DEMARTINI, et al.,
Plaintiffs,
v.
MICHAEL J. DEMARTINI, et al.,
Defendants.

No. 2:14-cv-2722 JAM CKD PS

ORDER AND
FINDINGS AND RECOMMENDATIONS

Plaintiffs’ motion for a temporary restraining order (“TRO”) came on for an ex parte hearing before the undersigned on December 21, 2016. ECF No. 159. Kirk Rimmer appeared on behalf of plaintiffs Timothy DeMartini and Margie DeMartini (collectively “plaintiffs”). Defendants Michael DeMartini and Renate DeMartini (collectively “defendants”) appeared in propria persona. Upon consideration of parties’ filings and oral arguments in support,¹ including defendants’ opposition to the motion and defendants’ documentation in support thereof either filed just prior to or provided during the hearing on this matter, THE COURT FINDS AS FOLLOWS:

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¹ During the hearing on this matter, defendants submitted two exhibits, Defendants’ Exhibits 1 and 2, which the court will docket in this action.

1 I. Relevant Background

2 Plaintiffs filed this action in the Nevada County Superior Court on September 15, 2014,
3 asserting, among other claims, a cause of action for the partition of the parties' interests in the
4 parcels of real property located at 12757, 12759, and 12761 Loma Rica Drive, Grass Valley,
5 California. ECF No. 1 at 11-28. Plaintiffs also filed concurrently with their complaint a request
6 for a TRO, which sought to enjoin defendants from, among other things, occupying, selling,
7 encumbering, or otherwise disparaging plaintiffs' interest in the property located at 12759 Loma
8 Rica Drive, Grass Valley, California, one of the properties alleged to be at issue in the complaint.
9 Id. at 7-10. Plaintiffs sought the TRO after defendants had attempted to lease that property to
10 themselves. See ECF No. 163 at 6-7.²

11 On September 16, 2014, the Nevada County Superior Court granted plaintiffs' TRO
12 application and directed defendants to, among other things, immediately vacate the subject
13 property and enjoined them from filing or recording any documents with a government entity on
14 behalf of plaintiffs without plaintiffs' express written authority. Id. at 48-51. That court also
15 directed defendants to show cause why they should not be required to deliver to plaintiffs a notice
16 of cancellation of the leasehold that they had recorded on the property. Id. at 50. Plaintiffs
17 represent that after the TRO was issued, defendants vacated their attempted leasehold of the
18 12759 Loma Rica Drive property and a new tenant moved in, which caused plaintiffs to not
19 pursue a preliminary injunction against defendants. ECF No. 160 at 5.

20 Defendants subsequently improperly removed this action to the United States District
21 Court for the District of Nevada, which then transferred this action to this court. ECF No. 163 at
22 53-55. On October 15, 2015, plaintiffs filed their operative first amended complaint, which
23 asserts the following three causes of action: (1) partition by sale of the parties' interests in the
24 parcels of real property located at 12757, 12759, and 12761 Loma Rica Drive, Grass Valley,

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26 ² Plaintiffs' request that the court take judicial notice of a number of filings made in state and
27 federal court over the course of this action. ECF No. 163. The court grants plaintiffs' request
28 because the documents for which they seek judicial notice are public court records not subject to
reasonable dispute. See Reyn's Pasta Bella, LLC v. Visa USA, Inc., 442 F.3d 741, 746, n.6 (9th
Cir. 2006); Fed. R. Evid. 201(b).

1 California; (2) breach of contract; and (3) dissolution of the parties' partnership, and an
2 accounting and sale of that partnership's assets. ECF No. 75.

3 On December 13, 2016, defendant Michael DeMartini sent an email to plaintiffs' counsel
4 and plaintiff Timothy DeMartini stating the following:

5 High Sierra Electric has given notice to the partnership that they are
6 vacating the premises at 12757 Loma Rica Drive by January 1,
7 2017 per the notice prepared by High Sierra's accountant, Robbie.

8 Also, please find attached a copy of lease agreement and a
9 memorandum of lease regarding 12757 Loma Rica Drive filed in
10 the Nevada County recorder. I apologize for not sending it sooner,
11 but I was waiting for the copy from the recorder but it got mixed
12 into the mail pile and I forgot about it until just recently.

13 ECF No. 161 (Decl. of Kirk Rimmer) at 5. Michael DeMartini also forwarded the recipients of
14 that email a copy of the lease contract that defendants had recorded with the Nevada County
15 Recorder's Office, which was signed by Michael DeMartini as the lessor,³ and Michael and
16 Renate DeMartini as lessees. Id. at 6. This lease was recorded in the Nevada County Recorder's
17 Office on October 20, 2016, and went into effect December 1, 2016, despite the fact that a third
18 party tenant was already paying to lease the property at that time.⁴ Id.; ECF No. 160 at 3.

19 Plaintiffs represent that they had not discussed this lease with defendants, and were not otherwise
20 aware that it had been recorded, prior to Michael DeMartini's December 13, 2016 email.

21 Plaintiffs represent further that they are currently "in the process of exploring the leasing of the
22 [12757 Loma Rica Drive] property with several possible tenants in mind, and would expect to
23 lease it for considerably more than the monthly rent stated in Defendant Michael DeMartini's
24 'self-lease.'" ECF No. 162 (Decl. of Timothy DeMartini) at 2.

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27 ³ The lease is signed by Michael DeMartini as "lessor" in his purported capacity as a partner in
28 "DeMartini & Sons, a Nevada and California Partnership [and] DeMartini Brothers Construction,
a Nevada and California Partnership," and in his capacity "as an individual." ECF No. 161 at 8.

⁴ The lease states in the alternative that the actual commencement date for the lease will be "the
date of the intent to vacate the property by the current tenant." ECF No. 161 at 6. The lease sets
its termination date for November 30, 2017. Id.

1 On December 14, 2016, Michael DeMartini sent a second email to plaintiffs' counsel and
2 Timothy DeMartini proposing that the parties' "partnership" take out a "substantial" loan due to
3 "still low interest rates" for the purpose of, among other things, "[f]und[ing] all or portions of the
4 cost associated with the actions that are essentially beneficial to the resolution of partnership
5 related matters." Id. at 11. Michael DeMartini also stated in that email that "while it would be
6 best that all partners sign the loan documents it was determined before that only one partner may
7 be necessary." Id. Plaintiffs state that they interpreted this last part of the email to mean that
8 "Michael intended to take out a loan, allegedly against a partnership of which Plaintiffs are
9 alleged partners, and intends to do so whether or not plaintiffs agree with him." Id. Plaintiff's
10 counsel responded to Michael DeMartini's email on December 15, 2016 rejecting the offer to
11 have the "partnership" take out a loan. Id. On December 19, 2016, plaintiffs filed their request
12 for a TRO that is currently pending before the court. ECF No. 159.

13 II. Plaintiffs' Request for a TRO

14 Plaintiffs request that the court issue a TRO that, among other things, enjoins defendants
15 from occupying, selling, encumbering, or otherwise disparaging plaintiffs' interest in the property
16 located at 12757 Loma Rica Drive, Grass Valley, California, and directs them to vacate that
17 property immediately. Plaintiffs also request that the court direct defendants to show cause why a
18 preliminary injunction should not issue enjoining them from the above conduct during the
19 pendency of this action.⁵

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22 ⁵ Just prior to the hearing on plaintiffs' motion, defendants filed an opposition to plaintiffs'
23 motion along with a declaration of defendant Renate DeMartini in support of that opposition.
24 ECF Nos. 169, 169-1. In their opposition defendants argue that plaintiffs' request for a TRO
25 should be denied because plaintiffs failed to file a TRO checklist as required under the court's
26 local rules, and because plaintiffs unduly delayed in seeking injunctive relief until over two years
27 after this action was filed. As discussed on the record at the hearing on plaintiffs' motion, the
28 court finds that a lack of a TRO checklist is not fatal to plaintiffs' motion. Moreover, the court
finds that plaintiffs filed their present motion in response to defendants' recent conduct, i.e.,
recording a lease on a property at issue in this action, of which plaintiffs just recently became
aware, not with regard to events occurring years ago as defendants appear to suggest.
Accordingly, the court finds defendants' arguments in opposition unpersuasive.

1 The standards governing the issuance of temporary restraining orders are “substantially
2 identical” to those governing the issuance of preliminary injunctions. Stuhlbarg Intern. Sales Co.,
3 Inc. v. John D. Brushy and Co., Inc., 240 F.3d 832, 839 n. 7 (9th Cir. 2001). Therefore, “[a]
4 plaintiff seeking a [TRO] must establish that he is likely to succeed on the merits, that he is likely
5 to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in
6 his favor, and that an injunction is in the public interest.” Am. Trucking Ass’n, Inc. v. City of
7 Los Angeles, 559 F.3d 1046, 1052 (9th Cir. 2009) (quoting Winter v. Natural Res. Def. Council,
8 Inc., 555 U.S. 7 (2008)). “A preliminary injunction is appropriate when a plaintiff demonstrates
9 ... that serious questions going to the merits were raised and the balance of hardships tips sharply
10 in the plaintiff’s favor.” Alliance for the Wild Rockies v. Cottrell, 622 F.3d 1045, 1049-50 (9th
11 Cir. 2010) (quoting Lands Council v. McNair, 537 F.3d 981, 97 (9th Cir. 2008) (en banc)). A
12 TRO is “an extraordinary remedy that may only be awarded upon a clear showing that the
13 plaintiff is entitled to such relief.” Winter, 129 S. Ct. at 376.

14 The Ninth Circuit Court of Appeals has reiterated that under either formulation of the
15 principles, if the probability of success on the merits is low, preliminary injunctive relief should
16 be denied: Martin explicitly teaches that “[u]nder this last part of the alternative test, even if the
17 balance of hardships tips decidedly in favor of the moving party, it must be shown as an
18 irreducible minimum that there is a fair chance of success on the merits.” Johnson v. California
19 State Bd. of Accountancy, 72 F.3d 1427, 1430 (9th Cir. 1995) (quoting Martin v. International
20 Olympic Comm., 740 F.2d 670, 675 (9th Cir. 1984)).

21 First, the court addresses whether there is a likelihood of success on the merits of
22 plaintiffs’ claims. In their first amended complaint, plaintiffs assert three claims for relief,
23 specifically, a partition by sale of the three properties at issue in this action, a claim for breach of
24 contract, and a request for the dissolution and accounting of the parties’ partnership. The court
25 addresses each claim in turn.

26 For their first cause of action, plaintiffs seek a partition by sale of the tenancy in common
27 they allege they hold in the properties with defendants. In their amended complaint, plaintiffs
28 allege that plaintiffs and defendants jointly hold fee title in each of the properties subject to this

1 action as tenants in common, with plaintiff's holding a 50 percent interest, and defendants
2 holding a 50 percent interest. ECF No. 75 at 2. Plaintiffs also allege that there are no interests
3 held by any third parties that would be materially affected by a partition by sale. Id. Plaintiffs
4 allege further that a partition by sale is necessary and appropriate because the parties' relationship
5 "has broken down and there are irreconcilable differences between them as to the ownership,
6 management and operation of the [properties at issue] and [those properties are] not capable of
7 physical division." Id. at 3.

8 It is well established that under California law, "[a] tenant in common has an absolute
9 right to partition." Formosa Corp. v. Rogers, 108 Cal. App. 2d 397, 409 (Cal. Ct. App. 1951);
10 Cal. Code of Civ. Proc. § 872.710(b) (generally "partition as to concurrent interests in the
11 property shall be as of right"); see also De Roulet v. Mitchel, 70 Cal. App. 2d 120 (Cal. Ct. App.
12 1945); Rich v. Smith, 26 Cal. App. 775, 783 (Cal. Ct. App. 1915) ("Ordinarily, if the party
13 seeking partition is shown to be a tenant in common, and as such entitled to the possession of the
14 land sought to be partitioned, the right to partition is absolute, and cannot be denied."). While
15 partitions by forced sale are generally disfavored, they are permitted when "sale and division of
16 the proceeds would be more equitable than division of the property." Cal. Code of Civ. Proc. §
17 872.820(b). Because plaintiffs allege facts showing that the parties jointly hold an unencumbered
18 fee title to the properties at issue pursuant to a tenancy at common, that plaintiffs desire to
19 partition those properties, and that a sale of those properties would be more equitable than
20 division, the court finds there is a likelihood of success on the merits of plaintiffs' claim for
21 partition by sale.

22 In their second cause of action, plaintiffs assert a claim for breach of contract against
23 defendants. Plaintiffs allege in their first amended complaint that, on or about April 30, 1998,
24 they and defendants "jointly executed a promissory note secured by a deed of trust in favor of
25 Westamerica Bank in exchange for a line of credit with the Bank in the amount of [\$250,000]."
26 ECF No. 75 at 3. Plaintiffs allege further that defendants and plaintiffs were each responsible for
27 repayment of the entire loan and had an "implicit agreement" that "each would reimburse the
28 other for payments made to the Bank on account of the loan in excess of the payor's one-half

1 share.” Id. Plaintiffs also allege that on or about May 23, 2014, they paid off the entire
2 remaining balance of the loan and subsequently made a “demand of the Defendants that they
3 reimburse them for their pro-rata one half share of that payment” pursuant to the parties’
4 agreement. Id. Finally, plaintiffs allege that “Defendants have failed and refused to make the
5 required payment.” Id.

6 To state a claim for breach of contract under California law, plaintiff must allege (1) the
7 existence of a contract; (2) plaintiff’s performance; (3) defendant’s breach of the contract; and (4)
8 damages flowing from the breach. CDF Firefighters v. Maldonado, 158 Cal. App. 4th 1226, 1239
9 (2008). To establish the existence of a valid contract plaintiff must allege: (1) parties capable of
10 contracting; (2) their consent; (3) a lawful object; and (4) sufficient cause or consideration.
11 United States ex rel. Oliver v. Parsons Co., 195 F. 3d 457, 462 (9th Cir. 1999) (citing Cal. Civ.
12 Code§ 1550; Marshall & Co. v. Weisel, 242 Cal. App. 2d 191, 196 (1966)). Here, the allegations
13 of the complaint indicate that there existed a valid contract between defendants and plaintiffs,
14 plaintiffs performed their contractual obligations under that agreement, defendants breached that
15 agreement by refusing to pay, and plaintiffs suffered damages as a result of that breach. If
16 proven, plaintiffs’ allegations would permit plaintiffs to recover against defendants for breach of
17 contract. Accordingly, the court finds that there is a likelihood of success on the merits of
18 plaintiff’s breach of contract claim.

19 For their third claim, plaintiffs request that the court dissolve the partnership between
20 defendants and themselves, and order an accounting and sale of all partnership assets. Plaintiffs
21 allege in their first amended complaint that, “[i]n or about November 1978,” plaintiff Timothy
22 DeMartini, defendant Michael DeMartini, and those parties’ father “entered into an oral
23 partnership at will under the firm name of DeMartini and Sons, and recorded a Statement of
24 Partnership pursuant to California Corporations Code section 15010.5.” ECF No. 75 at 4.
25 Plaintiffs allege further that the owners of the 12731 Loma Rica Drive property deeded that
26 property to the partnership. Id. Plaintiffs also allege that upon death of Timothy and Michael
27 DeMartini’s father, those two parties succeeded to ownership of their father’s share of the
28 partnership assets, “and the partnership continued in business with them as the sole partners.” Id.

1 In addition, plaintiffs allege that it is the express will of plaintiff Timothy DeMartini “to dissolve
2 and wind up the partnership business.” Id. Finally, plaintiffs allege that defendant Michael
3 DeMartini’s conduct relating to the partnership business “makes it not reasonably practicable to
4 carry on the business of the partnership with him.” Id. at 4-5.

5 Pursuant to California Corporations Code section 16801(1), an at will partnership may be
6 dissolved, and its business wound up, when at least half of the partners have expressed their will
7 to dissolve and wind up the partnership business. Alternatively, pursuant to California
8 Corporations Code section 16801(5)(B), a partnership may be dissolved after a partner obtains a
9 judicial determination that “[a]nother partner has engaged in conduct relating to the partnership
10 business that makes it not reasonably practicable to carry on the business in partnership with that
11 partner.”

12 Here, plaintiffs allege that Timothy DeMartini and Michael DeMartini are the sole
13 partners in the DeMartini and Sons at will partnership and that Michael DeMartini, one half of the
14 partners to that partnership, desires to dissolve the partnership and sell off its assets. Plaintiffs
15 also allege Michael DeMartini has engaged in conduct that “makes it not reasonably practicable
16 to carry on the business of the partnership with him.” ECF No. 75 at 5. If plaintiffs are able to
17 demonstrate that these allegations are true, then they will be entitled to the dissolution of the
18 partnership, and an accounting and sale of its assets. Accordingly, the court finds that there is a
19 likelihood of success on the merits with regard to plaintiffs’ third cause of action.

20 Because there exists a likelihood of success on the merits for each of plaintiffs’ claims
21 asserted in this action, the court finds that the first TRO factor favors a grant of plaintiffs’ request
22 for a TRO.

23 Next, the court addresses whether plaintiffs will suffer an irreparable harm if the
24 emergency injunctive relief they request is not granted. Plaintiffs argue that they will suffer
25 irreparable harm as a result of defendants’ lease because it “jeopardizes the executed lease
26 agreement with a third party which is set to commence upon the vacating of the present tenant.”
27 ECF No. 160 at 8. Plaintiffs argue further that defendants’ lease creates an illegal cloud on the
28 title to the property that interferes with plaintiffs’ right to partition the property through this

1 action and to properly lease the property to third parties. In addition, plaintiffs contend that they
2 would have no other form of recourse if a TRO was not issued to prevent this alleged harm
3 because defendants' conduct is of a continual and repeated nature, and pecuniary relief would be
4 inadequate under the circumstances and extremely difficult to ascertain.

5 The court agrees with plaintiffs and finds that if a TRO is not issued, defendants' lease
6 would disrupt the status quo with regard to the parties' interests in the property at issue in this
7 matter, and potentially jeopardize the lease agreements plaintiffs have entered into with third
8 parties, both present and future. Therefore, the court finds that plaintiffs have met their burden in
9 showing that they will suffer irreparable harm if the requested TRO is not issued.

10 With regard to the third TRO factor, plaintiffs assert that the balance of the equities
11 between the parties tips in their favor because such an order would preserve the status quo and
12 defendants would not suffer any actual damages or other losses as their lease is nothing more than
13 an improper attempt to falsely claim rights to the property superior to plaintiffs and impede the
14 orderly partition of the property that plaintiffs seek through this action. The court agrees with
15 plaintiffs' reasoning and finds that the balance of the equities tip in plaintiffs' favor as defendants
16 would be enjoined only from engaging in activities that would improperly burden plaintiffs'
17 interest in the property at issue in this action.

18 Finally, while plaintiffs do not argue in their motion whether the imposition of a TRO
19 would be in the public interest, the court finds that this factor also tips in favor of granting such
20 an order. There exists a public interest in preventing interferences with proceedings in partition
21 actions, and with existing and future leases on property that have been lawfully entered into.
22 Accordingly, the court finds that this final factor also favors plaintiffs' request for a TRO.

23 In sum, the court finds that plaintiffs meet their burden in demonstrating that they are
24 entitled to a TRO providing the injunctive relief they request. Accordingly, the court
25 recommends that a TRO issue providing the temporary injunctive relief set forth in greater detail
26 below.

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1 Plaintiffs request further that the court not require them to post a bond with regard to the
2 issuance of the requested TRO. Plaintiffs contend that defendants will not suffer any damages as
3 a result of the requested injunction as plaintiffs are merely preserving the status quo with regard
4 to the parties' respective interests in a property that has been subject to a partition action for over
5 2 years, during which time defendants have not been lessees. Plaintiffs also argue that
6 defendants' attempt to lease the property to themselves is nothing more than an improper attempt
7 to cloud title and grant themselves rights in the property superior to plaintiffs.

8 "The court may issue a preliminary injunction or a temporary restraining order only if the
9 movant gives security in an amount that the court considers proper to pay the costs and damages
10 sustained by any party found to have been wrongfully enjoined or restrained." Fed. R. Civ. P.
11 65(c). The amount of the bond rests within the sound discretion of the trial court and is subject to
12 review only for an abuse of that discretion. See GoTo.com, Inc. v. Walt Disney Co., 202 F.3d
13 1199, 1211 (9th Cir. 2000); Walczak v. EPL Prolong, Inc., 198 F.3d 725, 730 (9th Cir. 1999).

14 Here, the injunction plaintiffs seek merely preserves the status quo among the parties with
15 regard to the 12757 Loma Rica Drive property, and the requested relief only temporarily
16 precludes defendants from attempting to improperly encumber the property that is subject to a
17 partition action. In short, there is no indication that defendants will legitimately suffer damages
18 as a result of the injunction. Accordingly, the court finds that the TRO should issue without the
19 need for plaintiffs to post bond. See Connecticut General Life Ins. Co. v. New Images of Beverly
20 Hills, 321 F.3d 878, 882 (9th Cir. 2003) ("The district court is afforded wide discretion in setting
21 the amount of the bond . . . and the bond amount may be zero if there is no evidence the party will
22 suffer damages from the injunction.").

23 III. Plaintiffs' Request to Impose a Bond Requirement on Defendants Pursuant to Local
24 Rule 151

25 Plaintiffs also request that defendants be required to furnish a bond pursuant to this court's
26 Local Rule 151(b) based on defendants' continuing improper conduct in this matter. Local Rule
27 151(b) authorizes this court, on its own motion or on motion of a party, to "order a party to give a
28 security, bond, or undertaking in such an amount as the Court may determine to be appropriate."

1 L.R. 151(b). Through this Local Rule, this court has adopted “the provisions of Title 3A, part 2,
2 of the California Code of Civil Procedure, relating to vexatious litigants, on [which] basis the
3 Court may order the giving of a security.” Id. Plaintiffs argue that defendants’ conduct relating
4 to the recordation of the lease, in particular, their failure to inform plaintiffs until nearly two
5 weeks after the lease went into effect and roughly two months after the lease was recorded, is just
6 the latest misconduct in a long line of inappropriate conduct by defendants throughout the course
7 of this litigation thus far.

8 While plaintiffs’ reasons in support of their request appear to provide a potentially sound
9 basis on which to impose a bond requirement on defendants under Local Rule 151(b), the court
10 declines to do so at this juncture. Plaintiffs have filed their request as part of an ex parte
11 application for a TRO, against which defendants have not had an opportunity to file an opposition
12 to this request.⁶ The court finds that defendants should first have an opportunity to oppose
13 plaintiffs’ request before any order is issued directing defendants to post a bond in this action.
14 Accordingly, plaintiffs’ request is denied, but without prejudice to their filing a properly noticed
15 motion making such a request, to which defendants will have an opportunity to provide an
16 opposition.

17 IV. Conclusion

18 Based on the foregoing, IT IS HEREBY ORDERED that:

- 19 1. Plaintiffs’ request that defendants be ordered to post a bond pursuant to Local
20 Rule 151(b) is denied without prejudice to a renewal of that request through a properly
21 noticed motion that provides defendants an opportunity to oppose plaintiffs’ request.

22 Furthermore, IT IS HEREBY RECOMMENDED that:

- 23 1. Plaintiffs’ application for a TRO (ECF No. 159) be granted.
24 2. Defendants Michael DeMartini and Renate DeMartini be directed to vacate the

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26 ⁶ While defendants filed an opposition to plaintiffs’ motion just prior to the hearing, that
27 opposition did not address plaintiffs’ request pursuant to Local Rule 151. Because defendants
28 were not required to file a response to plaintiffs’ motion, given its ex parte nature and the limited
time frame in which a response could be filed, the court finds that their failure to address that
issue in their opposition does not constitute a statement of non-opposition to plaintiffs’ request.

1 premises of the property located at 12757 Loma Rica Drive, Grass Valley, California
2 forthwith and immediately.

3 3. Defendants, their agents, servants and employees, be temporarily restrained from the
4 following through the date on which an order regarding any motion for a preliminary
5 injunction regarding defendants' activities on the property located at 12757 Loma Rica
6 Drive, Grass Valley, California is issued, or 14 days following the issuance of an order
7 regarding these findings and recommendations,⁷ whichever length of time is shorter:

- 8 a. Occupying the property located at 12757 Loma Rica Drive, Grass Valley,
9 California;
- 10 b. Interfering with any lawful tenant's occupancy and full use of the property
11 located at 12757 Loma Rica Drive, Grass Valley, California, and interfering
12 with plaintiff Timothy DeMartini's use, occupation, control and management
13 of that leasehold interest;
- 14 c. Filing or recording any documents with the County Recorder, Secretary of
15 State, or other government entity with regard to the property located at 12757
16 Loma Rica Drive, Grass Valley, California on behalf of plaintiffs without their
17 express written authority;
- 18 d. Further disparagement or slandering of plaintiffs' title to the property located
19 at 12757 Loma Rica Drive, Grass Valley, California, and preventing further
20 publication of a claim or interest casting doubt upon plaintiffs' title;
- 21 e. Holding the ownership of the property located at 12757 Loma Rica Drive,
22 Grass Valley, California out as a "partnership"; and
- 23 f. Selling, transferring, or otherwise encumbering any interest in or otherwise
24 clouding title to the property located at 12757 Loma Rica Drive, Grass Valley,

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26 ⁷ Under Federal Rule of Civil Procedure 65(b)(2), the duration of a TRO is not to exceed 14 days
27 total, unless extended by the court based on a showing of good cause or the adverse parties'
28 consent. Accordingly, the TRO the court recommends be issued should be of a duration no
longer than 14 days total after such an order is issued absent a showing by plaintiffs that there is
good cause for or defendants' consent to an extension of its duration.


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4. Defendants be ordered to deliver to plaintiffs’ attorney Kirk Rimmer within 5 days of the date of an order regarding these findings and recommendations a “Notice of Cancellation” of the “Memorandum of Lease” recorded at the Nevada County Recorder’s Office by defendant Michael DeMartini on October 20, 2016, as Document No. 20160024151.
5. Defendants be directed to appear before the undersigned on a date no later than 14 days after the date of an order regarding these findings and recommendations to show cause why a preliminary injunction enjoining them from engaging in the conduct set forth above during the pendency of this action should not be issued.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days after being served with these findings and recommendations, any party may file written objections with the court and serve a copy on all parties. Such a document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections within the specified time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

Dated: December 22, 2016



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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