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Summit Lake Vineyard, and Cook’s Flat Associates a
12 California Limited Partnership

13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA

15
16 HOOPES VINEYARD LLC, a California
limited liability company;
17 SUMMIT LAKE VINEYARDS & WINERY
LLC, a California limited liability company;
18 and COOK’S FLAT ASSOCIATES A
CALIFORNIA LIMITED PARTNERSHIP, a
19 California limited partnership,

20 Plaintiffs,

21 v.

22 COUNTY OF NAPA,

23 Defendant.

Case No. 3:24-cv-6256

COMPLAINT

1 COMES NOW the Plaintiffs, HOOPES VINEYARD LLC, SUMMIT LAKE
2 VINEYARDS & WINERY LLC, and COOK’S FLAT ASSOCIATES A CALIFORNIA
3 LIMITED PARTNERSHIP (collectively “Plaintiffs” or “Plaintiff Wineries”), by and through
4 their attorneys, MILLER, CANFIELD, PADDOCK and STONE, P.L.C., and for their Complaint
5 against Defendant, COUNTY OF NAPA, state as follows:

6 **INTRODUCTION**

7 1. Defendant County of Napa (“Napa County” or the “County”) regulates wineries
8 within the County not based on clear, understandable ordinances, but rather upon an ever-
9 changing patchwork of undocumented “policies” and procedures. The few written ordinances
10 Napa County does have are so vague that County wineries are unable to decipher what is and is
11 not allowed and so vague as to allow Napa County officials to use their unfettered discretion to
12 restrict winery operations as they see fit.

13 2. If a winery within the County dares challenge the discretion of Napa County and
14 the restrictions placed on these wineries, it is met with retribution and millions of dollars in costs
15 just to “maintain” the limited operating permissions Napa County was “gracious” enough to allow
16 in the first place. In many cases, the winery is forced to bargain “down” their existing
17 entitlements (at substantial expense) to avoid closure and/or enforcement action.

18 3. Napa County’s actions have violated numerous Constitutional rights of County
19 wineries, including Plaintiffs, and it is time they end.

20 4. Specifically, the relevant Napa County ordinances and policies violate Plaintiffs’
21 First Amendment rights to free speech, are an impermissible prior restraint on speech, are a
22 content-based restriction on speech, violate the Dormant Commerce Clause, are void for
23 vagueness, arbitrarily interfere with a constitutionally protected business interest, violate the non-
24 delegation doctrine, take property without just compensation, deny Plaintiffs equal protection of
25 the law, and are preempted by California law.

26 **THE PARTIES**

27 5. HOOPES VINEYARD LLC (“Hoopes”) is a California limited liability company
28 which leases property located at 6204 Washington Street, Napa, California 94558 (the “Hoopes

1 Property”). Hoopes maintains a Type 02 Winegrower license issued by the State of California.
2 The property was approved on March 6, 1984 by Napa County as a legal conforming “small
3 winery use permit exemption.”

4 6. SUMMIT LAKE VINEYARDS & WINERY LLC (“Summit Lake”) is a
5 California limited liability company. It owns the real property located at 2000 Summit Lake
6 Drive, Angwin, California 94508 (the “Summit Lake Property”). Summit Lake was approved as a
7 legal conforming “small winery use permit exemption” on March 1, 1984 by Napa County.
8 Summit Lake also maintains a Type 02 Winegrower license issued by the State of California.

9 7. COOK’S FLAT ASSOCIATES A CALIFORNIA LIMITED PARTNERSHIP dba
10 Smith-Madrone (“Smith-Madrone”), is a California limited partnership. Smith-Madrone owns the
11 real property located at 4022 Spring Mountain Road, Saint Helena, California 94574 (the “Smith-
12 Madrone Property”). The Smith-Madrone property was approved to “build a winery” on October
13 24, 1973 by Napa County. Smith-Madrone maintains a Type 02 Winegrower license issued by the
14 State of California.

15 8. Defendant NAPA COUNTY is a general law county duly organized under the
16 laws of the State of California.

17 JURISDICTION AND VENUE

18 9. This Court has subject-matter jurisdiction over this action under 28 U.S.C. §§
19 1331 and 1343 because this case arises under the United States Constitution and 42 U.S.C. §
20 1983.

21 10. This Court has supplemental jurisdiction over the state law claims under 28 U.S.C.
22 § 1367 because these claims are so related to Plaintiffs’ federal claims that they form part of the
23 same case or controversy in this judicial district and derive from a common nucleus of operative
24 facts.

25 11. This Court has the authority to grant declaratory relief under 28 U.S.C. §§ 2201
26 and 2202.

27 12. This Court has the authority to grant injunctive relief under Federal Rules of Civil
28 Procedure 57 and 65.

1 13. Napa County is subject to the personal jurisdiction of this Court because it is
2 located within this judicial district.

3 14. Venue is proper in this Court under 28 U.S.C. § 1391(b) because (i) Napa County
4 is located within this judicial district and (ii) the events or omissions giving rise to Plaintiffs'
5 claims occurred in this judicial district.

6 15. Plaintiffs' claim for attorneys' fees and costs is authorized by 42 U.S.C. § 1988.

7 **DIVISIONAL ASSIGNMENT**

8 16. This action should be assigned to the San Francisco Division or Oakland Division
9 because this action arose in Napa County.

10 **FACTUAL ALLEGATIONS**

11 **Hoopes:**

12 17. The Hoopes Property is located in the Napa County Agricultural Preserve District
13 and consists of a small vineyard and winery on approximately eight acres.

14 18. In 1984, predecessors in interest to Hoopes obtained a small winery use permit
15 exemption from Napa County and began operating a winery at the Hoopes Property. **Exhibit 1.**

16 19. Historically, Napa County allowed the public to come to the Hoopes Property,
17 consume wine and picnic on the Hoopes property, and allowed Hoopes to sell wine-related and
18 other items.

19 20. A 2012 version of the Napa County Public Winery Database, a database created
20 and maintained by Napa County, demonstrates official recognition of now disputed accessory use
21 entitlements at the Hoopes property (then named Hopper Creek). The publicly disseminated
22 document shows Hoopes is allowed to host Tastings by Appointment without any restriction on
23 the number of daily/weekly/yearly visitors and without any restriction on the number of
24 marketing events or marketing event visitors. (**Exhibit 2:** 2012 Database.)

25 21. The 2015 version of the Winery Database also shows the same entitlements for
26 Hoopes. (**Exhibit 3:** 2015 Database.)

27 22. In 2016, this Winery Database was changed and the entitlements for Hoopes were
28 manipulated to state that Hoopes was not allowed to conduct Tastings by Appointment, have any

1 visitors whatsoever and was not allowed any marketing events or marketing event visitors.

2 **(Exhibit 4: 2016 Database.)**

3 23. This change was done without notice to Hoopes' predecessor in interest.

4 24. Hoopes is not the only winery to have its entitlements changed. Napa County
5 changed the entitlements for approximately thirty Napa wineries between 2012 and 2016, though
6 it is unclear whether those wineries are aware that their entitlements were altered.

7 25. On October 30, 2019, Hoopes obtained a Type 02 Winegrower license; a Type 17
8 Beer and Wine Wholesaler license; and a Type 20 Off Sale Beer and Wine license from the
9 California Department of Alcoholic Beverage Control for the Hoopes Property after a related
10 entity had purchase the real estate.

11 26. At the time, Hoopes remodeled portions of the Hoopes Property and Napa County
12 approved all remodel-related building permits, confirmed adequacy of existing infrastructure, and
13 issued final approvals for all floodplain and building permits associated with the renovations
14 between February 2020 and October 2020.

15 27. Regardless, Napa County issued Hoopes a "Notice of Apparent Violation" on
16 February 14, 2020, alleging Hoopes was not allowed to engage in "tours and tastings" or
17 "marketing" at the Hoopes Property. No one from County Code Enforcement had been to the
18 property and no County personnel had personal knowledge of any "tours and tastings."

19 28. Napa County does not contest that unlimited "retail operations" are allowed at all
20 Plaintiff Wineries.

21 29. On October 20, 2022, Napa County filed a lawsuit against Hoopes, and its related
22 entities, alleging that Hoopes' operations were a public nuisance and that Hoopes had engaged in
23 unlawful business practices.

24 30. No citations, citizen complaints, or nuisances had ever been reported or issued to
25 Hoopes or its predecessor.

26 31. As of the date of this Complaint, that lawsuit is still pending.

27 32. The winery at the Hoopes Property is older than other wineries in the
28 neighborhood. After it began operating in 1984, other wineries opened nearby. The Hoopes

1 Property is now located 400 feet from Bell Wine Cellars and 750 feet from Mira Winery.

2 33. Both Bell Wine Cellars and Mira Winery are much larger wineries and Napa
3 County allows these two wineries more expansive operating permissions than it does Hoopes.

4 34. Hoopes routinely receives requests from customers, both formally and informally,
5 for tastings, wine by the glass, retail sales, tours, marketing events and other common services
6 provided by wineries.

7 35. Hoopes has to decline these requests which has cost Hoopes millions of dollars in
8 profits.

9 36. The Napa County ordinance and policies have also prevented Hoopes from
10 advertising and marketing its winery which has additionally caused Hoopes to suffer millions of
11 dollars in damages from lost sales.

12 **Summit Lake:**

13 37. On March 1, 1984, the predecessors in interest to Summit Lake obtained a Small
14 Winery Use Permit Exemption from Napa County and began operating a winery. (**Exhibit 5.**)

15 38. The Summit Lake Property is located in the Napa County Agricultural Watershed
16 District.

17 39. Historically, Napa County allowed Summit Lake to have guests at its property to
18 consumer wine, picnic, and sample wine, and Summit Lake to sell wine at its property.

19 40. These entitlements are contained within a 2012 version of the Napa County
20 Winery Database which states Summit Lake is allowed Tastings by Appointment and without any
21 limitation on the number of visitors per day/week/year. (**Exhibit 2.**)

22 41. The 2015 version of the Winery Database contains these same permissions for
23 Summit Lake. (**Exhibit 3.**)

24 42. According to later versions of the Winery Database, at some point in time Napa
25 County, without notice to Summit Lake, took away these entitlements as these later databases
26 state Summit Lake is not allowed to do Tastings by Appointment, is not allowed any visitors
27 whatsoever and is not allowed any marketing events or marketing event visitors. (*See Exhibit 4:*
28 **2016 Winery Database; Exhibit 6: 2019 Winery Database.**)

1 43. Summit Lake only became aware of the new restrictions when Summit Lake
2 sought other property improvements.

3 44. In 2018, Summit Lake considered increasing wine production at the property and
4 knew that a production increase at the property would potentially require a use permit application
5 of some kind.

6 45. In February 2019, Summit Lake received a form letter from the County advising
7 that winery owners could voluntarily submit to an audit from the County to memorialize and/or
8 clarify allowed uses.

9 46. Summit Lake voluntarily submitted to the audit and sought a use permit
10 modification for its planned wine production increase.

11 47. In response, Napa County determined that Summit Lake Winery was not entitled
12 to any “visitation” under the small winery exemption, despite nearly forty years of hosting same.

13 48. In October 2019, Summit Lake was advised that if it wished to obtain its permit
14 modification, it would need to agree to repave a substantial portion of the road leading to its
15 winery at a cost of over \$1 million.

16 49. This road serves numerous other properties and businesses, some of which have
17 completed more substantial winery upgrades but did not trigger similar improvement
18 requirements, and the proportional impact of Summit Lakes’ increase use of the road was
19 negligible; indeed, it was not an actual “increase” in use.

20 50. Summit Lake was unable to afford this upgrade or justify the expense relative to
21 the requested wine production upgrade.

22 51. On June 3, 2021, Summit Lake requested a reconsideration because it did not
23 believe hosting visitors was a new “use,” and that even if it were, there was no nexus between the
24 cost and intensity of the upgrade. There was similarly no “intensification” as visitors had been
25 coming to the property for four decades. Summit Lake advised the County the cost was
26 prohibitive and reduced or eliminated “visitation” threatened viability of the business that had
27 been in operation and reliant thereon for nearly forty years.

28 52. On June 4, 2021, the County responded that its position would not change.

1 53. On January 11, 2022, Napa County threatened Summit Lake that if it did not agree
2 to the road improvement then its permit modification application would be closed and going
3 forward Summit Lake would not be allowed any visitors to its winery.

4 54. Summit Lake is unable to afford the substantial road improvement cost without
5 risking the viability of its winery.

6 55. Summit Lake cannot viably operate without visitation at the winery.

7 56. To date, Napa County continues to assert that any visitors consuming wine at
8 Summit Lake is a violation of the small winery use permit exemption and that Summit Lake must
9 cease sales/tasting operations or improve the roadway.

10 57. The winery located at the Summit Lake Property is older than other wineries (and
11 residences) on the same road. After it began operating in 1984, other wineries opened, including
12 much larger operations nearby: Outpost Wines; Robert Craig Winery; Robert Foley Vineyards;
13 and Black Sear. These are all located less than one mile from Summit Lake. Napa County allows
14 all four neighbors more expansive winery operations than it does Summit Lake.

15 58. Summit Lake routinely receives requests from customers, both formally and
16 informally, for tastings, wine by the glass, retail sales, tours, marketing events and other common
17 services provided by wineries.

18 59. While Summit Lake has engaged in some limited on-premises sales, it has limited
19 the amount of on-premises sales due to fear of County enforcement which has cost Summit Lake
20 millions of dollars in damages in lost profits.

21 60. The Napa County ordinance and policies have also prevented Summit Lake from
22 advertising and marketing its winery which has additionally caused Summit Lake to suffer
23 millions of dollars in damages from lost sales.

24 **Smith-Madrone:**

25 61. On May 14, 1971, Smith-Madrone purchased the 200-acre Smith-Madrone
26 Property located in the Napa County Agricultural Watershed District.

27 62. On August 15, 1973, Smith-Madrone applied for a land use permit to open a
28 winery and the only question on the application was the reason for the use permit.

1 63. On October 24, 1973, Smith-Madrone obtained a winery use permit. (**Exhibit 7.**)

2 64. One of the findings of the use permit was that the winery would not provide public
3 tastings and that “private arrangements will be required to visit the winery.” (*Id.* at Finding #6.)

4 65. A condition of approval was that “[w]ine tastings be limited to a private, invitation
5 only, basis.” (*Id.* at Condition #7.)

6 66. However, the use permit did not place any restrictions on the number of visitors
7 Smith-Madrone could see on a daily, weekly, or yearly basis.

8 67. The use permit did not place restrictions on the number or type of event Smith-
9 Madrone could host on a daily, weekly, or yearly basis.

10 68. The use permit did not limit the number of event visitors Smith-Madrone could
11 host on a daily, weekly, or monthly basis.

12 69. The use permit did not limit the number of employees Smith-Madrone could have.

13 70. Smith-Madrone was one of the first winery use permits issued in Napa County.

14 71. Smith-Madrone is older than most wineries (and residences) in the immediate area
15 and in Napa County, generally. After it began operating, other wineries opened, including much
16 larger operations nearby. Napa County allows nearby wineries more expansive winery operations
17 than it allows Smith-Madrone.

18 72. Historically, Smith-Madrone has allowed consumers to engage in “tours and
19 tastings” by appointment and has hosted “marketing events” and has been so doing for over 50
20 years.

21 73. Smith-Madrone has also allowed consumers to purchase wine on the premises and
22 consume wine on the premises.

23 74. Smith-Madrone is informed that Napa County now has a policy that some wineries
24 are prohibited from private tours and tastings by appointment, are prohibited from marketing
25 wine, and are prohibited from allowing the purchase and consumption of wine on their premises.

26 75. The 2012 version of the Napa County Winery Database, consistent with Smith-
27 Madrone’s use permit, does not contain any limit on the number of visitors allowed to visit
28 Smith-Madrone. (Exhibit 2.)

1 76. However, thereafter, without explanation, notice, or a hearing, later versions of the
2 Winery Database state that Smith-Madrone is limited to 10 visitors per week and 520 visitors per
3 year. (Exhibits 4, 6.) Oddly, the same databases do not indicate that Smith-Madrone is allowed a
4 specific number of visitors per day, which, upon information and belief, Plaintiffs believe Napa
5 County interprets as meaning the winery is not allowed any daily visitors.

6 77. Given the 520 visitors per year limitation, it would take Smith-Madrone 854.4
7 years to see the same number of visitors another Napa County winery is allowed to see in a single
8 year.

9 78. The 2012 database, consistent with Smith-Madrone’s use permit, did not contain a
10 limit on marketing events or marketing event visitors while later versions state that Smith-
11 Madrone is not allowed any marketing events or marketing event visitors.

12 79. These numbers and limits are not displayed anywhere in the use permit, conditions
13 of approval, or findings for the use permit issued to Smith-Madrone. (Exhibit 7.)

14 80. Unlike other wineries in Napa County, Smith-Madrone did not receive
15 correspondence regarding Napa County’s “Use Permit Compliance Program” but was advised of
16 the letter by other wineries.

17 81. Smith-Madrone has not sought a status determination for fear, based upon
18 information and belief, that Napa County engages in a policy and practice to deem longstanding
19 winery entitlements “beyond the scope” of an issued use permit and mandate “compliance” by
20 application for a conditional use permit that is materially more limited than the existing
21 entitlements, and to trade down property uses at great expense.

22 82. Smith-Madrone is informed and believes that many participants in the “use permit
23 compliance program” and/or “status determination program” are still navigating the process more
24 than six years after they filed, with consistently changing “goalposts” for “compliance” and at
25 debilitating expense.

26 83. Smith-Madrone is informed and believes that wineries that have sought
27 determination and/or contested Napa County’s determination of winery entitlements have resulted
28 in reductions in their uses without explanation or legal authority.

1 84. Smith-Madrone routinely receives requests from customers, both formally and
2 informally, for tastings, wine by the glass, retail sales, tours, marketing events, and other common
3 services provided by wineries.

4 85. Because of the restrictions placed upon it by Napa County, Smith-Madrone is not
5 able to freely grant these requests which has caused it to lose profits.

6 86. The Napa County ordinance and policies have also prevented Smith-Madrone
7 from advertising and marketing its winery which has additionally caused Smith-Madrone to
8 suffer damages from lost sales.

9 **California State Laws and Regulations Allow More Winery Uses Than Napa County:**

10 87. California Business and Professions Code (“BPC”) Section 23358(a)(2) allows
11 wineries with a Type 02 Winegrower license to sell wine and brandy to consumers for
12 consumption off the winegrowers’ premises.

13 88. BPC Section 23358(a)(3) allows wineries with a Type 02 Winegrower license to
14 sell bottles of wine to consumers for consumption on the winegrowers’ premises.

15 89. BPC Section 23358(a)(3) does not restrict how such wine is served, *e.g.*, by the
16 sample, by a flight, by the glass or by the bottle. Indeed, the legislative history of the bill
17 expressly confirms sale by the bottle, glass, or sample is expressly allowed.

18 90. BPC Section 23358(a)(4) allows a winery to operate a bona fide eating place on
19 the licensed premises and “[s]ell all beers, wines, and brandies, regardless of source, to
20 consumers for consumption on the premises.”

21 91. BPC Section 23358(b) states that a “winegrower may also have upon the premises
22 all beers, wines, and brandies, regardless of source, for sale or service only to guests during
23 private events or private functions not open to the general public.”

24 92. BPC Section 23358(c) states that at least fifty percent of the wine a winegrower
25 sells on its licensed premises must be produced by the winegrowers from the conversion of
26 grapes, berries, or other fruit into wine.

27 93. BPC Section 23358(c) does not dictate the source of the grapes, berries, or fruit a
28 winegrower converts into wine.

1 94. BPC Section 23358(c) does not dictate the location of production of the wine as
2 long as produced by the winegrower.

3 95. BPC Section 23358(e) provides that counties exercising land use regulatory
4 authority can restrict, but not eliminate, the privileges afforded by section 23358.

5 96. BPC Section 23358(e) is the only section of the BCP related to wineries where the
6 California Legislature provided a local government with this limited authority.

7 97. BPC Section 23356.1 authorizes a winegrower to “conduct winetastings of wine
8 produced or bottled by, or produced and packaged for, the licensee, either on or off the
9 winegrower’s premises.”

10 98. That section also states that the “department may adopt the rules as it determines
11 to be necessary for the administration of this section.” *Id.* at 23356.1(d).

12 99. Unlike BPC Section 23358, BPC Section 23356.1 does not provide Napa County
13 with authority to establish rules related to a winegrower conducting wine tastings.

14 100. The State of California has issued the following rules related to wine tastings:

15 (a) California law defines a “winetasting” as a “presentation of samples of one
16 or more wines, representing one or more wineries or industry labels, to a group of consumers for
17 the purpose of acquainting the tasters with the characteristics of the wine or wines tasted.” Cal.
18 Code Regs., Title 4, § 53.

19 (b) California law allows a winegrower to “supply small amounts of bread,
20 crackers, cheeses or nuts to clear the taste buds of the participants between successive samples of
21 wine during a winetasting.” Cal. Code Regs., Title 4, § 53.

22 (c) “Winetastings may be conducted without charge or for a fee for the public
23 on a premises licensed with a winegrower's license.” Cal. Code Regs., Title 4, § 53(a)(1).

24 (d) “Winegrowers...may conduct winetastings which are sponsored by a bona
25 fide charitable, fraternal, political, religious, trade, service, or similar private organization”
26 subject to limited conditions. Cal. Code Regs., Title 4, § 53(b).

27 (e) While Section 53 contains some restrictions, the rule is clear that
28 “[n]othing in this rule shall prevent the holder of any license which permits the sale and

1 consumption of wine on the premises from holding a winetasting of wines legally acquired,
2 provided the on-sale licensee shall charge for the wines presented in accordance with law.”

3 101. BPC Section 23386(a) states that a winegrower’s license “authorizes the giving
4 away of samples of the alcoholic beverages that are authorized to be sold by the license under the
5 rules that may be prescribed by the department.”

6 102. BPC Section 23386(a) does not provide Napa County with authority to establish
7 rules related to a winegrower giving away samples.

8 103. California courts have long recognized that, “[o]bviously, the use of samples is for
9 the purpose of encouraging the sale of the product.” *Tonkin Distributing Co. v. Collins*, 50 Cal.
10 App. 2d 790, 795, 123 P.2d 938 (1942).

11 104. California rules allow winegrowers to “sponsor contests, races, tournaments, and
12 other similar activities on or off licensed premises.” Cal. Code Regs., Title 4, § 106(i)(2).

13 105. No California statute or rule allows Napa County to further restrict the provisions
14 of Cal. Code Regs., Title 4, § 106(i)(2).

15 106. California Government Code section 65852 states that all zoning regulations “shall
16 be uniform for each class or kind of...use of land throughout each zone....”

17 **The Napa County Code Related to Wineries:**

18 107. In 1955, Napa County adopted a comprehensive set of zoning ordinances
19 recognizing that “agriculture is a major industry for the County” and for “protection of
20 agriculture.” (**Exhibit 8:** 1955 Ordinance at Sec. 1.02 (the “Napa County Code” or “NCC”).)

21 108. In 1968, the Napa County Code was amended to add an Agricultural Preserve
22 District which allowed, without the need for a use permit, “wineries”, the “[s]ale of agricultural
23 products grown, raised or produced on the premises” and “[a]ccessory and incidental uses
24 compatible with and necessary to the operation of the above uses.” (**Exhibit 9:** Ordinance 274,
25 Sec. P.02.)

26 109. In 1976, the County established that all post-1976 winery developments may
27 continue to operate in the Agricultural Preserve and Agricultural Watershed Districts as lawful
28 uses but must first obtain a use permit.

1 110. In 1980, the Napa County Code was amended to create a use permit exemption for
2 “small wine[ies],” converting production facilities under 20,000 gallons to a use by right without
3 the need to obtain a use permit, known as the Small Winery Use Permit Exemption or Certificate
4 of Exemption. (**Exhibit 10.**)

5 111. The 1980 Ordinance defined a “small winery” as “any existing winery or proposed
6 new winery with a maximum annual production capacity of 20,000 gallons of wine” and that met
7 certain criteria including that a “small winery does not conduct public tours, provide wine
8 tastings, sell wine-related items or hold social events of a public nature.” (*Id.* at Section 12048.)

9 112. The 1980 Ordinance did not include a definition for the terms “retail,” “public
10 tours,” “wine tastings,” “wine-related items,” or “social events of a public nature.” (*Id.*)

11 113. These terms were not defined elsewhere in the Napa County Code at the time, or
12 in subsequent versions.

13 114. While the 1980 Ordinance included a definition for a “small winery,” it did not
14 include operative ordinances which prohibited a small winery from producing more than 20,00
15 gallons of wine, conducting public tours, providing wine tastings, selling wine related items or
16 from holding social events of a public nature.

17 115. On January 23, 1990, Napa County passed Ordinance 947, the Winery Definition
18 Ordinance. (**Exhibit 11.**)

19 116. Ordinance 947 grandfathered in wineries established prior to its enactment,
20 whether by use permit or exemption, and allowed those wineries to continue as legal conforming
21 uses. (*Id.* Section 2 and Section 3.)

22 117. The stated intent behind Ordinance 947 was to “protect agriculture and open space
23 as the primary land use in Napa County.” (*Id.* at Section 6.)

24 118. Ordinance 947 expressly declared that small winery use permit exemptions and
25 other existing small wineries entitled by use permit were critical economic contributors to the
26 Napa Valley economy. (*Id.* at Section 2 and Section 3.)

27 119. Ordinance 947 simplified and broadened the definition of winery and eliminated
28 any distinction between “winery” and “small winery.”

1 120. Ordinance 947 defined a “Winery” to “mean an agricultural processing facility
2 used for: (1) The fermenting and processing of grape juice into wine; or (2) The refermenting of
3 still wine into sparkling wine.” (*Id.* at Section 8.)

4 121. Ordinance 947 also added definitions which were not found in previous versions
5 of the ordinances. (*Id.* at Section 9.)

6 122. Ordinance 947 did not include a definition of the terms “retail,” “public tours,”
7 “wine tastings,” “wine-related items,” or “social events of a public nature.”

8 123. Like the Small Winery Use Permit Exemption, Ordinance 947 defined certain
9 terms but it did not contain operative ordinance sections which affirmatively precluded certain
10 activities.

11 124. The Napa County Code was re-codified in 1994 and carried forward the revisions
12 made by Ordinance 947 along with other revisions which have been made since 1994.

13 125. The current Napa County Code defines the term “Agriculture” to include
14 “[m]arketing, sales, and other accessory uses that are related, incidental and subordinate to the
15 main agricultural processing use.” NCC Section 18.08.040.

16 126. The current Napa County Code defines the term “Marketing of wine” to mean
17 “any activity of a winery which is conducted at the winery on a prearranged basis for the
18 education and development of customers and potential customers with respect to wine which can
19 be sold at the winery on a retail basis pursuant to Chapters 18.16 and 18.20. Marketing of wine
20 may include cultural and social events directly related to the education and development of
21 customers and potential customers provided such events are clearly incidental, related and
22 subordinate to the primary use of the winery. Marketing of wine may include food service,
23 including food and wine pairings, where all such food service is provided without charge except
24 to the extent of cost recovery. Business events are similar to cultural and social events, in that
25 they will only be considered as ‘marketing of wine’ if they are directly related to the education
26 and development of customers and potential customers of the winery and are part of a marketing
27 plan approved as part of the winery's use permit. Marketing plans in their totality must remain
28 ‘clearly incidental, related and subordinate to the primary operation of the winery as a production

1 facility' (subsection (G)(5) of Sections 18.16.030 and subsection (I)(5) of 18.20.030). To be
2 considered directly related to the education and development of customers or potential customers
3 of the winery, business events must be conducted at no charge except to the extent of recovery of
4 variable costs, and any business content unrelated to wine must be limited. Careful consideration
5 shall be given to the intent of the event, the proportion of the business event's non-wine-related
6 content, and the intensity of the overall marketing plan." NCC Section 18.08.370.

7 127. The Napa County Code defines the terms "Tours and tastings" to mean "tours of
8 the winery and/or tastings of wine, where such tours and tastings are limited to persons who have
9 made unsolicited prior appointments for tours or tastings. Tours and tastings may include food
10 and wine pairings, where all such food service is provided without charge except to the extent of
11 cost recovery and is incidental to the tasting of wine. Food service may not involve menu options
12 and meal service such that the winery functions as a café or restaurant." NCC Section 18.08.620.

13 128. The Napa County Code defines the term "Winery" to mean "an agricultural
14 processing facility used for: A. The fermenting and processing of grape juice into wine; or B. The
15 refermenting of still wine into sparkling wine." NCC Section 18.08.640.

16 129. The Napa County Code does not define the terms:

- 17 (a) "Retail"
 - 18 (b) "Public tours"
 - 19 (c) "Private tours"
 - 20 (d) "Private tasting"
 - 21 (e) "Winetastings"
 - 22 (f) "Wine-related items"
 - 23 (g) "Social events of a public nature"
 - 24 (h) "Consumption"
 - 25 (i) "Marketing events"
 - 26 (j) "Unsolicited"
- 27
28

1 130. The Napa County Code makes clear that any “[u]ses allowed without a use permit
2 or uses permitted upon grant of a use permit shall include any accessory use.” NCC Section
3 18.104.040.

4 131. Significantly, all wineries entitled prior to Ordinance 947 (1990) were
5 “grandfathered” as legal conforming uses, not legal nonconforming uses, by express decree.

6 132. Thus, every winery with either a use permit or exemption may also engage in
7 accessory uses by right.

8 133. In defining the term “Agriculture,” the Napa County Code recognizes that, for
9 wineries who have obtained either a use permit or an exemption, “[a]griculture shall
10 include...[p]roduction and processing of agricultural products, including agricultural processing
11 facilities [and m]arketing, sales, and other accessory uses that are related, incidental and
12 subordinate to the main agricultural processing use.” NCC Section 18.08.040.

13 134. Thus, every winery which has either a use permit or an exemption has the ability
14 to engage in “Marketing, sales, and other accessory uses that are related, incidental and
15 subordinate to the main agricultural processing use.”

16 135. Thus, each Plaintiff winery may engage in “Marketing of Wine” as defined by
17 NCC Section 18.08.370.

18 136. As discussed above, Napa County prohibits Plaintiff Wineries, as well as other
19 wineries, from freely engaging in marketing of wine.

20 137. As discussed above, Plaintiff Wineries are unable to decipher what the County
21 deems a “marketing event,” which subjects Plaintiffs to uncertainty in their business operations
22 due to the threat of costly enforcement should Plaintiffs err in their interpretation of a marketing
23 event as opposed to Napa County’s subjective interpretation of the same term.

24 138. The Napa County Code also recognizes that some accessory uses at a winery
25 include tours and tastings, as defined in NCC Section 18.08.620, and sale of wine related
26 products. *See* NCC Section 18.16.030 and NCC Section 18.20.030.

27 139. Despite the Napa County Code allowing Plaintiff Wineries to engage in the above-
28 described uses, Napa County prohibits Plaintiff Wineries from engaging in these uses and has

1 issued code violations to many wineries in Napa County on this issue.

2 140. Plaintiff Wineries are aware of code enforcement actions against other wineries
3 over the years by Napa County and have responded by curtailing their activities to avoid
4 subjective enforcement by Napa County and putting their businesses at risk.

5 141. Despite the Napa County Code allowing Plaintiff Wineries to engage in the above-
6 described uses, Napa County currently declares that small winery use permit exemptions, legally
7 conforming wineries by express decree, are prohibited from uses authorized other “small
8 wineries” or pre-WDO and post-WDO wineries entitled by “use permit” (as opposed to “use
9 permit exemption”) such as “tastings by appointment” and “marketing of wine” without obtaining
10 a new winery entitlement.

11 142. Despite the Napa County Code allowing Plaintiff Wineries to engage in the above-
12 described uses, Napa County prohibits small winery use permit exemptions from sale of wine,
13 items, or agricultural products not “produced” on the premises, but does not place a similar
14 prohibition to other wineries.

15 143. The Napa County Code also requires that for all wineries established after the date
16 the ordinance was codified, “at least seventy-five percent of the grapes used to make the winery’s
17 still wine, or the still wine used by the winery to make sparkling wine, shall be grown within the
18 county of Napa.” NCC Section 18.104.250(B).

19 144. For wineries established prior to the codification of the ordinance, if they wish to
20 expand, seventy-five percent of the grapes used to make still or sparkling wine as a result of the
21 expansion must be grown in Napa County. NCC Section 18.104.250(C).

22 145. In 2022 Napa County created a new type of winery, a micro-winery, which
23 provided more uses, rights, and entitlements to micro-wineries than allowed to Plaintiff wineries
24 despite micro-wineries being much smaller in both production and infrastructure. NCC Section
25 18.08.377. For example, a micro-winery has the following restrictions and uses:

- 26 (a) Product capacity of no more than 5,000 gallons of wine.
- 27 (b) Maximum indoor space of 5,000 sq. ft.
- 28 (c) Up to 20 daily trips for visitors, employees and deliveries.

1 (d) Tours and tastings between the hours of 9:00am and 6:00 pm.

2 **Napa County Has Admitted That Many Ordinance Terms Are Vague and Ambiguous:**

3 146. Napa County maintains multiple active definitions of the term “small winery,” that
4 are all distinct:

5 (a) A “small winery” “does not conduct public tours, provide winetastings, sell
6 wine related items, or hold social events of a public nature.” NCC Section 18.08.600(c).

7 (b) “[S]mall wineries” are those “that produce a small quantity of wine using
8 grapes mostly grown on site and host a limited number of small marketing events each year.”

9 (**Exhibit 12:** Napa County General Plan, Policy AG/LU 16.)

10 (c) “Small wineries,” for the purposes of determining whether a development
11 or use permit modification, has no environmental impact, and is thus exempt is defined to include
12 the following:

13 (i) Less than 5,000 square feet excluding caves;

14 (ii) Will involve either no cave excavations or excavation sufficient to
15 create no more than 5,000 additional square feet;

16 (iii) Will produce 30,000 gallons or less per year;

17 (iv) Will generate less than 40 vehicle trips per day and 5 peak hour
18 trips except on those days when marketing events are taking place;

19 (v) Will hold no more than 10 marketing events per year, each with no
20 more than 30 attendees, except for one wine auction event with up to 100 persons in attendance.

21 (vi) And will hold no temporary events. (**Exhibit 13:** Class 3 CEQA
22 Exemption, Napa Local Exemption Classification, (2020).)

23 147. In its General Plan, the County acknowledged that the following terms are vague
24 and required further definition: “small wineries,” a “small quantity of wine,” “small marketing
25 events,” and “mostly grown on site.” (Exhibit 12: General Plan, Action Item, AG/LU – 16.1.)

26 148. Napa County concedes that the term “tasting” in the NCC is vague and ambiguous.

27 149. In responding to Requests for Admissions in a California state court case related to
28 Plaintiff Hoopes, Napa County objected to requests using the term “tasting” because the term was

1 “vague and ambiguous.” (**Exhibit 14:** March 9, 2023 Resp. to RFA at Requests 29, 32, 44, 45.)

2 150. Specifically, Napa County objected to a request asking it to “[a]dmit that the Napa
3 County Code only prohibits ‘tastings’ without prior appointment” because the “Request is vague
4 and ambiguous, particularly based upon the quoted use of the word ‘tastings.’” (*Id.* at Request
5 32.)

6 151. Napa County officials have also admitted that the “Napa County Code includes no
7 definition of the term ‘tasting.’” (**Exhibit 15:** August 8, 2023 RFA Responses at 16.)

8 152. Napa County concedes that the term “retail” in the NCC is vague and ambiguous.

9 153. In the same Hoopes lawsuit, Napa County objected to a request to “[a]dmit that the
10 Napa County Code does not define what ‘retail’ permissions at pre-WDO wineries means”
11 because the request was “incomprehensible, vague and ambiguous, particularly based upon the
12 quoted use of the word ‘retail.’” (**Exhibit 14:** Request to Admit 31.)

13 154. Napa County has admitted that the “small winery use permit exemption
14 application does not define ‘retail sales.’” (**Exhibit 15:** Request to Admit 19.)

15 155. Napa County has conceded that the term “consumption” is vague and ambiguous.
16 “Consumption” does not appear in the NCC, but the County takes the official position that any
17 form of “consumption” at a small winery use permit exemption is a “tour and tasting.”

18 156. In the same Hoopes lawsuit, Napa County objected to a request to “[a]dmit that the
19 picnic bill allows consumption on winery premises” because the request was “vague and
20 ambiguous, particularly based upon the quoted use of the word ‘consumption.’” (**Exhibit 14:**
21 Request to Admit 31.)

22 157. Napa County denied a request to “[a]dmit that onsite consumption is not a tour or
23 tasting.” (*Id.* at Request to Admit 66.)

24 158. “Consumption” is expressly allowed at all Plaintiff Wineries though the State O2
25 licenses. Consumption is not defined at State Law as equivalent to a “tasting.”

26 159. Napa County concedes that the “wine related” in the NCC is vague and
27 ambiguous.
28

1 160. In the same Hoopes lawsuit, Napa County objected to request to “[a]dmit there is
2 no definition of ‘wine related’ items in the Napa County Code” because the request was “vague
3 and ambiguous, particularly based upon the quoted phrase ‘wine-related.’” (*Id.* at Request to
4 Admit 85.)

5 161. Napa County concedes that the term “visitors” in the NCC is vague and
6 ambiguous.

7 162. In the same Hoopes lawsuit, Napa County objected to a request to request to admit
8 using the term “visitors” because Napa County believed the request was “vague and ambiguous
9 because the word ‘visitors’ is not defined.” (Exhibit 15: Request to Admit 2.)

10 163. In a May 26, 2016, email, Napa County officials discussed that that term
11 “visitors,” at least as it relates to small winery use permit exemptions, “does not mean
12 tours/tastings but rather business-related visitors (deliveries, sales people, etc.)” (**Exhibit 16:**
13 May 26, 2016 Email.)

14 164. Charlene Gallina, the Napa County Planning Supervisor, previously testified under
15 oath that after “[r]eviewing the ordinance, reviewing regulation - - or, you know, reviewing the
16 ordinances, the WDO, discussions with County counsel, interpretation, also interpretation by the
17 manager, how we presented those documents to the Planning Commission,” she interpreted the
18 term “visitors” to mean people in the trade such as restaurant/store owners who might come to a
19 winery to “purchase cases of wine so that they could have in their restaurant or at the liquor store
20 or at the grocery store.” (**Exhibit 17:** Gallina Deposition Testimony at 69-71.)

21 165. Napa County does not maintain records related to an “[o]fficial County working
22 definition of ‘wine related’ and ‘non-wine related items.’” (**Exhibit 18:** August 28, 2023, letter.)

23 166. Napa County does not maintain records related to an “[o]fficial definition or
24 internal working definitions and documents reflecting the same of ‘visitor’ and/or ‘visitation’ at
25 winery operations.” (*Id.*)

26 167. Napa County does not maintain records related to “definitions or working
27 enforcement and permitting distinctions between ‘small winery exemptions’ and ‘full blown
28 winery.’” (*Id.*)

1 168. Napa County does not maintain a “[l]ist of wineries with permission to host
2 picnics.” (*Id.*)

3 169. Napa County does not maintain a “[l]ist of all wineries with permission to sell
4 items other than wine.” (*Id.*)

5 170. Napa County does not maintain a “[l]ist of all wineries with permission to sell
6 wine-related items.” (*Id.*)

7 171. Napa County has admitted that “[w]e were terrible, I have to agree, we were
8 terrible in notating exactly what entitlements were, and so we’ve had to go back to the application
9 and look at the requests to see what they asked for because the final approval letter didn’t identify
10 what their visitation and marketing program was. They just said you get a 20,000 gallon winery
11 and that’s it, and then a building that’s 5,000 or 10,000 square feet.” (Exhibit 17: Gallina
12 Deposition Testimony at 70-71.)

13 172. In determining that some County wineries may not provide wine tasting, Napa
14 County relies upon the definition contained within NCC 18.08.600. (Exhibit 19: March 9, 2023,
15 Interrogatory Response 4.)

16 173. In determining that Plaintiff Wineries are prohibited from “holding social events of
17 a public nature,” Napa County relies upon the definition contained within NCC 18.08.600. (*Id.* at
18 Interrogatory Response 40.)

19 174. Definitional sections of ordinances are not operative law. *See, e.g., Isaacson v.*
20 *Brnovich*, 610 F. Supp 3d 1243, 1252 (D. Ariz. 2022) (definition in a statute “is not by itself
21 operative law”); *Hamilton v. Brown*, 4 Vet. App. 528, 536 (U.S. Ct. Vet. App. 1993)
22 (“[d]efinitions, whether statutory or regulatory, are not themselves operative provisions of law.”);
23 *Aguayo v. Jewell*, No. 13-CV-1435-BAS KSC, 2014 WL 6473111, at *16 (S.D. Cal. Nov. 18,
24 2014), *aff’d*, 827 F.3d 1213 (9th Cir. 2016); *see also Hawaii v. Off. of Hawaiian Affs.*, 556 U.S.
25 163, 175 (2009) (“whereas” clauses and preamble language are not operative).

26 175. According to Napa County, using social media for marketing purposes is a
27 violation of the Napa County Code. (Exhibit 19: Interrogatory Response 11.)
28

1 176. According to Napa County, if a Napa County winery “offers visitors access to the
2 winery’s interior and exterior,” the winery has provided the visitor with a “public tour” which is
3 in violation of the Napa County Code. (*Id.* at Interrogatory Response 37.)

4 **Napa County Was Aware of Constitutional Issues With the Napa County Code:**

5 177. On October 16, 1989, in relation to the proposed Winery Definition Ordinance,
6 Napa County’s Chief Deputy Legal Counsel wrote a memorandum to the Board of Supervisors
7 regarding legal issues with the Winery Definition Ordinance. (**Exhibit 20.**) That memorandum
8 outlined a number of federal and state constitutional issues as well as statutory issues:

9 (a) Equal Protection: The memo discussed that a provision which would
10 regulate retail sales based on the source of the grapes used in the wine sold would be subject to an
11 Equal Protection claim because there was no rational relationship between the provision and “any
12 legitimate state purpose.” (*Id.* at p. 1-2.)

13 (b) Non-Uniform Zoning Ordinances: The memorandum discussed the
14 discrepancy between the right to engage in “public tours, public promotional activities, winery
15 guest picnic areas, and display and sale of wine-related items” at existing wineries and newly
16 established wineries because “state law does not permit local agencies to adopt discriminatory
17 rules for the same type of future uses (wineries) on essentially similar properties within the same
18 zoning districts.” (*Id.* at 2.)

19 (c) Commerce Clause: The memorandum discussed the legality of the Winery
20 Definition Ordinance’s requirement that a winery utilize at least 75% grapes grown in Napa
21 County. *Id.* at p. 3-4. On this issue, Napa’s counsel determined the restriction would likely be
22 legal based on the appellation regulations and a legal opinion received from the law firm of
23 Townsend and Townsend. (*Id.* at 4.)

24 178. In an October 26, 2009, Memorandum (**Exhibit 21**), Napa County again
25 recognized that the Napa County Code and interpretations thereof were problematic and
26 potentially violated the Constitutional rights of wineries:

27 (a) Napa County recognized that “events are protected under the First
28 Amendment of the US Constitution.” *Id.* at 3.

1 (b) Napa County recognized that “it has not always been clear whether
2 business meetings and similar events qualify as marketing events.... [For example,] business
3 meetings have a marketing objective (e.g. a wine tasting or education event scheduled for a group
4 of bankers as a part of a corporation retreat), have often been considered marketing events....”
5 *Id.* at 2.

6 (c) “[P]lanning staff understands that the prohibition on cultural and social
7 events and the issues surrounding business meetings...are themselves based on interpretations of
8 code language. In the case of cultural and social events, County staff and policy makers have
9 routinely interpreted birthday parties, weddings, etc. to be cultural and social events that are
10 ‘unrelated to...education and development’ of the persons and groups called out in the definition
11 of ‘marketing.’” *Id.* at 3.

12 (d) “In the case of business meetings, County staff and policy makers have
13 interpreted some business meetings as falling within the definition of ‘marketing,’ while
14 acknowledging that the practice of hosting other business meetings can be considered a
15 commercial activity outside the definition of ‘marketing.’ Careful consideration should be given
16 to legal issues and potentially preferable alternatives before using an administrative interpretation
17 to clarify when business meetings are acceptable. While there is no phrase in the code expressly
18 describing these meetings as not falling within the definition of marketing (as there is for social
19 and cultural events), there is still the disadvantage that an administrative interpretation can be
20 reversed ... whenever the composition of the Commission or the Board changes.” *Id.*

21 **Disparity of Rights for Napa Wineries:**

22 179. Wineries in Napa County have varied permissions from the County with respect to
23 the services they are allowed to offer and the number of visitors allowed at each winery.

24 180. Napa County prohibits some, but not all, wineries within the County from offering
25 public tastings at their winery.

26 181. Napa County prohibits some, but not all, wineries within the County from offering
27 private tastings at their winery.
28

1 182. Napa County prohibits some, but not all, wineries within the County from offering
2 tastings by appointment at their winery.

3 183. Napa County prohibits some, but not all, wineries within the County from selling
4 wine for on-premises consumption at their winery.

5 184. Napa County prohibits some, but not all, wineries within the County from playing
6 music at their winery.

7 185. Napa County prohibits some, but not all, wineries within the County from hosting
8 private social events at their winery.

9 186. Napa County prohibits some, but not all, wineries within the County from hosting
10 public social events at their winery.

11 187. Napa County prohibits some, but not all, wineries within the County from hosting
12 private business events at their winery.

13 188. Napa County prohibits some, but not all, wineries within the County from hosting
14 public business events at their winery.

15 189. Napa County prohibits some, but not all, wineries within the County from hosting
16 private marketing events at their winery.

17 190. Napa County prohibits some, but not all, wineries within the County from hosting
18 public marketing events at their winery.

19 191. Napa County prohibits some, but not all, wineries within the County from hosting
20 private cultural events at their winery.

21 192. Napa County prohibits some, but not all, wineries within the County from hosting
22 public cultural events at their winery.

23 193. Napa County prohibits some, but not all, wineries within the County from hosting
24 meetings at their winery.

25 194. Napa County prohibits some, but not all, wineries within the County from having
26 customers come to their winery.

27 195. Napa County prohibits some, but not all, wineries from hosting weddings at their
28 winery.

1 196. Napa County prohibits some, but not all, wineries from hosting weddings
2 receptions at their winery.

3 197. Napa County prohibits some, but not all, wineries from selling wine at their winery
4 that was produced at other licensed facilities operated by the same winegrower.

5 198. Napa County prohibits some, but not all, wineries from selling retail items at their
6 winery.

7 199. Napa County prohibits some, but not all, wineries from selling anything “not
8 produced on site” at their winery.

9 200. Napa County prohibits some, but not all, wineries from selling wine-related items
10 at their winery.

11 201. Napa County prohibits some, but not all, wineries from selling non-wine related
12 items at their winery.

13 202. Napa County dictates the number of customers who may come to a winery each
14 day, week, and year.

15 203. Napa County dictates the number of employees a winery may employ.

16 204. Napa County determines whether an event is allowed at a winery based on the
17 content of the event.

18 205. A 2019 Napa County Winery Database (Exhibit 6), shows the disparity in
19 permissions for wineries in Napa County. At the time, there were 491 wineries in Napa County
20 and the tasting room visitors each were allowed varied greatly:

21 (a) 99 wineries are not allowed to have any visitors.

22 (b) 46 wineries are allowed to have between 1 and 10 visitors per week.

23 (c) 85 wineries are allowed to have between 11 and 50 visitors per week.

24 (d) 68 wineries are allowed to have between 51 and 100 visitors per week.

25 (e) 134 wineries are allowed to have between 101 and 500 visitors per week.

26 (f) 24 wineries are allowed to have between 501 and 1,000 visitors per week.

27 (g) 31 wineries are allowed to have between 1,001 and 8,544 visitors per week.

28

1 206. According to the Winery Database, the average number of weekly visitors across
2 all wineries is 281 visitors per week.

3 207. The 2019 Napa County Database shows that the ability to have marketing events
4 varies greatly:

- 5 (a) 151 wineries are not allowed any marketing events per year.
- 6 (b) 56 wineries are allowed between 1 and 5 marketing events per years.
- 7 (c) 72 wineries are allowed between 6 and 10 marketing events per year.
- 8 (d) 130 wineries are allowed between 11 and 50 marketing events per year.
- 9 (e) 53 wineries are allowed between 51 and 175 marketing events per week.
- 10 (f) 13 wineries are allowed between 176 and 400 marketing events per year.
- 11 (g) 9 wineries are allowed between 401 and 832 marketing events per year.
- 12 (h) 2 wineries are allowed between 1,130 and 1,673 marketing events per year.
- 13 (i) 1 winery is allowed 4,612 marketing events per year.
- 14 (j) This last winery could have 12.6 marketing events per day which is more
15 events in one day than 159 wineries are allowed to have in a year.

16 208. The 2019 Napa County Winery Database shows that the ability to have marketing
17 event visitors also varies greatly:

- 18 (a) 148 wineries are not allowed any marketing event visitors.
- 19 (b) 27 wineries are allowed between 1 and 100 marketing event visitors per
20 year.
- 21 (c) 61 wineries are allowed between 101 and 250 marketing event visitors per
22 year.
- 23 (d) 76 wineries are allowed between 251 and 500 marketing event visitors per
24 year.
- 25 (e) 45 wineries are allowed between 501 and 1,000 marketing event visitors
26 per year.
- 27 (f) 95 wineries are allowed between 1,001 and 5,000 marketing event visitors
28 per year.

1 (g) 20 wineries are allowed between 5001 and 10,000 marketing event visitors
2 per year.

3 (h) 18 wineries area allowed between 10,001 and 50,000 marketing event
4 visitors per year.

5 (i) 1 winery is allowed up to 95,400 marketing event visitors per year.

6 (j) This last winery is allowed more marketing event visitors per year than 378
7 Napa wineries combined.

8 209. For total visitors allowed at wineries, the disparity is massive:

9 (a) 81 wineries are not allowed to have any visitors at their tasting room or
10 marketing events.

11 (b) 4 wineries are allowed to have up to 100 visitors per year at their tasting
12 room or marketing events.

13 (c) 64 wineries are allowed to have between 101 and 1,000 visitors per year at
14 their tasting room or marketing events.

15 (d) 122 wineries are allowed to have between 1,001 and 5,000 visitors per year
16 at their tasting room or marketing events.

17 (e) 83 wineries are allowed to have 5,001 and 10,000 visitors per year at their
18 tasting room or marketing events.

19 (f) 61 wineries are allowed to have between 10,001 and 25,000 visitors per
20 year at their tasting room or marketing events.

21 (g) 36 wineries are allowed to have between 25,001 and 50,000 visitors per
22 year at their tasting room or marketing events.

23 (h) 17 wineries are allowed to have between 50,001 and 100,000 visitors per
24 year at their tasting room or marketing events.

25 (i) 22 wineries are allowed to have between 100,001 and 539,688 visitors per
26 year at their tasting room or marketing events.

27 (j) One winery is allowed more visitors in one year than 170 wineries
28 combined.

1 210. The distinction between the number of tasting room visitors, marketing event
2 visitors, and marketing events allowed is not based upon objective criteria such as acreage,
3 building size, or parking spaces as the 2019 Napa County Winery Database shows that wineries
4 with similar building sizes, and parking spaces have drastically different allowances for visitors.

5 211. For example, one winery with 75 parking spaces and a 96,200 sq. ft. building is
6 allowed 6,280 visitors per year while another winery with 75 parking spaces and a 56,215 sq. ft
7 building is allowed 118,700 visitors per year. These two wineries were approved approximately
8 one year apart. Another winery has 22 parking spaces and is allowed 146,000 visitors per year.

9 212. As discussed above, sometime between 2012 and 2016, Napa County revised its
10 Winery Database to change the permissions for county wineries without notice to those wineries
11 and in many instances removing permissions for wineries.

12 213. On August 11, 2015, David Morrison, Director of PBES, communicated to the
13 Board of Supervisors that PBES conducted a “multi-month” audit of the winery database, but has
14 refused to disclose the details, audit trial, directive for the “audit,” who had access to the
15 database, who completed the audit, what standards were used, or what changes were made to the
16 public or to property owners. In response to Public Records Requests, the Department declared in
17 general terms that these documents were not maintained or did not exist.

18 214. For example, between 2012 and 2016, the Napa County changed the permissions
19 for the following wineries from “tastings by appointment” to no tastings allowed: Alta Vineyard
20 Cellar, Amizetta Vineyards, Baldacci Family Vineyards, Cain Cellars, Combs Brothers Cellars,
21 David Busby Winery, Domaine Montreaux, El Molino, Winery, Frisinger Vineyards, Hakanson
22 Winery, Hopper Creek Winery, Kates Vineyard, Kongsgaard Winery, La Vallette Winery, Mt.
23 Veeder Winery, Obrien Family Vineyard, Sears Winery, Simone Winery, Stags Leap Winery
24 (Doumani 1), Stags Leap Winery (Doumani 5), Summit Lake Vineyards, Villa Helena, Villa
25 Ragazzi and Volker Eisele Family Estate. (Exhibits 2-4, 6.)

26 **Napa County Enforces Its Unconstitutional Ordinances and Policies:**

27 215. On August 22, 2017, Napa County adopted a policy wherein it vested authority, in
28 its “sole discretion,” with the County Director of Planning to oversee a program to determine the

1 “extent of existing entitlements” for existing wineries.

2 216. Napa County has utilized this policy to strip wineries, like Plaintiffs, of uses,
3 rights, and entitlements without due process.

4 217. Napa County has also made the process of modifying a use permit so expensive
5 that wineries in Napa County cannot go through the process without risking the financial viability
6 of their business.

7 218. This process is also incredibly time consuming with permit modifications often
8 taking more than five years to complete.

9 219. In a 2016 Board Agenda Letter, Napa County’s Director of Planning conceded that
10 Napa County is unsure of the vested rights at each winery in the County. (**Exhibit 22.**)

11 220. During the Hoopes state court lawsuit, the Planning Supervisor admitted that
12 entitlements for wineries entitled by right, prior to any use permit requirements, were never
13 recorded or interpreted, other than as reflected in application documents. (**Exhibit 17.**)

14 221. While Napa County now views application documents as dictating winery
15 permissions, in a 1989 Memo Napa County determined that these documents were irrelevant and
16 not even necessary. (**Exhibit 23.**)

17 222. Despite being unsure of the uses, rights, and entitlements for each winery in the
18 County, Napa County has enforced varied and vague restrictions on County wineries, including
19 Plaintiffs.

20 223. County officials actively monitor the social media accounts of County wineries,
21 including Plaintiffs, looking to find alleged violations. (See, e.g., **Exhibit 24**, Declaration of
22 Akenya Robinson-Webb, Napa County’s Code Compliance Supervisor.)

23 224. County officials have conducted undercover operations, wherein they pretend to be
24 regular customers, and seek to induce County wineries into offering services which the County
25 believes are in violation of the service these wineries, including Plaintiffs, are allowed to offer.
26 (**Id.**)

27 225. Napa County’s enforcement actions against Hoopes and other wineries are well-
28 known amongst County wineries, including Plaintiffs, and have had a chilling effect on their

1 actions, to avoid the ire of Napa County.

2 226. Plaintiff Wineries have actively engaged with the County to find a workable
3 solution, provided all requested documents, and expended substantial funds in furtherance of a
4 solution and to avoid litigation.

5 227. The County induced good faith reliance that the County would provide a path to
6 resolution through the voluntary “compliance” and/or timely responses but the County has instead
7 used the program to demand unsupportable, unlawful, and unworkable demands to continue
8 existing operations and/or abandonment of existing entitlements.

9 228. Plaintiff Wineries relied on these promises in continuing to make adjustments, and
10 artificially abate lawful behavior to appease County officials, even absent legal authority
11 requiring the same, to find a resolution.

12 229. The County was not motivated to “gain compliance,” but rather force unlawful
13 upgrades for existing entitlements the County knew or should have known the Plaintiff Wineries
14 could not or did not need to undertake.

15 230. As part of this process and the process for any new wineries, Napa County defers
16 to the subjective interest of neighboring landowners and special interest groups to dictate the
17 permissions allowed to wineries like Plaintiffs.

18 231. In other instances, Napa County has advised applicant wineries or vineyards that
19 they must first negotiate with third parties, including special interest groups, before Napa County
20 will review and approve an application.

21 232. In some instances, Napa County includes third parties in enforcement efforts
22 against wineries by sharing investigative materials and internal enforcement communications
23 therewith.

24 233. Napa County has advised applicants that they “should” agree to dedicate land for
25 conversations and easements, pay money to public projects and/or voluntarily agree to reduce the
26 number of visitors or size of facilities to appease third-party interests and those of the County.

27 ///

28 ///

**FIRST CLAIM FOR RELIEF
FACIAL CHALLENGE TO VIOLATION OF FREEDOM OF SPEECH UNDER THE
FIRST AND FOURTEENTH AMENDMENTS (42 U.S.C. § 1983)**

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234. Plaintiffs incorporate and reallege the preceding paragraphs as if fully restated herein.

235. The First Amendment to the United States Constitution prohibits the abridgement of the freedom of speech.

236. The protections of the First Amendment have been extended through the Fourteenth Amendment to prohibit the abridgement of the freedom of speech and freedom of expression by state and local governments.

237. Persons violating the First and Fourteenth Amendments under color of state law are liable under 42 U.S.C. § 1983.

238. Napa County has violated Plaintiffs’ freedom of speech by restricting both expressive and commercial speech.

239. For a regulation of commercial speech to be constitutional, courts apply a four-part test: 1) if the speech concerns lawful activity and is not misleading; 2) the asserted governmental interest must be substantial; 3) the regulation must directly advance the governmental interest asserted; and 4) the regulation must not be more extensive than is necessary to serve that interest. *Central Hudson Gas & Elec. Corp. v. Public Serv. Comm’n of New York*, 447 U.S. 557, 566 (1980).

240. Plaintiffs wish to invite guests to their businesses and/or maintain their businesses as generally open to the public for the express purpose of advertising and promoting the products Plaintiffs have for sale with the intent of completing a sale of their products to consumers who visit their businesses.

241. Plaintiffs are afraid to exercise entitlements and rights they believe are already entitled to the property, and authorized pursuant to state licenses, for fear of retribution and unauthorized law enforcement. This has chilled exercise of lawful entitlements and rights.

242. Plaintiffs wish to invite guests to their businesses and/or maintain their businesses as generally open to the public for the express purpose engaging in product demonstrations to

1 allow customers to taste Plaintiffs' products with the primary intent that these customers will
2 purchase Plaintiffs products at that time and/or sign up for Plaintiffs' wine clubs so that Plaintiffs
3 may sell additional products to these customers throughout the year.

4 243. Activities which seek to "have prospects enter their stores and purchase Plaintiffs'
5 products . . . [are] commercial speech." *FF Cosmetics FL Inc. v. City of Miami Beach, Florida*,
6 129 F. Supp. 3d 1316, 1321 (S.D. Fla. 2015).

7 244. Product demonstrations are commercial speech because they are "essentially an
8 advertisement" of products and the motivation for engaging in the speech is purely economic.
9 *Am. Future Sys., Inc. v. Pennsylvania State Univ.*, 752 F.2d 854, 857 (3d Cir. 1984); *Bd. of*
10 *Trustees of State University of New York v. Fox*, 492 U.S. 469 (1989).

11 245. Napa County's ordinances and policies violate Plaintiffs' First Amendment free
12 speech rights by prohibiting and/or restricting political, cultural, charitable, and other forms of
13 events and gatherings.

14 246. Napa County concedes that activities which bring potential customers to a winery
15 are for the purpose of "marketing of wine."

16 247. Napa County's ordinances and policies violate Plaintiffs' First Amendment free
17 speech rights by, among other restrictions, prohibiting and/or restricting Plaintiffs' ability to
18 engage in commercial speech which is no more than speech proposing a commercial transaction.

19 248. Napa County further requires that permit applicants "shall submit to the county a
20 fully executed indemnification agreement agreeing to defend, indemnify, release and hold
21 harmless the county from any claim, action, or proceeding brought against the county to attack,
22 set aside, void or annul the approval based on the county's failure to comply with the
23 requirements of any federal, state, or local law, including but not limited to general plan and
24 zoning requirements, or both. The indemnification shall include damages awarded against the
25 county, if any, costs of suit, attorneys' fees and other expenses incurred in connection with such
26 action." NCC Section 1.30.030(A).

27 249. But under Section 1988, even if Napa County were determined to be the prevailing
28 party in a Section 1983 lawsuit, it is only entitled to recover its costs and attorneys' fees if the

1 litigation was “unreasonable, frivolous, meritless, or vexatious.” By attempting to make the
2 payment of attorneys’ fees and costs mandatory, Napa County violates Plaintiffs’ First
3 Amendment right to petition the courts by attempting to chill meritorious litigation under the
4 threat of costs and attorneys’ fees. *See S. Bay Rod & Gun Club, Inc. v. Bonta*, 646 F. Supp. 3d
5 1232, 1241–44 (S.D. Cal. 2022).

6 250. Plaintiff Wineries are in, or have threatened, litigation with Napa County for
7 which they have experienced retaliation from Napa County.

8 251. This has violated Plaintiffs’ First Amendment Right to petition the courts.

9 252. These First Amendment violations have caused Plaintiffs damages.

10 WHEREFORE, Plaintiffs respectfully request that this Honorable Court:

11 (a) Enter a judgment declaring that, on its face and as applied, the ordinances
12 and policies violate the United States Constitution;

13 (b) Enjoin Napa County, its employees, officers, and agents, from enforcing
14 the ordinances and policies permanently and preliminarily while this litigation is pending;

15 (c) Award Plaintiffs actual, compensatory, punitive, nominal, and special
16 damages in an amount to be proven at trial, plus prejudgment interest on those amounts;

17 (d) Award Plaintiffs their reasonable costs, including attorneys’ fees, incurred
18 in bringing this action pursuant to 42 U.S.C. § 1988; and

19 (e) Grant such other and further relief as this Court deems just and proper.

20 **SECOND CLAIM FOR RELIEF**

21 **AS-APPLIED CHALLENGE TO VIOLATION OF PLAINTIFFS’ FREEDOM OF
22 SPEECH UNDER THE FIRST AND FOURTEENTH AMENDMENTS (42 U.S.C. § 1983)**

23 253. Plaintiffs incorporate and reallege the preceding paragraphs as if fully restated
24 herein.

25 254. The First Amendment to the United States Constitution prohibits the abridgement
26 of the freedom of speech.

27 255. The protections of the First Amendment have been extended through the
28 Fourteenth Amendment to prohibit the abridgement of the freedom of speech and freedom of
expression by state and local governments.

1 256. Persons violating the First and Fourteenth Amendments under color of state law
2 are liable under 42 U.S.C. § 1983.

3 257. Plaintiffs wish to invite guests to their businesses and/or maintain their businesses
4 as generally open to the public for the express purpose of advertising and promoting the products
5 Plaintiffs have for same with the intent of completing a sale of their products to consumers who
6 visit their businesses.

7 258. Plaintiffs wish to invite guests to their businesses and/or maintain their businesses
8 as generally open to the public for the express purpose engaging in product demonstrations to
9 allow customers to taste Plaintiffs' products with the intent that these customers will purchase
10 Plaintiffs products at that time and/or sign up for Plaintiffs' wine clubs such the Plaintiffs may
11 sell additional products to these customers throughout the year.

12 259. Napa County's ordinances and policies, as applied to each Plaintiff, violate
13 Plaintiffs' First Amendment free speech rights by, among other restrictions, prohibiting and/or
14 restricting Plaintiffs' ability to engage in commercial speech which is no more than speech
15 proposing a commercial transaction.

16 260. Napa County's ordinances and policies, as applied to each Plaintiff, violate
17 Plaintiffs' First Amendment free speech rights by prohibiting and/or restricting political, cultural,
18 charitable, and other forms of events and gatherings.

19 261. Plaintiff Wineries are in, or have threatened, litigation with Napa County for
20 which they have experienced retaliation from Napa County.

21 262. This has violated Plaintiffs' First Amendment Right to petition the courts.

22 263. These First Amendment violations have caused Plaintiffs damages.

23 WHEREFORE, Plaintiffs respectfully request that this Honorable Court:

24 (a) Enter a judgment declaring that, on its face and as applied, the ordinances
25 and policies violate the United States Constitution;

26 (b) Enjoin Napa County, its employees, officers, and agents, from enforcing
27 the ordinances and policies permanently and preliminarily while this litigation is pending;
28

1 (c) Award Plaintiffs actual, compensatory, punitive, nominal, and special
2 damages in an amount to be proven at trial, plus prejudgment interest on those amounts;

3 (d) Award Plaintiffs their reasonable costs, including attorneys' fees, incurred
4 in bringing this action pursuant to 42 U.S.C. § 1988; and

5 (e) Grant such other and further relief as this Court deems just and proper.

6 **THIRD CLAIM FOR RELIEF**
7 **PRIOR RESTRAINT OF SPEECH**
8 **(42 U.S.C. § 1983)**

9 264. Plaintiffs incorporate and reallege the preceding paragraphs as if fully restated
10 herein.

11 265. "The term prior restraint is used 'to describe administrative and judicial orders
12 forbidding certain communications when issued in advance of the time that such communications
13 are to occur.'" *Alexander v. United States*, 509 U.S. 544, 550 (1993) (citation omitted). There is
14 a "heavy presumption" against the constitutional validity of prior restraints. *See Bantam Books,*
15 *Inc. v. Sullivan*, 372 U.S. 58, 70 (1963). If a licensing statute places "unbridled discretion in the
16 hands of a government official or agency, [it] constitutes a prior restraint and may result in
17 censorship." *City of Lakewood v. Plain Dealer Publ'g Co.*, 486 U.S. 750, 757 (1988).

18 266. The relevant Napa County ordinances and policies unconstitutionally require
19 Plaintiffs to obtain governmental approval before speaking.

20 267. Approval is at the unbridled discretion of Napa County and is not a matter of
21 routine.

22 268. For example, to have a cultural, business, or social event at a winery, Plaintiffs are
23 required to obtain approval from Napa County regarding the purpose and intent of the event, by
24 way of submission of a "marketing plan," before "marketing events" can take place.

25 269. The requirement to get governmental pre-approval is an unlawful prior restraint
26 and has caused Plaintiffs damages.

27 WHEREFORE, Plaintiffs respectfully request that this Honorable Court:

28 (a) Enter a judgment declaring that, on its face and as applied, the ordinances
and policies violate the United States Constitution;

1 (b) Enjoin Napa County, its employees, officers, and agents, from enforcing
2 the ordinances and policies permanently and preliminarily while this litigation is pending;

3 (c) Award Plaintiffs actual, compensatory, punitive, nominal, and special
4 damages in an amount to be proven at trial, plus prejudgment interest on those amounts;

5 (d) Award Plaintiffs their reasonable costs, including attorneys' fees, incurred
6 in bringing this action pursuant to 42 U.S.C. § 1988; and

7 (e) Grant such other and further relief as this Court deems just and proper.

8 **FOURTH CLAIM FOR RELIEF**
9 **CONTENT-BASED SPEECH RESTRICTIONS**
10 **(42 U.S.C. § 1983)**

11 270. Plaintiffs incorporate and reallege the preceding paragraphs as if fully restated
12 herein.

13 271. It is a fundamental precept of the First Amendment that the government cannot
14 favor one private speaker over another. *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515
15 U.S. 819, 828 (1995).

16 272. Accordingly, content-based restrictions are “presumptively invalid.” *Ysursa v.*
17 *Pocatello Educ. Ass’n*, 555 U.S. 353, 358 (2009).

18 273. An especially “egregious” form of content-based discrimination is that which
19 excludes a viewpoint from the marketplace of ideas. *Rosenberger*, 515 U.S. at 829.

20 274. “One reliable way to tell if a law restricting speech is content based is to ask
21 whether enforcement authorities must ‘examine the content of the message that is conveyed’ to
22 know whether the law has been violated.” *Otto v. City of Boca Raton, Florida*, 981 F.3d 854, 862
(11th Cir. 2020) (quoting *McCullen v. Coakley*, 573 U.S. 464, 479 (2014)).

23 275. The Napa County Code recognizes that “Marketing of Wine” includes activities
24 and events intended to educate consumers about wine that is offered. NCC Section 18.08.370.

25 276. The Napa County Code allows business events for the marketing of wine but in
26 determining whether to approve a business event at a winery, the ordinances state that “[c]areful
27 consideration shall be given to the intent of the event, the proportion of the business event’s non-
28 wine-related content, and the intensity of the overall marketing plan.” *Id.*

1 277. Napa County has issued interpretative guidance as how it determines what is an
2 allowed social, cultural, and business event. (**Exhibit 25.**)

3 278. That interpretive guidance explicitly states that this determination is made based
4 on the content of the advertising and message at the event: “Since the adoption of the Winery
5 Definition Ordinance in 1990, Napa County Code has allowed activities for the education and
6 development of customers and potential customers at wineries under the definition of ‘marketing
7 of wine.’ Cultural and social events that are unrelated to education and development are explicitly
8 not permitted, while cultural and social events that are directly related to education and
9 development have always been allowed. Business events are similar to cultural and social events,
10 in that they are only permitted as part of ‘marketing of wine’ if they are directly related to the
11 education and development of customers and potential customers of the winery and are part of an
12 approved marketing plan that in its totality is ‘clearly incidental, related and subordinate to the
13 primary operation of the winery as a production facility’” NCC Section 18.16.030(G)(5) and
14 NCC Section 18.20.030 (I)(5).

15 279. Napa County’s Planning Supervisor testified in the Hoopes State Court lawsuit
16 that Napa County uses the interpretive guidance to determine whether an event at a winery is
17 allowed. (**Exhibit 26:** Transcript at 511.)

18 280. The guidance then gives “some examples of marketing events, including cultural
19 and social events that the County considers directly related to education and development of
20 consumers. These events fall within the definition of ‘marketing of wine.’ In each case, the
21 example describes the intent of the event, the wine-related content, and the non-wine related
22 content.” (Exhibit 25.)

23 281. The guidance also gives “some examples of business events that the County
24 considers directly related to education and development of consumers, and therefore fall within
25 the definition of ‘marketing of wine.’ In each case, the example describes the intent of the event,
26 the wine-related content. and the non-wine related content.”

27 282. Napa County is clear that whether an event is allowed to occur at a winery is
28 entirely dependent on the “intent of the event” as well as the wine and non-wine “content.”

1 283. Thus, Napa County determines whether an event is allowed based on the content
2 of the marketing at the event which violates the Plaintiffs’ First Amendment rights.

3 284. Napa County takes the position that small wineries are prohibited from any and all
4 “marketing events” and “temporary events,” including “events” [seemingly, any gathering of any
5 size] with political, philanthropic, commercial, and/or religious object.

6 285. Plaintiffs have suffered damages from these content-based speech restrictions.

7 WHEREFORE, Plaintiffs respectfully request that this Honorable Court:

8 (a) Enter a judgment declaring that, on its face and as applied, the ordinances
9 and policies violate the United States Constitution;

10 (b) Enjoin Napa County, its employees, officers, and agents, from enforcing
11 the ordinances and policies permanently and preliminarily while this litigation is pending;

12 (c) Award Plaintiffs actual, compensatory, punitive, nominal, and special
13 damages in an amount to be proven at trial, plus prejudgment interest on those amounts;

14 (d) Award Plaintiffs their reasonable costs, including attorneys’ fees, incurred
15 in bringing this action pursuant to 42 U.S.C. § 1988; and

16 (e) Grant such other and further relief as this Court deems just and proper.

17 **FIFTH CLAIM FOR RELIEF**
18 **VIOLATION OF DUE PROCESS UNDER THE FOURTEENTH AMENDMENT**
19 **(42 U.S.C. § 1983)**

20 286. Plaintiffs incorporate and reallege the preceding paragraphs as if fully restated
21 herein.

22 287. The Due Process Clause of the Fourteenth Amendment of the U.S. Constitution
23 provides that no state may “deprive any person of life, liberty, or property without due process of
24 law.” U.S. Const. amend. XIV, § 1.

25 288. The Fourteenth Amendment has been construed to provide rights to both
26 substantive and procedural due process.

27 289. “Where a [business] permit has been properly obtained and in reliance thereon the
28 permittee has incurred material expense, he acquires a vested property right to the protection of
which he is entitled.” *O’Hagen v. Bd. of Zoning Adjustment*, 19 Cal. App. 3d 151, 158 (1971).

1 290. “When a municipal ordinance regulates a useful business enterprise, it is subject to
2 scrutiny by the courts with a view to determining whether the ordinance is a lawful exercise of the
3 police power, or whether it amounts to unwarranted and arbitrary interference with the
4 constitutional rights to carry on a lawful business, to make contracts, or to use and enjoy
5 property.” *Safeway Inc. v. City and County of San Francisco*, 797 F. Supp. 2d 964, 969 (N.D.
6 Cal. 2011) (citing *Dobbins v. Los Angeles*, 195 U.S. 223, 235–36 (1904) and *Lawton v. Steele*,
7 152 U.S. 133, 137 (1894)).

8 291. Napa County enforces arbitrary and vague laws against Plaintiffs which interfere
9 with their constitutional rights to carry on a lawful business.

10 292. Further, “[i]t is a basic principle of due process that an enactment is void for
11 vagueness if its prohibitions are not clearly defined.” *Grayned v. City of Rockford*, 408 U.S. 104,
12 108 (1972).

13 293. The vagueness doctrine reflects two related requirements. First, “laws [must] give
14 the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he
15 may act accordingly.” *Id.* Second, the vagueness doctrine demands that laws “provide explicit
16 standards for those who apply them” to avoid “arbitrary and discriminatory enforcement.” *Id.*

17 294. As discussed above, the Napa County Code related to wineries are vague on their
18 face and Napa County has admitted the ordinances are vague.

19 295. Definitional sections of ordinances are not operative law.

20 296. As discussed above, Napa County enforces definitional ordinances as if they are
21 operative law which violates the Plaintiffs’ due process rights.

22 297. As discussed above, Plaintiff Wineries cannot identify what conduct is permitted
23 or prohibited conduct due to lack of operative or even definitional guidance.

24 298. Plaintiff Wineries cannot identify what conduct is permitted due to inconsistent
25 enforcement for the same conduct and as to similarly situated properties.

26 299. The Napa County Code fails to provide explicit standards for those who apply
27 them which then allows Napa County official to engage in arbitrary and discriminatory
28 enforcement.

1 300. Additionally, as discussed above, sometime between 2012 and 2016, Napa County
2 revised its Winery Database and removed permissions for Plaintiffs without providing Plaintiffs
3 of notice of the change or the opportunity to challenge the change in permissions.

4 301. During this time, Napa County did not establish standards, policies, procedures, or
5 training to guide this mid-2010's interpretation of existing property entitlements and/or ensure
6 uniform interpretation of decades old entitlements.

7 302. While Napa County has advised Plaintiffs that they could "voluntarily" seek a
8 review of the "uses" and "rights" each are entitled to, Napa County engages in this "review" in an
9 arbitrary and discriminatory way seeking to punish wineries like Plaintiffs.

10 303. Napa County has made this review process so expensive that wineries are not
11 financially able to complete the process.

12 304. Additionally, Napa County intentionally makes the process time consuming, often
13 taking several years to complete, to further deter wineries from attempting to gain additional
14 permissions or even defend existing entitlements.

15 305. Additionally, Napa County applies its Road and Street Standards in an arbitrary
16 and capricious manner specifically designed to violate the Due Process rights of wineries in Napa
17 County.

18 306. The Napa County Code defines agriculture to include wineries and the sale of wine
19 products. NCC Section 18.08.040.

20 307. Specifically, for those wineries like Plaintiffs who have been granted a use permit
21 or a small winery exemption, agriculture includes "Production and processing of agricultural
22 products, including agricultural processing facilities" and "Marketing, sales, and other accessory
23 uses that are related, incidental and subordinate to the main agricultural processing use." NCC
24 Section 18.08.040(H).

25 308. Yet in the Road and Street Standards, Napa County defines an agricultural road to
26 include all types of agricultural uses except a winery. (**Exhibit 27**: Section 14(i).)

27 309. Under those standards, an agricultural road must contain a ten-foot-wide drivable
28 surface and four feet of shoulder. (*Id.* at Section 15.)

1 310. At the time “small wineries” were entitled in the 1980s they were expressly
2 recognized as exempt from road standards applying to other winery developments.

3 311. Presumably, Napa County in its Road and Street Standard implicitly redefines a
4 winery as a commercial use in order to hold it to the higher road standard.

5 312. However, this determination is not contained within the standard.

6 313. Such a determination would also conflict with the definition of commercial use in
7 the Napa County Ordinances which specifically excludes the growing, processing, and ultimate
8 sale of agricultural products and all necessary accessory uses from the definition of a commercial
9 use. NCC Section 18.08.170.

10 314. Thus, the Road and Street Standards should not apply to wineries.

11 315. Napa County is aware that it has incorrectly applied its Road and Street Standard
12 against wineries and agricultural roads. Napa County officials recognized in a June 8, 2022,
13 email that “[b]ased on our local definition [of agriculture], all wineries would be exempt from the
14 State Minimum Fire Safe Regulations [and thus the Road and Street Standards]. This is a
15 loophole I have been aware of and have conveyed to many of you.” (**Exhibit 28.**)

16 316. Despite this recognition, Napa County has applied the Road and Street Standards
17 against numerous wineries, including Plaintiffs, and has incorrectly forced these wineries to
18 spend tens of millions of dollars in costs.

19 317. Napa County also applies its Road and Street Standards related to installation of
20 left turn lanes in an arbitrary and capricious manner. (Exhibit 27: Road and Street Standards
21 Section 17.)

22 318. For example, Napa County has demanded wineries pay for and install left turn
23 lanes on public roads to increase its daily allowed visitors by just a few visitors.

24 319. However, Napa County does not apply its Road and Street Standard uniformly
25 and, upon information and belief, only applies its standards to some but not all wineries and also
26 not to other types of property.

27 320. County wineries have inquired of Napa County why Napa County does not apply
28 the standards uniformly and Napa has replied that it does not apply the standards uniformly

1 because it believes it does not have to apply the standards to all types of properties and to all
2 wineries and that it has the discretion to pick and choose when and if the standards are applied.

3 321. Thus, Napa County applies its standards arbitrarily.

4 322. Napa County's vague and arbitrary enforcement of its ordinances, standards, and
5 policies has a chilling effect because Plaintiff Wineries face the prospect of their businesses being
6 shut down if Napa County determines that Plaintiff Wineries are operating as a nuisance. See
7 NCC 18.144.040.

8 323. Plaintiffs have suffered damages from Napa County's vague and arbitrary
9 enforcement of its ordinances and policies.

10 WHEREFORE, Plaintiffs respectfully request that this Honorable Court:

11 (a) Enter a judgment declaring that, on its face and as applied, the ordinances
12 and policies violate the United States Constitution;

13 (b) Enjoin Napa County, its employees, officers, and agents, from enforcing
14 the ordinances and policies permanently and preliminarily while this litigation is pending;

15 (c) Award Plaintiffs actual, compensatory, punitive, nominal, and special
16 damages in an amount to be proven at trial, plus prejudgment interest on those amounts;

17 (d) Award Plaintiffs their reasonable costs, including attorneys' fees, incurred
18 in bringing this action pursuant to 42 U.S.C. § 1988; and

19 (e) Grant such other and further relief as this Court deems just and proper.

20 **SIXTH CLAIM FOR RELIEF**
21 **DUE PROCESS – NON-DELEGATION DOCTRINE**
22 **(42 U.S.C. § 1983)**

23 324. Plaintiffs incorporate and reallege the preceding paragraphs as if fully restated
24 herein.

25 325. In those rare instances where Napa County is amendable to granting or modifying
26 a use permit, as a conditions to receiving that permit, Napa County requires the consent of third
27 parties including special interest groups.

28 326. For example, Plaintiffs are aware of at least two recent instances where Napa
County has conditioned the issuance of a use permit on the approval of third parties.

1 *Co. v. Limbach*, 486 U.S. 269, 273 (1988).

2 332. Laws which require wineries to use a minimum percentage of local grapes are per
3 se invalid unless the restriction passes strict scrutiny. *Alexis Bailly Vineyard, Inc. v. Harrington*,
4 482 F. Supp. 3d 820, 824 (D. Minn. 2020) (state law requiring use of majority Minnesota grapes
5 per se invalid); *Wineries of the Old Mission Peninsula Ass’n v. Peninsula Twp.*, No. 1:20-cv-
6 1008, 2022 WL 2155097, at *7-9 (W.D. Mich. June 3, 2022) (ordinance requiring use of 85% in-
7 Township grapes *per se* invalid.)

8 333. The Napa County Code requires that for all wineries established after the date the
9 ordinance was codified, “at least seventy-five percent of the grapes used to make the winery’s
10 still wine, or the still wine used by the winery to make sparkling wine, shall be grown within the
11 county of Napa.” NCC Section 18.104.250(B).

12 334. For wineries established prior to the codification of the ordinance, if they wish to
13 expand, seventy-five percent of the grapes used to make still or sparkling wine as a result of the
14 expansion must be grown in Napa County. NCC Section 18.104.250(C).

15 335. In 2022 Napa County created a new type of winery, a micro-winery, which also
16 requires the use of at least seventy-five percent Napa County grapes.

17 336. Napa County also has a policy prohibiting sale of wine and other agricultural
18 products “not produced on site,” even though many Napa wineries operate state licensed wineries
19 in other locations outside of Napa County and are legally allowed to transfer that product to other
20 licensed locations. Similarly, many wineries have relationships with agricultural growers outside
21 of Napa County and seek to purchase agricultural products from those growers rather than just
22 Napa County growers.

23 337. The Napa County Code discriminates against interstate commerce in violation of
24 the Commerce Clause, Article I, § 8, Clause 3, of the United States Constitution, by favoring, and
25 mandating in-County products and persons over out-of-County products and persons.

26 338. Plaintiffs wish to expand their operations but do not wish to be subject to the
27 unconstitutional grape source requirements in NCC Section 18.104.250(B) and NCC Section
28 18.104.250(C).

1 1008, 2022 WL 2155097, at *7-9 (W.D. Mich. June 3, 2002) (ordinance requiring use of 85% in-
2 Township grapes *per se* invalid.)

3 344. The Napa County Code requires that for all wineries established after the date the
4 ordinance was codified, “at least seventy-five percent of the grapes used to make the winery’s
5 still wine, or the still wine used by the winery to make sparkling wine, shall be grown within the
6 county of Napa.” NCC Section 18.104.250(B).

7 345. For wineries established prior to the codification of the ordinance, if they wish to
8 expand, seventy-five percent of the grapes used to make still or sparkling wine as a result of the
9 expansion must be grown in Napa County. NCC Section 18.104.250(C).

10 346. In 2022 Napa County created a new type of winery, a micro-winery, which also
11 requires the use of at least seventy-five percent Napa County grapes.

12 347. Napa County also has a policy prohibiting sale of wine and other agricultural
13 products “not produced on site,” even though many Napa wineries operate state licensed wineries
14 in other locations outside of Napa County and are legally allowed to transfer that product to other
15 licensed locations. Similarly, many wineries have relationships with agricultural growers outside
16 of Napa County and seek to purchase agricultural products from those growers rather than just
17 Napa County growers.

18 348. The Napa County Code places an excessive burden on interstate commerce in
19 excess of the putative benefit to Napa County in violation of the Commerce Clause, Article I, § 8,
20 Clause 3, of the United States Constitution, by favoring, and mandating in-County products and
21 persons over out-of-County products and persons.

22 349. Plaintiffs wish to expand their operations but do not wish to be subject to the
23 unconstitutional grape source requirements in NCC Section 18.104.250(B) and NCC Section
24 18.104.250(C).

25 350. Plaintiffs therefore are entitled to a declaratory judgment that the ordinances
26 discriminate against out-of-County products and persons are unconstitutional under the
27 Commerce Clause.

28

1 *Tigard*, 512 U.S. 374, 391 (1994).

2 357. This test applies regardless of whether the condition requires the landowner to
3 relinquish property or requires the landowner to pay a monetary exaction. *Koontz v. St. Johns*
4 *River Water Mgmt. Dist.*, 570 U.S. 595, 612-615 (2013).

5 358. Napa County applies both a formal and informal policy to take property from
6 winery use permit applicants in violation of their constitutional rights.

7 359. Napa County requires wineries to submit to at least three unlawful conditions
8 before it will consider issuing or amending winery permits.

9 360. First, NCC Section 18.104.250 requires all wineries formed after 1990 or any
10 winery that wishes to “expand beyond their winery development area” to source at least 75% of
11 their grapes from within Napa County. As explained in Counts VII and VIII, this requirement
12 violates the Dormant Commerce Clause.

13 361. Second, NCC Section 1.30 requires all wineries submitting new applications to
14 indemnify Napa County from legal challenges to a potential permit issuance:

15 (a) Applicants “shall submit to the county a fully executed indemnification
16 agreement agreeing to defend, indemnify, release and hold harmless the county from any claim,
17 action, or proceeding brought against the county to attack, set aside, void or annul the approval
18 based on the county's failure to comply with the requirements of any federal, state, or local law,
19 including but not limited to general plan and zoning requirements, or both. The indemnification
20 shall include damages awarded against the county, if any, costs of suit, attorneys’ fees and other
21 expenses incurred in connection with such action.” NCC Section 1.30.030(A).

22 (b) Even if an applicant winery chooses not to sign the indemnification
23 agreement, the ordinance forces the applicant to indemnify the County anyway. *See* NCC Section
24 1.30.040.

25 362. Third, Napa County forces applicants to pay exorbitant costs to improve roadways
26 in a disproportionate manner to the applicant’s proposed use.

27 363. These exactions also include the imposition of impermissible impact fees. *See*
28 *Sheetz v. County of El Dorado, California*, 601 U.S. 267 (2024).

1 364. These requirements are applied to all wineries for any modification, inclusive of
2 sale of wine-related products in addition to wine, regardless of its relationship to the above
3 requirements.

4 365. For example, Plaintiff Summit Lake applied for a winery use permit from Napa
5 County. As a condition to approval of that use permit application, Napa County demanded that
6 Plaintiff Summit Lake pay for the improvement of a one mile stretch of road at a cost of
7 approximately \$1 million.

8 366. Hoopes was advised that to sell wine glasses, sell t-shirts, sell non-wine
9 agricultural products from its farm, or to charge any type of fee to enter the property, even though
10 Hoopes is already entitled with unlimited retail wine sales, it would have to install a new septic
11 system. This is despite approval of the septic system for continued use as production and retail
12 winery facility.

13 367. Smith-Madrone wishes to expand its operations but the exaction requirements of
14 Napa County, such as road improvements and grape requirements, make these operations
15 expansions not viable.

16 368. Upon information and belief, Napa County has placed similar extraction demands
17 on other Napa County wineries.

18 369. Upon information and belief, Napa County's extractions are so prolific as to be an
19 official policy of Napa County.

20 370. Napa County's exaction practices have caused Plaintiff Wineries to refrain from
21 seeking use permits or amendments from Napa County.

22 371. Napa County's required exactions are not proportional to the alleged impact of the
23 expanded permissions for each winery.

24 372. Similar requirements were struck down as an unconstitutional exaction in *Alliance*
25 *for Responsible Planning v. Taylor*, 63 Cal. App. 5th 1072, 1085 (2021).

26 WHEREFORE, Plaintiffs respectfully request that this Honorable Court:

27 (a) Enter a judgment declaring that Napa County's extractions are a taking in
28 violation the United States Constitution;

1 (b) Enjoin Napa County, its employees, officers, and agents, from enforcing
2 the exaction policy on any Wineries in Napa County;

3 (c) Award Plaintiffs actual, compensatory, punitive, nominal, and special
4 damages in an amount to be proven at trial, plus prejudgment interest on those amounts;

5 (d) Award Plaintiffs their reasonable costs, including attorneys’ fees, incurred
6 in bringing this action pursuant to 42 U.S.C. § 1988; and

7 (e) Grant such other and further relief as this Court deems just and proper.

8 **TENTH CLAIM FOR RELIEF**
9 **REGULATORY TAKING**
10 **(Fifth and Fourteenth Amendments)**
11 **(42 U.S.C. § 1983)**

12 373. Plaintiffs incorporate and reallege the preceding paragraphs as if fully restated
13 herein.

14 374. As discussed above, Napa County has enacted a series of ordinances which
15 deprive Plaintiffs of the full use of their property.

16 375. These ordinances are “not reasonably necessary to the effectuation of a substantial
17 public purpose.” *Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104, 127 (1978).

18 376. As discussed above, the stated purposes for the ordinances are themselves
19 violations of Plaintiffs’ First Amendment rights and the Commerce Clause.

20 377. The Plaintiffs have a property right in the uses entitled by right, established over
21 the years at their wineries, as well as uses allowed by California law.

22 378. As discussed above, sometime between 2012 and 2015, Napa County revised its
23 Winery Database to take property rights from the Plaintiff Wineries without just compensation.

24 379. Further, each Plaintiff possess a Winegrowers licensed issued by the State of
25 California which is a valuable property right. *See Dash, Inc. v. Alcoholic Beverage Control*
26 *Appeals Bd.*, 683 F.2d 1229, 1233 (9th Cir. 1981) (“Under California law, a liquor license issued
27 pursuant to the Alcoholic Beverage Control act is a valuable property right.”).

28 380. As discussed above, Napa County, through its ordinances and policies, interferes
with this property right by limiting how Plaintiffs may utilize their property.

1 381. Plaintiffs will suffer irreparable harm if Napa County is allowed to enforce the
2 unconstitutional ordinances and policies.

3 382. Plaintiffs have suffered damages from Napa County’s unlawful deprivation of the
4 full use of Plaintiffs’ property rights.

5 WHEREFORE, Plaintiffs respectfully request that this Honorable Court:

6 (a) Enter a judgment declaring that, on its face and as applied, the ordinances
7 and policies violate the United States Constitution;

8 (b) Enjoin Napa County, its employees, officers, and agents, from enforcing
9 the ordinances and policies permanently and preliminarily while this litigation is pending;

10 (c) Award Plaintiffs actual, compensatory, punitive, nominal, and special
11 damages in an amount to be proven at trial, plus prejudgment interest on those amounts;

12 (d) Award Plaintiffs their reasonable costs, including attorneys’ fees, incurred
13 in bringing this action pursuant to 42 U.S.C. § 1988; and

14 (e) Grant such other and further relief as this Court deems just and proper.

15 **ELEVENTH CLAIM FOR RELIEF**
16 **EQUAL PROTECTION**
17 **(42 U.S.C. § 1983)**

18 383. Plaintiffs incorporate and reallege the preceding paragraphs as if fully restated
19 herein.

20 384. The U.S. Constitution, Article XIV, clause 2, states that no “state shall ... deny any
21 person within its jurisdiction the equal protection of the laws.” Due to the Supremacy Clause,
22 noncompliance with the Government Tort Claims Act is not a procedural bar. *See Williams v.*
Horvath (1976) 16 Cal. 3d 834, 842.

23 385. Government Code section 65852, states that all zoning regulations “shall be
24 uniform for each class or kind of...use of land throughout each zone...”

25 386. Because all wineries in Napa County are consolidated into a single use, all
26 wineries within the same zoning district must be subject to the same zoning regulations and
27 allowed all uses and accessory uses derivative of the primary use as a winery. *See, e.g., Neighbors*
28

1 *in Support of Appropriate Land Use v. County of Tuolumne*, 157 Cal. App. 4th 997, 1009-10
2 (2007).

3 387. Napa County violates the equal protection provisions of the federal constitution
4 when it proscribes different “uses” and “accessory uses” to land zoned as a “winery” within the
5 same zone.

6 388. Uniformity in zoning requires all uses and accessory uses that remain lawful uses
7 at wineries be allowed at all wineries, including any winery prior to enactment of the Winery
8 Definition Ordinance.

9 389. Napa County Code Section 18.08.600(C), on its face and as applied, violates the
10 Equal Protection clause of the U.S. Constitution. US Const. Amend. XIV.

11 390. Napa County Code Section 18.08.600(C), on its face and as applied, creates at
12 least two classes of licensed wineries: small wineries and other wineries, although the class of
13 “winery” is one-class post-Winery Definition Ordinance.

14 391. Napa County Code Section 18.08.600(C), on its face and as applied, disadvantages
15 small wineries, declared important businesses in the County, by prohibiting them from engaging
16 in tours, offering wine tastings, selling wine-related items, and hosting of public events, which are
17 designated by statute as critical economic functions of all wineries.

18 392. Napa County Code Section 18.20.020(H), on its face and as applied, violates the
19 Equal Protection clause of the U.S. Constitution. U.S. Const. Amend. XIV.

20 393. Napa County Code Section 18.20.020(H), on its face and as applied, creates at
21 least two classes of licensed small wineries: small wineries with use permits and wineries with
22 small winery use permit exemptions although the class of “winery” is one-class post-rezoning by
23 way of Winery Definition Ordinance.

24 394. Napa County Code Section 18.20.020(H), on its face and as applied, disadvantages
25 wineries with small winery use permit exemptions.

26 395. Napa County arbitrarily recognizes tasting and marketing rights at some pre-
27 Winery Definition Ordinance wineries, but not others.

28

1 396. Napa County Code Section 18.20.030(G), on its face and as applied, violates the
2 Equal Protection clause of the U.S. Constitutions. U.S. Const. Amend. XIV.

3 397. Napa County Code Section 18.20.030(G) allows wineries with a use permit to
4 engage in “marketing of wine” as the term is defined in Napa County Code Section 18.08.3704,
5 but does not state whether wineries with exemptions may market wine (or how).

6 398. Napa County Code Section 18.20.030(G), on its face and as applied, creates at
7 least two classes of licensed small wineries: wineries with use permits and wineries with small
8 winery use permit exemptions that conflicts with the unitary class of winery enacted pursuant to
9 the Winery Definition Ordinance.

10 399. Napa County Code Section 18.20.030(G), on its face and as applied, disadvantages
11 wineries with small winery use permit exemptions.

12 400. By ordering some wineries, like Plaintiffs, not to “market” their licensed wine
13 business, or conduct “tours and tastings” short of application for a “new” permit for the primary
14 use as winery, Napa County singles out, penalizes and treats these wineries differently from other
15 similarly situated wineries.

16 401. Napa County has no rational basis for singling out some wineries for lawful uses
17 of their properly licensed winery when it allows other similarly situated wineries to engage in
18 these same uses.

19 402. Napa County’s actions are not reasonably necessary to achieve a legitimate
20 government purpose.

21 403. Plaintiffs have suffered damages from Napa County’s unequal treatment of
22 wineries within Napa County.

23 WHEREFORE, Plaintiffs respectfully request that this Honorable Court:

24 (a) Enter a judgment declaring that, on its face and as applied, the Napa
25 County ordinances and policies violate the United States Constitution;

26 (b) Enjoin Napa County, its employees, officers, and agents, from enforcing
27 the ordinances and policies permanently and preliminarily while this litigation is pending;
28

1 (c) Award Plaintiffs actual, compensatory, punitive, nominal, and special
2 damages in an amount to be proven at trial, plus prejudgment interest on those amounts;

3 (d) Award Plaintiffs their reasonable costs, including attorneys' fees, incurred
4 in bringing this action pursuant to 42 U.S.C. § 1988; and

5 (e) Grant such other and further relief as this Court deems just and proper.

6 **TWELFTH CLAIM FOR RELIEF**
7 **STATE LAW PREEMPTION**

8 404. Plaintiffs incorporate and reallege the preceding paragraphs as if fully restated
9 herein.

10 405. In California, “[a] county or city may make and enforce within its limits all local,
11 police, sanitary, and other ordinances and regulations not in conflict with general laws.” Cal.
12 Const. art. XI, § 7.

13 406. When a county ordinance conflicts with a general state law, the county ordinance
14 is void. *See, e.g., O’Connell v. City of Stockton*, 41 Cal. 4th 1061, 1067 (2007).

15 407. California law gives licensed winegrowers the privilege to “[s]ell wine and brandy
16 to consumers for consumption off the premises where sold.” BPC § 23358(a)(2).

17 408. California law gives licensed winegrowers the privilege to “[s]ell wine to
18 consumers for consumption on the premises.” BPC § 23358(a)(3).

19 409. BPC Section 23358(a)(3) does not restrict how such wine is served, e.g., by the
20 sample, by a flight, by the glass or by the bottle. Indeed, the legislative history of the bill
21 expressly confirms sale by the bottle, glass, or sample is expressly allowed.

22 410. BPC Section 23358(a)(4) allows a winery to operate a bona fide eating place on
23 the licensed premises and “[s]ell all beers, wines, and brandies, regardless of source, to
24 consumers for consumption on the premises.”

25 411. BPC Section 23358(b) states that a “winegrower may also have upon the premises
26 all beers, wines, and brandies, regardless of source, for sale or service only to guests during
27 private events or private functions not open to the general public.”
28

1 412. BPC Section 23358(c) states that at least fifty percent of the wine a winegrower
2 sells on its licensed premises must be produced by the winegrowers from the conversion of
3 grapes, berries, or other fruit into wine.

4 413. BPC Section 23358(c) does not dictate the source of the grapes, berries, or fruit a
5 winegrower converts into wine.

6 414. BPC Section 23358(c) does not dictate the location of production of the wine as
7 long as produced by the winegrower.

8 415. BPC Section 23358(e) provides that counties exercising land use regulatory
9 authority can restrict, but not eliminate, the privileges afforded by section 23358.

10 416. BPC Section 23358(e) is the only section of the BCP related to wineries where the
11 California Legislature provided a local government with this limited authority.

12 417. BPC Section 23356.1 authorizes a winegrower to “conduct winetastings of wine
13 produced or bottled by, or produced and packaged for, the licensee, either on or off the
14 winegrower’s premises.”

15 418. That section also states that the “department may adopt the rules as it determines
16 to be necessary for the administration of this section.” *Id.* at 23356.1(d).

17 419. The State of California has issued the following rules related to wine tastings:

18 420. California law defines a “winetasting” as a “presentation of samples of one or
19 more wines, representing one or more wineries or industry labels, to a group of consumers for the
20 purpose of acquainting the tasters with the characteristics of the wine or wines tasted.” Cal. Code
21 Regs., Title 4, § 53.

22 421. California law allows a winegrower to “supply small amounts of bread, crackers,
23 cheeses or nuts to clear the taste buds of the participants between successive samples of wine
24 during a winetasting.” Cal. Code Regs., Title 4, § 53.

25 422. “Winetastings may be conducted without charge or for a fee for the public on a
26 premises licensed with a winegrower's license.” Cal. Code Regs., Title 4, § 53(a)(1).

27 423. “Winegrowers...may conduct winetastings which are sponsored by a bona fide
28 charitable, fraternal, political, religious, trade, service, or similar private organization” subject to

1 limited conditions. Cal. Code Regs., Title 4, § 53(b).

2 424. While Section 53 contains some restrictions, the rule is clear that “[n]othing in this
3 rule shall prevent the holder of any license which permits the sale and consumption of wine on
4 the premises from holding a winetasting of wines legally acquired, provided the on-sale licensee
5 shall charge for the wines presented in accordance with law.”

6 425. BPC Section 23386(a) states that a winegrower’s license “authorizes the giving
7 away of samples of the alcoholic beverages that are authorized to be sold by the license under the
8 rules that may be prescribed by the department.”

9 426. BPC Section 23386(a) does not provide Napa County with authority to establish
10 rules related to a winegrower giving away samples.

11 427. California rules allow winegrowers to “sponsor contests, races, tournaments, and
12 other similar activities on or off licensed premises.” Cal. Code Regs., Title 4, § 106(i)(2).

13 428. Tours and wine tastings are a means for wineries to sell wine to consumers for
14 consumption on and off premises.

15 429. Napa County Code Section 18.08.600 conflicts with California law because Napa
16 County Code Section 18.08.600 does not allow for licensed winegrowers to sell wine for on- and
17 off-premises consumption while BPC § 23358(a) specifically allows for licensed winegrowers to
18 sell wine for on- and off-premises consumption.

19 430. Napa County Code Section 18.08.600 cannot be reconciled with BPC § 23358(a).

20 431. Napa County Code Section 18.08.600 is preempted by BPC § 23358(a).

21 432. BPC §§ 23358(a)(4) and 23038 allow California wineries to operate a bona fide
22 eating place to serve food, wine, and beer to guests for compensation.

23 433. These sections do not require guests to have made an appointment.

24 434. Napa County Code Section 18.08.620 is preempted by BPC § 23358(a) and 23038
25 in that it requires that any food provided by provided without charge and prohibits food service
26 which “involve menu options and meal service such that the winery functions as a café or
27 restaurant.”
28

1 435. Other ordinance and formal and informal policies of Napa County, such as NCC
2 Sections 18.08.370, 18.16.030, 18.20.020 and 18.20.030, also are preempted by California law
3 such as restrictions on marketing, advertising, events, contests races, and other similar activities
4 as well as restrictions on where wine must be manufactured.

5 436. California courts have recognized that “impos[ition] of unique requirements on
6 individual establishments licensed to sell alcoholic beverages would contravene the goal of
7 uniform administration and enforcement of the state’s liquor laws.” *See Tryon v. DBS*
8 *Enterprises, Inc.*, No. D045656, 2006 WL 234728, * 8 (Cal. Ct. App. Feb. 1, 2006)
9 (unpublished).

10 437. Napa County utilizes a policy which places unique requirements and restrictions
11 on wineries in Napa County with regard to the sale of alcoholic beverages.

12 438. Such a policy conflicts with and contravenes the goal of uniform administration
13 and enforcement of the state’s liquor laws.

14 439. The California Legislature declared a statewide interest in uniform building codes
15 and enacted legislation expressing an intent to generally preempt the field of building standards.
16 *California Apartment Assoc. v. City of Fremont*, 97 Cal. App. 4th 693, 697 (2002).

17 440. The California Building Code expressly states that it applies to all businesses in
18 the state and that a local government may only modify its standards by making an express finding
19 that the modification is necessary due to “climatic, topographical or geological conditions” with
20 those findings being filed with the California Building Standard Commission. *See Cal. Build.*
21 *Code § 1.1.8 et seq.*

22 441. The California Business Code was explicitly adopted by Napa County and
23 incorporated into its ordinances. *See Napa County Code Section 15.12.010.*

24 442. The only modifications referenced in the Napa County Code to the California
25 Building Code related to wineries applies to construction and occupancy of wine caves which is
26 not relevant to this case.

27 443. Generally, per the California Building Code, the occupancy load for a winery
28 tasting room is one person per fifteen square feet. *See Cal. Build. Code § 1004.1.*

1 444. Thus, Napa County’s unilateral restriction of Winery occupancy (visitors) is
2 preempted by California law.

3 445. Plaintiffs have suffered damages from Napa County’s violations of California law.
4 WHEREFORE, Plaintiffs respectfully request that this Honorable Court:

5 (a) Enter a judgment declaring that Napa County Code Sections 18.08.370,
6 18.08.600, 18.08.620, 18.16.030, 18.20.020 and 18.20.030 are preempted by California law;

7 (b) Enjoin Napa County’s enforcement of Napa County Code Sections
8 18.08.370, 18.08.600, 18.08.620, 18.16.030, 18.20.020 and 18.20.030;

9 (c) Enter a judgment declaring that Napa County’s restriction on the number of
10 visitors at each winery is preempted by the California Building Code;

11 (d) Enjoin Napa County from enforcing a limit on winery visitation/occupancy
12 which is different than the occupancy calculations set forth in the California Building Code;

13 (e) Award Plaintiffs actual, compensatory, punitive, nominal, and special
14 damages in an amount to be proven at trial, plus prejudgment interest on those amounts;

15 (f) Award Plaintiffs their reasonable costs, including attorneys’ fees, incurred
16 in bringing this action; and

17 (g) Grant such other and further relief as this Court deems just and proper.

18 **THIRTEENTH CLAIM FOR RELIEF**
19 **INJUNCTIVE RELIEF**

20 446. Plaintiffs incorporate and reallege the preceding paragraphs as if fully restated
21 herein.

22 447. Plaintiffs are likely to succeed on the merits of their lawsuit.

23 448. Plaintiffs will be irreparably harmed if an injunction does not issue preventing
24 Napa County from continuing to enforce the ordinances.

25 449. Napa County will not be harmed if it is prohibited from enforcing its illegal
26 ordinances, policies, and restrictions on Plaintiffs.

27 450. Issuance of a preliminary injunction preventing Napa County from continuing to
28 enforce its illegal ordinances will serve the public interest.

1 451. Plaintiffs have no adequate remedy at law.

2 WHEREFORE, Plaintiffs respectfully request that this Honorable Court:

3 (a) Enjoin Napa County, its employees, officers, and agents, from enforcing
4 the Napa County Code Sections 18.08.370, 18.08.600, 18.08.620, 18.16.030, 18.20.020 and
5 18.20.030 as well as its formal policies, informal policies and other illegal restrictions placed on
6 Plaintiffs as described above permanently and preliminarily while this litigation is pending;

7 (b) Award Plaintiffs their reasonable costs, including attorneys' fees, incurred
8 in bringing this action; and

9 (c) Grant such other and further relief as this Court deems just and proper.

10 Respectfully submitted,

11 Dated: September 5, 2024

MILLER, CANFIELD, PADDOCK
AND STONE, P.L.C.

12

13 By: /s/ Q. Scott Kaye

14 Q. Scott Kaye,
Attorneys for Plaintiffs

15 Dated: September 5, 2024

MILLER, CANFIELD, PADDOCK
AND STONE, P.L.C.

16

17 By: /s/ Joseph M. Infante

18 Joseph M. Infante,
Attorneys for Plaintiffs

19 Dated: September 5, 2024

FENNEMORE WENDEL

20

21 By: /s/ Eugene M. Pak

22 Eugene M. Pak
Attorneys for Plaintiffs

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