

1 BUCHALTER  
A Professional Corporation  
2 KATHARINE H. FALACE (SBN: 222744)  
1230 Pine Street  
3 St. Helena, CA 94574-1106  
Telephone: 707.967.9656  
4 Email: kfalace@buchalter.com

5 LINDSAY BLAIR HOOPES (SBN: 271060)  
P. O. Box 3600  
6 Yountville, CA 94599  
Telephone: (415) 240-2644  
7 Email: lindsay@hoopesvineyard.com

8 Attorneys for Intervenor,  
COOKS FLAT ASSOCIATES

10 SUPERIOR COURT OF CALIFORNIA  
11 COUNTY OF NAPA

12 NAPA COUNTY and THE PEOPLE OF THE  
13 STATE OF CALIFORNIA ex. rel. THOMAS  
ZELENY, as Interim Napa County Counsel,

14 Plaintiffs,

15 v.

16 HOOPES FAMILY WINERY PARTNERS, LP,  
17 HOOPES VINEYARD, LLC, LINDSAY BLAIR  
HOOPES, and DOES 1 through 10 inclusive,

18 Defendants

19  
20  
21 HOOPES FAMILY WINERY PARTNERS, LP,  
a California limited partnership and HOOPES  
VINEYARD, LLC, a California limited liability  
22 company,

23 Cross-Complainants

24 v.

25 NAPA COUNTY, DAVID MORRISON, in his  
official and individual capacities, AKENYA  
26 ROBINSON-WEBB, in her official and  
individual capacities, and ROES 1 through 10  
27 inclusive,

CASE NO. 22CV001262

**COOKS FLAT ASSOCIATES' CROSS-  
COMPLAINT IN INTERVENTION FOR  
MONELL CLAIM, FEDERAL AND  
STATE DUE PROCESS AND EQUAL  
PROTECTION VIOLATIONS, AND  
DECLARATORY RELIEF (U.S. Const. I,  
VIX, Cal. Const. art. 1, § 7, 42 U.S.C.  
§ 1983, Cal. Civ. Code § 52.1)**

1 Cross-Defendants,  
2 Cross-Defendants  
3 COOKS FLAT ASSOCIATES, a California  
4 Limited Partnership, dba Smith-Madrone  
5 Vineyard and Winery,  
6 Intervenor.

7 Intervenor COOK’S FLAT ASSOCIATES, a California LIMITED PARNTERSHIP, dba  
8 SMITH-MADRONE VINEYARD AND WINERY, (“Smith-Madrone”), and STUART SMITH,  
9 General Partner, (“Smith”), bring the instant Cross-Complaint-In-Intervention against NAPA  
10 COUNTY (“the County”), and allege, upon information and belief, as follows:

11 **INTRODUCTION**

12 1. Napa County has engaged in a pattern and practice of misinterpreting and/or  
13 intentionally misrepresenting the entitlements of pre-Winery Definition Ordinance wineries,  
14 including “small winery” use permit holders, such as Smith-Madrone, and requiring these entitled  
15 properties to apply for winery uses and accessory uses, at great expense, already incorporated  
16 within the pre-WDO small winery use permit entitlements and/or vested upon ratification of the  
17 WDO to all existing wineries pre-dating the 1990 ordinance.

18 2. This policy of pushing and/or requiring pre-WDO wineries to re-apply for existing  
19 entitlements is a taking without due process or compensation.

20 3. This unequal treatment as to pre-WDO small wineries as compared to all other  
21 wineries is without legitimate government purpose, is discriminatory, and violates State  
22 uniformity in zoning and the County Code, reiterating same.

23 4. Further, the County has a practice of claiming violations and/or requiring winery-  
24 owners to undertake use permit applications for conduct that the County cannot regulate, is  
25 beyond the County’s jurisdiction, is lawful, and otherwise pursuant to invalid and  
26 unconstitutional regulations.

27 5. Smith-Madrone has never been found in violation of any law or operating in  
28 excess of their pre-WDO “small winery” use permit. Smith-Madrone has never been noticed for

1 apparent violations of their use permit relating to “visitation,” “wine tastings,” “tasting by  
2 appointment,” “marketing,” or “marketing events” and yet has been engaging in these uses,  
3 whatever they should mean to the County, without knowledge these are in excess of their use  
4 permit.

5 6. Only after Smith-Madrone was advised that the County was publicly issuing  
6 determinations of pre-WDO winery entitlements in 2017 was Smith-Madrone made aware that  
7 the County inexplicably deemed their “visitation” limited to an arbitrary number not listed as a  
8 condition on the use permit and was prohibited in engaging in “marketing events.”

9 7. Smith-Madrone has operated by allowing guests to consume wine at the winery  
10 since its foundation nearly five decades ago and cannot lawfully be required to apply for  
11 entitlements it already maintains.

12 8. Smith-Madrone fears a “status determination” without judicial intervention and  
13 declaration of the rights of pre-WDO wineries, and scope of appropriate uses and accessory uses  
14 thereon, based on knowledge that the County opts to pursue litigation if the proponent disagrees  
15 with the County’s unprincipled and inexplicable limits on uses not discussed within the  
16 conditions of pre-WDO permits or exemptions. Smith-Madrone has a history of publicly  
17 engaging in the allegedly “unlawful” conduct without complaint or citation, and despite believing  
18 the use permit entitles the property with “tours and tastings” or “consumption” by *appointment*  
19 far beyond the limitations arbitrarily designated in the County’s public database.

20 9. Because the County maintains that pre-WDO wineries must “apply” for “uses” not  
21 express on the face of the permit, even as to uses that were not limited, or defined, when the  
22 permits issued, or risk pain of suit for engaging in entitlements that pre-WDO winery operators,  
23 like Smith-Madrone, believe already run with the property, and after fifty years have elapsed  
24 engaging in same, Smith-Madrone must seek judicial clarification as to the rights of their pre-  
25 WDO use permit with respect to uses defined upon enactment of the WDO, and purporting to  
26 regulate pre-WDO wineries.

27 10. The County can, on a whim, as it has recently, refuse to allow Smith-Madrone to  
28 continue to operate as the winery always has, for five decades, without increase or intensification

1 in operations, change in use, until unspecified “upgrades” and unidentified “modifications” are  
2 completed. Smith-Madrone cannot afford to suffer modifications for existing rights *or* have to  
3 defend a meritless lawsuit.

4 11. Smith-Madrone contends that small winery use permits are allowed unlimited  
5 tours and tastings by appointment and marketing events. These uses are accessory to all wineries,  
6 were existing (or in regular practice) when Smith-Madrone was permitted, and grandfathered in  
7 to all pre-existing wineries, regardless of origin, when the WDO was enacted, including small  
8 winery use permits like Smith-Madrone.

9 12. Further, the County cannot prohibit these uses at a lawful winery because similar  
10 prohibitions are preempted by State law and if allowed at some, they must be allowed at all, due  
11 to uniformity of zoning and preemption through express County regulation of same. (NCC  
12 §§18.104.040, 18.12.080.) For the reasons detailed below, their lawful operation includes on site  
13 consumption and marketing of wine as afforded under the law even though not express in their  
14 permit. These rights may not be prohibited by silent indirection, and even if they could absent  
15 state law, any similar regulation is preempted here.

16 13. At the heart of the controversy is whether Napa County can render valueless a  
17 lawful, operating business – a winery – from doing what a winery does through arbitrary,  
18 capricious, vague, and unintelligible rules.

19 14. To promote efficiency, and protect the rights of all similarly situated small, pre-  
20 WDO wineries, of all kinds, Smith-Madrone seeks to join Hoopes in judicial determination of the  
21 entitlements of pre-WDO small winery use permits, as the County’s determination is in error, and  
22 to seek vindication for the unequal treatment of small wineries, and pre-WDO wineries, as  
23 compared with other wineries. Smith-Madrone further seeks to determine the constitutionality of  
24 the County’s regulation of accessory uses, representative of critical winery activities granted by  
25 valid state licenses, in a manner to effectively prohibit them at pre-WDO wineries.

26 **THE PARTIES**

27 15. Intervenor COOK’S FLAT ASSOCIATES, dba Smith-Madrone, is, and at all  
28 relevant times was, a limited partnership authorized to do business in California. It owns the real

1 property located at 4022 Spring Mountain Road, California 94574, Assessors Parcel Number 020-  
2 300-086-000 (the “Property”), and related parcel number 020-300-084-000. Its principal place of  
3 business is located in Napa County, California. The Property maintains a valid small winery use  
4 permit issued October 24, 1973 by the County of Napa.

5 16. Intervenor SMITH-MADRONE is the operating business for vineyard and winery  
6 business at the property and is, and at all relevant times, was, a limited partnership authorized to  
7 do business in California. Its principal place of business is in Napa County, California.

8 17. Defendant NAPA COUNTY (the “County”) is a general law county duly  
9 organized under the laws of the State of California.

10 18. NAPA COUNTY DEPARTMENT OF PLANNING, BUILDING and  
11 ENGINEERING SERVICES (“PBES”), is a department within the County, consisting of a  
12 planning division, building division, and environmental services division. PBES is comprised of  
13 the planning director and employees, and is authorized by, and subordinate to, the County Board  
14 of Supervisors. PBES is established Napa County Ord. 1256 § 1 (part), 2005 and Ord. No. 1379,  
15 § 6, 1-29-2013. NCC § 2.50.030. PBES “shall be administered and supervised” by the director,  
16 “also referred to as the planning director,” who “shall be appointed by the board of supervisors of  
17 the county” and who “shall hold office at the pleasure of the board.” NCC § 2.50.032. The  
18 director shall have charge of “the enforcement of the zoning ordinances of the county.” NCC  
19 § 2.50.034. PBES is tasked with issuing permits, enforcing permits and zoning, maintaining  
20 public records relating to permits and enforcement actions, establishing code enforcement  
21 operations, policies and procedures, observing code enforcement priorities, and hiring, training  
22 and supervising code enforcement officers.

23 19. Smith-Madrone is unaware of the true names and capacities, whether individual,  
24 corporate, associate, employee, agent, or other, of Cross-Defendants ROES 1 through 10,  
25 inclusive, and therefore, sues them by fictitious names. Smith-Madrone will seek leave to amend  
26 this Cross-Complaint in Intervention to allege their true names and capacities when it ascertains  
27 them.

28



1 the second 020-300-086-000 (78.70 acres). The winery is located on what is now this latter  
2 parcel, APN # 020-300-086-000, and the use permit associated with this parcel.

3 26. The winery parcel is located in the Napa County Agricultural Watershed District  
4 and consists of 78.70 acres. The winery parcel includes a vineyard and a winery. Cook’s Flat  
5 Associates purchased the property and the owners continue to farm the vineyard and operate the  
6 winery.

7 27. Smith-Madrone is older than most wineries (and residences) in the immediate area  
8 and in Napa County, generally. Smith-Madrone was one of the first winery use permits ever  
9 issued. After it began operating, other wineries opened, including much larger operations nearby.  
10 Many winery developments that post-date Smith-Madrone are much more substantial in terms of  
11 production and environmental impact than Smith-Madrone Winery.

12 28. The County issued “small winery” use permits before it adopted the 1990 Winery  
13 Definition Ordinance. (County Ord. No. 947, Jan.23, 1990, hereinafter, “WDO”.) The WDO  
14 adopted restrictions on new winery development that had not previously existed, adopted small  
15 winery exemptions and other pre-WDO small winery use permits, as legal conforming wineries,  
16 and altered the definition of winery.

17 29. At the time the WDO was enacted, various “uses” and “accessory uses” of  
18 wineries, now-regulated yet still lawful as to *new* winery developments, were common and not  
19 regulated as they are currently regulated (if regulated), including *private* tours and tastings, wine  
20 tastings, “tastings by appointment,” “marketing,” “retail sales,” sales of “wine-related” products,  
21 and consumption of wine on a winery property, and events. These definitions, uses and  
22 regulations, including “tours and tastings” and “marketing of wine,” were defined, changed,  
23 created and/or regulated through the enactment of the WDO in 1990.

24 30. The WDO created uniformity in zoning as to wineries, consolidating wineries of  
25 different origins into one singular zoning class or use, and defining the permissible uses and  
26 accessory uses of all wineries for the first time.

27 31. As a legislative finding integral to, and incorporated within, the WDO, pre-WDO  
28 wineries, including small wineries with pre-WDO use permits, and permitted prior to 1974 or

1 between 1974 and 1990, and whose activities were “lawful when established and have not been  
2 abandoned,” are an integral part of the Napa Valley economy. One of the primary purposes of  
3 enacting the WDO was to recognize their “legal existence” and their need to operate as “legal  
4 *conforming* uses.” (Napa County Ord. 947.)

5 32. The intent of the legislation was not to permit “expansion” beyond what legally  
6 existed. (Ord. 947, §§ 2, 3, 4, 5, 8, 9 10.)

7 33. “Expansion” is not defined in the WDO. The NCC does not create independent  
8 “uses” for the accessory winery uses. Accessory uses are derivative of primary uses as a matter of  
9 state and local law. (NCC 18.104.040; Gov’t Code § 65852.) Uniformity in zoning dictates that  
10 all buildings or uses, *with or without a permit*, maintain the same accessory uses as a matter of  
11 right, and as required by state and local law. (*Id.*) The only aspect of winery “use” requiring a  
12 new use permit drafted in the code is an increase in wine *production*.

13 34. Smith-Madrone Winery has been operating, openly and notoriously, under the  
14 belief that Smith-Madrone is entitled to allow consumers to engage in “tours and tastings” by  
15 appointment and host “marketing events” under their pre-WDO permit and has been so doing for  
16 nearly 50 years.

17 35. Smith-Madrone further believes that consumers are able to purchase wine on the  
18 premise and consume wine on the premises pursuant to its state license. (B&P 23358.)

19 36. Smith-Madrone is informed and believes that other wineries that pre-date the  
20 WDO operate in the AP and AW districts with all “uses” and “accessory uses” authorized by  
21 sections 18.20.020, 18.16.020, 18.20.030, 18.16.030, 18.104.040. Smith-Madrone further  
22 believes it is entitled with all uses and accessory uses of any post-WDO winery as derivative of  
23 its existing pre-WDO permit without application for a new permit: the accessory uses of a winery  
24 derive from entitlement as a *winery* and Smith-Madrone is a legal winery.

25 37. Smith-Madrone is informed and believes that the County now has a policy that  
26 pre-WDO wineries are prohibited from unlimited private tours and tastings by appointment even  
27 though no such limitation exists within the use permit. Smith-Madrone believes this limitation  
28 cannot exist because the County cannot read limitations into a permit that are not express



1 limitations, conditions on the use permits, and/or that relate to conduct that is and remains lawful  
2 yet was not regulated at the time the permit was issued. (See, e.g. *People v. Venice Suites, LLC*  
3 (2021) 71 Cal.App.5th 715, 733.)

4 38. Smith-Madrone is informed and believes that the County now has a policy that  
5 pre-WDO wineries are prohibited from “marketing” if not expressly indicated on the face of the  
6 use permit. Smith-Madrone believes this limitation is unlawful because the County cannot read  
7 limitations into a permit that are not express limitations, are not conditions on a specific use  
8 permit, and that relate to conduct that is and remains lawful, yet was not regulated at the time the  
9 permit was issued. (See, e.g. *People v. Venice Suites, LLC, supra*, 71 Cal.App.5th at p. 733.)  
10 Such conduct amounts to a reduction in valuable property entitlements.

11 39. Smith-Madrone is informed and believes that Napa County has arbitrarily  
12 designated their use permit as having limits on marketing activities and private tours and tastings  
13 that do not exist, without due process of law, and without compensation.

14 40. Further, Smith-Madrone is informed and believes the County has made public  
15 statements that “small wineries” are categorically prohibited from engaging in certain conduct.  
16 Pursuant to other official statements, the County does not limit the term “small winery” to small  
17 winery exemptions. Smith-Madrone has a “small winery” use permit that pre-dates enactment of  
18 the WDO. Any ruling relating to the rights of a pre-WDO “small winery” will impact Smith-  
19 Madrone’s entitlements.

20 41. Further, despite the County’s position that “small wineries” are categorically  
21 prohibited from accessory winery uses, such as “tastings” and “events of a public nature,” the  
22 County knows this is untrue.

23 42. Between 1973 and 2023, the County has never notified Smith-Madrone, in any  
24 capacity, or in any form, that their use of the property was unlawful or inconsistent with the  
25 winery entitlements. However, the County has published these limitations to the public. Although  
26 the County now takes the position that these uses were never “entitled,” and thus presumably  
27 could not have been grandfathered, the County never attempted to cite, abate, or regulate these  
28 uses at Smith-Madrone. Smith-Madrone has always publicly hosted what might be perceived as

1 “marketing events” without limitation. Various events have been reported in the news, and  
2 attended by Napa Valley politicians, including members of the Board of Supervisors. On just one  
3 occasion, in 1984, Smith-Madrone hosted a very visible “event” for the Democratic National  
4 Convention, attended by members of the Napa Board of Supervisors, and publicized in the San  
5 Francisco Chronicle. Smith-Madrone has never received any complaints, notices of apparent  
6 violation, citations, or communications from the County finding Smith-Madrone in violation of  
7 their winery use permit for hosting (or advertising) visits by appointment or engaging larger  
8 groups in what could be considered “events” based on County representations in the Hoopes  
9 action. Smith-Madrone has been operating under these very conditions and uses for nearly fifty  
10 years under the same ownership and expectations of rights, uses, and accessory uses.

11 43. “Tours and tastings” are lawful activities, and expressly authorized accessory  
12 winery uses pursuant to NCC. 18.20.030. “Marketing of wine” is lawful activity, and expressly  
13 authorized accessory use pursuant to NCC. 18.20.030 and 18.104.040. These uses are not limited  
14 in the Smith-Madrone permit and are entitlements of the lawful winery.

15 44. Smith-Madrone never received the form communication entitled “Use Permit  
16 Compliance Program” inviting wineries to seek voluntary status determinations of their older use  
17 permits but was advised of the letter by other winery owners. Smith-Madrone was also made  
18 aware of the Public Napa County Winery Database.<sup>1</sup> Stuart Smith looked at the database and  
19 discovered that Napa County had, without explanation, notice, or a hearing, annotated Smith-  
20 Madrone’s “tastings by appointment,” which Smith interpreted to mean the “maximum” number  
21 of people Napa County believed could visit Smith-Madrone, to “10” per “week.” (See, e.g.,  
22 Exhibit B [2018 Winery Database].) The database further records “no” marketing events  
23 permitted *at all*. These numbers and limits are not displayed anywhere in the use permit,  
24 conditions of approval, or findings for use permit U-87374.<sup>2</sup> The numbers listed for three  
25 consecutive years, to the public, as a public record, are of unknown origin.

26 <sup>1</sup> It does not appear that a database was updated and/or created after 2019, and the 2019 database is missing columns  
27 from the prior two versions, including designation as a small winery exemption, pre-WDO winery, and reference to a  
specific permit number.

28 <sup>2</sup> Public Record Search online of the Smith-Madrone permit number returns a permit for Stonebridge Cellars, entitled  
in the correct year, 1973, but not for the right premise, winery, or physical address, and other irrelevant documents.

1           45.     Upon enactment of the WDO, no status determination of pre-WDO wineries was  
2 conducted to determine the entitlements at the time of enactment, and no one has ever given  
3 Smith-Madrone any reason to believe that their entitlements do not include these uses.

4           46.     Smith-Madrone deems this property entitlement an incredibly valuable asset of the  
5 land and the winery operation, without which Smith-Madrone may not survive as a business. The  
6 artificial “reduction” of entitlements offends due process and was issued without notice or  
7 explanation. The limits Napa County has proposed are arbitrary and conditioned through silent  
8 indirection.

9           47.     Smith-Madrone has not sought a status determination out of fear and based upon  
10 information and belief, as well as knowledge of the current case and other actions, that the  
11 County engages in a policy and practice to deem longstanding winery entitlements “beyond the  
12 scope” of a pre-WDO “small winery” and mandate “compliance” by application for a “new” and  
13 more-limited conditional use permit. Smith-Madrone is informed and believes that wineries that  
14 have sought determination and/or contested the County’s determination of pre-WDO winery  
15 entitlements have resulted in reductions in their pre-WDO uses without explanation or legal  
16 authority. In lieu of collaborative resolution, these wineries are met with pain of suit for  
17 questioning the County’s seemingly unprincipled reduction of property entitlements.

18           48.     Regulation that forces wineries to apply for lawful accessory uses of a winery, that  
19 have already engaged in these uses, remain lawful accessory uses of wineries, are expressly  
20 acknowledged as permissible accessory uses, are critical economic functions of a winery, and that  
21 the winery has operated utilizing for multiple decades, is a regulation that violates State  
22 uniformity in zoning. Similar regulations without government authority or rational government  
23 purpose are also void, invalid, and unenforceable.

24           49.     Smith-Madrone is excused from the Government Tort Claims Act (also known as  
25 the California Tort Claims Act) because Smith-Madrone seeks declaratory relief.

26           50.     Further, futility excuses Smith-Madrone from exhaustion of the administrative  
27 remedies doctrine. (*McKee v. Bell-Carter Olive Co.* (1986) 186 Cal.App.3d 1230, 1245.) The  
28 \_\_\_\_\_  
(See, e.g., <https://www.countyofnapa.org/2474/PBES-Public-Records-Search.>)

1 County failed to pursue administrative procedures to properly consider Smith-Madrone’s  
2 entitlements prior to effectively revoking them without notice by demanding Smith-Madrone  
3 apply to maintain its current entitlements, and failing to provide a hearing or opportunity to  
4 appeal. (See, e.g., *Felkay v. City of Santa Barbara* (2021) 62 Cal.App.5th 30, 40-41.) It is not  
5 Smith-Madrone’s responsibility to prove entitlements; rather, given Smith-Madrone has been  
6 operating consistently for fifty years pursuant to these uses, it is the County’s responsibility to  
7 provide explanation for the unnoticed reduction of property entitlements and/or provide  
8 compensation for the reduction.

9 51. The County induced good faith reliance with others that the County would provide  
10 a path to resolution through the voluntary “compliance” and/or status determination programs but  
11 has instead used the programs to demand unsupportable, unlawful, and unworkable demands to  
12 continue *existing* operations. Smith-Madrone cannot afford to defend entitlements it already has  
13 given the County’s pattern to sue wineries who question County restrictions.

14 52. The policy undertaken at David Morrison’s request, and under his leadership and  
15 direction, was motivated by improper motive towards pre-WDO wineries, and in conflict with  
16 written procedures claiming that pre-WDO wineries are a critical component of the Napa Valley  
17 economy.

18 **FIRST CAUSE OF ACTION**

19 **(Due Process Violation of the Fourteenth Amendment of the U.S. Constitution and**  
20 **California Constitution – Against all Defendants – Cal. Const. Art. 1, § 7, U.S. Const., I,**  
**XIV, 42 U.S.C. § 1983)**

21 52. Smith-Madrone re-alleges and incorporates by reference all above paragraphs.

22 53. Section 1983 claims are not subject to claim procedures under the California  
23 Claims Act. “[T]he California remedy of recourse to the Tort Claims Act need not be first sought  
24 before a plaintiff is free to invoke the Civil Rights Act.” (*Williams v. Horvath* (1976) 16 Cal.3d  
25 834, 842.)

26 54. Local governmental entities can be sued directly under § 1983 for monetary,  
27 declaratory, or injunctive relief where the allegedly unconstitutional action implements or  
28

1 executes a policy statement, ordinance, regulation, or decision officially adopted; or was  
2 committed pursuant to a governmental custom. (*Zelig v. County of Los Angeles* (2002) 27 Cal.4th  
3 1112.)

4 55. “[A]n action for specific relief does not lose its exempt status solely because  
5 incidental money damages are sought.” (*Snipes v. City of Bakersfield* (1983) 145 Cal.App.3d  
6 861, 870.)

7 56. A citizen may hold a municipality liable if the citizen’s constitutional rights were  
8 violated as a result of an official policy or custom. (*See, Monell v. Dep’t of Social Serv.*  
9 (1978) 436 U.S. 658, 694 [holding that a municipality or local government may be held liable for  
10 constitutional violations under 42 U.S.C. § 1983].) 42 U.S.C. § 1983 (“Section 1983”) further  
11 provides that “[e]very person who, under color of any **statute, ordinance, regulation**, custom, or  
12 usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States . . . to  
13 the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall  
14 be liable to the party injured in an action at law.” Enforcement that is unlawful, void, or against  
15 the public welfare are just a few examples of official acts that satisfy the *Monell* requirement.

16 57. The Due Process Clause of the Fourteenth Amendment of the U.S. Constitution  
17 provides that no state may “deprive any person of life, liberty, or property without due process of  
18 law.” (U.S. Const. amend. XIV, § 1.) The Due Process Clause “provides heightened protection  
19 against government interference with certain fundamental rights and liberty interests.”  
20 (*Washington v. Glucksberg* (1997) 521 U.S. 702, 720.) The Fourteenth Amendment has been  
21 construed to provide rights to both substantive and procedural due process.

22 58. “Procedural due process requires that before a person is deprived of his life, liberty  
23 or property he must be given notice of the proceeding against him, he must be given an  
24 opportunity to defend himself, and the propriety of the deprivation must be resolved in a manner  
25 consistent with essential fairness.” (*Gray v. Whitmore* (1971) 17 Cal.App.3d 1, 21, citations  
26 omitted.)

27 59. Similarly, the California Constitution also provides that “[a] person may not be  
28 deprived of life, liberty, or property of due process of law.” (Cal. Const. Art. 1, § 7.)

1           60.     Substantive due process prohibits the government from depriving an individual of  
2 life, liberty or property without a sufficient purpose. A law that is not sufficiently related to a  
3 legitimate government purpose is invalid because it is not law, but rather unlawful government  
4 coercion masquerading as law.

5           61.     Enactment and enforcement of a void ordinance is unlawful. A municipal  
6 government may not enforce a void ordinance. In enacting or attempting to enforce void laws,  
7 Cross-Defendants have violated Smith-Madrone’s federal and state due process rights.

8           62.     There is no legitimate government purpose in prohibiting small wineries with a use  
9 permit, from engaging in marketing events that are critical winery functions, are allowed at all or  
10 virtually all other wineries, are a lawful accessory use of wineries, and could not have been  
11 requested at the time pre-WDO winery permits were issued. Rather, accessory uses were just  
12 allowed unless expressly prohibited. (Ord. 511, §§ 12405, 12806.)

13           63.     An ordinance granting some wineries fewer uses within the same zone for the  
14 same class, “winery,” is legally arbitrary. It is also a violation of state law regarding zoning  
15 uniformity. Any similar law, custom, or policy is void.

16           64.     There is no legitimate purpose in allowing some pre-WDO wineries, but not  
17 others, within the same zoning district, to engage in “tours and tastings” or “marketing of wine.”  
18 Any similar law, custom, or policy is void.

19           65.     Enforcement and/or enactment of an unconstitutional ordinance is unlawful. A  
20 municipal government may not enforce an unconstitutional ordinance. The County, in enacting or  
21 attempting to enforce unconstitutional laws, has violated Smith-Madrone’s due process rights. For  
22 example, the County’s enactment or continued application of vague laws relating to “marketing  
23 of wine” violates due process. Unconstitutional vagueness implicates dual concerns of fair notice  
24 of the line between lawful and unlawful conduct, and sufficiently explicit statutory limitations on  
25 the discretion of officials to avoid arbitrary and discriminatory enforcement. (*In re Scarpetti*  
26 (1981) 124 Cal.App.3d 434, 441.) The County’s attempt to prohibit conduct that the code does  
27 not properly define, or beyond statutory description, renders the ordinance unconstitutionally  
28 vague. Both are violations of due process.

1           66.     As set forth below, the County’s actions deliberately and intentionally targeted  
2 Smith-Madrone as a pre-WDO winery, with a permissive permit, to eradicate property  
3 entitlements.

4           67.     The County’s actions deliberately and intentionally attempted to prohibit lawful  
5 conduct through unconstitutional and/or void laws, in violation of due process.

6           68.     The County’s actions deliberately and intentionally attempted to prohibited lawful  
7 conduct that was not prohibited by any law, in violation of due process.

8           69.     The County’s actions deliberately and intentionally attempted to prohibit conduct  
9 that the County had stated was lawful, in violation of due process.

10          70.     The County’s actions deliberately and intentionally attempted to proscribe conduct  
11 permitted pursuant to vested property rights, in violation of due process.

12          71.     The County’s actions and policy deliberately and intentionally attempt to create  
13 limits on conduct that do not exist.

14          72.     Smith-Madrone maintains vested rights that the County attempts to unlawfully  
15 restrain or eliminate, including, *inter alia*, retail sales of wine and onsite consumption thereof.  
16 Unlawful elimination of vested property rights granted through state law is a due process  
17 violation.

18          73.     Smith-Madrone has rights conferred at state law for retail sales of wine and onsite  
19 consumption thereof that cannot be eliminated as they are preempted.

20          74.     Section 18.20.030, titled “Uses Allowed Without A Use Permit,” which was  
21 enacted after Smith-Madrone received their Small Winery Use Permit, provides that pre-WDO  
22 use permits are authorized, Smith-Madrone could continue its use on the Property, and all  
23 accessory uses permitted with that primary use, without securing additional use permits. Per NCC  
24 § 18.104.040, accessory uses derive from primary uses, **without need for further application**, or  
25 separate application, and all wineries are granted the uses enumerated in 18.20.030(g), (h) without  
26 any express exception or exemption. These uses and accessory uses apply to Smith-Madrone’s  
27 winery, as they must to all existing wineries. Because these accessory uses have not been limited  
28 in scope as to pre-WDO wineries, nor are they express from the permit, this limitation cannot be

1 read in to the permit by silent indirection. (See, e.g, *People v. Venice Suites, LLC*, 71 Cal.App.5th  
2 715, 733 (2021).)

3 75. “An ‘as applied’ challenge is a claim that the operation of a statute is  
4 unconstitutional in a particular case, while a ‘facial’ challenge alleges the statute may rarely or  
5 never be constitutionally applied.” (*Wal-Mart Stores, Inc. v. City of Turlock* (E.D. Cal. 2006) 483  
6 F. Supp. 2d 987, 996.) “When faced with a claim that application of a statute renders it  
7 unconstitutional, a court must analyze the statute as applied to the particular case, *i.e.*, how it  
8 operates in practice against the particular litigant and under the facts of the instant case, not  
9 hypothetical facts in other situations.” (*Wal-Mart*, 483 F.Supp.3d at 996-97, *citing* 16  
10 C.J.S. *Constitutional Law* § 187.) “An as-applied challenge claims the government’s conduct as  
11 permitted by a statute violated the defendant’s rights, but *[t]he violation is specific to the facts of*  
12 *the defendant's case*, and the statute is flawed only to the extent it permitted the government to act  
13 in that case.” (*Ibid.*, *citing* Orrin S. Kerr, *Congress, the Courts, and New Technologies: A*  
14 *Response to Professor Solove*, 74 *Fordham L. Rev.* 779, 787 n.50 (2005).)

15 76. In the present case, the Napa County ordinances and NCC ordinances, as applied  
16 by the County, deprive Smith-Madrone of its constitutional rights under the First and Fourteenth  
17 Amendments of the U.S. Constitution as well as Smith-Madrone’s rights under the California  
18 Constitution. These rights include the right to vested property entitlements, advertise, market their  
19 wine, and the right to operate a lawful business.

20 77. All of these rights, and more, are implicated by Napa County’s enforcement of the  
21 void and/or unconstitutional ordinances involved in this action, as well as by the County’s attempt  
22 to abate conduct not actually prohibited *by any ordinance*.

23 78. Granting wineries post-WDO wineries rights yet denying them to pre-WDO  
24 wineries violates the Due Process Clause of the California and U.S. Constitutions. (Cal. Const.  
25 Art. 1, § 7 and Art. IV, § 16; U.S. Const. Amend. XIV.)

26 79. Napa County Code section 18.08.620 defines “Tours and Tastings” as “tours of the  
27 winery and/or tastings of wine, where such tours and tastings are limited to persons who have  
28 made unsolicited prior appointments for tours or tastings . . .” State law allows wine



1 “consumption” at winery premises. (B&P 23358.) The Napa County winery database has  
2 different categories of “tastings” listed, including “by appointment” and public. Pre-WDO small  
3 winery use permits distinguish between “public” or “private” tastings, yet these terms are not  
4 defined. This provision is unconstitutionally void for vagueness.

5 80. Napa County’s policy of prohibiting marketing events or “public events of a social  
6 nature,” and regulating them as “inconsistent” or “beyond the scope” of pre-WDO permits or  
7 exemptions, are void for vagueness.

8 81. California Business and Professions Code, section 23358, subdivision (a),  
9 commonly called the “Picnic Bill,” allows wineries with a Type 02 Winegrower’s license, like  
10 Smith-Madrone, to sell bottles of wine to consumers for consumption on the winegrower’s  
11 premises. Section 23358, subdivision (e) further provides that counties exercising land use  
12 regulatory authority can restrict, but not eliminate, the onsite retail sale and consumption  
13 privileges. Insofar as Napa states that 18.08.020 conflicts with this law, and prohibits onsite  
14 consumption as a “tasting,” it is void as preempted.

15 82. California Business and Professions Code, section 23356.1 further authorizes  
16 licensed winegrowers to conduct wine tastings of wine produced for, or bottled by, or produced  
17 and packaged for, the winegrower. The wine tastings can be on or off the winegrower’s licensed  
18 premises. California law defines a “wine tasting” as a “presentation of samples of one or more  
19 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.  
21 Code Regs., tit. 4, § 53, emphasis added.)

22 83. Onsite consumption and tasting cannot be clearly or meaningfully distinguished by  
23 winery operators to provide sufficient notice of what conduct violates the ordinance if anything.

24 84. “Although zoning officials have broad discretion, they may not act unreasonably  
25 or arbitrarily.” (*Scarpetti, supra*, 124 Cal.App.3d at 441; see also *Carlin v. City of Palm Springs*  
26 (1971) 14 Cal.App.3d 706, 715.) Prohibiting uses and accessory uses that are lawful, deemed  
27 economically critical, and granted other wineries, is arbitrary.

28



1 threatened or ongoing unlawful conduct by a particular governmental officer. The doctrine does  
2 not allow a plaintiff to circumvent sovereign immunity by naming some arbitrarily chosen  
3 governmental officer or an officer with only general responsibility for governmental policy.”].)

4 111. The 1973 Small Winery Use Permit entitles Smith-Madrone to produce up to  
5 18,000 gallons of wine, operate a winery business, and engage in primary and accessory uses of  
6 the vineyard and winery consistent with all wineries in the AW (and AP).

7 112. All licensed wineries, with zoning permission in the primary use of “winery,”  
8 including Smith-Madrone Winery, can engage in accessory uses of their properties. NCC  
9 § 18.104.040 states that “[u]ses allowed without a use permit or uses permitted upon grant of a  
10 use permit shall include any accessory use.”

11 113. Napa County Code § 18.08.020 defines “Accessory Use” as follows:

12 *[A]ny use subordinate to the main use and customarily a part*  
13 *thereof. An accessory use must be clearly incidental, related and*  
14 *subordinate to the main use, reasonably compatible with the other*  
15 *principal uses in the zoning district and with the intent of the*  
16 *zoning district, and cannot change the character of the main use.*  
17 *Unless provided otherwise in this title, accessory uses may be*  
18 *conducted in the primary structure or in structures other than the*  
19 *primary structure. Where the zoning regulations applicable to a*  
20 *zoning district specifically identify the accessory uses which are*  
21 *permitted in conjunction with a primary use in that zoning district,*  
22 *no other accessory uses in conjunction with the primary use will be*  
23 *permitted in that zoning district. Structures constituting an*  
24 *accessory use that are related to a winery are further limited to the*  
25 *extent provided by Section 18.104.200.*

26 (*Ibid*, emphasis added.)

27 114. Smith-Madrone is informed and believes that Napa County considered at least  
28 some form of “tours and tastings” and wine “marketing” lawful uses not prohibited or regulated  
through use permits or use permit exemptions when it issued the 1973 Small Winery Use Permit.

115. Smith-Madrone is informed and believes that uses and accessory uses regulated for  
the first time upon adoption of the WDO were grandfathered/vested to small winery permit  
holders. Because no limitation was discussed, this vesting occurred without limitations as to this  
conduct.

1           116. The County has publicly declared through the public Winery Database that Smith-  
2 Madrone has limited “tours and tastings” by appointment and no marketing events. These limits  
3 are not incorporated into the use permit issued to Smith-Madrone in 1973.

4           117. Smith-Madrone was never limited to those “limits” included in the “Public Winery  
5 Database.” Smith-Madrone was never noticed, provided a hearing, or provided the opportunity to  
6 inform the determination. In the fifty years Smith-Madrone has been operating, these limits have  
7 never before been communicated to Smith-Madrone or noticed in any other format.

8           118. Actual controversies now exist, as described below. Smith-Madrone respectfully  
9 requests that the Court issue these declaratory judgments.

10           a. An actual controversy exists as to the scope of Smith-Madrone’s rights  
11 under the 1973 Small Winery Use Permit, including whether customers can  
12 consume wine on the property, if any limits apply to the number of guests  
13 that can arrive by appointment, whether retail sales of wine are permitted,  
14 and whether Smith-Madrone has entitlements, and what they are, to  
15 marketing. Smith-Madrone respectfully requests that the Court issue a  
16 declaratory judgment about the scope of its rights under the 1973 Small  
17 Winery Use Permit.

18           b. An actual controversy exists as to the scope of Smith-Madrone’s  
19 constitutional rights to speak about, advertise and market its business.  
20 Smith-Madrone respectfully requests that the Court issue a declaratory  
21 judgment finding the County violated its constitutional rights to Freedom  
22 of Speech.

23           c. An actual controversy exists as to whether various ordinances used by the  
24 County to prohibit conduct are constitutional, preempted, or void as vague.  
25 Smith-Madrone respectfully requests this Court to determine the legality of  
26 all ordinances attempting to regulate marketing, tours and tastings, retail  
27 wine sales, and advise how they govern winery operations of wineries  
28



1           125. NCC § 18.08.640 defines “winery” as an agricultural processing facility used for  
2 the fermenting of grape juice into wine. This definition was adopted pursuant to the WDO in  
3 1990. Small winery exemptions, pre-1974 wineries established without a use permit, and wineries  
4 adopted before and after 1990 with a use permit, are all classified as “wineries” under NCC  
5 § 18.08.640.<sup>3</sup>

6           126. NCC § 18.20.030(g) states that the following uses are permitted in connection with  
7 a “winery” as defined in section 18.08.640: (1) crushing of grapes, (2) on-site aboveground  
8 disposal of wastewater, (3) aging, processing, and storage of wine, (4) bottling and storage of  
9 bulk wine and shipping and receiving of bulk and bottled wine, provided the wine bottled or  
10 received does not exceed the permitted production capacity, (5) **any or all of the following uses:**  
11 (a) office and laboratory uses, (b) **marketing of wine**, (c) **retail sale of wine**.

12           127. NCC § 18.20.030(h) states that all accessory uses are “included” through primary  
13 “use” designation. There is no legislative authority to require a separate application to “add”  
14 accessory uses that are included in the primary “use” of a particular public use within a zoning  
15 district. Accessory uses “shall” be included with the primary use under NCC § 18.104.040.

16           128. Defendant the County violates the Equal Protection provisions of the state and  
17 federal constitutions when it proscribes different “uses” and “accessory uses” to land zoned as a  
18 “winery,” in the same zone.

19           129. Defendant the County was informed upon adoption of the WDO by then-County  
20 Counsel that tours and tastings, picnicking, marketing of wine, and any other use or accessory use  
21 *not prohibited* prior to adoption of the WDO, but *allowed* as a public “use” and “accessory uses”  
22 of a “winery” under the new WDO definition of “winery,” would be “grandfathered in” to all  
23 existing wineries, including small winery exemptions, whether or not they were obtained by use  
24 permit, use permit exemption, or simply through established use prior to regulation.

25           130. Smith-Madrone is informed and believes that the “uses” of “tours and tastings”  
26 and “marketing of wine,” *inter alia*, were not defined “uses” prior to adoption of the WDO and  
27

28 <sup>3</sup> Prior to 1990, and enactment of the WDO, winery was defined pursuant to Napa Ord. 629, enacted 3-11-1980.

1 existed in some form and practice at all or nearly all wineries prior to regulation. These remain  
2 lawful uses at wineries.

3 131. The General Plan was amended in 1990 to conform with the changes in the WDO.  
4 Agricultural Policies section 3.11 was amended to include “tours and tastings” as part of the  
5 definition of “agricultural processing” for wineries.

6 132. Prior to adopting the WDO, Cross-Defendant the County knew that it could not  
7 prohibit any existing winery, including small winery exemptions, to apply for “uses” that would  
8 be lawful winery “uses” or “accessory” for all “wineries” upon adoption of the WDO. This lawful  
9 conduct could only be regulated (or limited) as to *new* conditional winery use permits post-dating  
10 the WDO by express conditions in the post-WDO permits.

11 133. Cross-Defendant the County’s official policy that small winery use permits must  
12 apply for a “new” permit to avail of “uses” and “accessory uses” that are not express on the face  
13 of the permit, yet granted as to all wineries post-WDO, violates Napa County’s Ordinance  
14 18.104.040, state zoning laws, and provides some pre-WDO wineries and post-WDO wineries  
15 with privileges denied to Smith-Madrone, in violation of the Equal Protection provisions of the  
16 state and federal constitutions. This policy, on its face, and as applied, creates at least two classes  
17 of wineries, which is codified as only one zoning class, with different uses and accessory uses.  
18 This policy violates the Equal Protection clause of the California and U.S. Constitutions. (Cal.  
19 Const. Art. 1, § 7 and Art. IV, § 16; U.S. Const. Amend. XIV.) The County further recognizes  
20 tasting and marketing rights at some pre-WDO wineries, but not others; thus, it is untrue that the  
21 County actually prohibits these uses. How and when the County designates whom and how these  
22 uses may be utilized in a lawful winery operation is arbitrary.

23 134. Napa County Ordinance 18.20.030(G), on its face and as applied, violates the  
24 Equal Protection clause of the California and U.S. Constitutions. (Cal. Const. Art. 1, § 7 and  
25 Art. IV, § 16; U.S. Const. Amend. XIV.)

26 a. Napa County Ordinance 18.20.030(G) allows wineries with a use permit to  
27 engage in “marketing of wine” as the term is defined in Napa County  
28

1 Ordinance 18.08.370<sup>4</sup>, but does not state whether wineries with pre-WDO  
2 permits may market wine (or how).

3 b. Napa County Ordinance 18.20.030(G), on its face and as applied, creates at  
4 least various classes of small wineries: pre-WDO small wineries with use  
5 permits and pre-WDO small wineries with small winery use permit  
6 exemptions. That conflicts with the unitary class of winery enacted  
7 pursuant to the WDO.

8 135. Napa County Ordinance 18.20.030(G), on its face and as applied, disadvantages  
9 wineries with small winery use permits as compared with post-WDO wineries.

10 136. By denying Smith-Madrone Winery the right to “market” its licensed wine  
11 business, or conduct “tours and tastings” beyond the arbitrary limit of 10 per week, short of  
12 application for a “new” permit for the *primary* use as winery, which it already is, Napa County  
13 singled out Smith-Madrone, penalized it and treated it differently from other similarly situated  
14 wineries.

15 137. The County has singled out Smith-Madrone to be specifically isolated from its  
16 speech, due process and equal protection rights.

17 138. The County has no rational basis for singling Smith-Madrone out for lawful uses  
18 of its properly licensed winery engaged in by similarly situated wineries.

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19 <sup>4</sup> Napa County Ordinance 18.08.370 provides: “Marketing of wine” means “any activity of a  
20 winery which is conducted at the winery on a prearranged basis for the education and  
21 development of customers and potential customers with respect to wine which can be sold at the  
22 winery on a retail basis pursuant to Chapters 18.16 and 18.20. Marketing of wine may include  
23 cultural and social events directly related to the education and development of customers and  
24 potential customers provided such events are clearly incidental, related and subordinate to the  
25 primary use of the winery. Marketing of wine may include food service, including food and wine  
26 pairings, where all such food service is provided without charge except to the extent of cost  
27 recovery. Business events are similar to cultural and social events, in that they will only be  
28 considered as ‘marketing of wine’ if they are directly related to the education and development of  
customers and potential customers of the winery and are part of a marketing plan approved as part  
of the winery's use permit. Marketing plans in their totality must remain ‘clearly incidental,  
related and subordinate to the primary operation of the winery as a production facility’  
(subsection (G)(5) of Sections 18.20.030 and subsection (I)(5) of 18.20.030). To be considered  
directly related to the education and development of customers or potential customers of the  
winery, business events must be conducted at no charge except to the extent of recovery of  
variable costs, and any business content unrelated to wine must be limited. Careful consideration  
shall be given to the intent of the event, the proportion of the business event's non-wine-related  
content, and the intensity of the overall marketing plan.”





1 c. Napa County Code, sections 18.08.020 and 18.08.370 (marketing of wine)  
2 is unconstitutionally vague and thus violates the Due Process Clause of the California and U.S.  
3 Constitutions;

4 d. Napa County Code, section 18.08.020 is preempted by state law;

5 e. Napa County’s regulations, or County interpretation of same, express and  
6 implied, that attempt to regulate tours and tastings, retail wine sales, and marketing of wine, are  
7 preempted by state law, are void for vagueness, and overbroad.

8 f. That Smith-Madrone be awarded such other relief as the Court deems just  
9 and proper.

10  
11 DATED: September 8, 2023

BUCHALTER  
A Professional Corporation

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13  
14 By: \_\_\_\_\_  
KATHARINE H. FALACE

15 Attorneys for Defendants and Cross-  
16 Complainants COOK’S FLAT ASSOCIATES

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