COURT OF APPEAL CASE NO. PENDING

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT, DIVISION _____

NAPA COUNTY et al.,

Plaintiffs and Respondents,

v.

HOOPES FAMILY WINERY PARTNERS, LP, HOOPES VINEYARD, LLC, and LINDSAY BLAIR HOOPES,

Defendants and Appellants/Petitioners,

Appeal From an Order of the Napa County Superior Court
Super. Ct. No. 22CV001262
The Honorable Mark Boessenecker, Judge Presiding

PETITION FOR WRIT OF SUPERSEDEAS; REQUEST FOR IMMEDIATE STAY; MEMORANDUM OF POINTS AND AUTHORITIES

IMMEDIATE STAY REQUESTED
(WINERY OPERATIONS OF THE ABC TYPE 02 CLOSED IMMEDIATELY)

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TO BE FILED IN THE COURT OF APPEAL

APP-008

COURT OF APPEAL Pending APPELLATE DISTRICT, DIVISION	COURT OF APPEAL CASE NUMBER: Pending
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER: 271060 NAME: Lindsay Hoopes FIRM NAME: N/A STREET ADDRESS: PO BOX 3600 CITY: Yountville STATE: CA ZIP CODE: 94599 TELEPHONE NO.: 415-240-2644 FAX NO.: E-MAIL ADDRESS: Lindsay@hoopesvineyard.com ATTORNEY FOR (name): Hoopes Winery Partners, LP, Hoopes Vineyard, LLC, et. al	SUPERIOR COURT CASE NUMBER: 22CV001262
APPELLANT/ PETITIONER: Hoopes Winery Partners, LP, Hoopes Vineyard, LLC and Lindsay Blair Hoopes RESPONDENT/ REAL PARTY IN INTEREST: Napa County, et. al.	
CERTIFICATE OF INTERESTED ENTITIES OR PERSONS (Check one): [X] INITIAL CERTIFICATE [ ] SUPPLEMENTAL CERTIFICATE	

Notice: Please read rules 8.208 and 8.488 before completing this form. You may use this form for the initial certificate in an appeal when you file your brief or a prebriefing motion, application, or opposition to such a motion or application in the Court of Appeal, and when you file a petition for an extraordinary writ. You may also use this form as a supplemental certificate when you learn of changed or additional information that must be disclosed.

1. This form is being submitted on behalf of the following party (*name*): Hoopes Winery Partners, LP & Hoopes Vineyard, LLC

2. a. [X] There are no interested entities or persons that must be listed in this certificate under rule 8.208.
   b. [ ] Interested entities or persons required to be listed under rule 8.208 are as follows:

	Full name of interested entity or person	Nature of interest (Explain):
(1)		
(2)		
(3)		
(4)		
(5)		

[ ] Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: March 4, 2025

Lindsay Hoopes
(TYPE OR PRINT NAME)

(SIGNATURE OF APPELLANT OR ATTORNEY)

Form Approved for Optional Use
Judicial Council of California
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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

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INTRODUCTION: STATEMENT OF RELIEF REQUESTED

This petition seeks to enforce an automatic stay pending appeal of an order granting a patently mandatory injunction. The injunction effectively shuts down a business in operation for decades pursuant to an ABC State-issued winery license and without being subject to any public complaint. Among other subjects, it orders the removal of farm animals on Petitioners' agricultural property by March 7, 2025, and prohibits "marketing of wine," and all "commercial activity." Petitioners filed a notice of appeal, which should automatically stay the injunction, but the trial court denied the stay. (Petitioners Appendix of Exhibits ("PA"), Vol. 19, Ex. 48, at pp. 3899-3904.)

There are several reasons Petitioners should be afforded relief:

First, although the trial court labeled its injunction as "prohibitory," it is not. In addition to ordering Petitioners to remove animals[1], the injunction upsets more than forty years of winery activity by enjoining consumption for "any purpose," all wine tastings on the property, wine marketing, inducing customer purchase, tours of the winery, and sale of wine-related merchandise. The injunction also compels Petitioners to keep an employee on site for sixty-three hours each week to provide Napa access for warrantless searches on a whim. The following terms are clearly mandatory:

- suspension of Fourth Amendment rights to a warrantless search condition,
- cessation of all "commercial activity" at a lawfully licensed business;

[1] The court provided a two-week stay to remove the animals. (PA, Vol. 19, Ex. 53, p. 4011; Exh. 48, at pp. 3901, 3904.) On March 5, 2025, Napa County agreed to revise the definition of animal husbandry through a stipulation, but Petitioners continue to face threat of contempt as they are also enjoined from use of animals to "attract" or "entice" customers. Petitioners do not know if customers purchase wine because animals live on the property. Removal is thus the only likely way to comply with the Order.

- divestment of critical winery functions – including "all" wine tastings "however denoted," on-premise consumption of retail purchases, consumption of "any amount" for "any purpose," sale of "wine-related and non-wine related merchandise," "food service" of "any kind", and sales of "wine not produced on the Property" – which are all rights expressly licensed to the premises by the ABC Type 02 license, and which Napa confirmed to issue to the premises in 2019. (PA, Vol. 3, Exh. 16, at pp. 779-780; PA, Vol. 4, Exh. 20, at p. 829.)
- Suspension of First Amendment rights in protected speech in "use of animals as an attraction, enticement, or marketing activity related to a lawful winery use" and all "marketing of wine" (defined as "any activity" to induce "purchase" and "social events of a public nature")
- removal of farm animals from a registered 501(c)(3) animal sanctuary, an agricultural use by right in the AP (Napa County Code ("NCC") §§ 18.08.040; 18.16.020(A)); Motion for Judicial Notice ("MJN") Exhibits 1-3);

(PA, Vol. 19, Exh. 46, at pp. 3878 – 3881.)

The above orders are clearly mandatory and thus must be stayed pending appeal. (*Daly v. San Bernardino County Bd. of Supervisors* (2021) 11 Cal.5th 1030, 1035.)

The injunction has caused irreparable harm: prohibiting all "commercial use" on its face destroys Petitioners' business. (PA, Vol. 19, Exh. 46, § b(iii), at p. 3880.) This alone eliminates Petitioners' livelihood, displaces employees, and immediately depreciates the value of property. The terms are objectively punitive, going far beyond the statement of decision, and prohibiting lawful conduct not even prohibited at a residence, e.g., consuming "any amount" of alcohol for "any purpose." Neighboring

wineries are allowed to engage in the disputed uses, which are legislatively designated as critical agricultural functions necessary to ensure the economic viability of wineries and Napa County's economy. (PA, Vol. 3, Exh. 10, at pp. 748- 750, §§; PA, Vol. 2, Exh. 6, §§ 3.11, 3.12 at pp. 8607-8609; PA, Vol. 3, Exh. 10, at pp. 767 - 768.)

Aside from the need for an immediate stay, the injunction is flawed and likely to be reversed. At the threshold, the injunction exceeds the trial court's jurisdiction: no trial court can condition an ABC issued liquor license, so the injunction as to activities conveyed and vested by the ABC license is void. (Bus. & Prof. Code § 23090.5.) An injunction also cannot enjoin lawful activities expressly authorized by statute or a license (Civ. Code. § 3482), and/or never deemed a public nuisance by law. (*People v. Padilla-Martel*, (2022) 78 Cal.App.5th 139, 151.) Napa cannot regulate winery sales operations, because that is preempted through the plenary jurisdiction of the State. (Cal. Const. art XX, sec. 22; *see*, e.g., *Korean American Fed. v. City of Los Angeles* (1994) 23 Cal.App.4th 376, 387 ["if the purpose and effect … are to regulate the manufacture, sale, purchase, possession or transportation of alcohol, we would have to agree the state has expressly preempted the local regulation"].) The injunction is clearly erroneous on matters of pure law.

Yet even if the trial court had jurisdiction, the injunction is overbroad because it prohibits conduct that is not a public nuisance at a lawful business. Napa did not show the conduct violated any law, condition of the land use entitlement, or that the activities caused any harm. Thus, liability cannot lie on a theory of nuisance per se. Indeed, the conduct is *expressly* allowed under state and local law, so is also immune. (Civ. Code § 3482.)

The facts "in support of" injunction were never genuinely in dispute. The dispute was one of law, and the decision clearly erroneous. Two different judges assigned to the case came to different conclusions on the law. This

inconsistency supports the need for immediate review.

REQUEST FOR IMMEDIATE STAY

An immediate stay is necessary to prevent irreparable harm. Critical functions of the winery are enjoined, destroying Petitioners' livelihood and customer goodwill. Petitioners cannot generate revenue from the property without fear of ruinous fines. Petitioners' property rights in the ABC 02 license are surrendered. The enforcement date to remove the animals stands as March 7, 2025. (PA, Vol. 19, Exh, 53, at pp. 4011.)

The trial court agreed Petitioners are entitled to operate some sort of winery at the property, as has been the case for four decades, but left determination of scope for a later date. In the interim, Petitioner is effectively prohibited from operating its business at the property. Absent a stay, Petitioners will be forced to sell the property and be deprived of their livelihood, terminating any fruits of a meritorious appeal. Employees will lose jobs and a decades-old business will be extinguished. In contrast, there is little harm to Napa if a stay is granted: this code enforcement case was designated "low priority," without public complaint or life-safety concerns. (PA, Vol. 15, Exh. 39, at pp. 3301-3308.)

Petitioners request this Court issue a decision immediately to maintain the status quo of the lawful business: the functional use of their property as a winery. Petitioners further request the Court to Order that Petitioners can exercise all rights granted by the ABC 02 license issued at the property pending appeal.

PETITION FOR WRIT OF SUPERSEDEAS

Appellants allege the following facts in support of this petition for writ of supersedeas:

The Parties

1. Petitioners are Defendants/Cross-Plaintiffs in the action below (Napa County Superior Court No. 22CV001262).

2. Respondent Napa County ("Napa") is a general law county and was the Plaintiff/Cross-Defendant in the action below.

3. Respondent also brought this action in the name of the People of the State of California.

Authenticity of Exhibits

1. Many of the exhibits accompanying this Petition are true and correct copies of original documents on file in the Superior Court in the underlying case Napa County Case No. 22CV001262.

2. Some exhibits accompanying this Petition are true and correct copies of local ordinances, tax-related filings with the State, subject to a Motion for Judicial Notice ("MJN"), and a Motion for Consideration ("MFC") including a Declaration in support of harm derivative of the Injunction.

Timeliness of Petition

1. The challenged Order was entered on February 20, 2025. (PA, Vol. 19, Exh. 46, at pp. 3878.)

2. The notice of appeal was filed on February 21, 2025. The record of appeal is pending certification. (PA, Vol. 19, Exh. 47, at p. 3884.)

3. It is settled that mandatory terms are stayed on appeal. However, the trial court deemed the terms "prohibitory" and declined Petitioner's request to brief the stay, harm, and classification of the injunction. (PA, Vol. 19, Exh. 48, pp. 3892-3905.)

4. If the injunctive terms are prohibitory and not automatically

stayed, a discretionary stay is needed to prevent the irreparable harm that will result, as set forth in this Petition.

Chronology of Pertinent Events

The history of this case is lengthy. The following chronology contains the events most pertinent to this writ.

A. The State Vests the ABC with Plenary Regulatory Authority Over Wine Business Operations and Napa Defines Agriculture to Include Wineries.

1. In 1955, California amended its Constitution to provide plenary authority of alcohol regulation to the California Department of Alcohol and Beverage Control ("ABC") (Cal. Const. XX, sec. 22.) Since 1965, the winegrower license (an ABC Type 02 license) has authorized and regulated all aspects of the "production and sale of alcohol" at a winery. (*See*, e.g., Bus. & Prof. Code § 23013.) Today, the Type 02 license conveys, *inter alia*, the following rights and privileges:

i. Retail sale for "off-premise consumption" and "on-premise consumption" at the winery premise (Bus. & Prof. Code §§ 23358(a)(2), 23358(a)(3));

ii. Sale of all beers, wines, and brandies, regardless of source, to consumers for consumption on the premises (Bus. & Prof. Code § 23358(a)(4);

iii. Authorization to conduct winetastings of wine produced or bottled by, or produced and packaged for, the licensee, either on or off the premises (Bus. & Prof. Code § 23356.1) and for a fee for the public on the master premises (Cal. Code Regs. Tit. 4, § 53(a)(1));

iv. Consumption of wine, alcohol, beverage and food service on the premises (Bus. & Prof. Code §23305.7);

v. Supply of small amounts of bread, crackers, cheeses or nuts between successive samples of wine during a winetasting (Cal. Code Regs. Tit. 4, § 53);

vi. Giving away samples (Bus. & Prof. Code § 23386(a));

vii. Sale of wine by the glass or the bottle at the premises.

Petitioners and all predecessors-maintained ABC Type 02 licenses at the premises. Napa approved them to issue. This is not in dispute.

2. Prior to 1976, wineries in Napa's agricultural zones were a land use by right. (PA, Vol. 1, Exh. 1, § P.02, at pp. 6.) Between 1976 and 1980, Napa required a conditional use permit to operate any winery in the Agricultural Preserve ("AP"), the relevant zoning district here. (*See*, e.g., PA, Vol. 3, Exh. 3, § 12212, at p. 29.) In 1980, Napa codified a "small winery use permit exemption" so that "small wineries" could entitle without discretionary review. (PA, Vol. 1, Exhs. 4, 5). The use exemption mirrored the "same traditional conditions that ha[d] been applied to small wineries in the past," like "Cook's Flat." (PA, Vol. 1, Exh. 4, at pp. 121, 179.) Cook's Flat was entitled with unlimited tastings by "appointment" in 1973. (PA, Vol. 1, Exh. 2; *see also* PA, Vol. 3, Exh. 14.)

3. On March 6, 1984, Napa approved a "small winery use permit exemption" at 6204 Washington Street, then an empty lot. (PA, Vol. 3, Exhs. 7, 8, at pp. 709-743.) At some point prior to 1990, then-owners began operating a commercial winery. Although a certificate of exemption was not required to vest the ministerial entitlements (PA, Vol. 3, Exh. 9), a certificate was submitted. (PA, Vol. 3, Exh. 7, at pp. 709 - 743.) The winery was also CEQA Class 3 exempt. (*Id.*)

4. In 1990, Napa enacted a rezoning initiative known as the Winery Definition Ordinance. ("WDO") (PA, Vol. 3, Exh. 10, at pp. 748-761.) Through the WDO, Napa reverted to a conditional use permit requirement for all future wineries. Existing wineries, no matter how entitled,

were designated "legally conforming uses." (PA, Vol. 3, Exh. 10, §§ 1-7, at pp. 748-750.) The WDO declared existing small wineries "critical to the Napa Valley economy." (*Id.*) The WDO simplified the definition of "winery" and consolidated the categories of "winery" and "small winery"; thereafter, a winery was the sole entitlement class. (PA, Vol. 3, Exh. 10, Ord. 947, § 12407, at p. 750; PA, Vol. 13, Exh. 38, at pp. 2964.)

5. For the first time, the WDO defined and delimited winery accessory uses. (Compare PA, Vol. 1, Exh. 3, Ord. 511 § 12405; PA, Vol. 3, Exh. 10, Ord. 947 § 12202.) It also broadened the definition of agriculture, finding that "marketing of wine as defined in this ordinance as well as those uses identified in Section 12202(f) through (h) and Section 12232(h) through (j) are activities that are not only necessary to retain agriculture as a major source of income and employment in Napa County, but also will ensure the continued agricultural viability of existing and future Napa Valley Vineyards." (PA, Vol. 3, Exh. 10, Ord. 947 §§ 4-7, at pp. 748-750.) The WDO did not prohibit existing wineries from the newly defined accessory uses: it only discussed new use permits to increase production volume. (PA, Vol. 3, Exh. 10, Ord. 947 § 12419, at p. 757.) Wineries entitled prior to 1990 obtained accessory uses through entitlement in the primary use. (PA, Vol. 1, Exh. 3, Ord. 511, § 12405, at p. 34.) Tastings were a lawful pre-WDO accessory use and did not have a separate application. (*See*, e.g., PA, Vol. 1, Exh. 2; PA, Vol. 1, Exh. 3, § 12212, at p. 29.)

6. In 1991, Napa amended its General Plan to align with the expanded agricultural uses codified by the WDO: "Agriculture includes the production and processing of food and fiber …. In the case of wineries, processing includes tours and tastings, retail sales of wine produced by or for the winery partially or totally from Napa County grapes, activities for the education and development of consumers and members of the public, and limited non-commercial food service." (PA, Exh. 6, Vols. 2, 3, §§ 3.11, 3.12,

at pp. 260.) Agriculture has always been a use by right without a use permit in the AP. (PA, Vol. 1, Exh. 1; NCC § 18.16.020(A).)

7. In 2009, California enacted Assembly Bill 2004, known as the "picnic bill," to "authorize the consumption of wine on a winery's licensed premises in order to accommodate visitors interested in pairing wine with food in a picnic setting." (PA, Vol. 3, Exhs. 11, 12, at pp. 762-766.) The bill intended to align law with practice, as winery customers "often desire to drink wine that they have purchased during their visit, paired with food in a picnic setting... This measure is intended to allow a winery to sell wine that can be consumed by its patrons anywhere on the … premises, such as its tasting room or its picnic area." (PA, Vol. 3, Exh. 11, at pp. 762-763.) The bill was codified and became one of the privileges derivative of the Type 02 license. (*Id.*; Bus. & Prof. Code § 23358(a)(3).)

8. In 2010, Napa enacted Ordinance 1340, finding a "reliable market for Napa County wine grapes is dependent on the ability of Napa County wineries to promote, market and sell Napa County wines in an increasingly competitive domestic and international market." (PA, Vol. 3, Exh. 13, at p. 767.) "[S]elling and marketing of wine is a necessary and essential adjunct to the agricultural activity of growing grapes" so clarification of the definition of "marketing of wine" was required. (*Id.*; *see also* NCC § 18.08.370.) Ordinance 1340 added food service to the definition of "tours and tastings" under Napa County Code ("NCC") section 18.08.620. The Ordinance did not order existing wineries to obtain new permissions to utilize these modified definitions.

9. In 2017, Napa amended the definition of agriculture to state that "small winery use permit exemptions" "shall" have "marketing, sales, and accessory uses" "without a use permit." (PA, Vol. 4, Exh. 15, at p. 793; *see also* NCC §§ 18.08.040(H)(2); NCC §§ 18.16.020(H).) Agriculture remains an independent land use entitlement in the AP without a use permit

(NCC §§ 18.16.020(A).)

B. Property Purchase, ABC Licensure, and Code Enforcement Action.

10. That same year, Petitioner/Appellant Hoopes Winery Partners, LP purchased the property at 6204 Washington Street, closing on August 15, 2017. Between January 2018 and August 2020, Petitioners obtained multiple building and floodplain permits from Napa. (PA, Vol. 19, Exh. 51, at pp. 3994-3995.)

11. On June 5, 2019, Petitioner Lindsay Hoopes met with Planning, Building and Environmental Services Director David Morrison to discuss the permissions of the small winery use permit exemption. Morrison told Ms. Hoopes that samples and consumption of retail purchase was okay at the property. (PA, Vol. 4, Exh. 19, at p. 833; PA, Vol. 4, Exh. 23, at p. 838.)

12. On August 27, 2019, Petitioner Hoopes Vineyard applied for an ABC winery license. The ABC requested Napa confirm the property was zoned and entitled to receive a Type 02 license. Napa confirmed that "the intended use is allowed and approved," and that a "use permit" "has … been approved" as of "1987." (PA, Vol. 4, Exh. 16, at p. 802.)

13. Prior to opening, on February 14, 2020, Petitioners received a "Notice of Apparent Violation," alleging they were "exceeding the allowed uses of the approved Small Winery Exemption (approved in 1984 and amended in 1987) by allowing tours, tasting and marketing events without the benefit of a Winery Use Permit." (PA, Vol., 4, Exh. 17, at p. 805.) No factual basis was provided. On March 9, 2020, Petitioners' counsel met with code enforcement personnel and believed all issues were resolved. (PA, Vol., 4, Exh. 18, at p. 813.)

14. In June 2020, Petitioners sought materials for an amended permit, but were refused. (PA, Vol., 4, Exh. 19, at pp. 813-828.) The parties

discussed "potential tasting violations" and were advised that if Director Morrison determined a violation occurred, Napa would issue a citation. (PA, Vol. 4, Exh. 19, at p. 823; PA, Vol. 19, Exh. 52, at p. 3998.) Napa denied Petitioners an opportunity to apply for a corrective permit if one was required. (PA, Vol. 4, Exh. 19, at p. 823.) Petitioners requested a written determination and/or hearing with the Board of Supervisors but were denied. (PA, Vol., 4, Exh. 19, at pp. 813 – 828.) No citation issued.

15. Hoopes Vineyard applied to the ABC to "expand" the "licensed premises" to designate an outdoor "consumption" area for customers. On March 9, 2021, the ABC approved the expansion and indicated that an investigation concluded "the expansion … is not in conflict with the local zoning ordinances …." (PA, Vol. 4, Exh. 20, at p. 829.)

16. On May 17, 2021, Petitioners received an email from Napa regarding a Second Notice of Apparent Violation. (PA, Vol. 4, Exh. 21, at p. 833) No document was received. Petitioners sought clarification from Napa, given the Type 02 license and previous conversations with Director Morrison during which he said on-site consumption was allowed. (*Id.*). Napa never responded.

17. On January 27, 2022, Petitioners received a notice stating Petitioners were operating "without a Winery Use Permit" in violation of NCC section 18.08.600 (definition of small winery) and 18.26.020 (does not exist). (PA, Vol. 4, Exh. 22, at p. 834.) In February 2022, Petitioners opposed the notice, stating they had a winery use permit dating back to 1984, and a Type 02 license. (PA, Vol. 4, Exh. 23, at p. 837.) Thereafter, the parties had discussions. (*See*, e.g., PA, Vol. 4, Exhs. 22-25, at pp. 834-871.) The focus involved a set of chicken coops Petitioners believed to be code-compliant and on-site consumption. (*Id.*) Petitioners outlined their position in a lengthy document. (PA, Vol. 4, Exh. 25, at pp. 858-871.) Napa never responded.

C. Trial Court Denies Temporary Injunction and Other Relevant Pre-Trial Proceedings.

18. Despite Petitioners' responsiveness, Napa, in the name of the People of the State of California, filed its Complaint on October 20, 2022, alleging two Causes of Action: first, (1) public nuisance per se for violating the NCC; and second, (2) Unfair Competition under Business and Professions Code section 17200. Napa requested the following permanent injunctive relief: "[t]hat the continued existence of the public nuisance conditions on and uses of the Property be permanently enjoined, and that Defendants be commanded to abate said conditions as necessary to bring the Property into compliance with the NCC." (PA, Vol. 5, Exh. 26.)

19. Napa simultaneously applied, pursuant to Code of Civil Procedure sections 526 and 527, for (1) a temporary order restraining and enjoining Petitioners from engaging in "commercial uses" of the property beyond "winemaking and selling the resulting wine" ("TRO") and (2) for an order to show cause why they should not be preliminarily enjoined from that conduct. (PA, Vol. 6, Exhs. 27, 28, at pp. 1045-1206.)

20. On November 14, 2022, the trial court denied the TRO, and on November 17, 2022, issued an Order. (PA, Vol. 7, Exh. 29, at p. 1308 - 1313.) The court held: to be a nuisance per se, Napa bore the burden to show that the "substance, activity or circumstance … must be expressly declared a nuisance to be a nuisance by its very existence by some applicable law" and that on a "nuisance per se claim for injunctive relief, Plaintiffs have the burden to prove Defendants engaged in conduct which has been expressly declared to be a nuisance." (*Id*. at pp. 1310-1311) Due to lack of "competent evidence" or demonstration that conduct could violate the "general terms" of NCC 18.144.040 and 1.20.020 such that the conduct could constitute a nuisance per se, Napa could not meet its burden. The court further noted: "the NCC does not indicate that Small Wineries are limited to the activities listed

in the definition of a Small Winery, and a county cannot enjoin conduct that is not expressly prohibited," citing *People v. Venice Suites, LLC* (2021) 71 Cal.App.5th 715, 733; *Id.* at pp. 1310-1312.)

21. During trial proceedings, on September 8, 2023, Petitioner filed a motion to Bifurcate Statutory Interpretation and Questions of Law to bifurcate the foundational issue: the scope of pre-WDO winery entitlements as to uses, accessory uses, "tours and tastings," "marketing events," and on-site consumption. (PA, Vols. 7-9, Exh. 31.) Petitioner believed the issue was one of law and it was economical to resolve that issue first. (*See* generally *Id.*)

22. On October 19, 2023, Napa filed a motion to disqualify the trial judge pursuant to 170.3. (PA, Vol. 10, Exh. 33.) Despite Petitioners' opposition, on October 24, 2021, Judge Smith entered a notice of recusal pursuant to 170.3(a)(1).

23. On December 18, 2023, California State Controller expressed concern on Napa's position. In a letter to Napa, Madame Controller was troubled that Petitioners (and predecessors) had been "paying taxes on wine poured at [the] property for 40 years." Madame Controller noted that Petitioner "has a state permit" and "such permits are only issued if a winery has the local entitlements necessary ..." She looked to Napa for "clarification": how can "the state and county [collect] taxes from a small business for so many years" for activities "allegedly [it] was not allowed." (PA, Vol. 10, Exh. 35, at p. 2279-2280.)

24. On December 22, 2023, the Court denied Petitioners' Motion to Bifurcate Statutory Interpretation, but granted Napa's Motion to Bifurcate Petitioner's Cross-Complaint from trial on the Complaint, including the Declaratory Relief Cause of Action, over Petitioners Objection that this bifurcation violated due process.

25. On December 22, 2023, after discovery closed, Napa requested

leave to file a Second Amended Complaint ("SAC"). Petitioners objected: this would not leave time to test the pleadings until after trial. The Court allowed the SAC over objection. (PA, Vol. 11, Exh. 36, at p. 2283, et. seq.) Napa acknowledged Petitioners held a small winery use permit exemption and that Petitioners were allowed to engage in agriculture, produce wine, and sell wine from the premises to people who physically come to the property. (*Id.* at ¶¶ 14, 54.) The SAC did not address "consumption" or "samples" of wine. The SAC did not aver "marketing" with "animals" violated NCC section 18.08.600; rather, the SAC indicated a "petting zoo" was an unauthorized use. (*Id.* at ¶ 67.)

D. Trial and Statement of Decision.

26. Trial began on January 25, 2024. Petitioners requested Napa identify the predicate statutes. Napa explained its theory of liability was "nuisance per se … as opposed to public nuisance." (PA, Vol. 12, Exh. 37, at pp. 2470-2473.) Petitioners requested the specific statutes Napa would rely on, and Napa replied intent to rely on "the Napa code section that identifies that when there's a violation of our – any of the statutes, that's a nuisance per se." (*Id.*) Petitioners requested "an offer [of] proof that there is a nuisance per se; what specific statutes are they asking the Court to find that the defendants have violated as a nuisance per se?" (*Id.*) Napa responded: "what we will be doing at trial, Your Honor, is our witnesses will testify to the violations; we have a chart; we'll be putting up the chart and the code section." (*Id.*) The trial court took a recess, and upon return, Napa replied that it was relying on Section 1.20.020(A) and 18.144.040 and that "we have cited [that code] a number of times ... and so that's the section." (*Id.*)

27. Minutes before trial, Petitioners reminded the trial court to require Napa to identify the underlying predicate offenses for both causes of action. (PA, Vol. 12, Exh. 37, at p. 2584-2585.) They continued that, since Napa pled nuisance per se, "without understanding what the predicate

offenses are, the specific code violations, the specific acts that the Court is to interpret as being in violation of the code or not, … it's going to be very difficult to not only ascertain relevance … but understand precisely what … to elicit testimony about in terms of defending those." Petitioners noted "many of the things are not nuisances per se" so "while I understand the County's position that any violation of any law equals a nuisance, it is not true that any act equals a nuisance." It was going to be "particularly complicated to – from a due process perspective to prepare a defense when the predicate offenses are not identified." (*Id.*) Counsel noted "it cannot be a nuisance per se … if there is no statute that makes it so." (*Id.*)

28. Napa's evidence admitted in support of the original preliminary injunction request, discussed above, was not materially distinct from that ultimately adduced at trial, and in support of the injunction subject to this petition. Accepting the facts in the Statement of Decision as true, Petitioners still could not identify a nuisance per se as to use-related conduct. Napa bore the burden to demonstrate a law prohibits the activity, or that a condition existed on the entitlement; it was not Petitioners' burden to prove the land entitlements exist. (*See*, e.g., *People v. Venice Suites, LLC* (2021) 71 Cal.App.5th 715, 730-733.) Also, all the activities carried out pursuant to the Type 02 license were statutorily immune, as was all activity expressly allowed under local law. (Civ. Code § 3482.) Finding nuisance per se as to the activities enjoined activities was an error of law (PA, Vol. 16, Exh. 40, at p. 3374-3403.)

29. On October 4, 2024, the Court issued a tentative Statement of Decision. On October 14, 2024, Petitioners filed Statements of Controverted Issues and Request for Statement of Decision, one for the entity Defendants, and one for Lindsay Blair Hoopes in respect to Alter Ego. (PA, Vol. 16, Exh. 41.) Petitioner's Requests and Objections sought clarification of the predicate statutes and acts creating the legal and factual basis of liability

under both Causes of Action. (PA, Vol. 16, Exh. 41, at p. 3444-3453.)

30. The Statement of Decision ("SOD") entered on November 13, 2024. The trial court declined to clarify and "struck" the Requests for clarification. (PA, Vol. 16, Exh. 43, at p. 3493.)

31. The SOD was largely copied from Napa's closing brief. The facts were not connected with the law. In the verdict section, the Court stated: "NCC section 1.20.020(A)(1) provides: '[w]henever in this code or in any ordinance of the county, or in any condition of a permit or license or other entitlement issued by the county … the doing of any act or failure to act shall constitute a public nuisance.' Furthermore, NCC section 18.144.040 provides "any building set up, erected, built, moved or maintained, and any use of property contrary to the provisions of this title [NCC Title 18 Zoning], shall be and the same is hereby declared to be unlawful and a public nuisance." (PA, Vol. 16, Exh. 43, § V(a), pp. 17-18, at p. 3469-3471.)

32. The Court continued: "[t]herefore, having found that Hoopes violated its SWE [small winery use permit exemption] by expanding its uses outside its entitlements and NCC, sections 15.12.010 (building permits), 16.04.560 (floodplain permits) and 18.08.600 (tours, tastings, wine-related sales, social events), the Court finds that the County has proven its first cause of action for Public Nuisance." (*Id.*)

33. The SOD did not identify what specific statutes Petitioners violated giving rise to nuisance per se, other than to cite the non-operative definition of small winery (NCC § 18.08.600), the word "marketing," and general ordinances adopting the State and international building codes. (NCC § 15.12.010.) (*Id.*)

34. The only specific act identified as a "violation" was a "public tasting." The SOD noted that "private tastings of some sort may be allowed." (PA, Vol. 16, Exh. 43, SOD, § V(a), at pp. 3507.) The trial court did not identify the distinction between the two.

35. Historically, the distinction was that private tastings were held "by appointment." The NCC has never defined "private" or "public." (PA, Vol. 13, Exh. 38, at p. 3046-3048.) Only one definition of "tours and tastings" exists today. (*See* NCC § 18.08.620 ["tours of the winery and/or tastings of wine [are] limited to persons who have made unsolicited prior appointments …."]) It as a definition, not operative law, so does not prohibit the activity.

36. The SOD stated that "marketing" in connection with animals violated the NCC. (PA, Vol. 16, Exh. 43, § V(a).) No NCC section was cited.

37. The SOD did not identify the land use conditions that prohibited the conduct at issue. No other acts were identified as violative of and/or in connection with a statute or land use condition. The SOD did not discuss preemption in connection with the ABC 02 license, various other statutes outlining the permissions of the 02 license, or explain how exercise of those privileges could amount to nuisance per se, or be enjoined. (Civ. Code § 3482.) The SOD did not address *Venice Suites, LLC*, *supra*, the prevailing case on implied land use conditions (and prohibiting same). (71 Cal.App.5th at pp. 730-733.)

38. As to the Second Cause of Action, the Court held that Defendants committed "Unlawful Business Practices" because Defendant "unlawfully expanded its business without approval through the County's permit process" and this is "unfair because it gives Hoopes an unfair advantage – Hoopes does not have to spend the money to upgrade its systems and comply with the law, while other, law-abiding wineries do." (PA, Vol. 16, Exh. 43, § V(b).) The trial court did not identify which acts served as predicate offenses for the UCL claim, or which entity the finding applied to.

39. On December 12, 2024, Napa filed a Request for Equitable Remedies, seeking relief far beyond the findings in the SOD. On January 24, 2025, Petitioners filed an Opposition to Plaintiff's Request for Equitable

Remedies. (PA, Vols. 17, 18, Exh. 44.) Napa's Request for Preliminary Injunction came for hearing on February 7, 2025. (PA, Vol. 19, Exh. 45, at pp. 3850-3877.)

40. In opposition, Petitioners noted that the activities at issue could not be enjoined because, similar to the issues at trial, the activities are expressly authorized by the Type 02 license and, in any event, none of the activities were specifically designated a public nuisance by any law. (PA, Vols. 17, 18, Exh. 44.)

E. The Injunction.

41. On February 20, 2025, the trial court entered an order of Preliminary Injunction (the "Injunction"). (PA, Vol. 19, Exh. 46.) The trial court improperly characterized the terms as prohibitory when they are, in fact, mandatory. The Injunction was preliminary because final judgment has not been entered: Petitioners' Cross-Complaint is still pending in the state court without a trial date.

42. Through the Injunction, the trial court ordered Petitioners/Defendants do the following:

> "a. Defendants shall cease all winery activities that do not comply with Napa County Code sections 18.16.020(H) and 18.08.600 until such time as Defendants have obtained a valid use permit authorizing such activities and any necessary and related building, grading or other permits. Such prohibited winery activities include:
>
> > i. All tastings of wine, however described or denoted, characterized by the consumption of any amount of wine for any purpose, by anyone other than Defendants and employees of the Winery;

ii. All tours of the Winery by members of the public;

iii. All consumption of wine purchased by members of the public on the Winery premises;

iv. All "marketing of wine," as defined by Napa County Code section 18.08.370, including all social events of a public nature, but not including advertisement of marketing of lawful activity undertaken by Defendants at the Winery on any media;

v. All sales of wine-related and non-wine related merchandise, including tote bags, clothing, blankets, wine bottle candle holders, soap, books, ceramic bowls, greeting cards and wine openers;

vi. All occupancy and assembly within winery rooms or spaces that have not been permitted for occupancy or assembly, including the areas designated as storage in the building permits on file with the County, as well as any recreational vehicles on the Property,

vii. All sales of wine not produced on the Property, including any wine produced by or for the Winery at any other site;

viii. All service of food of any kind to any member of the public, whether or not in connection with the retail sale of wine

produced on site.

b. Defendants shall cease all commercial activity at the Property, which is not authorized in the zoning district in which the Property is located. Such commercial activities include:

i. All sales of non-wine related merchandise, including tote bags, clothing, blankets, wine bottle candle holders, soap, books, ceramic bowls, greeting cards and wine openers;

ii. All keeping of animals that do not qualify as animal husbandry, which is defined as the rearing or keeping of animals to sell the products they produce, such as mean, fur, dairy or eggs;

iii. Any use of animals as an attraction, enticement, or marketing activity related to a lawful winery use.

3. The Napa County Code Compliance Division shall be given full access to the Property at any time between the hours of 9:00 am and 6:00 p.m., seven days a week, to conduct inspections to confirm compliance with the provisions of this injunction. No advance notice is required for inspections during these normal business hours."

(*Id.* at pp. 3878-3883.)

43. On February 21, 2025, Petitioners filed a timely Notice of

Appeal of the Injunction. (PA, Vol. 19, Exh. 47.) That same day, the trial court orally ordered the animals removed by March 7, 2025. (PA, Vol. 19, Exh. 53; Exh. 48.)

44. Petitioners attempted to file a brief to stay, but the trial court refused to accept the motion for filing. (PA, Vol. 19, Exh. 48, at pp. 3892.)

45. The errors in the SOD are errors of pure law and in direct conflict with settled law. The legal justification for the Injunction is clearly erroneous based on the same legal flaw presented in the SOD: the activities enjoined are not nuisances per se and were not found to be public nuisances in fact. Thus, they cannot be enjoined (or establish liability).

46. The trial court also lacks jurisdiction to enjoin activities licensed by the ABC, because that is a de facto condition on the license and, thus, the injunction is void (Bus. & Prof. Code § 23090.5.)

47. Petitioners/Appellants cannot be enjoined from activities expressly permitted by the Type 02 liquor license for the premise or be liable under a theory of nuisance per se. (Civ. Code § 3482; Bus. & Prof. Code § 23090.5.) Thus, regardless of whether accessory land use entitlements exist, the independent rights under the ABC liquor license require a stay of the Injunction, which orders a surrender of these rights.

48. The stay by right was error and must be reversed or Petitioners will suffer irreparable harm. The Injunction's terms are mandatory and disrupt the status quo.

49. Petitioners hereby incorporate the accompanying memorandum and the appendices attached hereto. Petitioners' claims will be based on the petition, the accompanying memorandum, the attached declarations and exhibits, and all records, documents, and pleadings and any further material to be developed at any future hearing that may be ordered.

F. Request for Immediate Stay

50. To prevent irreparable harm, Petitioners/Appellants request an

immediate stay of the Injunction pending the disposition of this petition.

THEREFORE, APPELLANTS REQUEST THAT THIS COURT:

1. Issue an immediate temporary stay to allow this Court to rule on the petition for writ of supersedeas;

2. Issue writ of supersedeas and order that enforcement of the following mandatory paragraphs of the injunction are automatically stayed pending appeal:

a. ¶¶ 2(a)(i), 2(a)(ii), 2(a)(iii), 2(a)(iv), 2(a)(vi), 2(a)(vii), and 2(a)(viii), because they alter the status quo, halt winery operations that have existed for nearly forty years, require Petitioners to affirmatively cancel reservations and alter physical structures on the property, and cause irreparable harm to Petitioners by destroying their business;

b. ¶ 2(b)(ii) and 2(b)(iii), because they require the relocation or euthanasia of animals on the property and prevent Petitioners from selling Hoopes brand wine due to animals pictured on the federally-approved wine label; and

c. ¶ 3, because it compels Petitioners to employ someone on the property sixty-three hours per week to provide availability so that Napa can conduct warrantless searches in violation of the Fourth Amendment;

3. Issue a writ of supersedeas that enforcement of all remaining terms of the Injunction that this Court deems to be prohibitory are stayed pending appeal;

4. Prohibit Napa from enforcing violations of the express permissions of Petitioners Type 02 ABC license at the premises pending appeal; and

5. Issue any other relief that this court deems proper.

Respectfully submitted,

BUCHALTER, A PROFESSIONAL CORPORATION
Katharine Falace

LINDSAY HOOPES

Attorneys for Defendants and Appellants
HOOPES FAMILY WINERY PARTNERS, LP, HOOPES VINEYARD, LLC and LINDSAY BLAIR HOOPES

VERIFICATION

I, Lindsay Hoopes, declare as follows:

1. I am an attorney duly admitted and licensed to practice law in California. I am one of the attorneys representing appellants in this case.

2. I have read this petition for writ of supersedeas and know its contents. The facts alleged in the petition are based on papers I reviewed that are on file in, or directly related to, the above-entitled matter, Napa County Superior Court case number 22CV001262.

3. I am knowledgeable about the facts and procedural history set forth in this petition, having participated in the preparation of this petition, and because of my familiarity with the record pertaining to respondent court's decision that is the subject of this petition; I accordingly make this verification on my client's behalf.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 6, 2025, at Napa County, California.

Lindsay Hoopes

_____

Lindsay Hoopes

SUPPORTING MEMORANDUM

I. This Court Has the Power to Order Supersedeas.

A party may appeal an order granting an injunction. (Cal. Civ. Pro. § 904.1(a)(6).) Common law provides for an automatic stay pending appeal for injunctions of mandatory character. (*Daly v. San Bernardino County Board of Supervisors* (2021) 11 Cal.5th 1030, 1040-1053.) If a trial court exceeds its jurisdiction by enforcing mandatory injunctions pending appeal, or improperly assigns the character as prohibitory, a writ of supersedeas will issue to enforce the stay as a matter of right. (*Id.*) Petitioners request a writ of supersedeas from this Court on the mandatory injunctive terms until their appeal is fully resolved on the merits. They also request a temporary stay under Cal. Rule of Court 8.112(c) and 8.116.

II. The Terms of the Injunctive Order are Mandatory.

For more than 40 years, a winery has existed at 6204 Washington Street. No party disputes the property is lawfully entitled as a "winery" (PA, Vol. 13, Exh. 38, at pp. 2964-2965.) The property is located in a zone that welcomes winery operations and is licensed by the ABC as a winery. The Injunction will cripple the existing winery operations, destroy Petitioners' livelihood and require the emergency re-housing or euthanizing of rescue animals, if not stayed pending appeal.

"Like many distinctions in the law, the distinction between a mandatory and prohibitory injunction sometimes proves easier to state that apply." (*Daly, supra*, at pp. 1041-1042.) To establish the character of an injunction, the court must examine its terms and effects. (*People v. Mobile Magic Sales, Inc.* (1979) 96 Cal.App.3d 1, 13.) A mandatory injunction, "by definition, commands some change in the parties' position." (*Daly, supra*, 11 Cal.5th at 1041.) The rationale is that "before such orders are executed and the defendant must detrimentally alter its position, the defendant is entitled to know whether the order is correct." (*Id.* (citations omitted).) A mandatory

injunction is anything that compels performance of an affirmative act or requires a detrimental change in legal rights. (*Daly, supra*, 11 Cal.5th at p. 1041.) An injunction that requires a party to surrender a status or rights lawfully held is mandatory. (*Paramount Pictures Corp. v. Davis* (1984) 228 Cal.App.2d 827, 791; *Daly*, *supra*, at p. 1041.)

"If an injunction compels a party to surrender a position he holds and which upon the facts alleged by him he is entitled to hold, it is mandatory." (*Dosch v. King* (1961) 192 Cal.App.2d 800, 804.) The surrender of rights may include contract or property rights. (*See*, e.g., *Paramount Pictures, supra*; *see also Byington v. Superior Court of Stanislaus County* (1939) 14 Cal.2d 68, 70-71.) There is no dispute that Petitioners maintain a Type 02 ABC license at the premises which vests Petitioner with rights the Injunction now takes away.

The Injunction, relative to Petitioners' Constitutional rights, is mandatory as Petitioners did not consent to waiving their Constitutional rights or condition the rights of the Type 02 license or land use entitlements in a bargained for exchange. Because it is mandatory, the Injunction cannot lawfully be enforced pending appeal.

1. The Type 02 Property Rights Have Vested; Divestment and Conditioning Disrupts the Status Quo.

Petitioner Hoopes Vineyard, LLC acquired a Type 02 License from the ABC in 2019. (PA, Vol. 4, Exh. 16, at pp. 801-802; PA, Vol. 4, Exh. 20, at p. 829; PA, Vol. 14, Exh. 3053.) Before it issued, Napa confirmed to the ABC that "the intended use is allowed and approved" and that a "use permit" "has … been approved" as of "1987." (PA, Vol. 4, Exh. 16, at pp. 801-802; PA, Vol. 14, Exh. 3053.) Between 2012 and 2015, Napa advised the public, through its winery database, that the property was allowed "[tastings] by appointment." (PA, Vol. 4, Exh. 16, at pp. 801-802.) In 2021, Napa confirmed to the ABC that the property's zoning allowed for outdoor on-

premise wine consumption. (PA, Vol. 4, Exh. 20, at p. 829.) Because those permits have issued, ABC has sole authority to regulate the scope of permissions. (Bus. & Prof. Code § 23090.5.) A trial court does not have jurisdiction to review the decisions of the ABC. (Cal. Const. XX, art. 22; Bus. & Prof. Code § 23090.5.) By enjoining lawful ABC activities, the trial court exceeded its authority.

2. The Following Terms are Mandatory Because the Enjoined Activities Vested with the Type 02 License.

A Type 02 license grants its holder significant rights. This includes retail sales of wine, regardless of source, for on and off-premises consumption, (Bus. & Prof. Code § 23358(a)(2)-(4)), winetastings on or off premises, (Bus. & Prof. Code § 23356.1), service of food with wine, (Bus. & Prof. Code §23305.7 and Cal. Code Regs. Tit. 4, § 53), winetastings and wine sampling with or without charge, (Bus. & Prof. Code § 23386(a) and Cal. Code Regs. Tit. 4, § 53(a)(1)), and sale of wine by the glass or bottle, (PA, Vol. 3, Exhs. 11, 12, at pp. 762-766). Any restriction on these rights is within the exclusive authority of the ABC. (Bus. & Prof. Code § 23090.5.)

The following provisions of the Injunction invade that authority and restrict lawful operations of Petitioners:

i. All tastings of wine, however described or denoted, characterized by the consumption of any amount of wine for any purpose, by anyone other than Defendants and employees of the winery.

ii. All consumption of wine purchased by members of the public on the winery premises;

iii. All sales of wine not produced on the property, including any wine produced by or for the winery at any other site;

iv. All service of food of any kind to any member of the public, whether or not in connection with the retail sale of wine produced on site. (PA, Vol. 19, Exh. 48, at pp. 3878-3883.)

The Injunction cannot prohibit these activities as a nuisance given that "[n]othing which is done or maintained under the express authority of a statute can be deemed a nuisance." (Cal. Civ. Code § 3482.)[2] Napa also does not have the authority to deem activities related to the sale of alcohol a nuisance as such a determination would be preempted by California law. *Korean American Fed. v. City of Los Angeles* (1994) 23 Cal.App.4th 376, 387 ["if the purpose and effect … are to regulate the manufacture, sale, purchase, possession or transportation of alcohol, we would have to agree the state has expressly preempted the local regulation"]

The Type 02 license is has vested and the business operates in an area entitled for winery use. Thus, the Injunction requires Petitioners/Appellants to divest these rights.

3. The Property, Entitled as a Winery, is *Independently* Vested with "Accessory Uses."

The conduct at issue is also allowed through local law, pursuant to NCC section 18.08.040(H)(2), providing: small winery use permit exemption "shall" have "marketing, sales, and accessory uses" "without a use permit." Again, there is no dispute that Petitioner/Appellants are a lawful winery and remain a legally conforming use. (PA, Vol. 3, Exh. 10, Ord. 947, § 4, at pp. 748-750; NCC § 18.16.020(H); PA, Vol. 13, Exh. 38, at p. 2964-2965.) "Tours and tastings" and "marketing" are expressly lawful accessory uses in the zoning district. (NCC § 18.16.020(A) (agriculture); 18.08.040(H)(2) (historic small wineries are agriculture, and include marketing, sales, and accessory uses); PA, Vols. 2, Exh. 6, § 3.11, at pp. 8607-8609 (winery processing includes tours and tastings, food service, wine sales made by and for the winery). And, again, in 2019 and 2021, Napa

[2] Even if a liquor license becomes nonconforming, it is still a vested right entitled to operate. (*Goat Hill Tavern v. City of Costa Mesa* (1992) 6 Cal.App.4th 1519; Bus. & Prof. Code § 23790.)

advised the ABC that Petitioner/Appellants' license could vest in full – with all rights discussed above – because Petitioner/Appellants' held the legal equivalent of a use permit. (PA, Vol. 4, Exhs. 16, 20.)

Separate and apart from the restrictions discussed in Section 2, above, which infringe upon Petitioners' rights in their Type 02 license, the restrictions in the Injunction identified below are mandatory because they enjoin vested accessory land uses and expressly granted by local law:

i. All tastings of wine, however described or denoted, characterized by the consumption of any amount of wine for any purpose, by anyone other than Defendants and employees of the winery.

ii. All consumption of wine purchased by members of the public on the winery premises;

iii. All "marketing of wine," as defined by NCC section 18.08.370, including all social events of a public nature, but not including advertisement of marketing of lawful activity undertaken by Defendants at the Winery on any media;

iv. All sales of wine-related and non-wine related merchandise, including tote bags, clothing, blankets, wine bottle candle holders, soap, books, ceramic bowls, greeting cards and wine openers.

(PA, Vol. 19, Exh. 46, at pp. 3878-3883.)

Divesting Petitioners/Appellants rights which vested four decades ago requires surrender of existing rights and, as such, changes the status quo.

4. Ordering Removal of the Farm Animals and Prohibiting Winery Operation was a Mandatory Injunction.

Agriculture is a lawful commercial use allowed without a use permit in the AP. (NCC 18.16.020(A); NCC § 2.94.) Agriculture has always been allowed by right as the "highest and best use of the land." (*See*, PA, Vol. 1, Exhs, 1, 3.) Agriculture includes raising of all animals without limitation except as to roosters. (NCC § 18.08.040(c).) The following terms of the

Injunction are mandatory as they infringe upon vested agricultural rights:

i. All keeping of animals that do not qualify as animal husbandry, which is defined as rearing or keeping animals to sell the products they produce, such as meat, fur, dairy or eggs;

ii. Any use of animals as an attraction, enticement, or marketing activity related to a lawful winery use.

(PA, Vol. 19, Exh. 46, at pp. 3878-3883.)

The animals at issues are kept by Oasis Animal Sanctuary, a registered 501(c)(3) with the State of California. (MJN, Exhibits 1-3; MJC, Decl. of L. Hoopes, ¶¶ 2-11.) The animals are rescue animals provided palliative/end-of-life care, including chickens, six goats, five pigs, one donkey, five horses, seven sheep, and one turkey. (MJC, Declaration of Lindsay Hoopes, at ¶ 2-11.) These animals are used for regenerative farming practices. (*Id.*, ¶ 4.) For example, horses protect the chickens from coyotes. Every animal is recognized generally as a farm animal and is commonly present throughout the zoning district. (*Id.*, ¶¶ 2-11.)

The Injunction instructs Petitioners to remove animals not used for "animal husbandry" which the trial court defined as animals used exclusively for food production or products, e.g., for fur. (PA, Vol. 19, Exh. 46, at pp. 3878 - 3883.) Limiting the "keeping" of animals to those intended for "production" is inconsistent with the Right to Farm, which allows "raising, breeding, harvesting, or processing of any living organism having value as an agricultural commodity *or* product." (NCC § 2.94.030(b).) It would prohibit dogs and horses. Other than the chickens, Petitioners do not intend to use the animals for food production, but they have other agricultural purposes such as fire protection (goats, sheep), vineyard management (sheep and goats), weed abatement (goats), tilling (chickens), and pulling machinery (horses and donkeys). The Injunction's new definition of animal husbandry conflicts with the Right to Farm.

Given this conflict, Petitioners do not know how to comply with the Injunction. Petitioners assume any animals which cannot be rehomed must be euthanized, an obviously mandatory term.

5. The Injunction Enjoins Constitutional Rights Guaranteed by the First, Fourth, and Fourteenth Amendments.

Numerous terms of the Injunction are mandatory because they demand suspension of constitutional rights. These includes precluding all commercial activity (Fourteenth Amendment), warrantless searches (Fourth Amendment), restrictions on marketing (First Amendment commercial speech) and preclusion of animals in marketing (First Amendment content-based speech.)

a. The Injunction Violates the Fourteenth Amendment Because it Prohibits Petitioners from "All Commercial Activity."

The Injunction orders Petitioners/Appellants to cease "all commercial activity." This forces Petitioners to shut down. "Substantive due process 'forbids the government from depriving a person of life, liberty, or property in such a way that 'shocks the conscience' or 'interferes with the rights implicit in the concept of ordered liberty.'" (*Corales v. Bennett* (9th Cir. 2009) 567 F.3d 554, 568.) The property is entitled for "winery." A liquor license issued by the ABC is a valuable property right. (*Etchart v. Pyles* (1951) 106 Cal.App.2d 549.) By forcing Petitioners to close, the Injunction is mandatory.

b. The Injunction, on its face, violates the Fourth Amendment.

The Injunction requires Petitioners to keep the property open to Napa officials seven days a week, nine hours per day and "[n]o advance notice is required for inspections during these normal business hours." Such a warrantless search condition violates the Fourth Amendment. (*Schneckloth*

v. Bustamonte (1973) 412 U.S. 218, 219; U.S. Const. amend. IV; *Marshall v. Barlow's Inc.* (1978) 436 U.S. 307, 311.) The protection granted businesses is as firm as a home: "The businessman, like the occupant of a residence, has a constitutional right to go about his business free from unreasonable official entries upon his private commercial property." (*Id.*)

Code enforcement is not exempt from the search warrant requirement. (*Camara v. Municipal Court of the City and County of San Francisco* (1967) 387 U.S. 523, 533.) There is no ordinance or regulatory framework authorizing Napa to enter a private premises without a warrant to ensure "compliance" with land use entitlements. Such an ordinance would open the door to warrantless searches of every use in every zone.

The Injunction is also overbroad because it does not put limits on purpose or scope. The condition as written subjects Petitioners' property, papers, employees and personal effects to inspection for any reason. The scope is nearly limitless.

Importantly, a civil injunction must serve a remedial purpose, and not serve as punishment. There is no remedial purpose in denying Petitioners privacy rights in their business. Few harms justify suspension of constitutional rights. The scope of injunctive relief available to address a public nuisance or unlawful business practice is limited "to the wrongful act to be prevented." (*People v. Padilla Martel* (2022) 78 Cal.App.5th 139, 151.) The Injunction is not narrowly tailored to prevent a wrongful act; it grants unfettered access to Petitioners' property and business affairs.

Yet even if the search provision were constitutional, it would still cause irreparable harm to Petitioners because they would be forced to pay employees to be on site sixty-three hours per week in case Napa may, at some point, appear, all the while otherwise ceasing commercial activities.

c. The Injunction, on its face, violates the First Amendment.

When a petitioner claims that an "injunction will deprive them of rights protected by the First Amendment during the period of appellate review which, in the normal course, may take a year or more to complete," the state "must provide strict procedural safeguards" which "includ[es] immediate appellate review." (*National Socialist Party of America v. Village of Skokie*, 432 U.S. 43, 44 (1977) (citations omitted).) "Absent such review, the State must instead allow a stay." (*Id.*) Because this appeal involves First Amendment rights, this Court must independently review the record, rather than following the substantial evidence standard of review. (*See Franklin v. Leland Stan. Junior University* (1985) 172 Cal. App. 3d 322, 330–331).

An injunction that violates the First Amendment is void. (*DVD Copy Control Assn., Inc. v. Bunner* (2003) 31 Cal.4th 864, 875.) Injunctions "carry greater risks of censorship and discriminatory application than do general ordinances"; as such, they require a "more stringent application of general First Amendment principles." (*Madsen v. Women's Health Center* (1994) 512 U.S 753, 764.) "[C]ourt orders that actually forbid speech activities—are classic examples of prior restraints." (*Bunner, supra*, at 886.) Accordingly, an injunction must be "content neutral" and burden no more speech than necessary to serve a legitimate government interest. (*Madsen, supra*, at 765; *Planned Parenthood Shasta–Diablo, Inc. v. Williams* (1995) 10 Cal.4th 1009, 1019–1024.)

i. The Injunction is a content-based restriction.

The Injunction prohibits Petitioners from "all use of animals as … marketing." (PA, Vol. 19, Exh. 46, at p. 3878-3883) This is facially content-based (by limiting the substance of the marketing) and wildly overbroad (to include all advertising and marketing – in turn defined as "any activity" – to educate a consumer or entice purchase). (*See*, e.g., *Ysursa v. Pocatello Educ.*

Ass'n (2009) 555 U.S. 353, 358.) Petitioners' wine label contains a picture of a dog, so this poses a very real problem.

Wine labels are commercial speech. (*See Benson v. Kwikset Corp.* (2007) 1552 Cal.App.4th 1254, 1268; *see also Rubin v. Coors Brewing Co* (1995) 514 U.S. 476 [alcohol content on label is commercial speech].) The Injunction precludes Petitioners from using animals on wine labels, or using those labels to entice customers to make a purchase. Review is necessary before Petitioner is fully disabled from selling any products at all.

ii. The Injunction impermissibly restricts commercial speech.

By enjoining all tastings and consumption "by any name," the Injunction intentionally restricts how Petitioners speak to consumers and therefore unconstitutionally restricts protected commercial speech. Napa agrees people can come to the property – the dispute is over what happens when they are there. The First Amendment "protects commercial speech from unwarranted governmental regulation." (*Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of New York* (1980) 447 U.S. 557, 561.) Commercial speech encompasses "expression related solely to the economic interests of the speaker and its audience" and "speech proposing a commercial transaction." (*Rubin, supra* 514 U.S. at 493.) California has long recognized that "[o]bviously, the use of samples is for the purpose of encouraging the sale of the product." (*Tonkin Distributing Co. v. Collins* (1942) 50 Cal.App.2d 790, 795.) Thus, the Injunction "threaten[s] societal interests in broad access to complete and accurate commercial information that First Amendment coverage of commercial speech is designed to safeguard." *Edenfield v. Fane* (1993) 507 U.S 761, 766.

Commercial speech includes activities which seek to "have prospects enter their stores and purchase Plaintiffs' products." (*FF Cosmetics FL Inc. v. City of Miami Beach, Florida* (S.D. Fla. 2015) 129 F. Supp. 3d 1316,

1321.) Product demonstrations are commercial speech because they are "essentially an advertisement" of products and the motivation for engaging in the speech is purely economic. (*Am. Future Sys., Inc. v. Pennsylvania State Univ.* (3d Cir. 1984) 752 F.2d 854, 857; *Bd. of Trustees of State University of New York v. Fox* (1989) 492 U.S. 469.)

The regulation of commercial speech is subject to the *Central Hudson* analysis. Under this analysis if (1) the speech concerns lawful activity and is not misleading, then the government must (2) identify a substantial governmental interest, (3) show that the regulation directly advances that interest, and (4) show that the regulation is not more extensive than necessary. (*Central Hudson*, 447 U.S. at 566). Napa bears this burden, not Petitioners. California has already decided that sampling is commercial speech. Accordingly, the burden shifted to Napa to prove by clear and convincing evidence that there is a legitimate government interest. But neither Napa nor the trial court even discussed Central Hudson. The government cannot restrict commercial speech unless and until the requirements of *Central Hudson* are met. Until then, any restriction, like those contained in the Injunction, are unconstitutional.

The marketing prohibition is not limited to the physical property, and thus, it appears Hoopes cannot price, sell, advertise, or otherwise discuss their wine through any channel, even one unrelated to the property. The trial court refused to provide clarification of its Injunction, so a stay is necessary to prevent destruction of Petitioners' livelihood.

III. Even for Provisions This Court May Deem Prohibitory, a Stay Should Issue to Prevent Irreparable Harm

This Court has broad discretion to grant a writ of supersedeas. (*People ex. rel. San Francisco Bay Conservation and Development Commission v. Town of Emeryville* (1968) 69 Cal.2d 533, 538-539.) The writ should issue when petitioners (1) demonstrate that they will suffer irreparable injury if a

stay is not granted before a meritorious appeal, (2) demonstrates a likelihood of success on appeal by raising substantial questions of probable error by the trial court, and (3) shows that the balance of the equities weighs in favor of granting the requested writ. (*Deepwell Homeowner's Protective Association v. City Council of Palm Springs* (1965) 239 Cal.App.2d 63, 65–67.) Specifically, a writ should issue to avoid situations where the result of a judgment taking effect during the pendency of the appeal would result in a "denial of the appellant's right if his appeal were successful." (*Id.* at 66.)

1. Petitioners/Appellants Demonstrate Irreparable Injury.

Petitioners/Appellants satisfy the first prong to show irreparable injury. At its core, "[t]he purpose of the writ of *supersedeas* is to maintain the subject of the action in *status quo* until the final determination of the appeal, in order that the appellant may not lose the fruits of a meritorious appeal." (*Wilkman v. Banks* (1953) 120 Cal.App.2d 521, 523.) "The destruction of one's business is manifestly an irreparable injury." (*Greenfield v. Board of City Planning Com'rs of Los Angeles* (1935) 6 Cal.App.2d 515, 519; *see also Bullock v. City and County of San Francisco* (1990) 221 Cal.App.3d 1072, 1102-03 [destruction of business, insolvency and unemployment is irreparable injury].)

In *Bullock*, the plaintiff sought to convert its building from a residential to a transient hotel. San Francisco alleged the plan violated its ordinance and obtained a preliminary injunction. On appeal, the plaintiff argued the ordinance violated its constitutional rights and was preempted by the Ellis Act. As for the injunction, the plaintiff alleged, and the Court of Appeals agreed, that it would be irreparably harmed absent a stay. "[T]he injunction would and was destroying his business and driving him into insolvency" which "consequences qualify as irreparable injuries to plaintiff." (*Id.* at 1102 (citing *Greenfield, supra,* 6 Cal.App.2d at 519).) The court also found irreparable harm to in that "the injunction would cause unemployment

for the staff of the hotel" and "considerable inconvenience to guests" whose reservations would be canceled. (*Id.* at 1102-1103.) "The suffering endured by plaintiff and others as a result of the injunction thus clearly outweighs whatever detriment there may be to any interest the City would have in enforcing an invalid portion of an ordinance." (*Id.* at 1103.)

Harm to a business's reputation and loss of customer goodwill also constitute irreparable injury. (*Am. Trucking Associations, Inc. v. City of Los Angeles* (9th Cir. 2009) 559 F.3d 1046, 1057; *Rent-A-Ctr., Inc. v. Canyon Television & Appliance Rental, Inc.* (9th Cir. 1991) 944 F.2d 597, 603.) Courts "presume that a constitutional violation causes a preliminary injunction movant irreparable harm and that preventing a constitutional violation is in the public interest." (*Baird v. Bonta* (9th Cir. 2023) 81 F.4th 1036, 1046.)

Both harms were addressed by the court in *American Trucking*, 559 F.3d at 105, which involved a plaintiff challenging required concession agreements as unconstitutional/preempted. The appellate court found that plaintiffs had two choices, sign a potentially unconstitutional agreement, or refuse to sign, with either choice resulting in irreparable harm. If plaintiff did not sign, it suffered the "at the very least a loss of customer goodwill—or, indeed, of the carrier's whole drayage business." *Id.* "In fact, it is likely that all of that part of the carrier's business will evaporate, even if it does other things elsewhere. As to smaller companies that cannot afford the vast increase in capital requirements [to comply] the result would likely be fatal. And that means that those smaller carriers, and their employees, and even independent contractors who depend upon them, will be out of work." (*Id.*)

On the other hand, if the plaintiff signed the agreement "it will have been forced to sign an agreement to conditions which are likely unconstitutional because they are preempted." (*Id.*) "[T]he constitutional violation alone, coupled with the damages incurred, can suffice to show

irreparable harm." (*Id.*) "[C]onstitutional violations cannot be adequately remedied through damages and therefore generally constitute irreparable harm. Moreover, the loss of one's [business] does not carry merely monetary consequences; it carries emotional damages and stress …." (*Id.* at 1059 (quoting *Nelson v. NASA* (9th Cir. 2008) 530 F.3d 865, 881-82 (reversed on other grounds).)

For businesses, the status quo is to continue their operation pending appeal. For example, the Court of Appeal issued a writ of supersedeas and stayed enforcement of a preliminary injunction against a hospital pending resolution of an appeal as to whether the operation violated deed restrictions. (*Wilkman, supra*, 120 Cal. App. 2d at p. 523.) The Court of Appeal concluded "irreparable damage would be done to defendants in their business and that they would lose the fruits of a favorable determination on appeal if they were to be precluded in the meantime from continuing in their business of operating a sanitarium." (*Id.* at 523.) Further, there was no indication that the plaintiff would "be left with an empty victory if defendants are permitted to continue to carry on their business until the appeal is decided." (*Id.*)

Notably, the first trial judge did not consider Petitioners' activities to violate any law, denied the injunction, and Petitioners continued operating for years without harm. Whether the operations are allowed is a question of law, not fact. These operations were recognized for two years as existing on the premises by the initial judge, and this dispute alone warrants a discretionary stay. Whether the operations are "entitled" or not, they are indisputably "licensed," and the dispute requires a shift in status quo because, in reliance on that decision, Petitioners have invested in these operations by maintaining employees, insurance, and more.

The Preliminary Injunction will cause at least five irreparable harms to Petitioners.

2. Petitioners must affirmatively prohibit consumption of their product not just at the winery, but worldwide.

The Injunction enjoins "[a]ll tastings of wine, however described or denoted, characterized by the consumption of any amount of wine for any purpose, by anyone other than Defendants and employees of the Winery." (PA, Vol. 19, Exh. 46, ¶ 2(a)(i).) That restriction is not limited to winery property and seemingly applies worldwide. This intent is apparent when contrasted with the language just two lines later, which prohibits "[a]ll consumption of wine purchased by members of the public on the Winery premises." (*Id.*, 2(a)(iii) (emphasis added).) This worldwide injunction has serious, irreparable impact on Petitioners, because it forces them to recall products from the market, which would be unlawful. 27 USC § 205(d).

It is broad. Petitioners cannot allow friends, family or independent contractors to consume wine on the property. In this case, this includes Petitioners winemaker: he is not an employee. This makes little sense given other areas where wine consumption is allowed. Yountville, the nearest town, allows wine consumption in public parks, one of which is around the corner from Petitioners' property.

Forcing Petitioners to not only forgo tastings on their property, but all consumption regardless of "purpose," changes the status quo and causes irreparable harm because it disables Petitioners from actually doing the things it needs to do to be a winery: make and sell wine.

3. Petitioners must rebrand their entire business and destroy wine in the market.

The label on Hoopes' wine contains a picture of a dog, yet the Injunction precludes Hoopes from advertising its wine with animals. Going forward, Hoopes will need to destroy every unused label, create new ones, and apply for new Certificates of Label Approval with the United States Tax and Trade Bureau. It will have to, in essence, rebrand Hoopes Vineyard,

LLC. But Hoopes already has finished wine labeled and ready for sale. Hoopes cannot informally relabel its wine because such relabeling violates federal law.[3] Presumably, the only option is destroy its entire inventory. Hoopes also has existing merchandise, such as branded hats. These would all have to be destroyed, as well. This is mandatory and without legitimate government purpose.

4. Petitioners must cancel existing customer reservations and distributor meetings and will lose goodwill.

Ordering that "all commercial activity" cease is so broad that Petitioner will not be able to operate in any capacity for fear of violating the Injunction. It appears that as written, even use of the office is "commercial activity" that is not "expressly authorized" pursuant to 18.08.600 (or the zoning area).

If Hoopes cannot provide wine for consumption "for any purpose" on the premises, it cannot sell wine to its distributors and importers who visit Napa to purchase wine for out-of-state export. Petitioners are not aware of any winery in the Valley who is forbidden from allowing trade and the media to taste wine on premises. This is also in direct conflict with settled law: only the ABC can determine "who" can buy and consume wine. (*Wiseman Park, LLC, supra,* at p. 127.) If Petitioners' distributors cannot come to the property and try the wines, they are unlikely to buy the wines even for out-of-state export. This will effectively close off all distribution channels.

Hoopes must cancel all upcoming customer reservations and stop taking new reservations. This is frustrating given that the trial court determined Hoopes is entitled to private tastings of "some sort," but refused to define what would qualify as a private tasting, and denied any and all

[3] See 27 USC 205(e): "It shall be unlawful for any person to alter, mutilate, destroy, obliterate, or remove any mark, brand, or label upon … wine … held for sale in interstate or foreign commerce or after shipment therein …."

consumption "for any purpose." This is internally inconsistent and Hoopes, like every winery, relies on in-person business for any channel, which is one of the rights conveyed to a winery through the Type 02 license. (*See*, e.g., PA, Vol. 19, Exh. 45, at p. 3871-3871.) Hoopes has already had to cancel appointments for purely export in wholesale, at great financial loss. All commercial activity at the premises is chilled. (*See*, e.g., MJC, Decl. of Lindsay Hoopes.)

If the prohibition of on-site activities continues, Hoopes will be forced to terminate all employees: without customers there is no need for service staff. This will harm Petitioners' employees who rely on the winery for their livelihoods. Requiring termination of employees has been held to be a mandatory term. (*Feinberg v. Doe* (1939) 14 Cal.2d.24, 27.)

Hoopes, a lawful business, cannot functionally utilize the property anymore: without the ability to sell its branded products, meaningfully to *any* channel from the premises (even seemingly online), Hoopes has no channel to sell its wine. Hoopes cannot survive as a company without the ability to sell wine.

5. Petitioners must stop wine production, waste fruit, and break their contracts with local grape growers.

The Injunction has ended Petitioners' winemaking ability at the premises because its winemaker is an independent contractor, not an employee, and non-employees are prohibited from consuming wine at the premises. (PA, Vol. 19, Exh. 45, at pp. 3871-3872.) Tasting wine (i.e., consuming a small amount) is an integral part of the winemaking process. If a winemaker cannot taste wine, then wine cannot be manufactured. Wine has always been produced at the premises, so this is a change in the status quo. Because Hoopes can no longer functionally produce wine at the premises, it has no use for the grapes it grows, and those grapes will not be harvested. Hoopes has contracts to purchase grapes. Given Hoopes now has

no use for those grapes, they will need to cancel those contracts and may end up in lawsuits.

IV. MERITS OF APPEAL

The correctness of the trial court decision is not involved in a supersedeas proceedings. (*Shakin v. Bd. of Med. Examiners* (1967) 254 Cal.App.2d 102.) However, parties seeking supersedeas may establish necessity by sufficient showing that substantial questions will be presented an appeal. (*Homestake Mining Co. v. Superior Court* (1936) 11 Cal.App.2d 488.) This Court must examine the appeal on its face to see if there are "substantial" or "debatable" questions raised. (*Id.* at 496.) To do that, the Court examines "generally the proceedings before the challenged tribunals." (*Deepwell Homeowners' Protective Ass'n, supra,* 239 Cal.App.2d at 67.)

Initial rulings confirmed Petitioners legal position when the Honorable Cynthia Smith, presiding at the time, denied Napa's request to enjoin Petitioners. (PA, Vol. 7, Exh. 29, at p. 1309-1313.) She ruled Napa "failed to make a satisfactory showing that Defendants' conduct violates NCC sections 1.20.020 and 18.144.040, such that the conduct can constitute nuisance per se." (*Id.*.) Judge Smith recognized that "the NCC does not indicate that Small Wineries are limited to the activities listed in the definition of a Small Winery, and a county cannot enjoin conduct that is not expressly prohibited." (*Id.*) She ruled "Defendants have operated under a Small Winery Use Permit Exemption dating to 1984, and the Exemption permits sales," so "Plaintiffs have not shown satisfactorily that the conduct alleged . . . violates NCC sections 1.20.020 and 18.144.040." (*Id.*) Judge Smith acknowledged Petitioners' evidence that offering wine tastings and tours, selling wine-related items, holding marketing events without a use permit, engaging in commercial uses of the property, and engaging in a cottage food operation "does not violate NCC sections 1.20.020 and 18.144.040." (*Id.*)

Judge Boessenecker replaced Judge Smith after Napa's request for recusal and reached a different legal conclusion. The trial court issued its SOD for Phase 1 and rendered three verdicts. First, the trial court ruled that Napa proved its cause of action for nuisance per se because "Hoopes violated its SWE by expanding its uses outside its entitlements and NCC, sections 15.12.010 (building permits), 16.04.560 (floodplain permits), and 18.08.600 (tours, tastings, wine-related sales, social events)." (PA, Vol. 16, Exh. 43; PA, Vol. 19, Exh.48, at p. 3870.) Second, the trial court ruled that Napa proved its Unlawful Business Practices Act claim because "Hoopes unlawfully expanded its business without approval through Napa's permit process," which is "patently unfair because it gives Hoopes an unfair advantage – Hoopes does not have to spend the money to upgrade its systems and comply with the law, while other, law-abiding wineries do." (PA, Vol. 16, Exh. 43.) Finally, the trial court ruled that Napa established Alter Ego liability against Lindsay Hoopes individually. (*Id.*)

Following the SOD, on February 20, 2025, the trial court entered a Preliminary Injunction over objection. (PA, Vol. 19, Exhs. 44, 45, 46.) The Injunction is broader than the SOD. It enjoins Petitioners from "all winery activities that do not comply with Napa County Code sections 18.16.020(H) and 18.08.600 until such time as Defendants have obtained a valid use permit authorizing such activities ..." (PA, Vol. 19, Exh. 46, ¶ 2(a), at pp. 3878-3883.)

1. Petitioners have raised substantial questions of probable error by the trial court.

While there is no firm rule on what constitutes a "substantial question" on appeal, the potential impact of a meritorious appeal and the fallout if a reversal occurs is the focus. For example, this Court found a substantial question when the moving party asserted that, if it prevailed, the payout from dissolution would change by forty percent. (*Veyna v. Orange Cnty. Nursery,*

Inc. (2009) 170 Cal.App.4th 146, 154.) It found a substantial question in the interpretation of trust terms because "[s]hould the trust property be distributed and appellants later prevail on appeal, the task of recovering the property and redistributing it would be enormous." (*Est. of Murphy* (1971) 16 Cal.App.3d 564, 568.) Similarly, it found a substantial question over the interpretation of an insurance policy where a varying interpretation would alter coverage limits. (*Meyer v. Arsenault* (1974) 40 Cal.App.3d 986, 988 n.1.) And, it has found a substantial question as to whether an order is even appealable in the first instance. (*In re Est. & Guardianship of Davis* (1966) 246 Cal.App.2d 290, 295.)

Petitioners satisfy both the potential impact and fallout criteria. The fallout of a reversal absent a stay is enormous. If the Injunction is left in place, Petitioners' business will be shuttered: wine will be shelved or destroyed, liquor privileges divested, reservations canceled, goodwill will be lost, existing payments left outstanding, employees will lose their jobs and animals likely relocated. The bell cannot be unrung.

As to the potential impact of a meritorious appeal, Petitioners have raised substantial issues on appeal that are directly relevant to the Injunction. If Petitioners prevail on any of these issues, the Injunction will have to change.

2. The trial court incorrectly interpreted the law and failed to recognize that state law preempts the NCC.

To start, the law does not actually prohibit the activities enjoined. A county cannot simply declare general nuisances; it must legislate one or show proof of a nuisance in fact. (*Flahive v. City of Dana Point* (1999) 72 Cal.App.4th 241, 244.) A general nuisance statute does not create liability per se without identifying a predicate statute that has been violated. Whether an act or condition constitutes a nuisance per se is a question of law. (*City of Dana Point v. California Coastal Comm'n* (2013) 217 Cal.App.4th 170,

187.) If the trial court did not properly identify a law that made the conduct a nuisance per se, Napa cannot enjoin that activity.

In a similar vein, the small winery definition in Section 18.08.600 is not operative law and thus does not prohibit conduct. (*See*, e.g., *Kaanaana v. Barrett Business Servs*. (2021) 11 Cal.5th 158, 169 [example of distinguishing definitions and operative provisions]; *Hawaii v. Off. of Hawaiian Affs.*, (2009) 556 U.S. 163, 175 [whereas clauses and preamble not operative].) And even if definitions are operative law, Petitioners have argued the very activities the SOD and Injunction seek to divest, e.g., wine samples, winetastings, on-premises consumption, are activities expressly granted by the State ABC license. (Bus. & Prof. Code §§ 23358(a)-(d); AB 2004 (TE 1066); AB 1470 [TE 1068].) Napa does not have the authority to eliminate operations allowed by state law. (*Chevron U.S.A. Inc. v. County of Monterey* (2023) 15 Cal.5th 135, 147.) Nor does it have the authority to "control sales of alcohol" through a nuisance ordinance. (*Wiseman Park, LLC v. Southern Glazer's Wine & Spirits, LLC* (2017) 16 Cal.App.5th 110, 127.) These are substantial issues because, if Petitioners are correct, the entire rationale for the SOD/Injunction falls apart.

3. The trial court abrogated vested property rights.

Petitioners' rights to the activities enjoined are specifically allowed under state law through the existing license: sale of wine for on and off-premises consumption, (Bus. & Prof. Code § 23558(a)(2), (3)); sale of wine, regardless of source, for on premises consumption, (*Id.* § 23358(a)(4)); winetastings of wine produced or bottled by, or produced and packaged for, the licensee; (*Id.* § 23356.1), food service, (*Id.* §23305.7); wine sampling with food to cleanse a customer's palate, (Cal. Code Regs. Tit. 4, § 53); winestasting for a fee for the public, (*Id.* Tit. 4, § 53(a)(1)); free samples of wine, (Bus. & Prof. Code § 23386(a)); and sale of wine by the glass. (PA, Vol. 3, Exhs. 11, 12.) Petitioners have therefore raised substantial question

whether a county ordinance can alter rights granted by state licenses, particularly by implication.

Similarly, Petitioners have raised the substantial question of whether the trial court even had jurisdiction to impose these de facto conditions on the Type 02 license, because that is solely within the plenary authority of ABC. (*See*, e.g., *Korean American Fed. v. City of Los Angeles* (1994) 23 Cal.App.4th 376, 387 ["if the purpose and effect … are to regulate the manufacture, sale, purchase, possession or transportation of alcohol, we would have to agree the state has expressly preempted the local regulation."]

4. The trial court violated Petitioners' Constitutional rights.

On appeal, Petitioners will raise First Amendment and Due Process challenges to the SOD. On the Due Process front, Petitioners were not properly noticed of the theory advanced in the SOD as to public tastings. The trial court resolved the case by unilaterally deciding the conduct was a "public" as opposed to private tasting, but Napa did not present this position. Thus, Petitioners did not have opportunity to present evidence on the elements distinguishing the two.

On the First Amendment front, at bottom, Hoopes uses dogs on its labels. Wine labels are commercial speech. (*Benson*, 1552 Cal.App.4th at 1268; *Rubin*, 514 U.S. 476.) The prohibition against using animals in marketing is a very broad, content-based restriction and on its face prevents Hoopes from using a specific, legal form of advertising.

Finally, the ban on tastings also violates the First Amendment right to commercial speech. California has long recognized that "[o]bviously, the use of samples is for the purpose of encouraging the sale of the product." (*Tonkin*, 50 Cal.App.2d at 795.) By ruling that "tastings" are not allowed at the winery, the trial court has restricted commercial speech. This is obvious: Napa admits the public can buy wine, so takes issue with how wine is sold, not that it is.

5. These issues are "debatable" because two different trial court judges have already reached different conclusions.

To be substantial, these questions need only be "debatable." (*Homestake Mining Co., supra*, 11 Cal.App.2d at 496.) Two trial court judges have already reached different conclusions on these issues in this very case.

When Judge Smith denied Napa's early request to enjoin Petitioners, she ruled that even assuming Napa introduced evidence supporting the alleged conduct, Napa failed to make a satisfactory showing that the conduct violates NCC sections 1.20.020 and 18.144.040, such that the conduct can constitute nuisance per se. (PA, Vol. 7, Exh. 29, at pp. 1309-1313.) As discussed above, Judge Smith recognized the NCC does not limit a "Small Winery" to the activities in the definition of a Small Winery. (*Id*.) (The definition does not discuss much of what a small winery *can* do.) By law, the conduct cannot be a nuisance per se vis a vis a general nuisance statute. Judge Smith acknowledged wine tastings and tours, selling wine-related items, holding marketing events, engaging in commercial uses of the property, and engaging in a cottage food operation "does not [by their existence] violate NCC sections 1.20.020 and 18.144.040" per se, and the county cannot enjoin conduct that is not expressly prohibited. (*Id*.) She further ruled "Defendants have operated under a Small Winery Use Permit Exemption dating to 1984, and the Exemption permits sales." (*Id.*) Petitioners are also licensed for "sales" pursuant to the ABC, as opposed to land use entitlements. The ABC decides what "sales" are.

Judge Boessenecker looked at the same NCC sections and reached a different conclusion. Through appeal, Petitioners will request this Court reach the same conclusion as Judge Smith. Minimally, the issues are "debatable." Petitioners have carried their burden on this element.

6. The balance of harms favors granting the writ.

The last question is the balance of harms. (*Mills v. County of Trinity*

(1979) 98 Cal. App. 3d 859, 861.) On one hand, the harm to Petitioners is tremendous. They face loss of customer goodwill, termination of employees, destruction of inventory, loss of valuable liquor license privileges, and, ultimately, the end of the winery. (*See*, e.g., generally *Beames v. City of Visalia* (2019) 43 Cal.App.5th 741.)

On the other hand, the harm to Napa is minimal. A winery has operated on the site since the 1980s. (*Id.*) The conduct is classified a critical agricultural operation allowed under the NCC. (*See*, e.g., NCC §18.08.080(H)(2); 18.16.020(A), (H), 18.16.030(G)(1)-(5).) Code enforcement simply investigated "online." (PA, Vol. 15, Exh. 39, at pp. 3290-3293, 3309-3315.) Napa did not issue a citation, stop work order, nuisance abatement notice, summary abatement, or inspection warrant. (*See*, e.g., PA, Vol. 15, Exh. 39, at pp. 3290-3293.) The case was low priority and without life safety concerns. (PA, Vol. 15, Exh. 39, at pp. 3301-3302.) Petitioners were responsive and admitted the conduct: they just did not believe it violated any law. (*See*, e.g., *Id*. pp. 3258; PA, Vol. 4, Exh. 25; PA, Vol. 4, at p. 829.)

Napa does not have an interest in an unconstitutional injunction. Instead, "it is always in the public interest to prevent the violation of a party's constitutional rights." (*Melendres v. Arpaio* (9th Cir. 2012) 695 F.3d 990, 1002 (citation omitted). On balance, the Injunction should be stayed pending the resolution of whether the underlying SOD is correct and whether the Injunction itself imposes unconstitutional harms to Petitioners.

V. THE COURT SHOULD ISSUE A TEMPORARY STAY PENDING DETERMINATION OF THE PRESENT WRIT.

This Court has the authority to issue a temporary stay of the Injunction pending resolution of this writ. (Cal. Rule of Court 8.116.) Petitioners request that a temporary stay issue to avoid further harm.

VI. CONCLUSION

The Court should stay the Mandatory Preliminary Injunction pending resolution of Petitioner's appeal, and toll liability for exercise of the ABC 02 license rights during such time.

Dated: March 6, 2025

Respectfully submitted,

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WORD COUNT CERTIFICATION [CRC 8.204(c)(1)]

Counsel for Petitioners/Appellants hereby certify that this petition contains 13,887 words as measured by Microsoft Office Word processing software.

Respectfully submitted,

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PROOF OF SERVICE
(Code Civ. Proc., § 1013a, subd. (3))

I am employed in Napa County, California. I am over the age of 18 years and not a party to this action; my business address is 1230 Pine Street, St. Helena, CA 94574.

I served the Petition for Writ of Supersedeas, Motion for Judicial Notice and attached Exhibits, Motion for Consideration and attached Exhibit, and Petitioners Appendix of Exhibits (nineteen volumes) on the interested parties in this action by e-mail and/or electronic transmission: based on an existing order or agreement of the parties to accept service by e-mail or electronic transmission.

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury that the above is true and correct. Executed on March 6, 2025 at Napa, California.

Jolene Gleffe

_____
Jolene Gleffe

SERVICE LIST

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