

1 DILLINGHAM & MURPHY, LLP
2 JOHN N. DAHLBERG (SBN 85122)
3 601 Montgomery Street, Suite 1900
4 San Francisco, California 94111
5 Telephone: (415) 397-2700
6 Facsimile: (415) 397-3300

7 Attorneys for Plaintiff [REDACTED]

FILED
ALAMEDA COUNTY

OCT 18 2017
CLERK OF THE SUPERIOR COURT
By [REDACTED] Deputy

8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF SANTA CLARA

10 [REDACTED]

11 Plaintiff,

12 v.

13 JOHN DOES 1-500,
14 and ALPHA COMPANIES 1-25,

15 Defendants.

16 Case No. [REDACTED]

17 **[PROPOSED] ORDER GRANTING
PRELIMINARY INJUNCTION**

DATE: October 12, 2017
TIME: 10:00 AM
DEPT.: 511
JUDGE: Hon. Kimberly Colwell
Alameda County Superior Court

18 Plaintiff [REDACTED] Motion for Preliminary Injunction against Defendant
19 John Doe 10, also known as Christopher Lamont ("Lamont"), is GRANTED.

20 Hearing was held October 12, 2017 on Plaintiff [REDACTED] Motion for Preliminary
21 Injunction. Plaintiff and moving party [REDACTED] was represented by John N. Dahlberg, Esq. No
22 appearance was made by, or on behalf of Defendant and responding party John Doe 10 also
23 known as Christopher Lamont.

24 **Procedural History**

25 This case has been transferred to this Court on special assignment by the Judicial Council.
26 Upon [REDACTED] ex parte application on 9/22/17, the Court granted a Temporary Restraining
27 Order against Lamont restraining him from entering any [REDACTED] store premises located in Santa
28 Clara County, California, for any purpose whatsoever, including but not limited to any expressive

1 activity. The Court issued an Order to Show Cause to be heard on 10/12/17 as to why a
2 preliminary injunction should not issue, ordered [REDACTED] to serve Lamont by 10/2/17, and
3 ordered Lamont to file and personally serve any opposition by 10 a.m. on 10/10/17. [REDACTED] has
4 shown personal service on Lamont on 9/28/17. No opposition was filed.

5 **Standard for Preliminary Injunction**

6 In determining whether to issue a preliminary injunction, the court evaluates the
7 interrelated factors of "(1) the likelihood that the plaintiff will prevail on the merits at trial and (2)
8 the interim harm that the plaintiff would be likely to sustain if the injunction were denied as
9 compared to the harm the defendant would be likely to suffer if the preliminary injunction were
10 issued." (Smith v. Adventist Health System/West (2010) 182 Cal.App.4th 729, 749.) The Court
11 can consider evidence in the form of declarations under penalty of perjury, weigh the credibility of
12 the declarants, and make factual findings. (See Oiyee v. Fox (2012) 211 Cal.App.4th 1036, 1050
13 and Fleishman v. Superior Court (2002) 102 Cal.App.4th 350, 356.). The Court's analysis of
14 these issues is expressly preliminary and "does not amount to an adjudication of the ultimate
15 rights in controversy." (Woods v. Superior Court (1980) 102 Cal.App.3d 608, 615-616.)

16 The Court grants in part [REDACTED] request for judicial notice. The Court cannot take
17 judicial notice of the truth of facts stated in declarations or court orders. (Intengan v. BAC Home
18 Loans Servicing LP (2013) 214 Cal.App.4th 1047, 1057 [declarations]; Sosinsky v. Grant (1992) 6
19 Cal.App.4th 1548, 1562-1567 [court orders].) The Court can take judicial notice of the existence
20 of such documents. (Ibid.)

21 **Factual Findings**

22 [REDACTED] evidence establishes the following facts: [REDACTED] operates retail grocery stores
23 in Santa Clara County, including stores at [REDACTED] and [REDACTED]
24 [REDACTED] in the City of San Jose. [REDACTED] controls these
25 two stores as well as the areas immediately in front of the store buildings, and uses the latter areas
26 to display merchandise and advertising signs.

1 [REDACTED] seeks to provide a pleasant, peaceful, and efficient shopping experience to ensure
2 customers will wish to return to its stores. The areas in front of the entrances of [REDACTED] stores
3 are used by employees and customers to travel in and out of the stores.

4 [REDACTED] does not invite the general public to linger, socialize, or congregate at the store
5 entrances or the areas in front of its store entrances. Those areas do not have any courtyards,
6 plazas, or other areas where [REDACTED] invites or allows the public to engage in such activities.

7 Lamont was present, respectively, on 9/14 (at the [REDACTED]), and 9/18 through 9/20
8 (at the [REDACTED]). On those days, [REDACTED] personnel saw Lamont standing in the area
9 in front of the stores, where he was attempting to solicit signatures for a countywide recall
10 petition. On those days, Lamont waited near the store entrances or exits, or the shopping carts, to
11 accost as many [REDACTED] customers as possible who were entering or exiting the premises.
12 Lamont quickly approached customers, stood very close, and demanded that they sign his petition
13 in a tone of voice that was described as loud, insistent, stern, or angry.

14 At both stores, [REDACTED] personnel received multiple complaints about Lamont's
15 solicitations. At both stores, when [REDACTED] personnel asked Lamont to leave the premises, he
16 refused to leave and made offensive and insulting remarks to them in a loud voice in the presence
17 of [REDACTED] customers.

18 At the [REDACTED] store, when customers refused to sign, Lamont would not take no for an
19 answer; sometimes followed customers out to their cars; and made offensive and insulting
20 remarks in a loud voice to at least one customer. He also told the [REDACTED] store director that the
21 court cannot stop him. The store director estimated that at least 700 customers per day at the
22 [REDACTED] store have been subjected to Lamont's solicitations. At the [REDACTED] store,
23 Lamont was seen approaching customers at their cars.

24 [REDACTED] has previously obtained injunctive relief in San Diego against a John Doe 1 and
25 against Lamont in Orange County. The declarations submitted in support of those orders refer
26 only to a John Doe 1. However, the attached photographs and the descriptions of consistent
27 patterns of behavior are sufficient to establish John Doe 1 is Lamont, and in turn, that Lamont has
28

1 also solicited signatures in a similar fashion in front of [REDACTED] stores in [REDACTED] and [REDACTED]
2 [REDACTED]

3 Legal Analysis

4 [REDACTED] has demonstrated that it is reasonably probable that it will prevail on the merits.
5 (San Francisco Newspaper Printing Co. v. Superior Court (1985) 170 Cal.App.3d 438, 442.) The
6 above facts are sufficient to establish the essential elements of the three causes of action in
7 [REDACTED] First Amended Complaint for (1) trespass (CACI 2000); (2) nuisance (CACI 2021);
8 and (3) declaratory judgment.

9 [REDACTED] is entitled to declaratory relief because it has shown an actual dispute with
10 Lamont as to his right to solicit [REDACTED] customers on [REDACTED] premises, and that it has the better
11 argument. [REDACTED] has established that the entrances to its stores and the privately owned
12 walkways in front of its stores are not public forums subject to Robins v. Pruneyard Shopping
13 Center (1979) 23 Cal.3d 899, 910. They are not designed to induce shoppers to linger, socialize,
14 or congregate. They are merely intended to facilitate the entrance and exit of shoppers moving
15 between vehicles and stores. (Ralphs Grocery Co. v. United Food and Commercial Workers
16 Union Local 8 (2012) 55 Cal.4th 1083, 1093.)

17 In the unique context of the collision between private property rights and free speech
18 rights, the harm analysis collapses into the merits analysis. (Donahue Schriber Realty Group, Inc.
19 v. Nu Creation Outreach (2014) 232 Cal.App.4th 1171, 1185.) In any event, [REDACTED] has
20 presented adequate, undisputed, and substantial evidence of significant interim harm if a
21 preliminary injunction is not granted. [REDACTED] has shown that Lamont has caused significant
22 disruption to [REDACTED] store operations, both in Santa Clara County and elsewhere; several
23 customers have complained to [REDACTED] about Lamont's activities on [REDACTED] premises; and
24 Lamont has refused to stop. That is sufficient. (Trader Joe's Co. v. Progressive Campaigns (1999)
25 73 Cal.App.4th 425, 438.) In comparison, Lamont will suffer minimal harm if enjoined. There
26 are other places open to the general public in Santa Clara County where Lamont may legally
27 solicit signatures.
28

1 Although a bond or undertaking is normally required for a preliminary injunction, Lamont
2 has waived and forfeited that requirement by failing to file any opposition. (See Smith v.
3 Adventist Health System/West (2010) 182 Cal.App.4th 729, 741.) [REDACTED] need not file a bond
4 or post an undertaking.

5 **Disposition**

6 Images of John Doe 10 also known as Christopher Lamont are incorporated into this
7 Order, and are physically attached hereto.

8 For the foregoing reasons, the Court grants the following relief: Pending trial of this
9 action, or amendment, modification or vacation of this preliminary injunction, John Doe 10, also
10 known as Christopher Lamont, is RESTRAINED, PROHIBITED AND ENJOINED from
11 entering any [REDACTED] store premises located in Santa Clara County, California, including but not
12 limited to the stores at [REDACTED]
13 [REDACTED] (including the privately owned exterior walkways directly in front of
14 [REDACTED] store buildings and all store entrance areas) for any purpose whatsoever, including but
15 not limited to the purpose of engaging in any expressive activity, which in turn includes loitering,
16 approaching or hailing passersby or customers, soliciting signatures from any person, collecting
17 or seeking to collect petition signatures, and communicating verbally with any store customers,
18 employees, or passersby for such purposes, and from bringing with him to such stores any
19 petitions or any other documents or writings.

20
21
22 Dated: 10/12/17

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26 
JUDGE OF THE SUPERIOR COURT

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