

FILED

NOV 18 2022

Clerk of the Napa Superior Court

By AN Deputy

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LP, and HOOPES VINEYARD, LLC,
7 LINDSAY BLAIR HOOPES

8 SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF NAPA

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

12 Plaintiffs,

13 v.

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

16 Defendants.

CASE NO. 22CV001262

^{CPS}
[PROPOSED] ORDER

Hearing Date: 11/17/22

Time: 1:30 P.M.

Dept.: A

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19 Plaintiffs Napa County and the People of the State of California (collectively, "Plaintiffs")
20 apply, pursuant to Code of Civil Procedure sections 526 and 527, for (1) a temporary restraining
21 order ("TRO") restraining and enjoining Defendants Hoopes Family Winery Partners, LP, Hoopes
22 Vineyard, LLC, and Lindsay Blair Hoopes (collectively, "Defendants") from engaging in
23 commercial uses of the property located at 6204 Washington Street ("Property") beyond
24 winemaking and selling the resulting wine, and (2) for an order Defendants to show cause why they
25 should not be preliminarily enjoined from that conduct.

26 On November 3, 2022, the Court heard the matter, granted a continuance upon Defendants'
27 counsel's request, and allowed further briefing by the parties. (11/3/11 Minute Order.) The Court

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[PROPOSED] ORDER
CASE NO. 22CV001262

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Napa Superior Court

1 specially set the matter for hearing on the preliminary injunction for November 17, 2022. (*Ibid.*)
2 The Court advised it would post a tentative ruling on November 16, 2022, and instructed the parties
3 to keep this in mind when filing their briefs.

4 On November 14, 2022, the Court denied Plaintiffs' request for a TRO. (11/14/22 Order.)

5 On November 16, 2022, the Court posted a Tentative Ruling. Pursuant to Local Rule 2.9:

6 The court has adopted a tentative ruling system in civil law and motion and probate
7 matters. Tentative rulings will be available no later than 3:00 p.m. on the court day before
8 the scheduled hearing, and may be obtained on the court's website at
9 <http://www.napa.courts.ca.gov>. Rulings may also be obtained by calling (707) 299-1270.
10 Oral argument on matters for which a tentative ruling has been posted will be permitted
11 **only** if a party notifies all other parties and the court by 4:00 p.m. on the court day before
12 the hearing that the party intends to appear and argue. Notice to the court **shall** be given
13 by calling (707) 299-1270 (when recording begins, press "0"). If notice of intent to appear
14 has not been given to all parties and to the court, **no oral argument will be permitted
15 and the tentative ruling will become the court's ruling.** If no tentative ruling is posted
16 on a particular matter, or if the tentative ruling indicates that an appearance is required,
17 then the parties must appear at the hearing. (Emphasis added.)

18 No notice was given to the Court that either party intended to contest the tentative ruling
19 prior to 4:00 p.m. on the court day before the hearing.

20 ~~Counsel for Defendants wrote to Plaintiffs' counsel at 4:34 p.m. confirming that
21 Defendants' counsel had received no notice from Plaintiffs' counsel and, accordingly, they would
22 not appear.~~

23 Only after Defendants' counsel sent the confirming email, and only after the notice period
24 expired, did Plaintiffs' Counsel respond: "We have been reviewing the tentative and it is apparent
25 that the tentative ruling does not take into account any of our papers filed in reply today before
26 noon." Defendants disagreed and indicated the tentative order was based on all moving papers, no
27 notice was given to Defendants or the Court to appear, so no attendance was required and the
28 Tentative Ruling becomes the Order of the Court.

29 Plaintiffs' counsel's email to Defendants that they would contact the Court after the notice
30 deadline did not comply with the Local Rules. ("We will contact the Court in the morning to
31 confirm whether the hearing will go forward and, if so, we will let your office know so that you
32 can attend and voice your opposition based on the Local Rules. If we end up looking at a

1 ~~continuance, we know that you are out next week, so it would not be until you are available again.~~
2 ~~If the Court stands on strict compliance with the Local Rules, then so be it; we'll do what we have~~
3 ~~to do thereafter.”) (Exhibit A). ~~The briefing schedule was expedited in this matter pursuant to~~~~
4 ~~Plaintiffs’ request.~~

5 The Court, having read all of the extensive briefing submitted by both parties, and no notice
6 to contest the Tentative Ruling pursuant to Local Rule 2.9 having been given, hereby adopts its
7 Tentative Ruling and makes it the ruling of the Court:

8 **PRELIMINARY INJUNCTION**

9 **TENTATIVE RULING:** Plaintiffs’ request for a preliminary injunction is DENIED
10 WITHOUT PREJUDICE.

11 **I. PROCEDURAL MATTERS**

12 Plaintiffs Napa County and the People of the State of California (collectively, “Plaintiffs”) apply, pursuant to Code of Civil Procedure sections 526 and 527, for (1) a temporary restraining order (“TRO”) restraining and enjoining Defendants Hoopes Family Winery Partners, LP, Hoopes Vineyard, LLC, and Lindsay Blair Hoopes (collectively, “Defendants”) from engaging in commercial uses of the property located at 6204 Washington Street (“Property”) beyond winemaking and selling the resulting wine, and (2) an order for Defendants to show cause why they should not be preliminarily enjoined from that conduct.

16 On November 3, 2022, the Court heard the matter, granted a continuance upon Defendants’ counsel’s request, and allowed further briefing by the parties. (11/3/22 Minute Order.) The Court specially set the matter for hearing on the preliminary injunction. (*Ibid.*) On November 14, 2022, the Court denied Plaintiffs’ request for a TRO. (11/14/22 Order.)

19 Defendants’ Request for Judicial Notice of the Small Winery Use Permit Exemption (Exhibit A) and the Statement of Information (Exhibit B) is GRANTED.

21 **II. LEGAL STANDARD**

22 “A preliminary injunction may be granted at any time before judgment upon a verified complaint, or upon affidavits if the complaint in the one case, or the affidavits in the other, show satisfactorily that sufficient grounds exist therefor.” (Code Civ. Proc., § 527, subd. (a).)

24 “[T]he question whether a preliminary injunction should be granted involves two interrelated factors: (1) the likelihood that the plaintiff will prevail on the merits; and (2) the relative balance of harms that is likely to result from the granting or denial of interim injunctive relief.” (*Jay Bharat Developers, Inc. v. Minidis* (2008) 167 Cal.App.4th 437, 443 (quoting *White v. Davis* (2003) 30 Cal.4th 528, 554).) The burden is on the plaintiff to show all elements necessary to support issuance. (*O’Connell v. Sup. Ct.* (2006) 141 Cal.App.4th 1452, 1481;

1 *Citizens for Better Streets v. Bd. of Supervisors* (2004) 117 Cal.App.4th 1, 6.) The court's
2 determination must be guided by a mix of the potential-merit and interim-harm factors; the
3 greater plaintiffs' showing on one, the less must be shown on the other. (*Butt v. State of*
4 *California* (1992) 4 Cal.4th 668, 678; *King v. Meese* (1987) 43 Cal.3d 1217, 1226-28 [held: court
has discretion to issue preliminary injunction where plaintiff demonstrates high likelihood of
success on merits even if plaintiff unable to show balance of harm tips in his or her favor].)

5 Preliminary injunctive relief requires the use of competent evidence to create a sufficient
6 factual showing on the grounds for relief. (See *Ancora-Citronelle Corp. v. Green* (1974) 41
7 Cal.App.3d 146,150.) "The trial court is the judge of the credibility of the affidavits filed in
8 support of the application for preliminary injunction and it is the court's province to resolve
9 conflicts." (*Whyte v. Schlage Lock Co.* (2002) 101 Cal.App.4th 1443, 1450 (internal quotations
omitted).) A trial court is to exercise its discretion "in favor of the party most likely to be
injured." (*Robbins v. Superior Court* (1985) 38 Cal.3d 199, 205.)

10 III. LEGAL ANALYSIS

11 A. Plaintiffs Have Not Met Their Burden to Show The Likelihood of Prevailing on the 12 Merits

13 Plaintiffs' Complaint asserts two causes of action against Defendants: (1) Public nuisance
14 per se in violation of Napa County Code ("NCC") and (2) Unfair competition under Business &
15 Professions Code section 17200. Plaintiffs pray for the following injunctive relief: "[t]hat the
16 continued existence of the public nuisance conditions on and uses of the Property be permanently
17 enjoined, and that Defendants be commanded to abate said conditions as necessary to bring the
Property into compliance with the NCC," and "[t]hat Defendants be enjoined from transferring
ownership of the Property unless there is compliance with all applicable orders of this Court, any
monetary judgment has been satisfied or will be satisfied with the proceeds of the transfer, and
the Court has approved of such transfer." (Complaint, Prayer ¶¶ 1-2.)

18 1. *Nuisance Per Se*

19 "A nuisance per se arises when a legislative body with appropriate jurisdiction, in the
20 exercise of the police power, expressly declares a particular object or substance, activity, or
21 circumstance, to be a nuisance. To rephrase the rule, to be considered a nuisance per se the object,
22 substance, activity or circumstance at issue must be expressly declared to be a nuisance by its
23 very existence by some applicable law." (*City of Claremore v. Kruse* (2009) 177 Cal.App.4th
1153, 1163, cleaned up.) "[N]o proof is required, beyond the actual fact of their existence, to
establish the nuisance." (*City of Costa Mesa v. Soffer* (1992) 11 Cal.App.4th 378, 382.)

24 Thus, on their nuisance per se claim for injunctive relief, Plaintiffs have the burden to
prove Defendants engaged in conduct which has expressly been declared to be a nuisance.

25 Plaintiffs point to two relevant sections of the NCC which expressly declare certain
26 conduct to be a public nuisance. These sections provide, in general terms, that (1) the doing of
27 any act or failure to act, which is prohibited by the NCC, an ordinance of the county, a permit or
28 license, or other entitlement issued by the county, law of the state, or rule or regulation, "shall
constitute a public nuisance"; and (2) any building maintained, and any use of property, contrary

1 to the provisions of NCC Title 18, “shall be and the same is hereby declared to be unlawful and a
2 public nuisance.” (NCC, §§ 1.20.020, subd. (a), 18.144.040.)

3 While Plaintiffs argue that Defendants engaged in conduct in violation of NCC sections
4 1.20.020 and 18.144.040 (see Support Memo at 9:22-10:27), Plaintiffs did not introduce
5 admissible evidence supporting Defendants’ alleged conduct. Furthermore, even assuming
6 *arguendo* that Plaintiffs introduced admissible evidence supporting Defendants’ alleged conduct,
7 Plaintiffs have failed to make a satisfactory showing that Defendants’ conduct violates NCC
8 sections 1.20.020 and 18.144.040, such that the conduct can constitute nuisance per se.

9 Code of Civil Procedure section 527, subdivision (a), provides in part that: “An injunction
10 may be granted at any time before judgment upon a verified complaint, or upon affidavits if the
11 complaint in the one case, or the affidavits in the other, show satisfactorily that sufficient grounds
12 exist therefor.” Thus, while the injunction may rest upon either a verified complaint or affidavits,
13 the law is settled that the allegations of either must be factual; conclusory averments in either are
14 insufficient to support issuance of an injunction.

15 Here, Plaintiffs’ complaint is not verified. Plaintiffs’ only evidence in support of the
16 allegations of Defendants’ conduct is a Declaration of Kelli Cahill. However, the Cahill
17 Declaration fails to set forth competent evidence that the alleged conduct existed or exists. While
18 the Cahill Declaration describes that Cahill received a complaint from County staff reporting the
19 alleged conduct, that two Notices of Apparent Violations (“NOV”) were sent to Defendants
20 detailing the alleged conduct, and that Cahill spoke with Defendants and counsel regarding the
21 alleged conduct, the Cahill Declaration fails to state, or provide a sufficient foundation or
22 personal knowledge to show, that the conduct set forth in the County complaint or in the NOV’s
23 actually existed or was ever substantiated. In other words, evidence that Plaintiffs received a
24 complaint reporting the alleged conduct, and that Defendants were notified of the alleged
25 conduct, is not evidence that the alleged conduct occurred.

26 Moreover, the bare assertions in the Cahill Declarations that the “illegal uses of the
27 Property” continued and remained, “the violations at the Property persisted,” “the unlawful uses
28 increased at the Property,” and “Defendants have not taken any steps to correct any of the code
violations or nuisances,” without more, are conclusory and not sufficient to establish the existence
of the alleged violative conduct. (See Cahill Decl. ¶¶ 6-9, 15.) “Unless the statement, in the nature
of a conclusion, is supported by the facts or circumstances on which it rests, it is insufficient to
sustain an application for injunction.” (*Finnie v. Town of Tiburon* (1988) 199 Cal.App.3d 1, 15
[properly denying injunction where “all of the allegations of the complaint were couched in
general terms and described the charges . . . in conclusory language and without any reference to
evidentiary facts” and where the declaration “also lacked the requisite facts and limited itself to a
general averment”].)

The only admissible evidence (i.e., not conclusory, hearsay, or lacking foundation and
personal knowledge) from the Cahill Declaration upon which the Court can rely is paragraph 10,
where Cahill asserts that she noticed that Defendants were advertising an event to take place in
April 2021 with music and wine. (Cahill Decl. ¶ 10.)¹ According to Plaintiffs, this conduct

¹ Based on the foregoing, the Court elects not to rule on Defendants’ objections to the Cahill
Declaration, as the subject matter of those objections was not relied upon by the Court in

1 requires a use permit under NCC section 18.08.030 and exceeds the allowable uses of a small
2 winery under the small winery permit exemption pursuant to NCC section 18.08.600(C). (See
Support Memo at 10:13-17.)

3 Section 18.08.030 defines “Administrator” as “the zoning administrator of Napa County,”
4 and thus, it is unclear how Plaintiffs construe section 18.08.030 to prohibit the April 2021
5 marketing conduct without a use permit. Section 18.08.600(C) defines a “small winery” as one
6 which “does not conduct public tours, provide wine tastings, sell wine-related items or hold social
7 events of a public nature.” While holding an event with music and wine may be considered a use
8 of the Property that is contrary to Section 18.08.600(C), Plaintiffs do not submit evidence that the
9 event was ever held; only that Cahill noticed an advertisement for the event on social media.
10 Moreover, as Defendants aver, the NCC does not indicate that Small Wineries are limited to the
11 activities listed in the definition of a Small Winery, and a county cannot enjoin conduct that is not
12 expressly prohibited. (See TRO Opposition at 7:22-8:2, OSC Opposition at 3:20-4:14, citing
13 *People v. Venice Suites, LLC* (2021) 71 Cal.App.5th 715, 733 [“Courts are reluctant to accept that
14 legislatures enact important or fundamental changes by silent indirection.”].) Furthermore, the
15 NCC states that small wineries established prior to enactment of the Winery Definition Ordinance
16 in 1990 are entitled to continue their approved operation in accordance with their approved
17 certificate of exemption. (See TRO Opposition at 7:22-8:2, citing Ord. 947 § 4, 1-23-1990; see
18 also NCC, § 18.16.020(H); Hoopes Decl. ¶ 3, Exh. A.) Here, Defendants have operated under a
19 Small Winery Use Permit Exemption dating to 1984, and the Exemption permits sales. (OSC
20 Opposition at 1:16-24; Declaration of Lindsay Hoopes re: TRO (“TRO Hoopes Decl.”) Exh. A;
21 Declaration of Lindsay Hoopes re: OSC (“OSC Hoopes Decl.”) ¶ 2; RJN, Exh. A.) As such,
22 Plaintiffs have not shown satisfactorily that the conduct alleged in paragraph 10 of the Cahill
23 Declaration violates NCC sections 1.20.020 and 18.144.040.

16 Furthermore, even assuming *arguendo* that the Court can rely on the remainder of the
17 Cahill Declaration to support the allegations of Defendants’ conduct – including that Defendants
18 improperly (1) supply and use produce grown on the Property for specialty boxes offered as part
19 of a virtual cooking class, (2) installed storage facilities and maintain buildings (including the
20 two-part shed(s)) without a floodplain permit or required building permit, (4) offer wine tastings,
21 tours, sell wine-related items, and hold marketing events without a use permit, (5) engage in
22 commercial uses of the Property that are not allowed in the Agricultural Preserve District, and (6)
23 engage in a cottage food operation at the Property – Defendants argue and offer evidence to show
24 that certain conduct does not violate NCC sections 1.20.020 and 18.144.040, that they have
25 abated certain of the concerns, and that they have worked in good faith with Plaintiffs, since they
26 were notified of the alleged violations in 2020, to seek more information in order to resolve all
27 other concerns. (See TRO Opposition at 7:9-12:4; TRO Hoopes Decl. ¶¶ 3, 10-18, Exh. A; OSC
28 Opposition at 5:22-11:9.)

24 “To issue an injunction is the exercise of a delicate power, requiring great caution and
25 sound discretion, and rarely, if ever, should [it] be exercised in a doubtful case.” (*Ancora-*
26 *Citronelle Corp. v. Green* (1974) 41 Cal.App.3d 146, 148.) The foregoing certainly leaves the
27 Court with doubts as to Plaintiffs’ showing. Thus, the Court is unable to find that Plaintiffs have

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28 determining this matter.

1 satisfied their burden to show the “probable validity” of their nuisance per se cause of action.

2 *2. Unfair Competition*

3 Section 17200 of the Business and Professions Code applies to unlawful, unfair, or
4 fraudulent business acts or practices. (Bus. & Prof. Code, § 17200.) As Plaintiffs argue,
5 Defendants alleged conduct with respect to Plaintiffs’ nuisance per se claim would constitute an
6 unlawful and unfair business practice. However, because the Court was unable to find that
7 Plaintiffs are likely to prevail on the merits of their nuisance per se cause of action, the Court is
8 also unable to find the same on their unfair competition cause of action.

9 B. Plaintiffs Have Not Met Their Burden to Show Irreparable Harm

10 Under the second prong, the court evaluates the harm the plaintiffs are likely to sustain if
11 the preliminary injunction is denied compared to the harm the defendants are likely to suffer if the
12 injunction is issued. (*IT Corp. v. County of Imperial* (1983) 35 Cal.3d 63, 69-70.) A court may
13 not grant a preliminary injunction, regardless of the balance of interim harm, unless there is some
14 possibility that the plaintiff will ultimately prevail on the merits of its claim. (*White, supra*, 30
15 Cal.4th 561-62.) Although the Court was unable to find that Plaintiffs are likely to prevail on the
16 merits of their nuisance per se or unfair competition causes of action, the Court evaluates the
17 interim harm factor under the assumption that there is some possibility for Plaintiffs to prevail.

18 Plaintiffs’ only argument in support of this factor is that irreparable harm from nuisance
19 per se is presumed. (Support Memo at 11:16-24, citing *People ex rel. Dep’t of Transportation v.*
20 *Outdoor Media Group* (1993) 13 Cal.App.4th 1067, 1076 [“a nuisance *per se* against which an
21 injunction may issue without allegation or proof of irreparable injury.”].) Defendants do not
22 challenge this proposition but argue that, because Plaintiffs have failed to establish a nuisance per
23 se, they must show harm. The Court agrees with Defendants.

24 To show irreparable harm, there must be “a substantial basis for supposing that the
25 defendant, if not restrained, will *actually engage* in the conduct to be enjoined. Such an injunction
26 ‘cannot issue in a vacuum based on the proponents’ fears about something that may happen in the
27 future. It must be supported by actual evidence that there is a realistic prospect that the party
28 enjoined intends to engage in the prohibited activity.’” (*Epstein v. Superior Court* (2011) 193
Cal.App.4th 1405, 1410.) The plaintiff’s request must be supported by evidence that there is a
realistic prospect that the defendant intends to engage in prohibited activity. (*Korean
Philadelphia Presbyterian Church v. California Presbytery* (2000) 77 Cal.App.4th 1069, 1084.)
Injunctive power is not punishment for past acts and is ordered only if there is evidence past acts
will probably recur. (*Ginsberg v. Gamson* (2012) 205 Cal.App.4th 873, 905; *Scripps Health v.*
Marin (1999) 72 Cal.App.4th 324, 332-33 [the court should deny injunctive relief not only
because the defendant has voluntarily discontinued the wrongful conduct, but also because there
is no equitable reason for ordering this relief when the defendant has, in good faith, discontinued
the proscribed conduct.])

As an initial matter, and as discussed in Section III.A.1., supra, there is a dispute as to
whether Defendants’ alleged past conduct is violative. Moreover, the Court is not convinced from
all of the admissible evidence before it that there is a substantial basis for supposing that
Defendants, if not restrained, will actually engage in prohibited activity. Even taking into


1 consideration the unauthenticated screenshots attached to the Cahill Declaration (those of which
2 are legible), which purport to show Defendants' alleged unlawful conduct, the date of the most
3 recent activity appears to be early-to-mid 2021 and the majority tracks back to 2017-2020.
4 Nothing in the record suggests a reasonable probability or a realistic prospect that Defendants'
5 conduct, assuming it is violative, is impending and threatened.

6 The authority cited by Plaintiffs for the proposition that the Court retains authority to issue
7 an injunction even if the alleged conduct to be enjoined has already been abandoned states that
8 voluntary cessation of conduct, while not determinative, may be a factor in the court's exercise of
9 its equitable jurisdiction to issue an injunction. (*Robinson v. U-Haul Co. of Cal.* (2016) 4
10 Cal.App.5th 304, 315.) Where the voluntary cessation was not of defendants' own accord, but
11 was done only after the plaintiffs initiated legal proceedings, the court in *Robinson* found that
12 defendant's promise to refrain from the unlawful activity could not be relied upon as the sole
13 means of ensuring a change of practice in the future. (*Id.* at 317.) Here, however, it appears that
14 Defendants have worked in good faith with Plaintiffs, since they became aware of the alleged
15 violations in 2020, to understand and abate all concerns and that they were under the impression
16 that certain of the concerns had been resolved. (See generally TRO Hoopes Decl.)

17 Based on the foregoing, Plaintiffs have not made a strong showing of irreparable harm
18 should the preliminary injunction be denied. Thus, Plaintiffs' request for a preliminary injunction
19 pending a determination on the merits of this action is DENIED, but without prejudice to
20 Plaintiffs reasserting their request to the extent that (1) circumstances arise while this action is
21 pending which serve as sufficient grounds to issue a preliminary injunction and (2) Plaintiffs can
22 satisfactorily show those grounds through admissible evidence.

23 IT IS SO ORDERED.

24 DATED: 11/17/22, 2022

25 
26 _____
27 HON. CYNTHIA SMITH
28 JUDGE OF THE SUPERIOR COURT

APPROVED AS TO FORM AND CONTENT:

DATED: _____, 2022

ALESHIRE & WYNDER, LLP

By: _____
G. ROSS TRINDLE, III
Attorneys for Plaintiffs