





Superior Court of California  
County of Napa

Minutes

Case #: 22CV001262

NAPA COUNTY et al vs Lindsay Blair Hoopes et al

Hearing Date:	11/17/2022	Hearing Time:	1:30 PM
Judicial Officer:	Cynthia P Smith	Clerk:	C Martinez
Court Reporter:	No Court Reporter	Interpreter:	
Courtroom:	Courtroom A		

Parties Present via Zoom:

Trindle, George Roscoe, III Attorney

NATURE OF PROCEEDINGS

The matter comes on calendar regularly this date for a Petition Hearing: Preliminary Injunction.

HEARING

Court hears comments from counsel in regard to the status of the case.

Court passes the matter to allow counsel to meet and confer in regard to Plaintiff's request to withdraw the Motion for Preliminary Injunction.

Upon recalling the matter, Mr. Trindle informs the Court he contacted Ms. Falace and Ms. Hoopes to let them know what communication took place with the Court.

Mr. Trindle further informs the Court Defendants do not stipulate to a continuance or withdrawal of the Motion in this matter.

Having heard comments, the Court orders the following tentative ruling shall be adopted and incorporated into the minutes of the Court, making it the order:

**RULING:** Plaintiffs' request for a preliminary injunction is DENIED WITHOUT PREJUDICE.

I. PROCEDURAL MATTERS

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

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

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

II. LEGAL STANDARD



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

"[T]he question whether a preliminary injunction should be granted involves two interrelated factors: (1) the likelihood that the plaintiff will prevail on the merits; and (2) the relative balance of harms that is likely to result from the granting or denial of interim injunctive relief." (*Jay Bharat Developers, Inc. v. Minidis* (2008) 167 Cal.App.4th 437, 443 (quoting *White v. Davis* (2003) 30 Cal.4th 528, 554).) The burden is on the plaintiff to show all elements necessary to support issuance. (*O'Connell v. Sup. Ct.* (2006) 141 Cal.App.4th 1452, 1481; *Citizens for Better Streets v. Bd. of Supervisors* (2004) 117 Cal.App.4th 1, 6.) The court's determination must be guided by a mix of the potential-merit and interim-harm factors; the greater plaintiffs' showing on one, the less must be shown on the other. (*Butt v. State of California* (1992) 4 Cal.4th 668, 678; *King v. Meese* (1987) 43 Cal.3d 1217, 1226-28 [held: court has discretion to issue preliminary injunction where plaintiff demonstrates high likelihood of success on merits even if plaintiff unable to show balance of harm tips in his or her favor].)

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

### III. LEGAL ANALYSIS

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

Plaintiffs' Complaint asserts two causes of action against Defendants: (1) Public nuisance per se in violation of Napa County Code ("NCC") and (2) Unfair competition under Business & Professions Code section 17200. Plaintiffs pray for the following 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," and "[t]hat Defendants be enjoined from transferring ownership of the Property unless there is compliance with all applicable orders of this Court, any monetary judgment has been satisfied or will be satisfied with the proceeds of the transfer, and the Court has approved of such transfer." (Complaint, Prayer ¶¶ 1-2.)

##### 1. Nuisance Per Se

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

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

Plaintiffs point to two relevant sections of the NCC which expressly declare certain conduct to be a public nuisance. These sections provide, in general terms, that (1) the doing of any act or failure to act, which is prohibited by the NCC, an ordinance of the county, a permit or license, or other entitlement issued by the county, law of the state, or rule or regulation, "shall constitute a public nuisance"; and (2) any building maintained, and any use of property, contrary to the provisions of NCC Title 18, "shall be and the same is hereby declared to be unlawful and a public nuisance." (NCC, §§ 1.20.020, subd. (a), 18.144.040.)

While Plaintiffs argue that Defendants engaged in conduct in violation of NCC sections 1.20.020 and 18.144.040 (see Support Memo at 9:22-10:27), Plaintiffs did not introduce admissible evidence supporting Defendants' alleged conduct. Furthermore, even assuming *arguendo* that Plaintiffs introduced admissible evidence supporting Defendants' alleged conduct, Plaintiffs have 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.



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

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

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

The only admissible evidence (i.e., not conclusory, hearsay, or lacking foundation and personal knowledge) from the Cahill Declaration upon which the Court can rely is paragraph 10, where Cahill asserts that she noticed that Defendants were advertising an event to take place in April 2021 with music and wine. (Cahill Decl. ¶ 10.)<sup>1</sup> According to Plaintiffs, this conduct requires a use permit under NCC section 18.08.030 and exceeds the allowable uses of a small winery under the small winery permit exemption pursuant to NCC section 18.08.600(C). (See Support Memo at 10:13-17.)

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

Furthermore, even assuming *arguendo* that the Court can rely on the remainder of the Cahill Declaration to support the allegations of Defendants' conduct – including that Defendants improperly (1) supply and use produce grown on the Property for specialty boxes offered as part of a virtual cooking class, (2) installed storage facilities and maintain buildings (including the two-part shed(s)) without a floodplain permit or required building permit, (4) offer wine

<sup>1</sup> Based on the foregoing, the Court elects not to rule on Defendants' objections to the Cahill Declaration, as the subject matter of those objections was not relied upon by the Court in determining this matter.



tastings, tours, sell wine-related items, and hold marketing events without a use permit, (5) engage in commercial uses of the Property that are not allowed in the Agricultural Preserve District, and (6) engage in a cottage food operation at the Property – Defendants argue and offer evidence to show that certain conduct does not violate NCC sections 1.20.020 and 18.144.040, that they have abated certain of the concerns, and that they have worked in good faith with Plaintiffs, since they were notified of the alleged violations in 2020, to seek more information in order to resolve all other concerns. (See TRO Opposition at 7:9-12:4; TRO Hoopes Decl. ¶¶ 3, 10-18, Ex. A; OSC Opposition at 5:22-11:9.)

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

## 2. Unfair Competition

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

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

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

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

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

As an initial matter, and as discussed in Section III.A.1., supra, there is a dispute as to whether Defendants’ alleged past conduct is violative. Moreover, the Court is not convinced from all of the admissible evidence before it that there is a substantial basis for supposing that Defendants, if not restrained, will actually engage in prohibited activity. Even taking into consideration the unauthenticated screenshots attached to the Cahill Declaration (those of which are legible), which purport to show Defendants’ alleged unlawful conduct, the date of the most recent activity appears to be early-to-mid 2021 and the majority tracks back to 2017-2020. Nothing in the record suggests a reasonable probability or a realistic prospect that Defendants’ conduct, assuming it is violative, is impending and threatened.

The authority cited by Plaintiffs for the proposition that the Court retains authority to issue an injunction even if the alleged conduct to be enjoined has already been abandoned states that voluntary cessation of conduct, while not determinative, may be a factor in the court’s exercise of its equitable jurisdiction to issue an injunction. (*Robinson v.*



*U-Haul Co. of Cal.* (2016) 4 Cal.App.5th 304, 315.) Where the voluntary cessation was not of defendants' own accord, but was done only after the plaintiffs initiated legal proceedings, the court in *Robinson* found that defendant's promise to refrain from the unlawful activity could not be relied upon as the sole means of ensuring a change of practice in the future. (*Id.* at 317.) Here, however, it appears that Defendants have worked in good faith with Plaintiffs, since they became aware of the alleged violations in 2020, to understand and abate all concerns and that they were under the impression that certain of the concerns had been resolved. (See generally TRO Hoopes Decl.)

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

1 County of Napa, et al. v. Hoopes, et al.  
2 Napa County Superior Court Case No. 22CV001262

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4 **PROOF OF SERVICE**

5 I am employed in the County of Napa, State of California. I am over the age of 18 and not  
6 a party to the within action. My business address is BUCHALTER, A Professional Corporation,  
7 1230 Pine Street, St. Helena, CA 94574.

8 On the date set forth below, I served the foregoing documents described as:

9 **NOTICE OF ENTRY OF JUDGMENT OR ORDER**

10 on all other parties and/or their attorney(s) of record to this action as follows:

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**Attorneys for Plaintiffs NAPA COUNTY and  
THE PEOPLE OF THE STATE OF CALIFORNIA**

24 **BY EMAIL** On November 17, 2022, I caused the above-referenced document(s) to be  
25 sent in electronic PDF format as an attachment to an email addressed to the person(s) on whom  
26 such document(s) is/are to be served at the email address(es) shown above, as last given by that  
27 person(s) or as obtained from an internet website(s) relating to such person(s), and I did not  
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

Executed on November 17, 2022, at St. Helena, California.



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JOLENE GLEFFE