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SUMMIT LAKE VINEYARDS & WINERY, LLC

9  
10 **SUPERIOR COURT OF CALIFORNIA**

11 **COUNTY OF NAPA**

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

14 Plaintiffs,

15 v.

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

18 Defendants

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

22 Cross-Complainants

23 v.

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

27 Cross-Defendants  
28

CASE NO. 22CV001262

**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 SUMMIT LAKE VINEYARDS & WINERY,  
2 LLC,

3 Intervenor.

4 Intervenor, SUMMIT LAKE VINEYARDS & WINERY, LLC, (“SLV”), a California  
5 single-member limited liability company, owned by ROBERT BRAKESMAN, and SUMMIT  
6 LAKE VINEYARDS, LP, a California partnership, owned by ROBERT BRAKESMAN, and the  
7 BRAKESMAN children, HEATHER GRIFFIN BRAKESMAN, BRIAN BRAKESMAN, and  
8 DANIEL BRAKESMAN (collectively, “SUMMIT LAKE WINERY” or “SLV”), bring the instant  
9 Cross-Complaint against NAPA COUNTY (“the County”), DAVID MORRISON, in his official  
10 and individual capacities, and AKENYA ROBINSON-WEBB, in her official and individual  
11 capacities, and allege, upon information and belief, as follows:

12 **INTRODUCTION**

13 1. Napa County has engaged in a pattern and practice of misinterpreting and/or  
14 intentionally misrepresenting the entitlements of small winery use permit exemption holders, a  
15 category of pre-Winery Definition Ordinance Wineries, such as Summit Lake Winery, and  
16 requiring these entitled properties to apply for winery uses and accessory uses, at great expense,  
17 including entitlements already incorporated within the small winery use permit exemptions and/or  
18 vested upon ratification of the WDO to all existing wineries pre-dating the 1990 ordinances. This  
19 unequal treatment as to small winery exemptions compared to all other wineries is without  
20 legitimate government purpose, is discriminatory, and violates State uniformity in zoning and the  
21 County Code, reiterating same.

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

26 3. Summit Lake Winery has never been found in violation of any law or operating in  
27 excess of their use permit exemption. Summit Lake Winery has never been noticed for apparent  
28 violations of their use permit relating to “visitation,” “wine tastings,” “tasting by appointment,”

1 “marketing,” or “marketing events” and yet has been engaging in these uses, whatever they  
2 should mean to the County, without knowledge these are in excess of their use permit, prior to  
3 entering the “compliance program.”

4 4. Only after Summit Lake Winery submitted a use permit to increase wine  
5 production, and simultaneously seek official “recognition” of its rights relating to wine  
6 consumption on the premise, did the County unilaterally, and without notice, a hearing, or  
7 identifiable procedure, determine that Summit Lake Winery had been out of compliance for  
8 nearly four decades in operating to receive guests for wine consumption and tastings by prior  
9 appointment.

10 5. After suspending pursuit to increase wine-production volume, or modify the  
11 existing “uses” in anyway, the County notified Summit Lake Winery they would be required to  
12 apply for a “new” use permit regardless, despite *no* increase or intensification of existing  
13 operations, in order to “recognize” the use of by appointment “visitation” that had been ongoing  
14 for nearly forty years. The County refused to acknowledge this existing right, although the  
15 County had never challenged this right prior, and despite the fact that Summit Lake Winery had  
16 been engaging in this “use” for nearly four decades.

17 6. The County issued a “compliance” Notice of Apparent violation for “tours and  
18 tastings” in response to Summit Lake Winery’s voluntary request that the County acknowledge  
19 the pre-existing conduct of tours and tastings by appointment to remain active until “compliance”  
20 was resolved through an unidentified and unknown process.

21 7. Summit Lake Winery has operated by allowing guests to consume wine at the  
22 winery since foundation and cannot lawfully be required to apply for entitlements it already  
23 maintains.

24 8. Summit Lake Winery has attempted to work with the County through the Use  
25 Permit Compliance Program, without any results, and at debilitating expense, despite never  
26 having been found in violation of their use permit exemption, a four-decade long history of  
27 engaging in the allegedly “unlawful” conduct without complaint or citation, and despite believing  
28

1 the use permit exemption already entitled the property with “tours and tastings” or “consumption”  
2 by *appointment*.

3 9. Because the County maintains that Summit Lake Winery must “apply” for  
4 entitlements that already run with the property, and after forty years have elapsed, the current  
5 application requirements will shutter the business.

6 10. The County refuses to allow Summit Lake Winery to continue to operate as the  
7 winery always has, without legally defined “increase” or “intensification” in operations, change  
8 in “use,” until these “upgrades” are completed. Summit Lake Winery cannot afford the requested  
9 upgrades and will be forced to sell the property or close.

10 11. Summit Lake Winery contends that small winery exemptions were allowed tours  
11 and tastings by appointment. These uses are accessory to all wineries, were grandfathered in to all  
12 pre-existing wineries when the WDO was enacted, including small winery exemptions like  
13 Summit Lake Vineyards.

14 12. Further, the County cannot prohibit these uses at a lawful winery because similar  
15 prohibitions are preempted by State law and if allowed at some, they must be allowed at all, due  
16 to uniformity of zoning and preemption of municipal regulation of same. For the reasons detailed  
17 below, their lawful operation includes on site consumption and marketing of wine as afforded  
18 under the law. At the heart of the controversy is whether Napa County can render valueless a  
19 lawful, operating business – a winery – from doing what a winery does through arbitrary, vague,  
20 and unintelligible rules.

21 13. To promote efficiency, and protect the rights of all similarly situated small, pre-  
22 WDO wineries, Summit Lake Winery seeks to join Hoopes in obtaining a judicial determination  
23 of the entitlements of small winery exemptions, seek vindication for the unequal treatment of  
24 small winery exemptions as compared with other wineries, and determine the constitutionality of  
25 the County’s regulation of accessory, integral, and critical winery activities granted by valid state  
26 licenses.

27  
28

**THE PARTIES**

1  
2           14.     Intervenor SUMMIT LAKE VINEYARDS & WINERY is, and at all relevant  
3 times was, a single-member limited liability company authorized to do business in California. It  
4 owns the real property located at 2000 Summit Lake Drive, Angwin, California 94508, Assessors  
5 Parcel Number 018-200-021-000 (the “Property”). Its principal place of business is located in  
6 Angwin, California. The Property maintains a valid small winery exemption permit issued March  
7 1, 1984 by the County of Napa.

8           15.     SUMMIT LAKE VINEYARDS is the operating business for vineyard and winery  
9 business and operations located on the parcel zoned for winery-use at 2000 Summit Lake Drive,  
10 Angwin, California 94508, Assessors Parcel Number 018-200-021-000. SUMMIT LAKE  
11 VINEYARDS is, and at all relevant times, was, a general partnership authorize to do business in  
12 California. Its principal place of business is located in Angwin, California.

13           16.     Defendant NAPA COUNTY (the “County”) is a general law county duly  
14 organized under the laws of the State of California.

15           17.     NAPA COUNTY DEPARTMENT OF PLANNING, BUILDING and  
16 ENGINEERING SERVICES (“PBES”), is a department within the county, consisting of a  
17 planning division, building division, and environmental services division. PBES is comprised of  
18 the planning director and employees, and is authorized by, and subordinate to, the County Board  
19 of Supervisors. PBES is established Napa County Ord. 1256 § 1 (part), 2005 and Ord. No. 1379,  
20 § 6, 1-29-2013. NCC § 2.50.030. PBES “shall be administered and supervised” by the director,  
21 “also referred to as the planning director,” who “shall be appointed by the board of supervisors of  
22 the county” and who “shall hold office at the pleasure of the board.” NCC § 2.50.032. The  
23 director shall have charge of “the enforcement of the zoning ordinances of the county.” NCC  
24 § 2.50.034. PBES is tasked with issuing permits, enforcing permits and zoning, maintaining  
25 public records relating to permits and enforcement actions, establishing code enforcement  
26 operations, policies and procedures, observing code enforcement priorities, and hiring, training  
27 and supervising code enforcement officers.  
28

1 18. Cross-Defendant DAVID MORRISON (“Mr. Morrison”) is an individual  
2 employed by Defendant, the County. Mr. Morrison was the DIRECTOR of PBES and ultimate  
3 supervisor of all code enforcement staff and zoning enforcement for the majority of time relevant  
4 in this case. Mr. Morrison initiated, oversaw or otherwise supervised code enforcement actions,  
5 programs, and determinations relating to the aggrieved parties, including determination without  
6 notice that Summit Lake Winery did not have entitlements it believes it has and attempts to  
7 deprive Summit Lake Winery of those rights without jurisdiction, due process, of law, and  
8 without compensation through unlawful regulatory action.

9 19. Mr. Morrison remains employed by Defendant the County, later served as the  
10 County Chief Executive Officer when the original action was filed. Mr. Morrison has/had final  
11 authority over the matter and expenditure of County funds related hereto.

12 20. Cross-Defendant AKENYA ROBINSON-WEBB (“Ms. Robinson-Webb”) is an  
13 individual employed as a Code Enforcement Supervisor with the County. Summit Lake Winery is  
14 informed and believes Ms. Robinson-Webb was personally aware, or intentionally and recklessly  
15 ignorant to, the contents of all County policies and procedures relating to deprivation of critical  
16 property and economic rights of the above parties.

17 21. Summit Lake Winery is unaware of the true names and capacities, whether  
18 individual, corporate, associate, employee, agent, or other, of Cross-Defendants ROES 1 through  
19 10, inclusive, and therefore, sues them by fictitious names. Summit Lake Winery will seek leave  
20 to amend this Cross-Complaint to allege their true names and capacities when it ascertains them.

21 22. Summit Lake Winery is informed and believes, and thereon alleges, that at all  
22 times mentioned in this Cross-Complaint, each of the Cross-Defendants was the agent, servant,  
23 and/or employee of each of the remaining Cross-Defendants. In doing the things alleged here,  
24 they were acting in the course and scope of their agency or employment, under color of state law,  
25 and therefore, all Cross-Defendants are in some manner liable or responsible for damages.

26 **GENERAL ALLEGATIONS**

27 23. On March 1, 1984, Robert Brakesman, then a current owner of the real property  
28 located at 2000 Summit Lake Drive, Angwin, California, Assessors Parcel Number 018-200-021-

1 000, obtained a Small Winery Use Permit Exemption from Napa County and began operating a  
2 winery. A true and correct copy of the 1984 Summit Lake Winery Small Winery Use Permit  
3 Exception is attached and incorporated herein as **Exhibit A**.

4 24. The Property is located in the Napa County Agricultural Watershed District and  
5 consists of twenty acres of land, an orchard, a chicken house, redwood barn, a residence built in  
6 1880, a walnut grove, vineyard and winery. Robert Brakesman purchased the property in 1971,  
7 and continues to live there today, as does son Daniel Brakesman.

8 25. Robert’s Children, Heather, Daniel and Brian, divide vineyard and winery  
9 management and responsibilities.

10 26. The Summit Lake Winery at the 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. The Property is now located 0.7 miles from Outpost Wines  
13 (<https://www.outpostwines.com/>), 0.5 miles from Robert Craig Winery  
14 (<https://robertcraigwine.com>), 0.6 miles from Robert Foley Vineyards  
15 (<https://www.robertfoleyvineyards.com>) and 0.8 miles from Black Sears. All four are much larger  
16 wineries than Summit Lake Winery that offer tours, tastings, and events.

17 27. Napa County issued small winery use permit exemptions before it adopted its 1990  
18 Winery Definition Ordinance. (Napa County Ord. No. 947, Jan.23, 1990, hereinafter, “WDO”).  
19 Small winery use permit exemptions were deemed lawful wineries. Pre-WDO limitations on  
20 small winery exemptions wineries were revised to uniformly grant legal wineries, of all origins,  
21 pre-dating the WDO, to the continuing lawful uses and accessory uses of wineries defined in the  
22 first instance through the WDO.

23 28. At the time the WDO was enacted, various “uses” and “accessory uses” of  
24 wineries, now-regulated yet still lawful as to *new* winery developments, were common and not  
25 regulated as they are today, including the consumption of wine on a winery property These  
26 definitions and regulations, including “tours and tastings” and “marketing of wine, were created  
27 in the first instance through enactment of the WDO in 1990.  
28

1           29.     Continued operation of small winery use permit exemptions was codified under  
2 the WDO to “recognize the legal existence of such operational small wineries” previously  
3 operating as exemptions, and whose “activities were lawful when established and have not been  
4 abandoned.” Small wineries use permit exemptions grandfathered under the WDO are an  
5 “integral part of the Napa Valley economy.” Ord. 947, §§ 4, 5, 8, 9 10.

6           30.     Napa County Code section 18.20.020(H) allows wineries with a small winery use  
7 permit exemptions in existence prior to 1990 to operate as a winery, including any “related  
8 accessory uses and structures,” without a use permit. So long as the wineries have continuously  
9 operated, they can continue winery operations without a use permit, including uses and accessory  
10 uses of wineries. (Ord. 947, NCC §§ 18.16.020; 18.16.030, 18.08.040 subd. (H), 18.104.040.).

11           31.     Summit Lake Winery is informed and believes there are currently only around  
12 thirty-two (32) wineries in Napa County lawfully operating with small winery use permit  
13 exemptions, and less than ten (10) the County alleges do not have “visitation” or “tour and  
14 tasting” entitlements. These terms, however, are not defined or meaningfully defined by the  
15 County. Summit Lake Winery is informed and believes that there are substantially fewer small  
16 winery permit exemptions today than existed at the time of enactment of the WDO.

17           32.     Summit Lake Winery is informed and believes that other wineries that pre-date the  
18 WDO operate in the AP and AW districts with all “uses” and “accessory uses” authorized by  
19 18.20.020 and/or 18.20.030 pursuant to 18.104.040 and 18.08.040.

20           33.     Summit Lake Winery is informed and believes that despite the County’s position  
21 that small winery exemptions are categorically prohibited from accessory winery uses, such as  
22 “tastings,” “marketing,” and “events of a public nature,” the County knows this is untrue and  
23 uniquely targets Summit Lake Winery and few others to prohibit uses the County endorses and  
24 allows at other similarly situated small winery exemptions and wineries, generally.

25           34.     Robert Brakesman purchased the subject parcel in 1971. He has continuously  
26 resided thereon. Robert Brakesman personally applied for the Small Winery Exemption. Since at  
27 least March 1, 1984, Roberts Brakesman, and now his three children, have continuously operated  
28 a vineyard and winery on the premise. Beginning in at least 1985, Summit Lake Winery has



1 allowed guests to come to the property, consume wine on the property, picnic, sample wine, and  
2 has engaged retail sales of wine. These “uses” were lawful at the time the subject exemption  
3 issued and remain lawful uses generally.

4 35. Between 1984 and 2019, the County never notified Summit Lake Winery, in any  
5 capacity, that these uses were unlawful. Although the County now takes the position that these  
6 uses were never “entitled,” and thus presumably could not have been grandfathered, the County  
7 never attempted to cite, abate, or regulate these uses. The County only determined these uses  
8 were unlawful, and that Summit Lake Winery was not “in compliance,” when Summit Lake  
9 Winery sought *other* property improvements, thirty-five years after continuous operation of those  
10 “uses,” and uses that notably remain lawful within the AW, generally.

11 36. The Brakesman family has lived in Napa County for nearly five decades. The  
12 Brakesman family is not engaged in any other industry; rather, the family’s primary economic  
13 lifeline is the winery and related operations. Multiple generations of the Brakesman family  
14 members have devoted themselves to property and winery business. They live in Napa and send  
15 their children to school in Napa County. All generations call Napa County their primary home.  
16 Few stand to benefit more from preservation of the agricultural integrity of Napa than members of  
17 the Brakesman family.

18 37. In 2018, the Brakesman family considered increasing wine production at the  
19 property and knew that a production increase at the property would potentially require a use  
20 permit application of some kind. The Brakesman’s retained various specialists to submit an  
21 application for the production upgrade.

22 38. In February 2019, Summit Lake Winery received a form letter from David  
23 Morrison, addressed generally to unspecified property owners, entitled “Re: Compliance  
24 Program” and date February 5, 2019. The letter advised that property owners should review their  
25 use permits to self-determine compliance with use permits running with their property. The letter  
26 counseled property owners to apply for modifications or seek a status determination with PBES  
27 staff if owners observed “inconsistencies” or “violations” or wanted to clarify what “was  
28 allowed.” Under either scenario, “inconsistencies” or “violations” could be cured with

1 “substantially complete” voluntary “modification applications” submitted prior to 2:00 p.m.  
2 March 29, 2019. Adhering to the deadline would allow property owners to continue with  
3 “existing operations” while the application was processed. After the March 29, 2019 deadline,  
4 owners out of compliance would be required to return to existing legal entitlements, not “continue  
5 operations,” and wait “at least” one year before the County would accept use permit applications.  
6 A true and correct copy of the February 5, 2019 letter is attached and incorporated herein **Exhibit**  
7 **B**.

8 39. In an effort to apply prior to an influx of “compliance” applications, and to ensure  
9 that an application satisfied the deadline of March 29, 2019 in the event of a disagreement about  
10 existing entitlements, Summit Lake Winery submitted their “use permit modification” for wine  
11 production by March 29, 2019. As part of the application, Summit Lake Winery requested that  
12 the County acknowledge “existing visitation” while considering an increase in production.

13 40. The County determined that Summit Lake Winery was not entitled to any  
14 “visitation” under the small winery exemption, despite nearly forty years of hosting same, in  
15 responding to the application.

16 41. On May 14, 2019, the County conducted an inspection of the property.

17 42. On July 2, 2019, the County issued a letter containing a list of “life safety issues”  
18 that had to be resolved prior to consideration of the “use permit” modification. Summit Lake  
19 Winery endeavored to correct the “life safety issues.” The letter was drafted by code enforcement  
20 officer Kelli Cahill.

21 43. On August 3, 2019, the County emailed Summit Lake Winery stating that some  
22 life safety issues remained unresolved and that a hearing could not take place on the requested  
23 modifications until those were resolved. The letter was drafted by code enforcement officer Kelli  
24 Cahill.

25 44. On October 1, 2019, Summit Lake Winery submitted additional documents in  
26 support of the modification. Summit Lake Winery was advised that a use permit modification  
27 would trigger the need to redo a substantial portion of the private road leading to the winery.  
28

1           45.     Surveys and consultations confirmed that the cost of the road improvement would  
2 cost over one million dollars, if even possible to execute, due to roadway challenges and  
3 neighborhood easements. Summit Lake Winery was unable to afford this upgrade or justify the  
4 expense relative to the requested wine production upgrade.

5           46.     In June to July 2020, Summit Lake Winery decided to abandon any increase in  
6 production capacity and leave the winery “as is.” This was communicated to the County, but the  
7 County issued a letter notifying Summit Lake Winery that their permit remained incomplete and  
8 unresolved.

9           47.     On June 3, 2021, Summit Lake Winery requested a reconsideration because they  
10 did not believe existing visitors was a new “use” to trigger a road upgrade, and that even if it  
11 were, there was no nexus between the cost and intensity of the upgrade, and recognition of  
12 visitors that had been coming to the property for four decades. The cost was prohibitive, and  
13 threatened viability of the business that had been in operation for nearly forty years.

14          48.     On June 4, 2021, the County noted that despite dropping any intent to make  
15 physical improvements, or change “visitation,” it was the “intensification” of “tours and tastings”  
16 that triggered new upgrades as well.

17          49.     On August 26, 2021, Kelli Cahill advised that all life safety issues had been  
18 abated.

19          50.     On January 11, 2022, code enforcement supervisor Akenya Robinson-Webb  
20 notified Summit Lake Winery their permit remained incomplete. The letter threatened to close out  
21 the application and force Summit Lake Winery to return to “existing entitlements.” Believing all  
22 life safety issues had been resolved and knowing that the “new” upgrades had been abandoned,  
23 Summit Lake Winery engaged the County in a zoom conference. Summit Lake Winery noted that  
24 that they were not seeking physical changes or increases in visitors, so could not understand why  
25 they would need to continue to pursue a road improvement that was cost prohibitive, but also  
26 likely impossible to execute as requested.

27          51.     On March 22, 2022, Robinson-Webb wrote to inform Summit Lake Winery that  
28 their application was incomplete. Heather Brakesman Griffin replied that she was under the

1 impression the County had promised back with a proposal given the abandonment of the  
2 production increases, and that the change requested was merely a “paper” change as it did not  
3 involve physical changes or an increase in visitation.

4 52. From March 22, 2022 until today, the County has continued to assert that  
5 visitation was not an “existing” entitlement, that any visitors consuming wine on property is a  
6 violation of the small winery use permit exemption, and that Summit must cease sales/tasting  
7 operations or improve the roadway or “convert” the exemption to a use permit even though no  
8 actual or legal changes in winery use or accessory uses were sought.

9 53. “Tours and tastings” are lawful activities, and expressly authorized accessory  
10 winery uses pursuant to NCC §§ 18.16.020 and 18.20.030.

11 54. Regulation that forces wineries to apply for lawful accessory uses of a winery, that  
12 have already engaged in these uses, remain lawful accessory uses of wineries, are expressly  
13 acknowledged as permissible accessory uses, are critical economic functions of a winery, and that  
14 the winery has operated utilizing for multiple decades, is a regulation that violates State  
15 uniformity in zoning. Similar regulations without government authority or rational government  
16 purpose are also void, invalid, and unenforceable.

17 55. As a result, Summit Lake Winery is excused from complying with the Government  
18 Tort Claims Act (also known as the California Tort Claims Act): it would be futile. Summit Lake  
19 Winery entered in to the “compliance program” to apply for new uses it abandoned, and the  
20 County unilaterally declared that Summit Lake Winery had been in violation of their use permit  
21 exemption despite no notice, citation, or abatement notifications for forty years. Napa County  
22 made compliance impossible by their affirmative acts, *inter alia*, 1) failing to establish a claims  
23 process and/or 2) luring wineries to voluntarily seek entitlement clarification and using the  
24 declarations as “admissions” of noncompliance without administrative review, and 3) unilaterally,  
25 without notice or due process, declaring Summit Lake Winery was no longer allowed in engage  
26 in winery uses and accessory uses conveyed with their small winery exemption and/or  
27 grandfathered to all existing wineries when the WDO was passed in 1990, and in which they had  
28 engaged for nearly four decades.

1           56.     Communications with the County also, in the alternative, substantially complied  
2 with government claims requirements: the various letters to County officials created “readily  
3 discernable” notice to the government entity, specific to the subject property entitlements, that  
4 asserted a compensable claim if the County did not recognize the entitlements. (*Green vs. State*  
5 *Center Community College Dist.* (1995) 34 Cal.App.4th 1348, 1358; *City of San Jose v. Superior*  
6 *Court* (1974) 12 Cal.3d 447, 456-57.) On its face, the County’s failure to acknowledge existing  
7 entitlements of a property, and pursue claims absent a legal basis, would be actionable and  
8 compensable.

9           57.     Further, futility exempts Summit Lake Winery from exhaustion of the  
10 administrative remedies doctrine. (*McKee v. Bell-Carter Olive Co.* (1986) 186 Cal.App.3d 1230,  
11 1245.) The County failed to pursue administrative procedures to properly consider Summit Lake  
12 Winery’s entitlements prior to revoking them and/or make them available to Summit Lake  
13 Winery to regulate away existing entitlements without hearing or opportunity to appeal. (See,  
14 e.g., *Felkay v. City of Santa Barbara* (2021) 62 Cal.App.5th 30, 40-41.)

15           58.     Summit Lake Winery has actively engaged with the County to find a workable  
16 solution, provided all requested documents, has expended substantial funds in furtherance of a  
17 solution and to avoid litigation.

18           59.     The County induced good faith reliance that the County would provide a path to  
19 resolution through the voluntary “compliance” program but has instead used the program to  
20 demand unsupportable, unlawful, and unworkable demand to continue *existing* operations.

21           60.     Summit Lake Winery relied on these promises in continuing to make adjustments,  
22 and artificially abate lawful behavior to appease county officials, even absent legal authority  
23 requiring same, to find a resolution.

24           61.     The County was not motivated to “gain compliance,” but rather force unlawful  
25 upgrades for existing entitlements the County knew or should have known Summit Lake Winery  
26 could not undertake.

27           62.     The policy undertaken at David Morrison’s request, and under his leadership and  
28 direction, was motivated by improper motive towards small winery exemption holders, in conflict

1 with legislative acknowledgements of the economic value of small winery exemptions and the  
2 need to employ procedures to ensure their continued existence, and in conflict with written  
3 procedures claiming an intent to ease challenges with and to small winery entitlements.

4 **FIRST CAUSE OF ACTION**

5 **(Due Process Violation of the Fourteenth Amendment of the U.S. Constitution and**  
6 **California Constitution – Against all Defendants – Cal. Const. Art. 1, § 7, Cal. Civ. Code**  
7 **§ 52.1, U.S. Const., I, XIV, 42 U.S.C. § 1983)**

8 52. Summit Lake Winery re-alleges and incorporates by reference all above  
9 paragraphs.

10 53. Section 1983 claims are not subject to claim procedures under the California  
11 Claims Act. “[T]he California remedy of recourse to the Tort Claims Act need not be first sought  
12 before a plaintiff is free to invoke the Civil Rights Act.” (*Williams v. Horvath* (1976) 16 Cal.3d  
13 834, 842.)

14 54. Local governmental entities can be sued directly under § 1983 for monetary,  
15 declaratory, or injunctive relief where the allegedly unconstitutional action implements or  
16 executes a policy statement, ordinance, regulation, or decision officially adopted; or was  
17 committed pursuant to a governmental custom. (*Zelig v. County of Los Angeles* (2002) 27 Cal.4th  
18 1112.)

19 55. “[A]n action for specific relief does not lose its exempt status solely because  
20 incidental money damages are sought.” (*Snipes v. City of Bakersfield* (1983) 145 Cal.App.3d  
21 861, 870.)

22 56. A citizen may hold a municipality liable if the citizen’s constitutional rights were  
23 violated as a result of an official policy or custom. (*See, Monell v. Dep’t of Social Serv.*  
24 (1978) 436 U.S. 658, 694 [holding that a municipality or local government may be held liable for  
25 constitutional violations under 42 U.S.C. § 1983.] 42 U.S.C. § 1983 (“Section 1983”) further  
26 provides that “[e]very person who, under color of any statute, ordinance, regulation, custom, or  
27 usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States . . . to  
28 the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall

1 be liable to the party injured in an action at law.” Enforcement that is unlawful, void, or against  
2 the public welfare are just a few examples of official acts that satisfy the *Monell* requirement.

3 57. An individual acting under color of state law, inclusive of Mr. Morrison and  
4 Ms. Robinson-Webb, are individually liable for federal and state due process violations. (*See,*  
5 *e.g., Hafer v. Melo* (1991) 502 U.S. 21.)

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

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

17 60. Similarly, the California Constitution also provides that “[a] person may not be  
18 deprived of life, liberty, or property of due process of law.” (Cal. Const. Art. 1, § 7.) Violations  
19 of Constitutional rights can be enforced against state actors for damages under the Bane Act. (Cal.  
20 Civ. Code § 52.1.)

21 61. Substantive due process prohibits the government from depriving an individual of  
22 life, liberty or property without a sufficient purpose. A law that is not sufficiently related to a  
23 legitimate government purpose is invalid because it is not law, but rather unlawful government  
24 coercion masquerading as law.

25 62. Enactment and enforcement of a void ordinance is unlawful. A municipal  
26 government may not enforce a void ordinance. In enacting or attempting to enforce void laws,  
27 Cross-Defendants have violated Summit Lake Winery’s federal and state due process rights.  
28

1           63.     There is no legitimate government purpose in prohibiting small wineries, vested  
2 pursuant to the small winery exemption from engaging in “uses” and “accessory uses” permitted  
3 to other wineries established prior to, concurrent with, and subsequent to, Summit Lake Winery.  
4 An ordinance granting small winery exemptions, such as Summit Lake Winery, fewer uses within  
5 the same zone for the same class, “winery,” is legally arbitrary. It is also a violation of local and  
6 state law regarding zoning uniformity. Any similar law, custom, or policy is void.

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

10          65.     Enforcement and/or enactment of an unconstitutional ordinance is unlawful. A  
11 municipal government may not enforce an unconstitutional ordinance. The County, in enacting or  
12 attempting to enforce unconstitutional laws, has violated Summit Lake Winery’s due process  
13 rights. For example, the County’s enactment or continued application of vague laws relating to  
14 “onsite consumption” and “tours and tastings” violates due process. Unconstitutional vagueness  
15 implicates dual concerns of fair notice of the line between lawful and unlawful conduct, and  
16 sufficiently explicit statutory limitations on the discretion of officials to avoid arbitrary and  
17 discriminatory enforcement. (*In re Scarpetti* (1981) 124 Cal.App.3d 434, 441.) The County’s  
18 attempt to prohibit conduct that the code does not properly define, or beyond statutory  
19 description, renders the ordinance unconstitutionally vague. For example, the County’s attempt to  
20 ostensibly prohibit “onsite consumption” as a “tasting” demonstrates a material notice issue or a  
21 policy to prohibit conduct not prohibited by the statute. Both are violations of due process.

22          66.     As set forth below, the County’s actions deliberately and intentionally targeted  
23 Summit Lake Winery to interfere with Summit Lake Winery’s business, contrary to Summit Lake  
24 Winery’s statutory exemptions, (*see*, Cal. Bus. & Prof. Code, § 23790; *see, also*, Napa County  
25 Code, §§ 18.32.010, 18.16.020, subd. H) and violate the procedural protections of the Due  
26 Process Clause. The County publicly acknowledges that some small winery exemptions have the  
27 permissions they deny at Summit Lake Winery, without rational – or any – explanation.  
28



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

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

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

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

9           71.     For example, California Business and Professions Code, section 23790 allows  
10 licensed businesses in place prior to municipal zoning laws to continue exercising their vested  
11 rights. It states in relevant part:

12                   No retail license shall be issued for any premises which are located  
13 in any territory where the exercise of the rights and privileges  
14 conferred by the license is contrary to a valid zoning ordinance of  
15 any county or city. **Premises which had been used in the exercise  
of those rights and privileges at a time prior to the effective date  
of the zoning ordinance may continue operation under the  
following conditions:**

- 16                   (a) The *premises retain the same type of retail liquor license* within  
17 a license classification.  
18                   (b) The licensed *premises are operated continuously* without  
substantial CHANGE in mode or character of operation.

19 (*Ibid.*, emphasis added.) Summit Lake Winery maintains vested rights that the County attempts to  
20 unlawfully restrain or eliminate, including, *inter alia*, retail sales of wine and onsite consumption  
21 thereof. Unlawful elimination of vested property rights is a due process violation.

22           72.     Summit Lake is a legal conforming use pursuant to the WDO. However, Napa  
23 County Code, § 18.32.010 (“Section 18.32.010”), titled “Legal Nonconformities—Definition,”  
24 provides as follows:

25                   Within the zoning districts established by this title, as it may be  
26 amended, there exist lots, structures and uses which were legal prior  
27 to the effective date of the provisions codified in this title or future  
28 amendments thereof, but which would be prohibited, regulated or  
restricted by the terms of such provisions on the effective date  
thereof. Such lots, structures and uses are herein called “legal  
nonconformities.” ***Legal nonconformities may be continued***

1 *notwithstanding the prohibition, regulation or restriction of those*  
2 *provisions subject to the provisions of this chapter or, in the case of*  
3 *signs, the provisions of Chapter 18.116.*

4 (*Ibid.*, emphasis added.) Even if Summit Lake Winery Property qualifies as a “legal  
5 nonconformity” and not a conforming legal use under Section 18.32.010, it would be entitled to all  
6 “uses” and “accessory uses” granted to existing wineries upon adoption of the WDO. NCC  
7 18.104.040. Any attempt to abate those rights, as the County attempts here, is a violation of due  
8 process. Property entitlements are property interests.

9 73. Napa County enacted Code section 18.08.600, titled “Small Winery,” after  
10 Summit Lake Winery acquired the 1984 Small Winery Use Permit Exemption. It states the  
11 following:

12 “Small winery” means an existing winery with a maximum annual  
13 production capacity of twenty thousand gallons of wine that meets  
14 the following conditions:

- 15 A. A small winery shall be located on a parcel of land four acres  
16 or larger in size.
- 17 B. Small winery buildings and related facilities shall not be  
18 located in any county-designated environmentally-sensitive  
19 area.
- 20 C. *A small winery does not conduct public tours, provide wine*  
21 *tastings,<sup>1</sup> sell wine-related items or hold social events of a*  
22 *public nature.*
- 23 D. A small winery shall meet all requirements of the county’s  
24 Design Criteria for Small Winery.

25 (*Ibid.*, emphasis added.) The definition of “small winery” does not state that “small wineries” are  
26 prohibited from the “use” and “accessory uses” that are granted to other “wineries” through other  
27 legislation codified after enactment of the WDO. The definition of “small winery” also cannot be  
28 the complete definition of all small winery uses and accessory uses. For example, the definition  
says nothing about winery *operations*, such as fermenting, bottling, or crushing. There is no  
veritable dispute that small wineries can engage in these “uses” or “operations.” The small winery  
exemption issued to the property in 1984 clearly, on its face, and by necessary legal operation, has

26 <sup>1</sup> As discussed below, California law defines a “wine tasting” as a “presentation of samples of one  
27 or more wines, representing one or more wineries or industry labels, to a group of consumers *for*  
28 *the purpose of acquainting the tasters with the characteristics of the wine or wines tasted.*”  
(Cal. Code Regs., tit. 4, § 53, emphasis added.) NCC does not define the conduct of “tasting”  
beyond relation to “with” or “without” prior appointment.

1 more “uses” than those enumerated under the definition of “small winery.” Small wineries are  
2 “wineries” by NCC definition, which now is only one category of “zoning” despite winery size.  
3 Exemptions are not the only “small wineries.” The operation and force of law of the above  
4 ordinance is vague. The provision is also in conflict with other sections of the code granting rights  
5 this provision purports to prohibit at “small wineries.” See, e.g., NCC 18.08.040(H)(2). It cannot  
6 be legally read to articulate the full scope of small winery exemption uses or uses authorized at  
7 Summit Lake Winery. Because it is unintelligible, it is void. It is also being used to prohibit lawful  
8 conduct. (See, e.g., NCC § 18.08.040 [definition of agriculture includes sales and marketing at  
9 small winery exemptions].)

10 74. Where the definition of “small winery” is interpreted to restrict uses to Summit  
11 Lake Winery it is inconsistent with entitlements at other wineries in the same zone, even in some  
12 cases that were also established prior to 1990, the interpretation is legally void as  
13 inconsistent with due process, equal protection, and state law requiring zoning uniformity.  
14 Enforcement of void laws violates due process.

15 75. Small winery exemptions engaged in uses *not* prohibited prior to 1990. These uses,  
16 zoned as permissible uses and accessory uses for wineries, became vested rights for pre-WDO  
17 wineries; they were not defined, prohibited and/or regulated prior to enactment of the WDO, and  
18 only regulated *new* winery-developments without vested entitlements. Any attempt to now revoke  
19 or diminish these vested rights without compensation or notice is a violation of due process.

20 76. Mr. Morrison also advised that Summit Lake Winery that they could seek  
21 acknowledgement of existing rights if they submitted applications by certain deadlines. The  
22 County has refused to acknowledge these rights without authority but has also penalized Summit  
23 Lake Winery for complying and working in good faith. Enforcement inconsistent with reliance on  
24 government declaration of legal conduct is a violation of due process.

25 77. Section 18.20.020, titled “Uses Allowed Without A Use Permit,” which was  
26 enacted after Summit Lake Winery received the 1984 Small Winery Use Permit Exemption,  
27 provides in relevant part:  
28

1 The following uses shall be allowed in all AW districts without use  
2 permits:

3 A. Agriculture; . . .

4 H. Small wineries which were issued a certificate of exemption  
5 prior to the date of adoption of the ordinance codified in this  
6 section, and used the certificate in the manner set forth in Section  
7 18.124.080<sup>2</sup> before the effective date of the ordinance codified in  
8 this section in conformance with the applicable certificate of  
9 exemption, Section 18.08.600 of this code, and any resolution  
10 adopted pursuant thereto . . .

11 Because Summit Lake Winery’s Property is a small winery, which was issued a certificate  
12 of exemption prior to the date Section 18.20.020(H) was adopted, Summit Lake Winery could  
13 continue its use on the Property, and all accessory uses permitted with that primary use, without  
14 securing additional use permits.

15 78. Section 18.20.020(H) does not specify what uses small wineries may make of their  
16 exemptions, nor does it exempt small winery exemptions from the general class of “winery”  
17 applicable to all other pre-WDO and post-WDO wineries in the AW zoning district.

18 79. The “uses” and “accessory uses” permitted to *all* “wineries” pursuant to NCC  
19 § 18.20.030(g), (h) include uses that the County attempts to prohibit as to Summit Lake Winery.  
20 Per NCC § 18.104.040, accessory uses derive from primary uses, **without need for further**  
21 **application**, or separate application, and all wineries are granted the uses enumerated in  
22 18.16.030(g), (h) without any express exception or exemption. These uses and accessory uses  
23 apply to Summit Lake Winery, as they do and must to all existing legal wineries.

24 80. There are material inconsistencies between the County’s interpretation of  
25 exemptions, section 18.08.600, and various provisions of the code.

26 81. Napa County Code, section 18.104.255 attempts to reconcile some material  
27 inconsistencies between Napa County Code, section 18.08.620 (Tours and Tastings) and the  
28 exemptions. It permits wineries with exemptions to continue tours and tastings so long as they  
29 have (1) continuously offered tours and tastings since at least December 31, 2000, and (2) made

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<sup>2</sup> Section 18.124.080 addresses the automatic expiration of use permits.

1 at least 10% of their facility’s annual approved production capacity in at least one year before  
2 December 31, 2001.

3 82. “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 83. In the present case, the County ordinances and NCC sections, as applied by the  
16 County, deprive Summit Lake Winery of its constitutional rights under the First and Fourteenth  
17 Amendments of the U.S. Constitution as well as Summit Lake Winery’s rights under the  
18 California Constitution. These rights include the right to vested property entitlements, the right to  
19 market and advertise, and the right to operate a lawful business.

20 84. 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 85. No County provision addresses the material inconsistencies between  
24 Section 18.20.020(H) and the exemptions as to sales of wine-related items and social events of a  
25 public nature.

26 86. The portion of Section 18.20.020(H) that states “and used the certificate in the  
27 manner set forth in Section 18.124.080 before the effective date of the ordinance codified in this  
28 section in conformance with the applicable certificate of exemption, section 18.08.600(C) of this

1 code, and any resolution adopted pursuant thereto” is unconstitutionally vague. Summit Lake  
2 Winery does not understand this rule, which is objectively unintelligible. The WDO altered the  
3 definition of winery, and Summit Lake Winery is a lawful winery. The NCC grants accessory  
4 winery rights to small winery exemptions including marketing and sales, as an agricultural use.  
5 18.08.040. On its face and as applied, this violates the Due Process Clause of the California and  
6 U.S. Constitutions. (Cal. Const. Art. 1, § 7 and Art. IV, § 16; U.S. Const. Amend. XIV.)

7 87. Napa County Code section 18.08.620 defines “Tours and Tastings” as “tours of the  
8 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 . . .” State law allows wine  
10 “consumption” at winery premises. (B&P 23358.) The Napa County winery database has  
11 different categories of “tastings” listed, including “by appointment” and public. Pre-WDO small  
12 winery use permits distinguish between “public” or “private” tastings, yet these terms are not  
13 defined. This provision is unconstitutionally void for vagueness.

14 88. Napa County’s prohibition on marketing events or “public events of a social  
15 nature” are void for vagueness.

16 89. California Business and Professions Code, section 23358, subdivision (a),  
17 commonly called the “Picnic Bill,” allows wineries with a Type 02 Winegrower’s license, like  
18 Summit Lake Winery, to sell bottles of wine to consumers for consumption on the winegrowers’  
19 premises. Section 23358, subdivision (e) further provides that counties exercising land use  
20 regulatory authority can restrict, but not eliminate, the onsite retail sale and consumption  
21 privileges. Insofar as Napa states that 18.08.020 conflicts with this law, and prohibits onsite  
22 consumption as a “tasting,” it is void as preempted.

23 90. California Business and Professions Code, section 23356.1 further authorizes  
24 licensed winegrowers to conduct wine tastings of wine produced for, or bottled by, or produced  
25 and packaged for, the winegrower. The wine tastings can be on or off the winegrower’s licensed  
26 premises. California law defines a “wine tasting” as a “presentation of samples of one or more  
27 wines, representing one or more wineries or industry labels, to a group of consumers *for the*  
28

1 ***purpose of acquainting the tasters with the characteristics of the wine or wines tasted.***” (Cal.  
2 Code Regs., tit. 4, § 53, emphasis added.)

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

5 92. On its face and as applied, Napa County Code, section 18.08.600(C) violates the  
6 Due Process Clause of the California and U.S. Constitutions because it attempts to prohibit lawful  
7 conduct expressly authorized by county and state law. (Cal. Const. Art. 1, § 7 and Art. IV, § 16;  
8 U.S. Const. Amend. XIV.) It also violates uniformity in zoning, equal protection, and is  
9 unconstitutionally vague. As an invalid law, enforcement is a violation of due process.

10 93. “Although zoning officials have broad discretion, they may not act unreasonably  
11 or arbitrarily.” (*Scarpetti, supra*, 124 Cal.App.3d at 441; see also *Carlin v. City of Palm Springs*  
12 (1971) 14 Cal.App.3d 706, 715.) Prohibiting uses and accessory uses that are lawful, deemed  
13 economically critical, and granted to all other wineries, is arbitrary.

14 94. Government Code section 65852, states that all zoning regulations “shall be  
15 uniform for each class or kind of... use of land throughout each zone...” The County’s  
16 ordinances, regulations and/or policies declaring or attempting to establish distinct “uses” and  
17 “accessory uses” between existing wineries are void under state law.

18 95. NCC section 18.08.620, if read and enforced as prohibiting “tours and tastings” is  
19 void as to small winery exemptions, including Summit Lake Winery, because it would prohibit  
20 conduct made lawful at wineries upon enactment of the WDO.

21 96. NCC section 18.08.370, if used to prohibit “marketing of wine” at Summit Lake  
22 Winery, if read and enforced as prohibiting “marketing of wine” is void as to small winery  
23 exemptions, including Summit Lake Winery, because it would prohibit conduct made lawful at  
24 wineries upon enactment of the WDO. Further, it violates the First Amendment, equal protection,  
25 and is thus unconstitutional and void.

26 97. In requesting application for accessory uses predicated on road improvements  
27 without nexus to the existing uses, knowing these improvements were unnecessary but also  
28

1 economically not feasible, the County and PBES created an inability to comply with the law, in  
2 violation of due process.

3 98. As to David Morrison and Ms. Robinson-Webb, as individuals:

4 a. Abused their enforcement discretion in pursuing the actions in this case  
5 through active or indifferent oversight of the code enforcement actions undertaken in this case.  
6 (*See, e.g., Beames v. City of Visalia* (2019) 43 Cal.App.5th 741.)

7 b. Violated Summit Lake Winery’s due process by endorsing, permitting,  
8 being indifferent to, or requiring use of unconstitutional or void ordinances to proscribe lawful  
9 conduct.

10 c. Acted, or failed to act, in a manner that resulted in deliberately indifference  
11 to Summit Lake Winery’s due process and equal protection rights relating to their lawful business  
12 operation and vested property rights.

13 d. Did not have a rational basis for the difference in treatment.

14 e. Were motivated by malicious and bad faith intent.

15 f. Abused their enforcement discretion

16 g. Failed to properly train law enforcement staff in interpreting the codes that  
17 have enormous impacts on business operations and livelihoods of those involved

18 h. Created reasonable reliance on interpretation of local ordinances.

19 i. Violated Summit Lake Winery’s due process by failing to train code  
20 enforcement staff relating, inter alia, lawful interpretation of local ordinances, code provisions,  
21 and property entitlements of small winery exemptions.

22 **SECOND CAUSE OF ACTION**  
23 **(Declaratory Relief—Against All Defendants)**

24 109. Summit Lake Winery re-alleges and incorporates by reference all above  
25 paragraphs.

26 110. This Court has jurisdiction to hear a case seeking declaratory or injunctive relief  
27 against a governmental entity. (*See, e.g., Ex parte Young* (1908) 209 U.S. 123, 148 [holding that  
28 the lower court had jurisdiction to issue declaratory relief and “enjoin the railroad company from



1 putting them in force, and that it also had power, while the inquiry was pending, to grant a  
2 temporary injunction to the same effect”]; *see, also, Moore v. Urquhart* (9th Cir. 2018) 899 F.3d  
3 1094, 1103 [noting that “Plaintiffs would be required to proceed under 42 U.S.C. § 1983 if they  
4 sought to recover money damages[, b]ut they are seeking only declaratory and injunctive relief  
5 against the Sheriff in his official capacity—a declaration that § 375 is facially unconstitutional,”  
6 so “[t]o obtain that relief, plaintiffs do not need a statutory cause of action” but rather “can rely on  
7 the judge-made cause of action recognized in *Ex parte Young* (1908)209 U.S. 123 , which permits  
8 courts of equity to enjoin enforcement of state statutes that violate the Constitution”]; *Koala v.*  
9 *Khosla* (9th Cir. 2019) 931 F.3d 887, 895 [“In determining whether the doctrine of *Ex parte*  
10 *Young* avoids an Eleventh Amendment bar to suit, a court need only conduct a straightforward  
11 inquiry into whether [the] complaint alleges an ongoing violation of federal law and seeks relief  
12 properly characterized as prospective.”], internal quotations omitted; *Jamul Action Comm. v.*  
13 *Simermeyer* (9th Cir. 2020) 974 F.3d 984, 994, *cert. denied sub nom. Comm. v. Simermeyer*  
14 (Oct. 4, 2021) 211 L. Ed. 2d 17, *reh'g denied sub nom. Jamul Action Comm. v. Simermeyer*  
15 (Dec. 6, 2021) 211 L. Ed. 2d 391 [“For *Ex parte Young* to apply, a plaintiff must point to  
16 threatened or ongoing unlawful conduct by a particular governmental officer. The doctrine does  
17 not allow a plaintiff to circumvent sovereign immunity by naming some arbitrarily chosen  
18 governmental officer or an officer with only general responsibility for governmental policy.”].)

19 111. The 1984 Small Winery Use Permit Exemption entitles Summit Lake Winery to  
20 produce up to 12,000 gallons of wine, operate a winery business, and engage in primary and  
21 accessory uses of the vineyard and winery consistent with all wineries in the AW (and AP).

22 112. All licensed wineries, with zoning permission in the primary use of “winery,”  
23 including Summit Lake Winery, can engage in accessory uses of their properties. Napa County  
24 Code § 18.104.040 states that “[u]ses allowed without a use permit or uses permitted upon grant  
25 of a use permit shall include any accessory use.”

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

27 *[A]ny use subordinate to the main use and customarily a part*  
28 *thereof. An accessory use must be clearly incidental, related and*

1 subordinate to the main use, reasonably compatible with the other  
2 principal uses in the zoning district and with the intent of the  
3 zoning district, and cannot change the character of the main use.  
4 Unless provided otherwise in this title, accessory uses may be  
5 conducted in the primary structure or in structures other than the  
6 primary structure. Where the zoning regulations applicable to a  
7 zoning district specifically identify the accessory uses which are  
8 permitted in conjunction with a primary use in that zoning district,  
9 no other accessory uses in conjunction with the primary use will be  
10 permitted in that zoning district. Structures constituting an  
11 accessory use that are related to a winery are further limited to the  
12 extent provided by Section 18.104.200.

13 (*Ibid*, emphasis added.)

14 114. Summit Lake Winery is informed and believes that Napa County considered at  
15 least some form of “tours and tastings” and wine “marketing” lawful uses not prohibited or  
16 regulated through use permits or use permit exemptions when it issued the 1984 Small Winery  
17 Use Exemption Permit.

18 115. Summit Lake Winery is informed and believes that uses and accessory uses  
19 regulated for the first time upon adoption of the WDO were grandfathered/vested to small winery  
20 permit exemptions.

21 116. Actual controversies now exist, as described below. Summit Lake Winery  
22 respectfully requests that the Court issue these declaratory judgments.

23 a. An actual controversy exists as to the scope of Summit Lake Winery’s  
24 rights under the 1984 Small Winery Use Permit Exemption, including whether customers can  
25 consume wine on the property. Summit Lake Winery respectfully requests that the Court issue a  
26 declaratory judgment about the scope of its rights under the 1984 Small Winery Use Permit  
27 Exemption.

28 b. If the Court determines Napa County Code § 18.20.020(H) does apply to  
Summit Lake Winery, then an actual controversy now exists as to whether Napa County Code  
§ 18.20.020(H) is unconstitutionally vague and ambiguous, violates uniformity in zoning, is  
preempted and/or conflicts with other provisions in the County code and is thus void. Summit  
Lake Winery respectfully requests that the Court issue a declaratory judgment finding Napa

1 County Code § 18.20.020(H) violates the substantive Due Process guarantees of the California  
2 and US Constitutions.

3 c. An actual controversy exists as to whether Napa County Code  
4 § 18.08.600(C) is valid, or how it operates at law, post enactment of the WDO. Summit Lake  
5 Winery respectfully requests that the Court issue a declaratory judgment finding Napa County  
6 Code § 18.08.600(C) does not apply to Summit Lake Winery or, in the alternative, that it violates  
7 state law requiring uniformity of zoning, is inconsistent with the provisions permitting tours and  
8 tastings and marketing of wine, is preempted by state law, and does not lawfully prohibit statutory  
9 uses and accessory uses of other wineries, in the same zone, as to Summit Lake Winery.

10 d. If the Court determines Napa County Code § 18.08.600(C) does apply to  
11 Summit Lake Winery, then an actual controversy as to whether it is unconstitutionally vague and  
12 ambiguous as to “public tours,” “wine tasting” and “events of a public nature.” Summit Lake  
13 Winery respectfully requests that the Court issue a declaratory judgment finding Napa County  
14 Code § 18.08.600(C) violates the substantive Due Process guarantees of the California and US  
15 Constitutions.

16 e. If the Court determines Napa County Code § 18.08.600(C) does apply to  
17 Summit Lake Winery then an actual controversy as to whether it is preempted by California  
18 Constitution Article XX and California Business and Professions Code sections 23356.1, 23358  
19 and 23790. Summit Lake Winery respectfully requests that the Court issue a declaratory  
20 judgment finding Napa County Code § 18.08.600(C) is preempted by State law.

21 f. An actual controversy exists as to the scope of Summit Lake Winery’s  
22 constitutional rights to speak about, advertise and market its business. Summit Lake Winery  
23 respectfully requests that the Court issue a declaratory judgment finding the County violated its  
24 constitutional rights to freedom of speech.

25 g. An actual controversy exists as to whether various ordinances used by the  
26 County to prohibit conduct are constitutional, preempted, or void as vague. Summit Lake Winery  
27 respectfully requests this Court to determine the legality of all ordinances attempting to regulate  
28

1 marketing, tours and tastings, retail wine sales, and advise how they govern winery operations of  
2 wineries predating enactment thereof.

3 h. An actual controversy exists as to whether the actions by Napa County  
4 described herein amount to ultra vires acts, including Napa County’s demands that Summit Lake  
5 Winery cease allowing customers to consume wine on the premises. Summit Lake Winery  
6 respectfully requests that the Court issue a declaratory judgment finding these acts to be ultra  
7 vires, and thus void and unenforceable.

8 **THIRD CAUSE OF ACTION**  
9 **(Violation of Equal Protection Clauses of California and US Constitution – Against All**  
10 **Defendants – Cal. Civ. Code § 52.1, Cal. Const. art 1, § 7, 42 U.S.C. § 1983)**

11 117. Summit Lake Winery re-alleges and incorporates by reference all above  
12 paragraphs.

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

17 119. The California Constitution, Article 1, § 7(a) states “a person may not be ...  
18 denied equal protection of the laws.”

19 120. The California Constitution, Article 1, § 7(b) states that a citizen or class of  
20 citizens may not be granted privileges or immunities not granted on the same terms to all citizens.”

21 121. The Bane Act prohibits individuals operating under color of state law from  
22 threatening, intimidating, or coercing interference with the exercise or enjoyment by any  
23 individual rights secured by the California Constitution or laws of the United States. Cal. Civ.  
24 Code § 52.1, 52.)

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

27 123. Rezoning, as occurred upon enactment of the WDO, placed all existing winery  
28 parcels within a single category of use, and wineries, and within the same zone, the agricultural

1 watershed, must subject to the same zoning regulations and allowed all uses and accessory uses  
2 derivative of the primary use as a winery. (*See, e.g., Neighbors in Support of Appropriate Land*  
3 *Use v. County of Tuolumne* (2007) 157 Cal. App. 4th 997, 1009-1010.)

4 124. NCC § 18.104.040 states that uses allowed without a use permit or use permitted  
5 upon grant of a use permit “shall include any accessory use.”

6 125. NCC § 18.20.020 states that wineries established without a use permit prior to  
7 July 31, 1974 (subd. (g)), small wineries issued a certificate of exemption prior to 1990  
8 (subd. (h)), and wineries and related accessory uses that have been authorized by a use permit  
9 (subd. (i)) are permitted to operate in the agricultural watershed without a use permit.

10 126. NCC § 18.08.640 defines “winery” as an agricultural processing facility used for  
11 the fermenting of grape juice into wine. This definition was adopted pursuant to the WDO in  
12 1990. Small winery exemptions, pre-1974 wineries established without a use permit, and wineries  
13 adopted before and after 1990 with a use permit, are all classified as “wineries” under NCC  
14 § 18.08.640.<sup>3</sup>

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

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

25 129. The following “accessory uses” are allowed at a winery: (1) **tours and tastings**  
26 **and (2) sale of wine related products.**

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           130. Marketing and sales and “accessory” winery uses are allowed at small winery  
2 exemptions as agricultural uses allowed without a permit. NCC § 18.08.040.

3           131. Defendant the County violates the Equal Protection provisions of the state and  
4 federal constitutions when it proscribes different “uses” and “accessory uses” to land zoned as a  
5 “winery” within the same zone.

6           132. Defendant the County was informed upon adoption of the WDO by then-County  
7 Counsel that tours and tastings, picnicking, marketing of wine, and any other use or accessory use  
8 *not prohibited* prior to adoption of the WDO, but *allowed* as a public “use” and “accessory uses”  
9 of a “winery” under the new WDO definition of “winery,” would be “grandfathered in” to all  
10 existing wineries, including small winery exemptions, whether or not they were obtained by use  
11 permit, use permit exemption, or simply through establish use prior to regulation.

12           133. Summit Lake Winery is informed and believes that the “uses” of “tours and  
13 tastings” and “marketing of wine,” *inter alia*, were not defined “uses” prior to adoption of the  
14 WDO and existed in some form and practice at all or nearly all wineries prior to regulation.

15           134. Prior to adopting the WDO, Cross-Defendant the County knew that it could not  
16 prohibit any existing winery, including small winery exemptions, to apply for “uses” that would  
17 be lawful winery “uses” or “accessory” for all “wineries” upon adoption of the WDO. This lawful  
18 conduct could only be regulated as to *new* conditional winery use permits post-dating the WDO.

19           135. Small winery exemptions are not limited to specific use and accessory uses of the  
20 specified facility prior to enactment of the WDO. Uniformity in zoning requires all uses and  
21 accessory uses that remain lawful uses at wineries be allowed at all wineries, including any  
22 winery prior to enactment of the WDO.

23           136. Cross-Defendant the County’s official policy that small winery exemptions must  
24 apply for a “new” permit to avail of “uses” and “accessory uses” that were granted to all pre-  
25 WDO wineries upon adoption of the WDO, violates Napa County’s Ordinance 18.104.040, state  
26 zoning laws, and provides some pre-WDO wineries and post-WDO wineries with privileges  
27 denied to Summit Lake Winery, in violation of the Equal Protection provisions of the state and  
28 federal constitutions.

1           137. Napa County Ordinance 18.08.600(C), on its face and as applied, violates the  
2 Equal Protection clause of the California and US Constitutions. (Cal. Const. Art. 1, §7 and  
3 Art. IV, § 16; US Const. Amend. XIV.)

4           a. Napa County Ordinance 18.08.600(C), on its face and as applied, creates at  
5 least two classes of licensed wineries: small wineries and other wineries although the class of  
6 “winery” is one-class post-WDO.

7           b. Napa County Ordinance 18.08.600(C), on its face and as applied,  
8 disadvantages small wineries, declared important businesses in the County, by prohibiting them  
9 from engaging in tours, wine tastings, sales of wine-related items and hosting of public events,  
10 which are designated by statute as critical economic functions of all wineries.

11           c. Napa County Ordinance 18.20.020(H), on its face and as applied, violates  
12 the Equal Protection clause of the California and US Constitutions. (Cal. Const. Art. 1, § 7 and  
13 Art. IV, § 16; US Const. Amend. XIV.)

14           d. Napa County Ordinance 18.20.020(H), on its face and as applied, creates at  
15 least two classes of licensed small wineries: small wineries with use permits and wineries with  
16 small winery use permit exemptions although the class of “winery” is one-class post-WDO.

17           e. Napa County Ordinance 18.20.020(H), on its face and as applied,  
18 disadvantages wineries with small winery use permit exemptions.

19           f. The County recognizes tasting and marketing rights at some pre-WDO  
20 wineries, but not others; thus, it is untrue that the stated provision prohibits these uses, but how  
21 the County designates whom and how these uses may be utilized in a lawful winery operation is  
22 arbitrary.

23           138. Napa County Ordinance 18.20.030(G), on its face and as applied, violates the  
24 Equal Protection clause of the California and US Constitutions. (Cal. Const. Art. 1, § 7 and  
25 Art. IV, § 16; US Const. Amend. XIV.)  
26  
27  
28

1 a. Napa County Ordinance 18.20.030(G) allows wineries with a use permit to  
2 engage in “marketing of wine” as the term is defined in Napa County Ordinance 18.08.370<sup>4</sup>, but  
3 does not state whether wineries with exemptions may market wine (or how).

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

8 139. Napa County Ordinance 18.20.030(G), on its face and as applied, disadvantages  
9 wineries with small winery use permit exemptions.

10 140. By ordering Summit Lake Winery not to “market” its licensed wine business, or  
11 conduct “tours and tastings” short of application for a “new” permit for the *primary* use as  
12 winery, which it already is, Napa County singled out Summit Lake Winery, penalized it and  
13 treated it differently from other similarly situated wineries. Summit Lake Winery has a  
14 fundamental, vested right to speak and publish statements about its wine and winery.

15 141. The County has singled out Summit Lake Winery to be specifically isolated from  
16 its speech, due process and equal protection rights.

17 142. The County has no rational basis for singling Summit Lake Winery out for lawful  
18 uses 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 California Code of Civil Procedure, section 1021.5, given this is a matter of substantial public  
2 interest.

3 5. That the Court issue punitive damages based on David Morrison and  
4 Ms. Robinson-Webb's malicious intent to deprive Summit Lake Winery of due process and  
5 vested property rights, as evidenced by unequal treatment and discriminatory animus to Summit  
6 Lak Winery, as a unique class of small winery exemption holders and a class of one relevant to  
7 specific due processes violations unique to Summit Lake Winery, pursuant to 42 U.S.C.  
8 section 1988 and Cal. Civ. Code §§ 52.1 and 52.

9 6. That the Court issue a Declaratory Judgment, determining:

10 a. The scope of Summit Lake Winery's rights under the 1984 Small Winery  
11 Use Permit Exception, including a judgment that (1) Summit Lake Winery can sell wine to  
12 consumers from the premise and (2) Summit Lake Winery's consumers can drink and taste those  
13 bottles of wine on the Property;

14 b. All uses and accessory uses of wineries permitted under the NCC apply  
15 uniformly to Summit Lake Winery

16 c. All winery uses and accessory uses were vested to the small winery  
17 exemptions, including one not "express" in the exemption;

18 d. Napa County Code, section 18.20.020(H) violates the substantive Due  
19 Process guarantees of the California and U.S. Constitutions;

20 e. Napa County Code, section 18.08.600(C) violates the Due Process Clause  
21 of the California and U.S. Constitutions;

22 f. Napa County Code, section 18.08.600(C) is preempted by state law;

23 g. Napa County's regulations express an implied attempting to regulate tours  
24 and tastings, retail wine sales, and marketing of wine are preempted by state law and/or are void  
25 for vagueness.

26 h. Napa County's demands that Summit Lake Winery cease (1) selling wine,  
27 (2) marketing its wine, and (3) allowing retail customers to consume wine on the premises  
28 without further application were ultra vires acts, and thus, void and unenforceable.

1           7.       That Summit Lake Winery be awarded such other relief as the Court deems just  
2 and proper.

3  
4 DATED: September 8, 2023

BUCHALTER  
A Professional Corporation

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7 By: \_\_\_\_\_  
KATHARINE H. FALACE  
Attorneys for Intervenor  
SUMMIT LAKE VINEYARDS &  
WINERY, LLC

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