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GJC PROPERTIES 8 LP;
8 SUKIN & ROSENFELD LLC;
ERIK M. BLOCK

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF ORANGE**

12 CITY OF LAGUNA HILLS, a municipal entity;
13 BFE ASSET PARTNERS, LLC, a limited
liability company; GJC PROPERTIES 8 LP, a
14 limited partnership; SUKIN & ROSENFELD
LLC, a limited liability company; and ERIK M.
15 BLOCK, an individual,

16 Plaintiffs,

17 vs.

18 ELITE HOSPITALITY, INC.; COUNTY OF
ORANGE; BOARD OF SUPERVISORS OF
19 THE COUNTY OF ORANGE; ORANGE
COUNTY HEALTH CARE AGENCY; CEO
20 REAL ESTATE; FRANK KIM; NICHOLE
QUICK; and DOES 1 - 50, inclusive,

21 Defendants,

22 ILLUMINATION FOUNDATION, a nonprofit
23 organization,

24 Real Parties in Interest.

Case No.: 30-2020-01139345-CU-MC-CJC

**EX PARTE APPLICATION FOR ORDER
TO SHOW CAUSE AND TEMPORARY
RESTRAINING ORDER;
MEMORANDUM OF POINTS AND
AUTHORITIES**

Filed Concurrently With:

- (1) Request for Judicial Notice;
- (2) Declaration of Donald J. White;
- (3) Declaration of F. Ramzi Asfour, MD;
- (4) Declaration of Lawrence S. Mayer, MD,
MS, PhD;
- (5) Declaration of Gregory B. Beam, Esq.;
- (6) Declaration of Ahmad Z. Hamidi;
- (7) Declaration of Gregg Maedo
- (8) Declaration of Daniel C. Heaton, Esq.
- (9) Proposed Orders on TRO/OSC

DATE: April 16, 2020
TIME: 1:30 p.m.
DEPT: C25

Complaint Filed On: April 14, 2020

1 **COME NOW Plaintiffs CITY OF LAGUNA HILLS; BFE ASSET PARTNERS, LLC;**
2 **GJC PROPERTIES 8 LP; SUKIN & ROSENFELD LLC; and ERIK M. BLOCK** (collectively
3 “Plaintiffs”) and apply for a Temporary Restraining Order and for an Order to Show Cause requiring
4 Defendants ELITE HOSPITALITY, INC.; COUNTY OF ORANGE; BOARD OF SUPERVISORS
5 OF THE COUNTY OF ORANGE; ORANGE COUNTY HEALTH CARE AGENCY; CEO REAL
6 ESTATE; FRANK KIM; and NICHOLE QUICK (collectively “Defendants”) to show cause why a
7 preliminary injunction should not issue pending trial in this action, enjoining Defendants and their
8 employees, agents, and persons acting with them or on their behalf, from using the premises known
9 as the Laguna Hills Inn for the housing and treatment of persons who have tested positive for or are
10 believed to have been exposed to COVID-19.

11 This Application is made pursuant to Code of Civil Procedure § 527, on the ground that on
12 April 7, 2020, Defendants entered into an Occupancy Agreement whereby COVID-19 patients will
13 be transported to, housed and treated at the Laguna Hills Inn, located less than 100 yards away from
14 a dialysis center and close to other operating businesses and restaurants, and within walking distance
15 of the Laguna Woods Village, a retirement community where over 18,800 people over the age of
16 55 reside.

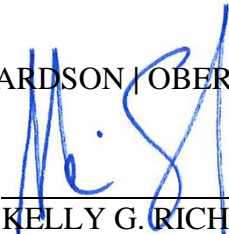
17 This Application is based upon the Memorandum in support and Declarations set forth
18 below, the Complaint in this action, and the accompanying Declaration of statutory notice.

19 There have been no previous applications for similar relief.

20
21 DATED: April 15, 2020

RICHARDSON | OBER | DeNICHILLO

22
23 By:



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GJC PROPERTIES 8 LP;
SUKIN & ROSENFELD LLC;
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 A group of 31,572 citizens has so far been successful in keeping themselves safe from the
4 deadly Coronavirus, resulting in only 13 reported cases of the Coronavirus in the City of Laguna
5 Hills as of April 15, 2020. But on April 7, 2020, the County of Orange and a hotel agreed to place
6 a COVID-19 care facility in its midst. The within application is brought to protect the citizens of
7 the City of Laguna Hills from the risk of numerous deaths and hospitalizations brought about by
8 importing at least 76 sick people.

9 Specifically, Plaintiffs seek this temporary restraining order to prevent the use of the
10 premises known as the Laguna Hills Inn for the housing of persons who have tested positive for
11 COVID-19. 26.1%% of the population of the City of Laguna Hills is aged 55 years and older.
12 Further, the Laguna Hills Inn is a stone’s throw away from the Davita Saddleback Dialysis center,
13 250 yards from a mobile home park, and within walking distance to the Laguna Woods Village, a
14 retirement community for those aged 55 years and older consisting of 18,800 senior citizens.

15 This highly communicable and deadly disease has no known vaccination or cure and, as of
16 the date of the preparation of this instant application, has killed over 123,010 people worldwide.
17 The nation’s top infectious disease expert, Dr. Anthony Fauci, has said that the United States could
18 eventually see 60,000 or more deaths from the novel corona virus, which has already claimed more
19 than 22,252 American lives. It is a widely known fact that persons are contagious before any
20 symptoms arise.

21 **II. FACTS**

22 **A. COVID-19 IS A DEADLY VIRUS WITH NO CURE OR VACCINE.**

23 In 2019 a novel virus, designated as *severe acute respiratory syndrome coronavirus 2*
24 (SARS-CoV-2 herein), was discovered to be the cause of a pneumonia outbreak in Wuhan, China.
25 Herein, coronavirus disease 2019 (COVID-19) refers to the disease caused by infection with SARS-
26 CoV-2. (Declaration of Lawrence S. Mayer, MD, MS, Phd (“Mayer Dec”), para. 5.) Confirmed
27 cases of COVID-19 in California, as everywhere, are not uniformly distributed across age groups;
28 nearly 50% of cases are individuals over 50 years of age. It is notable that while individuals over

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1 65 years of age comprise 14.3% of the state’s population they represent approximately 22.4% of the
2 state’s COVID-19 cases, almost a 60% increase. (Mayer Dec, para. 6.) Further, per the Centers for
3 Disease Control, 80% of the fatalities from the disease are 65 years of age or older. (Centers for
4 Disease Control, Weekly Morbidity and Mortality Report, April 3, 2020, Exhibit 13 to Request for
5 Judicial Notice (“RJN”).)

6 SARS-CoV-2 is highly contagious with transmission primarily due to person-to-person
7 contact. Infected individuals who are not displaying symptoms spread the disease to others.
8 Respiratory droplets produced via cough or sneeze from infected individuals are particularly capable
9 of infecting others. SARS-CoV-2 is transmitted via aerosols as well as shared contaminated objects
10 and surfaces. (Mayer Dec, para. 7.)

11 There are many documented cases of infection in patients who never develop symptoms.
12 The prevalence of asymptomatic infection largely remains unknown since asymptomatic persons are
13 not typically tested. Among symptomatic individuals there is a median incubation period of 4-5
14 days though it may take up to 14 days or more for an infected individual to show symptoms.
15 Asymptomatic transmission is dangerous because individuals working in proximity to infected
16 patients can contract and transmit the infection to others without ever being aware of their own
17 infection. (Mayer Dec, para. 8.)

18 There is no cure or vaccine for this infection. (Declaration of F. Ramzi Asfour, MD (“Asfour
19 Dec”), para. 8.) The only known effective measure to reduce the risk of injury or death from
20 COVID-19 is to prevent infected individuals, and individuals believed to be infected, from
21 interacting with, and being within the same areas, as non-infected persons. (Asfour Dec, para. 9.)
22 Social distancing (i.e., maintaining no less than six (6) feet of separation from other people) and
23 strict hygiene, including washing hands with soap and water, and continuously disinfecting surface
24 are the only known effective measures for protecting people from COVID-19. (Asfour Dec, para.
25 9.) However, such measures are not as effective as remaining physically separated from known or
26 potentially infected individuals. (Asfour Dec, para. 9.)

27 ///

28 ///

1 **B. THE COUNTY RENTS A HOTEL TO CONVERT IT TO A COVID-19**
2 **SHELTER FOR TRANSIENTS.**

3 On April 7, 2020, Defendant County of Orange (the “County”) and Defendant Elite
4 Hospitality, Inc. (“Elite”), entered into an Occupancy Agreement whereby the County took
5 possession of the 76-room Laguna Hills Inn, located at 23061 Avenida de la Carlota, in the City of
6 Laguna Hills, California (“Hotel”). (Exhibit 9 to the Declaration of Donald J. White (“White Dec”).)
7 The County is converting the Hotel into a temporary housing and medical facility for individuals
8 who have underlying medical conditions, and who have either already tested positive for COVID-
9 19, or are suspected of having contracted COVID-19. (White Dec, para. 4.)

10 Real Party in Interest Illumination Foundation will be running the shelter. (White Dec, para.
11 12.) According to the County’s program materials, the participating patients must agree to adhere
12 to Illumination Foundation’s rule and guidelines. (Exhibit 10 to White Dec.) Failure to abide by
13 the rules will “result in immediate exit from the program.” (Exhibit 10 to White Dec.) One of the
14 rules includes remaining in the patient’s room during the entire stay. (Exhibit 10 to white Dec.)
15 However, Illumination Foundation fails to provide any mechanism for enforcement, other than to
16 discharge the infected patient back into the community. (Asfour Dec, para. 11.)

17 The Hotel is located within a bustling commercial area of the City, surrounded by businesses
18 and customers, including busy restaurants and a dialysis center with high risk patients. (Declaration
19 of Gregory B. Beam, Esq., (“Beam Dec”) para. 12; Asfour Dec, para. 12.) Also within close
20 proximity of the Hotel is the Laguna Woods Village, home to over 18,800 seniors. (Exhibit 8 to
21 RJN.) The average age of the population of Laguna Woods Village is 75.4 years old age. (Mayer
22 Dec, para. 11.) For people in that age group, the rate of death for those that contract COVID-19 is
23 8%, conferring a 20-fold increase in the risk of death. (Mayer Dec, para. 12.)

24 As of the date of the preparation of this instant Application, Plaintiff City of Laguna Hills
25 (the “City”) has a population of 31,572. (White Dec, para. 2; Exhibit 7 to RJN.) 26.1% of its
26 residents are aged 55 and older. (White Dec, para. 2.) There are only 11 transients within the City’s
27 limits. (White Dec, para. 2.) There have been only 13 confirmed reported cases of COVID-19
28 within the City’s limits since the crisis began. (White Dec, para. 3; Exhibit 7 to RJN.)

1 **C. THE USE OF THE HOTEL AS A SHELTER FOR COVID-19 PATIENTS**
2 **PLACES PLAINTIFFS' RESIDENTS' LIVES IN DANGER.**

3 In addition to the risks inherent in exposure to COVID-19 patients, Illumination Foundation
4 has failed to put into place the proper protocols to secure the Hotel Property including the following
5 major risk factors:

- 6 • No infection prevention mitigation strategies in place
- 7 • No plan for monitoring potential residents for infectivity
- 8 • No symptom monitoring plan for residents
- 9 • No plan for meals
- 10 • No plans for visitation restrictions and mitigation of risks posed by visitors passing
11 infections on in the community
- 12 • Proximity to DaVita Saddleback Dialysis Center
- 13 • No mitigation plan for smoking. (Asfour Dec, para. 10.)

14 To elaborate, housing COVID-19 patients at the Laguna Hills Inn in a community with a
15 low prevalence of COVID-19 infection (13 cases as of 4/10/2020) and without proper infection
16 prevention strategies is a major safety risk for the local community. (Asfour Dec, para. 11.)
17 COVID-19 may be shed by some patients, especially those who are immunocompromised, for a
18 prolonged period of time. The Illumination Foundation does not address any of these issues.
19 Residents must be monitored for symptoms/signs of infection upon entering and exiting the
20 premises. A solid plan for medical follow-up of these patients needs to be implemented. There are
21 no policies in place for enforcing masking, prohibiting communal gatherings and visitation. (Asfour
22 Dec, para. 11.)

23 In addition, the proposed hotel site is very close to the Davita Saddleback Dialysis center.
24 Dialysis patients are considered immunocompromised and are at very high risk for complications
25 from SARS CoV-2. (Asfour Dec, para. 12.) Any commingling of COVID-19 patients and dialysis
26 patients at the nearby commercial food establishments will pose a high risk of infection with the
27 potential for serious complications for these patients. (Asfour Dec, para. 12.)

28 Meal provision for the residents of the hotel has not been addressed. There are no cooking

1 facilities in most rooms in the hotel. If meals are not provided, there will be an increased
2 likelihood that comingling of infected residents and the general public including dialysis patients
3 will occur. (Asfour Dec, para. 13.)

4 There is also no mitigation plan for smoking (which necessarily involves removing a
5 mask), hand hygiene, symptom monitoring, management and treatment. (Asfour Dec, para. 14.)
6 Indeed, pursuant to the participant agreement, handwashing is only “recommended”, not
7 mandated. (Exhibit 10 to White Dec.)

8 In addition, it is not clear that the hotel’s ventilation system will be optimal for the residents
9 or that the filtration system is adequate to prevent room to room spread of COVID-19. It is equally
10 unclear clear that the janitorial/cleaning staff of the hotel have proper training in appropriate
11 cleansing procedures. (Asfour Dec, para. 15.)

12 **D. USE OF THE HOTEL TO HOUSE COVID-19 PATIENTS VIOLATES THE**
13 **CC&RS.**

14 Plaintiffs BFE Asset Partners, LLC (“BFE”), GJC Properties 8 LP (“GJC”), Sukin &
15 Rosenfeld, LLC (“S&R”), and Erik M. Block (“Block”) all own property located within the Plaza
16 Pointe commercial interest development in Laguna Hills, California 92653 (collectively, “Owner
17 Plaintiffs”). Specifically, BFE owns 23113 and 23117 Plaza Pointe Drive; GJC owns 23297 S.
18 Pointe Drive; S&R owns 23121 Plaza Pointe Drive #150 and Block owns 23275 S. Pointe Drive.
19 Defendant Elite also owns property within Plaza Pointe, namely, the Laguna Hills Inn, located at
20 23061 Avenida de la Carlota (the “Hotel”). (Exhibits 1 - 6 to RJN.)

21 The owners of properties located within Plaza Pointe, including the Owner Plaintiffs and
22 Defendant Elite, are subject to certain restrictions and obligations in the Declaration of Covenants,
23 Conditions, Restrictions and Reservation of Easements, recorded with the Orange County
24 Recorder’s Office on August 9, 1978, as Instrument No. 12516 in Book 12791, Pages 1893-1937
25 (“CC&Rs”). (Exhibit 6 to RJN.) Article II, Section 2.02 requires advanced approval by the City
26 and the Plaza Pointe Development Committee for any change in operation or use not previously
27 authorized:

28 Other Operations and Uses. Operations and uses that are neither

1 specifically prohibited nor specifically authorized by this Declaration,
2 including the Planned Community Regulations as incorporated
3 herein, may be permitted in a specific case if (i) such operations or
4 uses are first approved by the County of Orange or such other
5 governmental entity then having jurisdiction [*i.e.*, the City] and (ii)
6 written operational plans and specifications for such operations or
7 uses, containing such information as may be requested by the
8 Development Committee, which approval shall be based upon
9 analysis of the anticipated effect of such operations or uses upon other
10 Lots, upon other real property in the vicinity of the Properties, and
upon the occupants thereof, but shall be in the sole discretion of the
Development Committee, as further provided in Article III of the
Declaration.

11 Article II, Section 2.03 of the CC&Rs states: “Nuisances. No noxious or offensive trade or
12 activity shall be carried on upon any Lot or any part of the Properties, nor shall anything be done
13 thereon which may be, or may become, an annoyance or nuisance to the neighborhood, or which
14 shall in any way interfere with the quiet enjoyment of each of the Owners of his respective Lot, or
15 which shall in any way increase the rate of insurance for any other Lot.”

16 Article III, Section 3.02 mandates: “[N]o Improvements shall be commenced, erected or
17 maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be
18 made until the plans and specifications showing the nature, kind, shape, height, materials and
19 location of the same shall have been submitted to and approved in writing by the Development
20 Committee as to harmony of external design, color and location in relation to surrounding structures
21 and topography.” Article I, Section 1.05 defines “Improvement” to include “all structures and
22 appurtenances thereto of every kind, including but not limited to buildings, utility systems,
23 walkways, driveways, parking areas, loading areas, landscaping items, fences, walls, decks, stairs,
24 poles, landscaping vegetation, signs, and exterior fixtures.” (Emphasis added.)

25 Elite did not seek or obtain approval for the City for the use of the Hotel to house COVID-
26 19 patients. (White Dec, para. 5.) Use of the Hotel in such manner creates a nuisance under the
27 CC&Rs, interfering with the quiet enjoyment of each of the owners and directly jeopardizing the
28 lives of the patients at Davite Saddleback Dialysis center. (Asfour Dec, para. 12.) Finally, Elite has

1 already commenced construction activity at the Hotel, without from the Development Committee.

2 **E. NO AMOUNT OF SECURITY OR OTHER PRECAUTIONS CAN MAKE**
3 **THE FACILITY SAFE**

4 It is anticipated that the defendants will argue that the facility is “closed,” and that security
5 staff will ensure residents do not mingle with the surrounding community. However, that is
6 disingenuous, since the County well knows that transients have civil rights and that they cannot
7 force the patients to stay on the grounds of the Hotel. The Illumination Foundation asks transients
8 to sign a promise that they will stay on site and will abide by the rules, but compliance is voluntary.
9 (Exhibits 10 & 11 to White Dec.) Further, the various Illumination Foundation Documents and the
10 Occupancy Agreement make no reference to health and infectious disease precautions which must
11 be taken. (Asfour Dec, para. 11.) More importantly, the agreement residents are asked by
12 Illumination Foundation to sign says that if the resident breaks the rules, they will be transported
13 back to their place of origin - except that the Illumination Foundation cannot force the individual
14 to do so. The sick person can decide to not get on the transportation and stay in the Laguna Hills
15 area - and nobody can stop them.

16 **III. LEGAL ARGUMENT**

17 Code of Civil Procedure § 527 authorizes issuance of injunctive relief before trial if
18 “sufficient grounds exist therefor.” (Code Civ. Proc., § 527(a).) Code of Civil Procedure § 526 sets
19 forth the seven grounds upon which an injunction may be granted:

- 20 “(1) When it appears by the complaint that the plaintiff is entitled to the relief demanded,
21 and the relief, or any part thereof, consists in restraining the commission or continuance of
22 the act complained of, either for a limited period or perpetually.
- 23 (2) When it appears by the complaint or affidavits that the commission or continuance of
24 some act during the litigation would produce waste, or great or irreparable injury, to a
25 party to the action.
- 26 (3) When it appears, during the litigation, that a party to the action is doing, or threatens, or
27 is about to do, or is procuring or suffering to be done, some act in violation of the rights of
28 another party to the action respecting the subject of the action, and tending to render the
judgment ineffectual.
- (4) When pecuniary compensation would not afford adequate relief.

1 (5) Where it would be extremely difficult to ascertain the amount of compensation which
2 would afford adequate relief.

3 (6) Where the restraint is necessary to prevent a multiplicity of judicial proceedings.

4 (7) Where the obligation arises from a trust.” (Code Civ. Proc., § 526(a).)

5 In this instance, at least four of the seven grounds are met. Specifically, Plaintiffs are likely
6 to succeed on the merits on their claims for nuisance and breach of the CC&Rs. Further, Plaintiff
7 City of Laguna Hills community will suffer irreparable harm in that its 31,572 residents who have
8 thus far successfully dodged the deadly Coronavirus, will now be exposed, including 37% of its
9 population aged 50 years and older. In short, residents of Plaintiff City of Laguna Hills community
10 may die. Thus, there is clearly no adequate remedy at law other than to enjoin and stop the
11 Defendants from converting the hotel into a shelter for COVID-19 patients. Finally, there is no
12 amount of money that can actually save the lives of the residents of Plaintiff City of Laguna Hills’
13 community once a vulnerable resident is infected with COVID-19.

14 While the statute makes no reference to the traditional equitable concern of “balancing
15 equities,” the court must exercise its discretion “*in favor of the party most likely to be injured ... If*
16 *denial of an injunction would result in great harm to the plaintiff, and the defendants would suffer*
17 *little harm if it were granted, then it is an abuse of discretion to fail to grant the preliminary*
18 *injunction.” (Robbins v. Sup.Ct. (County of Sacramento) (1985) 38 Cal.3d 199, 205 (emphasis*
19 *added).)*

20 **A. PLAINTIFFS ARE LIKELY TO PREVAIL ON THEIR CLAIMS.**

21 The likelihood of the plaintiff’s ultimate success on the merits affects the showing necessary
22 to a balancing-of-hardships analysis. The more likely it is that the plaintiff will ultimately prevail,
23 the less severe must be the harm the plaintiff alleges will occur if the injunction is not issued.
24 (*Integrated Dynamic Solutions, Inc. v. VitaVet Labs, Inc.* (2016) 6 Cal.App.5th 1178.) This is
25 particularly true when the requested injunction maintains, rather than alters, the status quo. (*Take*
26 *Me Home Rescue v. Luri* (2012) 208 Cal.App.4th 1342, 1350; *Right Site Coalition v. Los Angeles*
27 *Unified Sch. Dist.* (2008) 160 Cal.App.4th 336.) When the plaintiff makes a strong showing of
28

1 likelihood of success on the merits, the court has the discretion to issue the injunction even though
2 the plaintiff fails to show that the balance of harms tips in its favor.

3 Here, Plaintiffs have plead causes of action for breach of the CC&Rs as to the Hotel
4 Defendant, and nuisance as to both the Hotel Defendants and the County Defendants. As will be
5 shown, Plaintiffs are likely to succeed as to each cause of action.
6

7 **1. THE OWNER PLAINTIFFS ARE LIKELY TO PREVAIL ON**
8 **THEIR CAUSE OF ACTION AGAINST THE HOTEL DEFENDANT**
9 **FOR BREACH OF THE CC&Rs, WHICH BAR CONVERSION OF**
10 **THE HOTEL.**

11 CC&Rs are enforceable equitable servitudes that inure to the benefit of and bind all owners
12 of separate interests in the development. CC&Rs may be enforced by an owner of a separate interest,
13 by the association, or by both. (Civ. Code, § 6856; see also *Franklin v. Marie Antoinette*
14 *Condominium Owners Assn.* (1993) 19 Cal.App.4th 824.) Actual notice is not required for
15 enforcement of a recorded declaration's terms against subsequent purchasers. (*Nahrstedt v.*
16 *Lakeside Village Condominium Assn.* (1994) 8 Cal.4th 361.) Rather, the recording of a declaration
17 with the county recorder provides sufficient notice to permit the enforcement of the covenants and
18 restrictions contained therein, and condominium buyers are deemed to agree to them. (*Pinnacle*
19 *Museum Tower Assn. v. Pinnacle Market Development (US), LLC* (2012) 55 Cal.4th 223.)

20 Here, the Hotel owned by Defendant Elite and each of the Owner Plaintiffs are all located
21 within a commercial interest development known as Plaza Pointe. (Exhibits 1 - 6 to RJN.) The
22 owners of properties located within Plaza Pointe, including the Owner Plaintiffs and Defendant
23 Elite, are subject to the CC&Rs, recorded with the Orange County Recorder's Office on August 9,
24 1978, as Instrument No. 12516 in Book 12791, Pages 1893-1937. (Exhibit 1 to RJN.)

25 Pursuant to Article IX, Section 9.01 of the CC&Rs, the Owner Plaintiffs have standing to
26 bring the present action seeking injunctive relief to enjoin Defendants from converting and operating
27 the Hotel as a COVID-19 infectious disease facility:

28 Failure to comply with any of the terms of this Declaration or the

1 Development Committee regulations adopted pursuant thereto, by an
2 Owner, his guests, employees, invitees or tenants, shall be grounds
3 for relief which may include, without limitation, an action to recover
4 sums due for damages, injunctive relief, foreclosure of mechanics
5 lien, or any combination thereof, which relief may be sought by
6 Declarant, the Development Committee, or, if appropriate, by an
7 aggrieved Owner. ... Any Owner (not at the time in default
8 hereunder), or Declarant shall be entitled to bring an action for
damages against any defaulting Owner, and in addition may enjoy
any violation of this Declaration.

9 The CC&Rs also broadly define who is an “Owner” at Plaza Pointe with respect to the
10 controlling use restrictions. Article I, Section 1.08 provides that “[f]or purposes of Article II only,
11 unless the context otherwise requires, Owner shall also include the guests, invitees, licensees and
12 lessees of any Owner.” Thus, the CC&Rs are also binding and restrict the actions of the County
13 Defendants and the Real Party in Interest Illumination as Elite’s lessees and/or invitees.

14 Article II, Section 2.02 requires advanced approval by the City and the Plaza Pointe
15 Development Committee for any change in operation or use not previously authorized:

16 Other Operations and Uses. Operations and uses that are neither
17 specifically prohibited nor specifically authorized by this Declaration,
18 including the Planned Community Regulations as incorporated
19 herein, may be permitted in a specific case if (i) such operations or
20 uses are first approved by the County of Orange or such other
21 governmental entity then having jurisdiction [*i.e.*, the City] and (ii)
22 written operational plans and specifications for such operations or
23 uses, containing such information as may be requested by the
24 Development Committee, which approval shall be based upon
25 analysis of the anticipated effect of such operations or uses upon other
26 Lots, upon other real property in the vicinity of the Properties, and
upon the occupants thereof, but shall be in the sole discretion of the
Development Committee, as further provided in Article III of the
Declaration.

27 Article II, Section 2.03 of the CC&Rs states: “Nuisances. No noxious or offensive trade or
28 activity shall be carried on upon any Lot or any part of the Properties, nor shall anything be done

1 thereon which may be, or may become, an annoyance or nuisance to the neighborhood, or which
2 shall in any way interfere with the quiet enjoyment of each of the Owners of his respective Lot, or
3 which shall in any way increase the rate of insurance for any other Lot.”

4 Article IX, Section 9.03 further provides that “any violation of this Declaration shall be
5 deemed to be a nuisance.”

6 Article III, Section 3.02 mandates: “[N]o Improvements shall be commenced, erected or
7 maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be
8 made until the plans and specifications showing the nature, kind, shape, height, materials and
9 location of the same shall have been submitted to and approved in writing by the Development
10 Committee as to harmony of external design, color and location in relation to surrounding structures
11 and topography.”

12 Article I, Section 1.05 defines “Improvement” to include “all structures and appurtenances
13 thereto of every kind, including but not limited to buildings, utility systems, walkways, driveways,
14 parking areas, loading areas, landscaping items, fences, walls, decks, stairs, poles, landscaping
15 vegetation, signs, and exterior fixtures.” (Emphasis added.)

16 Here, there is no question of fact that Defendants’ attempt to use the Hotel to shelter and
17 treat COVID-19 patients constitutes a change of use not specifically authorized under the CC&Rs
18 nor permitted by the Planned Community Regulations, in violation of Article II, Sections 2.01 and
19 2.02 of the CC&Rs. There is equally no question of fact that such use constitutes a change of use
20 of the Hotel without the required prior approval by the City or the Plaza Pointe Development
21 Committee, in violation of Article II, Section 2.02 of the CC&Rs. Certainly, Plaintiff City of Laguna
22 Hills did not provide approval for such use. Defendants’ attempt to use the Hotel to shelter and treat
23 COVID-19 patients also constitutes a significant health and safety risk and a nuisance within the
24 meaning of, and in violation of, Article II, Section 2.03 and Article IX, Section 9.03 of the CC&Rs.
25 Finally, Defendants have already commenced certain improvements on and around the Hotel
26 Property, including erecting fences, as part of their plans to convert the Hotel into a COVID-19
27 infectious disease facility, without first submitting necessary plans and specifications for approval
28 by the Plaza Pointe Development Committee, in violation of Article III, Section 3.02 of the CC&Rs.

1 Thus, the likelihood that the Owner Plaintiffs will prevail against Defendants on their cause
2 of action for breach of the CC&Rs is extremely strong. On that basis, this Court should grant the
3 TRO as requested. Indeed, it is appropriate that Courts are called upon to grant preliminary
4 injunctive relief to maintain the status quo during litigation involving equitable servitudes affecting
5 use of land. (*MaJor v. Miraverde Homeowners Ass'n, Inc.* (1992) 7 Cal.App.4th 618, 623.)

6
7 **2. PLAINTIFFS ARE LIKELY TO PREVAIL ON THEIR CAUSE OF**
8 **ACTION AGAINST ALL DEFENDANTS FOR NUISANCE.**

9 With respect to Plaintiffs' causes of action for public nuisance as to all Defendants, their
10 likelihood of success is equally strong. Section 3479 of the California Civil Code provides the
11 following definition for a nuisance:

12 “*Anything which is injurious to health*, including, but not limited to, the illegal sale of
13 controlled substances, or is indecent or offensive to the senses, *or an obstruction to the*
14 *free use of property, so as to interfere with the comfortable enjoyment of life* or property,
15 or unlawfully obstructs the free passage or use, in the customary manner, of any navigable
16 lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway, is
17 a nuisance.” (Civ. Code, § 3479 (emphasis added).)

18 A public nuisance is one “which affects at the same time an entire community or
19 neighborhood, or any considerable number of persons, although the extent of the annoyance or
20 damage inflicted on individuals may be unequal.” (Civ. Code § 3480.) Further, Government Code
21 § 815 does not bar nuisance actions against public entities to the extent that such actions are founded
22 on Civil Code sections 3479, 3480 and 3481, which define public and private nuisances. (*Vedder*
23 *v. County of Imperial* (1974) 36 Cal.App.3d 654, 661.)

24 Here, there is no question of fact Defendants have created a condition that results in a
25 significant health and safety risk to the business owners, employees, customers and, particularly,
26 the residents of the surrounding community, in bringing COVID-19 patients into the community
27 and then sheltered and treated at the Hotel. Not only is the Hotel a stone’s throw away from Davita
28 Saddleback Dialysis center, where 100 immunocompromised individuals are treated each week, but
the Hotel is walking distance to the Laguna Woods Village, a retirement community of 18,800 aged
55 years and older. There is equally no question of fact that the use of the Hotel as a shelter for

1 COVID-19 patients interferes with the not only the comfortable enjoyment of their lives, but with
2 their continued existence. The likelihood that Plaintiffs will prevail against all Defendants on their
3 cause of action for abatement of public nuisance is extremely strong. On that basis, this Court
4 should grant the TRO as requested.

5 In fact, an injunction is the property remedy to abate a public or private nuisance. (Code
6 Civ. Proc., § 731; Civ. Code, § 3501; *Los Angeles Brick & Clay Prods. Co. v. City of Los Angeles*
7 (1943) 60 Cal.App.2d 478, 486; *Posey v. Leavitt* (1991) 229 Cal. App. 3d 1236, 1243.)

8 **3. PLAINTIFFS ARE LIKELY TO PREVAIL ON THEIR CAUSE OF**
9 **ACTION FOR PRIVATE NUISANCE.**

10 Pursuant to California Civil Code section 3481, every nuisance that is not a public
11 nuisance is a private nuisance. Hence, the elements of a private nuisance claim are the same as
12 those for a public nuisance claim, except that a plaintiff asserting a private nuisance does not have
13 to prove that the nuisance is one that affects a community or neighborhood and that they suffered a
14 special injury. (*Reinhard v. Lawrence Warehouse Co.* (1940) 41 Cal.App.2d 741, 745; see also
15 *Adams v. MHC Colony Park, L.P.* (2014) 224 Cal.App.4th 601, 605.) Plaintiffs' arguments
16 regarding private nuisance are therefore to those regarding public nuisance.

17 For the reasons discussed in section A.2. above, Plaintiffs will prevail on their cause of
18 action for private nuisance as against Defendant. This Court should grant the TRO as requested,
19 Plaintiffs' only meaningful remedy is injunctive relief.

20 **4. PLAINTIFFS ARE LIKELY TO PREVAIL ON THEIR CAUSE OF**
21 **ACTION FOR DECLARATORY RELIEF.**

22 Plaintiffs also seek declaratory relief against all Defendants. Code of Civil Procedure §
23 1060 provides, in relevant part, that:

24 “Any person interested ... under a contract ... may, in cases of actual controversy relating
25 to the legal rights and duties of the respective parties, bring an original action or cross-
26 complaint in the superior court for a declaration of his or her rights and duties..., including
27 a determination of any question of construction or validity arises under the ... contract.”

28 (Code Civ. Proc., § 1060.)

1 Declaratory relief generally operates prospectively to declare future rights, rather than to
2 redress past wrongs. (*Babb v. Superior Court* (1971) 3 Cal.3d 841, 848; *Gafcon, Inc. v. Ponsor &*
3 *Associates* (2002) 98 Cal.App.4th 1388, 1403.) It serves to set controversies at rest before they
4 lead to repudiation of obligations, invasion of rights or commission of wrongs. In short, the
5 remedy is to be used in the interests of preventive justice, to declare rights rather than execute
6 them. (*Jolley v. Chase Home Finance, LLC* (2013) 213 Cal.App.4th 872, 909.)

7 To qualify for declaratory relief, a plaintiff must establish two essential elements: “(1) a
8 proper subject of declaratory relief, and (2) an actual controversy involving justiciable questions
9 relating to [plaintiff’s] rights or obligations....” (*Wilson & Wilson v. City Council of Redwood*
10 *City* (2011) 191 Cal.App.4th 1559, 1582.) A declaratory relief action is an appropriate means to
11 test the enforceability of covenants or servitudes asserted against property, and the owner need not
12 violate the restrictions in order to ascertain his rights. (*Ross v. Harootunian* (1967) 257
13 Cal.App.2d 292.)

14 Here, Plaintiffs seek a declaration enforcing the rights, duties and obligations of the
15 parties to the CC&Rs, and thus, Plaintiffs have a proper subject of declaratory relief. There is an
16 actual controversy in that the Owner Plaintiffs maintain that the CC&Rs forbid Elite’s conduct as
17 aforesaid, and that Elite has already moved forward with signing an Occupancy Agreement with
18 the County Defendants, as well as beginning the process of erecting fences and other
19 improvements on and around the Hotel, indicative of its position that the CC&Rs have no force or
20 effect upon its current and intended conduct.

21 Plaintiffs are therefore likely to prevail on their cause of action for declaratory relief, thus
22 providing a further basis for this Court to grant the relief requested herein.

23 **B. PLAINTIFFS WILL SUFFER IRREPARABLE HARM IF THE TRO IS**
24 **NOT GRANTED AND HAVE NO OTHER ADEQUATE REMEDY.**

25 A consideration of interim harm to the plaintiff includes (1) the inadequacy of other remedies
26 (such as damages), (2) the degree of irreparable injury the denial of the injunction would cause, and
27 (3) the necessity of preserving the status quo. (*Take Me Home Rescue v. Luri, supra*, 208
28 Cal.App.4th at 1350; *AIU Ins. Co. v. Superior Court* (1990) 51 Cal.3d 807; *Friedman v. Friedman*

1 (1993) 20 Cal.App.4th 876, 889.) A judge must exercise discretion *in favor of the party most likely*
2 *to be injured.* (*Church of Christ in Hollywood v. Superior Court* (2002) 99 Cal.App.4th 1244: court
3 properly granted injunction on showing of substantial harm to plaintiffs if injunction was denied
4 and on showing of negligible harm to defendant if injunction was granted.)

5 Here, there is clearly no other remedy available to protect the lives of Plaintiff's residents
6 than to enjoin all Defendants from using the Hotel Property as a shelter for COVID-19 patients. The
7 degree of harm to Plaintiffs is significant and life-threatening. To that end, preserving the status
8 quo whereby the Hotel Property remains a hotel is absolutely necessary.

9 As shown in the accompanying declaration of Drs. Asfour and Mayer, the only known
10 effective measure to reduce the risk for a vulnerable person from injury or death from COVID-19
11 is to prevent infected individuals, and individuals believed to be infected, from interacting with, and
12 being within the same areas as such vulnerable persons. Placing people infected or believed to be
13 infected with COVID-19 in the Hotel will increase the risk of having exceptionally high
14 transmission to the residents the City of Laguna and immediately surrounding areas as all the
15 contacts and surrounding areas are populated and frequented by the most vulnerable class of people:
16 the elderly and those with compromised immunities. Further, any transmission that occurs from the
17 Hotel Property to the surrounding community will place these vulnerable community members at
18 grave risk of severe illness and death from COVID-19. Even if none of the infected patients leave
19 the Hotel and enter the surrounding community which certainly cannot be guaranteed, the staff at
20 the Hotel will be going in and out daily, including physicians, nurses, aides, housekeepers, cooks,
21 and security personnel. All of these workers will be visiting the same grocery stores, coffee shops,
22 and other nearby facilities. This presents an unreasonable and unacceptably high risk of
23 transmission of the COVID-19 virus to the most susceptible people, those over 50, as well as those
24 with compromised immunities.

25 **IV. CONCLUSION**

26 This is literally a life or death issue. If the residents of the City of Laguna Hills are exposed
27 to a COVID-19 shelter in their midst, people will die. There can be no greater showing of the need
28 for court intervention. The people of the City of Laguna Hills, speaking through Plaintiffs, ask this

1 Court to protect them and temporarily restrain Defendants, and their agents, servants, employees
2 and attorneys, and all those in active concert or participation with defendant from changing the use
3 of the Hotel from a hotel, to a shelter for COVID-19 patients, to evict any patients already present,
4 and to sanitize and make the Hotel safe again.

5 Respectfully submitted,

7 DATED: April 15, 2020

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