

FILED

JAN 29 2021

FRESNO COUNTY SUPERIOR COURT  
By \_\_\_\_\_ DEPT. 501

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SUPERIOR COURT OF CALIFORNIA, COUNTY OF FRESNO  
CENTRAL DIVISION

GHOST GOLF, INC., DARYN	)	Case No. 20CECG03170
COLEMAN, SOL Y LUNA MEXICAN	)	
CUISINE, AND NIEVES RUBIO,	)	
	)	
Plaintiffs,	)	ORDER ON PLAINTIFFS' MOTION
	)	FOR PRELIMINARY INJUNCTION
v.	)	
	)	
GAVIN NEWSOM, etc., et al.,	)	
	)	
Defendants.	)	

On October 26, 2020, plaintiffs Ghost Golf, Inc., Daryn Coleman, Sol Y Luna Mexican Cuisine and Nieves Rubio (collectively "plaintiffs") filed a Complaint for Declaratory Judgment and Permanent and Preliminary Injunctive Relief against four California government officials (collectively "defendants"), each in some way responsible for the creation or enforcement of California's Blueprint for a Safer Economy ("the Blueprint"). Plaintiffs contend that the Blueprint violates the California Constitution. (Complaint ¶ 94.)

On November 12, 2020, defendants filed a Motion for Preliminary Injunction, asking this court to enjoin defendants

1 from enforcing the Governor's Blueprint, claiming it is not  
2 statutorily authorized and is otherwise unconstitutional.

3 On November 30, 2020, defendants filed an Opposition to the  
4 Motion, contending that the Blueprint is lawfully authorized, both  
5 by Government Code section 8550 et seq., and Health & Safety Code  
6 section 120130 et seq.

7 The Motion for Preliminary Injunction came before the court  
8 for hearing on December 16, 2020. Appearances were noted on the  
9 record. The matter was argued, submitted and taken under  
10 advisement. The court now rules on the motion.<sup>1</sup>

11 The court grants defendants' Request of Judicial Notice filed  
12 November 30, 2020, with respect to all items. The court grants  
13 plaintiffs' Request for Judicial Notice filed December 8, 2020,  
14 with respect to all items except for items h, i and j. The court  
15 denies plaintiffs' Motion for Leave filed December 14, 2020.

16 I

17 **THE BURDEN OF PROOF**

18 The burden is on plaintiffs to show all elements necessary to  
19 support issuance of a preliminary injunction. (See *O'Connell v.*  
20 *Superior Court (Valenzuela)* (2006) 141 Cal.App.4th 1452, 1481.)

21 II

22 **FACTORS PLAINTIFFS MUST PROVE**

23 "A superior court must evaluate two interrelated factors when  
24 ruling on a request for a preliminary injunction: (1) the  
25 likelihood that the plaintiff will prevail on the merits at trial

26 \_\_\_\_\_  
27 <sup>1</sup> The court is aware of a matter (Case No. C093006) fully briefed before  
28 California's Third Appellate District, which raises some of the issues  
presented in this case. This court will wait no longer for a determination in  
that case.

1 and (2) the interim harm that the plaintiff would be likely to  
2 sustain if the injunction were denied as compared to the harm the  
3 defendant would be likely to suffer if the preliminary injunction  
4 were issued." (*Smith v. Adventist Health System/West* (2010) 182  
5 Cal.App.4th 729, 749; see *Brown v. Pacific Found, Inc.* (2019) 34  
6 Cal.App.5th 915, 925.)

7 The court's determination must be guided by a "mix" of the  
8 potential-merit and interim-harm factors; the greater the  
9 plaintiffs' showing on one, the less must be shown on the other to  
10 support an injunction. (*Butt v. State of California* (1992) 4  
11 Cal.4th 668, 678; *King v. Meese* (1987) 43 Cal.3d 1217, 1226-1227 -  
12 court has discretion to issue preliminary injunction where  
13 plaintiff demonstrates high likelihood of success on the merits  
14 even if plaintiff is unable to show balance of harm tips in its  
15 favor; *SB Liberty, LLC v. Isla Verde Association, Inc.* (2013) 217  
16 Cal.App.4th 272, 280.)

17 **A. The Potential-Merit Factor**

18 A preliminary injunction must not issue unless it is  
19 "reasonably probable that the moving party will prevail on the  
20 merits." (*San Francisco Newspaper Printing Co., Inc. v. Superior*  
21 *Court (Miller)* (1985) 170 Cal.App.3d 438, 442; *Costa Mesa City*  
22 *Employees' Association v. City of Costa Mesa* (2012) 209  
23 Cal.App.4th 298, 309 - no injunction may issue unless there is at  
24 least "some possibility" of success.) This court may not issue a  
25 preliminary injunction, regardless of the amount of interim harm,  
26 "unless there is some possibility" that plaintiffs will ultimately  
27 prevail on the merits of their claims. (*Jamison v. Department of*  
28 *Transp.* (2016) 4 Cal.App.5th 356, 362, quoting *Butt v. State of*

1 California, supra, 4 Cal.4th at p. 678; Association of Orange  
2 County Sheriffs v. County of Orange (2013) 217 Cal.App.4th 29,  
3 49.)

4 Based on the materials before it, the court determines that  
5 it is not reasonably probable that plaintiffs will prevail on the  
6 merits in this case.

7 **B. The Interim-Harm Factor**

8 Plaintiffs submitted significant evidence of harm to them  
9 should the injunction be denied. Having submitted no evidence, or  
10 even argument, concerning public harm, plaintiffs are blind to the  
11 possibility of harm to the public should the injunction be  
12 granted. Based on the materials before it, the court determines  
13 that the interim harm residents of Fresno, Kern and nearby  
14 Counties would be likely to sustain if the injunction were granted  
15 is monumental in comparison to the admitted very significant  
16 economic harm plaintiffs would likely suffer if the preliminary  
17 injunction were denied.

18 **III**

19 **DISPOSITION**

20 As plaintiffs' have not carried their burden of proof, their  
21 Motion for Preliminary Injunction is **DENIED**.

22 This ruling is not an adjudication of the ultimate rights in  
23 controversy. It merely represents this court's discretionary  
24 decision whether defendants should be restrained from exercising

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1 claimed rights pending trial. (*Cohen v. Board of Supervisors*  
2 (1985) 40 Cal.3d 277, 286.)

3 IT IS SO ORDERED.

4 DATED this 29<sup>th</sup> day of January, 2021.

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6   
7 D. TYLER THARPE  
8 JUDGE OF THE SUPERIOR COURT

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