

**Case No. 25-3903**

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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HOOPE'S VINEYARD, LLC, SUMMIT LAKE VINEYARDS & WINERY LLC,  
COOK'S FLAT ASSOCIATES, a California limited partnership,  
*Plaintiffs-Appellants,*

v.

COUNTY OF NAPA,  
*Defendant-Appellee.*

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On Appeal from the United States District Court for the  
Northern District of California San Francisco Division, No. 3:24-cv-06256-CRB

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**APPELLANTS' OPENING BRIEF**

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### UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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## **STATEMENT REGARDING ORAL ARGUMENT**

Appellants request oral argument because the case contains a complex factual record with proceedings happening simultaneously in both federal and state court. Oral argument will allow counsel for Appellants to provide the Court with the most current information possible about the status of the proceedings.

## JURISDICTIONAL STATEMENT

This Court has jurisdiction of two consolidated appeals under 28 U.S.C. § 1291 because they are taken from final judgments of the District Court.

First, on March 28, 2025, the District Court dismissed Plaintiffs-Appellants' (the "Wineries") claims for declaratory and injunctive relief under *Younger v. Harris*, 401 U.S. 37 (1971). 1-ER-22. In the same order, the District Court stayed the Wineries' claims for damages and dismissed First Amendment retaliation claims with the opportunity to amend. *Id.* On April 25, 2025, the Wineries timely filed a notice of appeal of the March 28, 2025, abstention dismissal, 7-ER-1620, which was immediately appealable. *See Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 713 (1996). This Court docketed that appeal as Case No. 25-2715.

Second, the Wineries filed a Second Amended Complaint with new allegations supporting their First Amendment retaliation claims. 2-ER-129. On June 18, 2025, the District Court dismissed the amended First Amendment retaliation claims with prejudice and entered a Rule 54(b) judgment on all remaining claims. 1-ER-2-5. Two days later, the Wineries filed a timely notice of appeal from the Rule 54(b) judgment and the District Court's March 28, dismissal order. 7-ER-1617. This Court docketed that appeal as Case No. 25-3903. On June 27, 2025, this Court consolidated Case No. 25-2715 and Case No. 25-3903.

## STATEMENT OF ISSUES PRESENTED FOR REVIEW

- I. Whether the District Court erred in following the *Hicks v. Miranda* line of cases rather than the *Doran v. Salem Inn* line of cases in dismissing on abstention grounds Summit Lake and Smith-Madrone's claims where Summit Lake and Smith-Madrone were not parties to the state proceeding, were prevented from intervening in that proceeding, and do not share common ownership, control or management with Hoopes.
- II. Whether the District Court erred in dismissing Hoopes' claims without first determining whether Hoopes still had an opportunity to raise its federal claims in state court and where Hoopes did not seek to have the federal court enjoin the state case.
- III. Whether the District Court erred in dismissing Summit Lake and Smith-Madrone's First Amendment retaliation claims under Federal Rule of Civil Procedure 12(b)(6) when it improperly weighed the credibility of the well-pled allegations in the Second Amended Complaint.

## INTRODUCTION

This appeal seeks redress from three errors committed by the District Court which denied Appellants—three small wineries—from invoking the protection of federal courts against the arbitrary actions of local government.

First, the District Court shut the courthouse doors on two Napa County wineries (Appellants Summit Lake and Smith-Madrone) because a third winery (Appellant Hoopes) is defending a state-court nuisance action. The District Court turned its back on the two wineries even though the three wineries have no common ownership, control or management and are regulated under different sections of the Napa County Code. Their only association is that they share concerns about the constitutionality of various Napa County winery regulations. Despite that loose connection, and in direct contradiction with the U.S. Supreme Court's ruling in *Doran v. Salem Inn, Inc.*, 422 U.S. 922 (1975) and this Court's post-*Doran* case law, the District Court abstained from ruling on constitutional issues under *Younger*.

Taken to its logical conclusion, the District Court's erroneous application of *Younger* under the facts presented would unreasonably delay or outright defeat a claimant's ability to challenge the constitutionality of state and local government action. *Younger* does not direct that federal courts must avert their eyes from alleged constitutional wrongdoing because some other party in some other proceeding is already litigating the same or a related issue. The Supreme Court rejected the District

Court's extrapolation of *Younger* and this Court should now do the same. The District Court had a duty to hear Summit Lake and Smith-Madrone's claims.

Second, as to Hoopes, the District Court's *Younger* decision would prevent a claimant from challenging the constitutionality of laws or government conduct so long as there is some ongoing criminal or quasi-criminal action between that claimant and the government. This Court has rejected this very proposition: "If the mere possibility of inconsistent federal and state court judgments justified *Younger* abstention, *Younger* would swallow whole both *Colorado River* abstention and preclusion." *ReadyLink Healthcare, Inc. v. State Compensation Ins. Fund*, 754 F.3d 754, 759 (9th Cir. 2014) (citation omitted). The District Court erred in abstaining from hearing Hoopes' claims.

Third, the District Court created an impossible pleading standard for a First Amendment retaliation claim. "At the pleading stage, a plaintiff adequately asserts First Amendment retaliation if the complaint alleges plausible circumstances connecting the defendant's retaliatory intent to the suppressive conduct." *Arizona Students' Ass'n v. Arizona Bd. of Regents*, 824 F.3d 858, 870 (9th Cir. 2016). Here, the District Court determined that if the government is enforcing a law generally, then it is not plausible its enforcement of that law against a specific individual can be retaliatory. This Court has rejected this proposition, determining that "[o]therwise lawful government action may nonetheless be unlawful if motivated by retaliation

for having engaged in activity protected under the First Amendment.” *O’Brien v. Welty*, 818 F.3d 920, 932 (2016).

In dismissing this case, the District Court made numerous errors and failed to follow binding precedent. Reversal is necessary.

## STATEMENT OF THE CASE

Plaintiffs-Appellants Cook's Flat Associates ("Smith-Madrone"), Summit Lake Vineyard & Winery ("Summit Lake") and Hoopes Vineyard ("Hoopes") (collectively, the "Wineries") are small local wineries that are distinct entities, operating under distinct licenses, on their own properties in different parts of Napa County. The Wineries do not have common ownership, control or management, do not share finances, and are independent businesses. 2-ER-132, ¶¶ 10-12.

Each holds a California-issued Type 02 Winegrowers license. Under California law, licensed Winegrowers may "[s]ell wine to consumers for consumption on the premises," CA Business & Professions Code ("BPC") § 23358(a)(3), "conduct wine tastings of wine produced or bottled by, or produced and packaged for, the licensee, either on or off the winegrower's premises," BPC § 23356.1, and give away samples of wine to consumers, BPC § 23386. Winetastings, under California law, are "a presentation of samples of one or more wines ... to a group of consumers for the purpose of acquainting the tasters with the characteristics of the wine or wines tasted." Cal. Code Regs., Title 4, § 53. Winetastings may be free or for a fee. Cal. Code Regs., Title 4, § 53(1)(a). A licensed Winegrower may provide "small amounts of bread, crackers, cheeses or nuts to clear the taste buds of the participants between successive samples of wine during a winetasting." California courts recognize that "the use of [wine] samples is for the purpose of

encouraging the sale of the product.” *Tonkin Distrib. Co. v. Collins*, 50 Cal. App. 2d 790, 795 (1942).

Despite these California laws clearly allowing wineries the right to market and sell wine on their premises by offering wine tastings and other means, Defendant-Appellee Napa County (“Napa”) unlawfully restricts the Wineries from exercising these rights, while liberally allowing other wineries, mostly larger corporate wineries, to offer and provide wine on their premises with virtually no limitations.

**A. Smith-Madrone.**

Smith-Madrone is a California limited partnership that operates a winery at 4022 Spring Mountain Road, Saint Helena, California. 2-ER-131, ¶ 9. Napa County approved the property to “build a winery” on October 24, 1973. *Id.* Smith-Madrone holds a state-issued Type 02 Winegrower license. *Id.* Smith-Madrone was approved by Napa County as a “small winery” with a use permit. 2-ER-145, ¶ 132. Smith-Madrone is one of the oldest wineries in Napa County. 2-ER-145, ¶ 140. Smith-Madrone’s property is in the Agricultural Watershed District and regulated under section 18.20 of the Napa County Code (“NCC”). 2-ER-145, ¶ 130.

Smith-Madrone’s use permit provides that “[w]ine tastings be limited to a private, invitation only, basis.” 2-ER-145, ¶ 134. Smith-Madrone’s use permit does not limit how many customers it may see in any day, the number and type of events

it may host, or how many employees it may have. *Id.* Unbeknownst to Smith-Madrone, at some point in 2015, Napa imposed a restriction that Smith-Madrone could only host 10 customers per week and 520 customers per year. 2-ER-146, ¶ 145. It also restricted Smith-Madrone to zero marketing events per year and dictated that Smith-Madrone could only have four employees. 2-ER-287. Smith-Madrone did not become aware of these restrictions until it read a newspaper article related to the state-court *Napa County v. Hoopes* lawsuit (the “Napa Lawsuit”). 2-ER-147, ¶ 157.

**B. Summit Lake.**

Summit Lake is a California limited liability company that operates a winery at 2000 Summit Lake Drive, Angwin, California. 2-ER-131, ¶ 8. Napa approved Summit Lake as a “small winery use permit exemption” on March 1, 1984.<sup>1</sup> Summit Lake holds a state-issued Type 02 Winegrower license. *Id.* Like Smith-Madrone, Summit Lake’s property is in the Agricultural Watershed District and regulated under NCC section 18.20. 2-ER-139, ¶ 81.

In 2019, Napa advised Summit Lake that, despite hosting customers for nearly forty years for winetastings on the property and holding a Type 02 Winegrowers license, going forward Napa was limiting Summit Lake’s operations to only wine to-go and Summit Lake could no longer have customers taste wine on-site. 2-ER-

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<sup>1</sup> At the time, Napa had put in place a streamlined process for smaller wineries which exempted them from the need to obtain a use permit.

140, ¶¶ 89-91. Napa also took away Summit Lake’s right to have marketing events and limited it to two employees. *Id.*; 2-ER-288. To regain its right to host customers on-site for tastings, Napa required Summit Lake to agree to use at least 75% grapes grown within Napa County in the wines that Summit Lake produced. 2-ER-141, ¶ 100. Napa also required that Summit Lake agree to pay more than \$1 million to repave the road serving nearby wineries. 2-ER-141, ¶ 95. Summit Lake refused to agree to these conditions.

### **C. Hoopes.**

Hoopes is a small family winery that is organized as a California limited liability company and operates a winery at 6204 Washington Street, Napa, California. 2-ER-131, ¶ 7. In 1984, Napa permitted the property as a “small winery use permit exemption.” *Id.* at ¶¶ 7, 31. Unlike Smith-Madrone and Summit Lake, the Hoopes property is regulated under NCC section 18.16 because it is in the Napa County Agricultural Preserve District.<sup>2</sup> 2-ER-134, ¶ 30. After purchasing the property in 2019, Hoopes obtained a state-issued Type 02 Winegrowers, Type 17 Beer and Wine Wholesaler, and Type 20 Off Sale Beer and Wine licenses for the property. 2-ER-136, ¶ 47.

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<sup>2</sup> The Agricultural Preserve is located on the Napa Valley floor while the Agricultural Watershed is in the mountains on both sides of the valley floor.

#### **D. The Napa Lawsuit.**

On February 14, 2020, Napa issued a “Notice of Apparent Violation” alleging that Hoopes illegally allowed customers to sample wine at the winery and illegally advertised its wines for sale. 2-ER-136, ¶ 53. Subsequently, on March 11, 2021, without objection from Napa, the California Department of Alcoholic Beverage Control (“ABC”) issued Hoopes a permit which allowed it to have outdoor tastings and customer picnics on the property. 2-ER-137, ¶¶ 56-60. In issuing this permit, the ABC determined that the expansion of Hoopes’ “existing tasting room” and “picnic area” “will not interfere with nearby residents, churches, schools, hospitals, public playgrounds, is not in conflict with local zoning ordinances, and will not create or aggravate a law enforcement problem.” 2-ER-137, ¶ 61. Despite this ABC approval, Napa issued a second Notice of Apparent Violation to Hoopes the following month for allowing customers to taste wine on the property. 2-ER-138, ¶ 63.

In October 2022, Napa filed the Napa Lawsuit against Hoopes alleging, relevant to this case, that Hoopes’ operations were a public nuisance in violation of NCC section 18.08.600, which is a definitional ordinance defining “tours and tastings.” 2-ER-138, ¶ 65. Napa alleged that Hoopes was a nuisance because Hoopes used its ABC licenses to host customers for winetastings, provided wine samples, and used animals in advertising its wines. *Id.* Hoopes filed a Cross-Complaint alleging that Napa’s enforcement was preempted by California law which explicitly

allowed winetastings and sampling, violated Hoopes' procedural due process rights, created a "class of one," and that section 18.08.600 was unconstitutionally vague. Hoopes' cross claims were stayed to allow Napa's claims to proceed first. 2-ER-138, ¶ 71. One month before trial, Napa amended its Complaint, but Hoopes was not able to file an amended Cross-Complaint before the case went to trial. Hoopes has since filed a motion with the state court to add claims to its Cross-Complaint—the same claims it seeks to raise in this case—but the state court has refused to rule on that motion, which has been pending for five months.

Trial on Napa's claims occurred in January and February 2024 with a Statement of Decision issuing on November 13, 2024, for Phase I. 6-ER-1433. The state court determined that Hoopes engaged in a nuisance by holding "public tastings," but also determined it was an open question whether Hoopes could host "private tastings." 6-ER-1447. Notably, the terms "public tasting" and "private tasting" are not set forth within the NCC. That Hoopes might be able to hold private tastings led the court to determine that California law did not preempt NCC section 18.08.600, because not *all* tastings had been eliminated by NCC section 18.08.600 even though there is no distinction made between "private" and "public" tastings in section 18.08.600 or anywhere in the NCC for that matter. 6-ER-1446-47. The Statement of Decision addressed Hoopes' Equal Protection defense, but the two-paragraph addressal leaves much to the imagination. 6-ER-1448. The same can be

said related to the due process discussion; the state court quoted general caselaw without analysis. 6-ER-1448-49.

### **E. State Court Intervention**

In 2023, Summit Lake and Smith-Madrone became aware of the Napa Lawsuit and sought to intervene. 2-ER-142, 147-48, ¶¶ 109-10, 157-58. Napa opposed intervention because Summit Lake and Smith-Madrone's situations were "not in the least equivalent or even similar to the Hoopes situation." 2-ER-142, 148, ¶¶ 111, 159. Napa continued, "[i]f [Summit Lake/Smith-Madrone] has unique concerns, then those concerns would be specific to its property or its treatment by the County thus negating its other arguments of having sufficient interest in this litigation to intervene." 2-ER-143, 148, ¶¶ 112, 160. Further, "there are significant differences in the cases including the different zoning districts, the type of, and intensity of the, uses made by the respective properties over several decades." *Id.*, ¶¶ 113, 161. Napa concluded that intervention "should be denied and [Summit Lake/Smith-Madrone] can file its own action against the County if it wishes." *Id.*, ¶¶ 114, 162.

At the intervention hearing, Napa argued: "there's no res judicata or collateral estoppel effect. This is a standalone case ... it's not binding on either of the proposed intervenors as a matter of law, because they're not parties, and they're not in privity." 2-ER-143, ¶ 115. Napa further argued that while the court might enter judgment

against Hoopes, it would be “a judgement that’s not binding on these other cases. As a matter of law, it cannot be binding.” *Id.*, ¶ 116. Napa concluded by positing that “[t]he court is going to make a determination that’s binding on Hoopes, not on anyone else. So, it doesn’t conclusively resolve anything with respect to these other wineries.” *Id.*, ¶ 117. The state court denied intervention because “any judgment rendered in the Hoopes action will have no direct effect upon any person other than Hoopes.” *Id.*, ¶ 118.

#### **F. The District Court Dismissed the Entire Case Below.**

The Wineries filed this lawsuit to assert their claims that certain Napa County ordinances, Napa’s interpretation of those ordinances, and its other conduct violates the United States Constitution and is preempted by California law. The District Court issued two separate dismissal orders that form the basis of this appeal.

##### **1. The District Court Abstained Under *Younger v. Harris*.**

The District Court granted Napa’s motion to dismiss and abstained under *Younger*. 1-ER-22. It reasoned that *Younger* abstention “is appropriate if a state criminal action or civil enforcement action is (1) ongoing, (2) implicates important state interests, (3) and provides an adequate opportunity to raise constitutional challenges, as long as (4) ‘the federal action would have the practical effect of enjoining the state proceedings.’” 1-ER-10 (quoting *Herrera v. City of Palmdale*, 918 F.3d 1037, 1043–44 (9th Cir. 2019)).) The District Court ruled that the Napa

Lawsuit against Hoopes qualified as an ongoing civil enforcement action that implicated Napa's interest in abating nuisances. 1-ER-10-11. Therefore, the District Court only examined the last two elements of *Younger* abstention.

On the third element, the District Court ruled that “Hoopes had the opportunity—whether or not Hoopes took advantage of it—to raise the claims Plaintiffs assert here in state court.” 1-ER-12. The District Court refused to compare the claims raised in federal and state court. *Id.* And on the fourth element, the District Court ruled that “Plaintiffs’ request for injunctive relief would actually enjoin the state proceedings” and that their requests for damages would have the same effect. 1-ER-13-14. The District Court seemed to conclude that abstention would not apply only where “the issues raised in the federal suit were ‘collateral’ to the state proceedings.” 1-ER-13.

After concluding that this case met all *Younger* elements for Hoopes, the District Court made a cursory connection between Hoopes, Summit Lake, and Smith-Madrone. Rather than recognizing the differences between the three wineries—like the fact they do not have common ownership and are not under common control or management, or that Summit Lake and Smith-Madrone are regulated under and seek to challenge different sections of the NCC—the District Court reasoned that “Summit Lake and Smith-Madrone bring essentially identical claims to Hoopes.” 1-ER-19. It ruled that the factual differences between the

Wineries do “not have legal significance in this action” such that the independent claims are “inextricably intertwined.” 1-ER-19-20. Next, it concluded that “there is no question that Hoopes can and will adequately represent Summit Lake and Smith-Madrone’s interest in the state-court litigation.” 1-ER-20. And it determined that while Summit Lake and Smith-Madrone’s claims “do not appear to be derivative” of Hoopes’ claims, “no court – and certainly no court whose decisions are binding on this Court – has suggested that [federal] nonparties’ claims must be derivative of a state defendant’s claim for Younger abstention to be proper.” 1-ER-18, 20.

The District Court also dismissed Summit Lake and Smith-Madrone’s First Amendment retaliation claim but allowed 30 days to file a second amended complaint. 1-ER-21-22.

## **2. The District Court Dismissed the Amended First Amendment Retaliation Claims.**

The Wineries filed a Second Amended Complaint and alleged more facts supporting their retaliation claims. They alleged that less than a month after Summit Lake and Smith-Madrone tried to intervene in the Napa Lawsuit, Napa employees began undercover entrapment operations against them. 2-ER-226-27, ¶¶ 778–781. Before they moved to intervene, Napa “had not previously engaged in any operations, undercover or otherwise, designed to entrap Smith-Madrone or Summit Lake by requesting that either winery engage in conduct that Napa County would then contend was unlawful, nor had Napa County previously accused Smith-

Madrone or Summit Lake of violating any of the ordinances at issue, nor made them the subject of enforcement proceedings.” 2-ER-227, ¶ 782. And after Summit Lake moved to intervene, Napa flipped its position as to whether its Road and Street Standards applied to Summit Lake, such that Napa newly asserted that Summit Lake had to spend upwards of a million dollars to widen and repave a road so it could continue its operations. 2-ER-228, ¶¶ 787–791.

The Wineries alleged that Napa took these actions because of Summit Lake and Smith-Madrone’s attempted intervention in the Napa Lawsuit, that Napa’s actions were taken “with retaliatory animus and motive” to chill further efforts to operate their businesses or examine the full extent of their rights, and that Summit Lake and Smith-Madrone’s First Amendment activities were chilled as a result. 2-ER-227-29, ¶¶ 783–785, 789, 792–793. Finally, as additional evidence of Napa’s retaliatory animus, they alleged that Napa “is aware of numerous other wineries similarly situated to Smith-Madrone and Summit Lake, but Napa County has not taken enforcement action against these wineries.” 2-ER-229, ¶ 795.

Napa moved to dismiss the remaining First Amendment retaliation claims. The District Court acknowledged the new allegations but granted Napa’s motion for two reasons.

First, the District Court ruled that the new allegations in the Second Amended Complaint “contradict well-pleaded facts elsewhere in the Complaint.” 1-ER-4.

According to the District Court, there were allegations that Napa had threatened Summit Lake with enforcement as early as 2019, so Napa's new enforcement efforts in 2023, could not support an inference that Napa's actions were caused by Summit Lake's protected conduct even though Napa took these new enforcement efforts soon after Summit Lake had sought to intervene in the Napa Lawsuit. *Id.* And as to Smith-Madrone, the District Court said nothing about Smith-Madrone's independent allegations but seemingly lumped Smith-Madrone together with Summit Lake. (*See id.*) Therefore, according to the District Court, "Plaintiffs allegations do not provide even circumstantial evidence of retaliatory animus." 1-ER-5.

Second, the District Court disregarded as "conclusory" the allegations of Napa's motivations for the entrapment operations. 1-ER-4 n.1. Rather than accepting them as true as required in a Rule 12(b)(6) motion, the District Court ruled that it "need not, and does not, accept these as true for purposes of this motion." *Id.* Thus, the District Court dismissed the First Amendment retaliation claims by conclusively resolving allegations of retaliatory animus against Summit Lake and Smith-Madrone rather than taking them as true or allowing discovery to determine their veracity.

After dismissing the remaining First Amendment retaliation claims, the District Court entered a Rule 54(b) judgment. 1-ER-2. Plaintiffs timely appealed.

## SUMMARY OF ARGUMENT

The District Court made two errors on abstention and one on First Amendment retaliation.

First, the District Court erred in dismissing Summit Lake and Smith-Madrone’s claims under *Younger* because they are not closely related to Hoopes through common ownership, control or management. In *Younger* cases featuring multiple parties, the court must pick between two lines of cases: *Hicks v. Miranda*, 422 U.S. 332 (1975) and *Doran*, 422 U.S. 922. Under *Hicks*, courts should abstain where a state court action is proceeding against one party and a closely tied party files a federal claim. The parties in *Hicks* were closely tied as owners of an adult movie theater and their employees.

In contrast, under *Doran*, abstention is inappropriate where the parties are “unrelated in terms of ownership, control, and management.” 422 U.S. at 928-29. The parties in *Doran* were three independent topless bars; one was involved in a state court proceeding while the others were not.

*Doran* controls this case. Hoopes is a party in the Napa Lawsuit, but Summit Lake and Smith-Madrone—who have no common ownership, management, or control with Hoopes or each other—are not. Their aim is not to enjoin Napa from pursuing a nuisance action against Hoopes. Rather, it is to vindicate their own constitutional rights. The District Court erred by conflating *Hicks* and its subsequent

cases with *Doran* and preventing Summit Lake and Smith-Madrone from litigating their constitutional claims in any forum.

Second, the District Court erred in dismissing Hoopes' claims under *Younger* because the state court has not timely allowed Hoopes to raise its constitutional claims and a federal court ruling on the constitutionality of an ordinance is not the type of action that would interfere with a state court proceeding. The District Court concluded that Hoopes "had" the opportunity to raise its constitutional claims in the Napa Lawsuit. But this Court rejected that exact reasoning in *Duke v. Gastelo*, 64 F.4th 1088 (9th Cir. 2023), so the District Court's conclusion is erroneous. And even though Hoopes raised some, but not all, of its federal claims in state court, the relevant question is whether the state court would hear them "*before*" ruling on Napa's claims. *Meredith v. Oregon*, 321 F.3d 807, 819 (9th Cir. 2003). That has not happened here, where Hoopes' cross claims have been stayed for more than two years and its request to pursue additional federal claims goes unanswered while the state court prepares to enter a final judgment.

The District Court also erred in ruling that Hoopes' requests would enjoin the state-court proceedings. Hoopes did not ask the District Court to enjoin the state court from continuing the ordinance enforcement case. At most, an earlier federal court ruling would have a res judicata effect on state proceedings, but that is not a reason to abstain. *New Orleans Pub. Serv., Inc. v. Council of City of New Orleans*,

491 U.S. 350, 372 (1989); *AmerisourceBergen Corp. v. Roden*, 495 F.3d 1143, 1151 (9th Cir. 2007). There must be direct interference, *Green v. Tucson*, 255 F.3d 1086, 1100 (9th Cir. 2001) (en banc), which is not present here.

Third, the District Court erred in dismissing Summit Lake and Smith-Madrone's First Amendment retaliation claims when it failed to accept their well-pled allegations as true and in the light most favorable to them. To state a First Amendment retaliation claim, a plaintiff must allege "that (1) he was engaged in a constitutionally protected activity, (2) the defendant's actions would chill a person of ordinary firmness from continuing to engage in the protected activity and (3) the protected activity was a substantial or motivating factor in the defendant's conduct." *O'Brien*, 818 F.3d at 932. Indirect and circumstantial evidence of retaliatory intent is acceptable. *Allen v. Iranon*, 283 F.3d 1070, 1074 (9th Cir. 2002). Good evidence of retaliatory motive is "proximity in time between the protected speech and the alleged retaliation." *Id.* at 1077. Questions about whether actions were retaliatory are typically best left for trial. *Alpha Energy Savers, Inc. v. Hansen*, 381 F.3d 917, 929–30 (9th Cir. 2004).

Summit Lake and Smith-Madrone sufficiently alleged each element. They alleged that they engaged in protected conduct by seeking to intervene in the Napa Lawsuit. They alleged that, within a month of their attempted intervention, Napa engaged in undercover entrapment operations to try to catch Summit Lake and

Smith-Madrone in violations and that Napa threatened Summit Lake with shutting down its winery if it refused to pay for expensive road improvements. And they alleged that Napa took those actions in retaliation for the attempted intervention. The District Court's conclusion that Summit Lake and Smith-Madrone failed to plausibly allege sufficient facts to support the third element of their retaliation claim ignores the well-pled allegations and fails to accept them as true at the Rule 12(b)(6) stage. If the District Court had taken them as true, a one-month timeframe between protected conduct and retaliatory act "easily" supports an inference of animus. *Alpha Energy*, 381 F.3d at 929.

## ARGUMENT

### I. THE DISTRICT COURT ERRED IN APPLYING *YOUNGER*.

#### A. Standard of Review.

A district court’s decision to abstain under *Younger* is reviewed de novo. *Bean v. Matteucci*, 986 F.3d 1128, 1132 (9th Cir. 2021). *Younger* abstention is an “extraordinary and narrow exception to the general rule” that “a federal court’s obligation to hear and decide a case is virtually unflagging.” *Arevalo v. Hennessy*, 882 F.3d 763, 765 (9th Cir. 2018) (cleaned up).

“*Younger* abstention is appropriate only when the state proceedings: (1) are ongoing, (2) are quasi-criminal enforcement actions or involve a state’s interest in enforcing the orders and judgments of its courts, (3) implicate an important state interest, and (4) allow litigants to raise federal challenges.” *Rynearson v. Ferguson*, 903 F.3d 920, 924 (9th Cir. 2018). “If these four threshold elements are established, we then consider a fifth prong: (5) ‘whether the federal action would have the practical effect of enjoining the state proceedings and whether an exception to *Younger* applies.’” *Id.* (quoting *ReadyLink*, 754 F.3d at 759).

#### B. The District Court Failed to Appreciate That Abstention is an Extraordinary Remedy and Not a Matter of Course.

At the hearing on Napa’s motion to dismiss, the District Court questioned why it should get involved when there is a nuisance case pending in state court. 5-ER-1134. There are two reasons. First, this case raises serious constitutional issues and

Summit Lake and Smith-Madrone now have no forum wherein to raise their concerns, regardless that their success might pose difficulty for Napa's regulatory scheme. *See Zablocki v. Redhail*, 434 U.S. 374, 379 n.5 (1978) (“there is, of course, no doctrine requiring abstention merely because resolution of a federal question may result in the overturning of a state policy”). Second, where a case does not meet the elements for abstention, the district court “has no discretion to abstain.” *Peridot Tree, Inc. v. City of Sacramento*, 94 F.4th 916, 932 (9th Cir. 2024). The Supreme Court has repeatedly instructed that “federal courts have a strict duty to exercise the jurisdiction that is conferred upon them by Congress.” *Quackenbush*, 517 U.S. at 716. “Abstention from the exercise of federal jurisdiction is the exception, not the rule.” *Moses H. Cone Mem’l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 14 (1983). Even “the threat that the federal courts might decide the entire state system unconstitutional is not a valid justification for ... abstention.” *Neufeld v. City of Baltimore*, 964 F.2d 347, 351 (4th Cir. 1992).

“[A]bstention cannot be ordered simply to give state courts the first opportunity to vindicate the federal claim.” *Peridot Tree*, 94 F.4th at 928 (citing *Zwickler v. Koota*, 389 U.S. 241, 251 (1967)); *Bud Antle, Inc. v. Barbosa*, 45 F.3d 1261, 1272 (9th Cir. 1994) (“the balance must always tip heavily in favor of exercising jurisdiction”). Some “lawsuit presents ‘difficult’ and significant questions. But as the Court wisely noted in 1821, “[q]uestions may occur which we

would gladly avoid; but we cannot avoid them. All we can do is, to exercise our best judgment, and conscientiously to perform our duty.” *Peridot Tree*, 94 F.4th at 936 (quoting *Cohens v. Virginia*, 19 U.S. 264, 404 (1821)).

**C. Abstention Cannot Apply to Smith-Madrone and Summit Lake.**

Typically, to find *Younger* abstention, the federal court plaintiff and the state court party must be legally related “in terms of ownership, control, and management.” *Doran*, 422 U.S. at 928-29; accord *Herrera*, 918 F.3d at 1046. And, *Younger* is ordinarily limited “to parties actually involved in state litigation.” *Benavidez v. Eu*, 34 F.3d 825, 832 (9th Cir. 1994); accord *Ripplinger v. Collins*, 868 F.2d 1043, 1049 n.5 (9th Cir. 1989). Again, Smith-Madrone and Summit Lake are *not* legally related to Hoopes in any manner and are not parties in the Napa Lawsuit against Hoopes.

And while there “may be some circumstances in which legally distinct parties are so *closely related* that they should all be subject to the *Younger* considerations which govern any one of them” (*Doran*, 422 U.S. at 928), these circumstances exist only when the federal-court plaintiff’s interests are “so intertwined with those of the state court party that ... interference with the state court proceeding is inevitable.” *Vasquez v. Rackauckas*, 734 F.3d 1025, 1035 (9th Cir. 2013) (quoting *Green*, 255 F.3d at 1100).

But as this Court has explained, “[c]ongruence of interests is not enough, nor is identity of counsel,” *Green*, 255 F.3d at 1100, “[n]or does due process permit the preclusion of a plaintiff’s claim on the ground that he could have intervened in a state court litigant’s action if he did not actually do so,” *id.* at 1101, nor does the “mere potential for conflict in the results of adjudications,” *id.* at 1097, nor is voluntary association enough, *Steffel*, 415 U.S. at 471 n.19. Rather, as noted above, the parties typically must be legally related “in terms of ownership, control, and management.” *Doran*, 422 U.S. at 929.

And even if a federal court decision in the present action as to Smith-Madrone and Summit Lake might influence the Napa Lawsuit, this is also not sufficient to invoke *Younger* abstention.” *Montclair Parkowners Ass’n v. Montclair*, 264 F.3d 829, 831 (9th Cir. 2001) (a federal court decision “‘may, through claim or issue preclusion, influence the result in state court,’ [but] this was not the sort of interference sufficient to trigger *Younger* abstention) (quoting *Green*, 255 F.3d at 1093); *see also Wiener v. Cty. of San Diego*, 23 F.3d 263, 267 (9th Cir. 1994) (“there is no reason why the California state courts should mind if a federal court resolves his claim”).

**1. Public Policy Cautions Against Overbroad Application of *Younger* to Non-parties to a State Case.**

“There are good public policy reasons for applying *Younger* to non-parties in only ‘certain limited, exceptional circumstances.’” *Culture of Life Fam. Serv., Inc.*

*v. Bonta*, --- F. Supp. 3d ---, No. 3:24-cv-01338-GPC-KSC, 2025 WL 1677783, at \*9 (S.D. Cal. June 13, 2025). (quoting *Mass Delivery Ass'n v. Coakley*, 671 F.3d 33, 42 (1st Cir. 2012)). For example:

a City could foreclose totally any federal constitutional challenge to an ordinance ... merely by prosecuting one individual among the many at whom the ordinance was directed. This result truly 'would turn federalism on its head' and would impose an exhaustion requirement upon § 1983 actions, which the Supreme Court has refused to do. Further, it would constitute an abrogation of the paramount duty of the federal courts to protect constitutional rights.

*Id.* (quoting *Cobb v. Beame*, 402 F. Supp. 19, 25 (S.D.N.Y. 1975)). More than 400 wineries are subject to Napa's winery ordinances in some way. Under the District Court's decision, their constitutional rights rest in the hands of Hoopes.

## **2. *Doran* and its Progeny from this Court Require Reversal.**

The District Court's critical error was that it failed to recognize two distinct lines of *Younger* abstention cases governing non-parties: cases which stem from the Supreme Court's decision in *Hicks v. Miranda* and cases which stem from the decision in *Doran v. Salem Inn*. The District Court stated that "no court – and certainly no court whose decisions are binding on this Court – has suggested that [federal] nonparties' claims must be derivative of a state defendant's claim for Younger abstention to be proper." 1-ER-18. This statement is wrong.

In *Doran*, three independent topless bars filed suit asserting an ordinance violated their constitutional rights. 422 U.S. at 924-25. One bar received a criminal

summons for violating the ordinance while the other two did not. *Id.* at 925. The Supreme Court held that *Younger* did not apply to the two bars that did not receive criminal summonses. *Id.* at 929. While all three were “represented by common counsel, and have similar business activities and problems,” because “they are apparently unrelated in terms of ownership, control, and management ... each of the respondents should be placed in the position required by our cases as if that respondent stood alone.” *Id.* at 928-29.

That the District Court believed there were no binding Ninth Circuit cases is incredible given the number of times this Court has weighed in on this issue. *See, e.g., Canatella v. California*, 404 F.3d 1106, 1115 (9th Cir. 2005); *Green*, 255 F.3d at 1100 (en banc), overruled on other grounds; *Gilbertson v. Albright*, 381 F.3d 965, (9th Cir. 2004) (en banc); *Vasquez*, 734 F.3d at 1035; *Arizona Attorneys for Criminal Justice v. Brnovich*, No. 20-16293, 2021 WL 3743888, at \*2 (9th Cir. Aug. 24, 2021) (“because the plaintiffs in this case assert their own First Amendment rights in this proceeding, not their clients’ rights, the plaintiffs’ interests are not ‘so intertwined’ with those of their clients in state court proceedings that ‘interference with the state court proceeding is inevitable’”) (quoting *Green*, 255 F.3d at 1100). In *Green*, this Court specifically addressed the line between *Hicks* and *Doran*:

Early in the development of the *Younger* doctrine, the [Supreme Court] in two paradigmatic cases addressed the question whether individuals who were not parties to the state litigation could proceed with a constitutional challenge to the statute involved in the state litigation in

federal court, *Hicks v. Miranda*, 422 U.S. 332 (1975); *Doran v. Salem Inn*, 422 U.S. 922 (1975). In *Hicks*, after two of their employees were charged under the state obscenity statute for showing a film and four copies of the film were seized, owners of an adult movie theater sued in federal court for return of their film copies and an injunction against the enforcement of the statute. The Court explained that, under the particular circumstances of that case, *Younger* barred the federal suit: The owners’ “interests and those of their employees were intertwined,” given the fact that the seized films belong to the owners but were central to the pending prosecutions.... **Shortly thereafter [in *Doran*], the Court clarified that when the federal plaintiff is not a party to the state court action, a mere commonality of interest with a party to the state litigation is not sufficient to justify abstention.**

\* \* \*

Together, then, *Hicks* and *Doran* circumscribe the quite limited circumstances under which *Younger* may oust a district court of jurisdiction over a case where the plaintiff is not a party to an ongoing state proceeding: Congruence of interests is not enough, nor is identity of counsel, but a party whose interest is so intertwined with those of the state court party that direct interference with the state court proceeding is inevitable may, under *Younger*, not proceed.

255 F.3d at 1100 (emphasis added).

This Court reversed a district court that abstained on similar facts to *Doran* and this case. In *We Are America/Somos America, Coalition of Arizona v. Maricopa County Board of Supervisors*, 594 F. Supp. 2d. 1104 (D. Ariz. 2009), the federal plaintiffs challenged the constitutionality of a state law under which unrelated state-court defendants were being prosecuted. *Id.* Like here, the district court abstained, finding that the state court defendants could adequately represent the interests of the federal plaintiffs and that if the district court granted declaratory or injunctive relief it would “interfere in the state proceedings because it would enjoin ... or otherwise

involve th[is] federal court ... in terminating or truncating state proceedings.” *Id.* at 1110 (quotations omitted). This Court reversed because the federal plaintiffs “weren’t parties to the state court proceedings, and they’re not sufficiently intertwined with the plaintiffs who were parties to trigger *Younger*.” *We Are America/Somos America, Coal. of Arizona v. Maricopa County Board of Supervisors*, 386 F. App’x 726, 727 (9th Cir. 2010) (citing *Doran*, 422 U.S. at 928-29; *Green*, 255 F.3d at 1099-1100; *Gilbertson*, 381 F.3d at 968-69).

Other Circuits recognize the distinction between *Hicks* and *Doran*. The First Circuit recognized that “[t]he Supreme Court has addressed in two cases whether distinct but very closely related parties should be treated the same for purposes of *Younger* abstention ....” *Massachusetts Delivery Association v. Coakley*, 671 F.3d 33, 42 (1st Cir. 2012). The Third Circuit affirmed a district court’s rejection of *Younger* as to a church, parents, professor and students at a college that was the subject of state prosecution for offering courses without a license. *New Jersey-Philadelphia Presbytery of the Bible Presbyterian Church v. New Jersey State Board of Higher Education*, 654 F.2d 868 (3rd Cir. 1981). The court applied *Hicks* and *Doran* in finding the federal plaintiffs’ rights were not interrelated with the college:

The Supreme Court’s articulation of the contours of derivative preclusion in *Younger* cases, however, has been limited to preclusion of an employer’s federal suit when its employees assert identical interests in state court, *Hicks v. Miranda*, [] and to preclusion of federal plaintiffs too intertwined with the state defendants “in terms of ownership, control and management,” *Doran v. Salem Inn* []. Certainly,

the parents and students in this action neither own, nor control, nor manage Shelton College.

*Id.* at 878. The court also noted that, as here, where a party seeks “merely a declaratory judgment invalidating the ... regulations, rather than an injunction limiting the scope of the state court injunction, there would be no direct interference in the state court proceeding.” *Id.* at 879. But “[a]s *Doran* makes clear, the real problem is not the relief sought in federal court, but the relationship of the nonparty federal plaintiffs to the state defendants” and “the nonparties here do not fall within the Hicks-Doran ‘nexus’ with the state defendants.” *Id.* at 880.

### **3. Smith-Madrone and Summit Lake Must be Allowed to Litigate Their Own Constitutional Rights.**

The District Court’s ruling is, essentially, that because Napa was enforcing one of its winery ordinances against Hoopes, Summit Lake and Smith-Madrone must stand on the sideline and Hoopes’ efforts would be dispositive of Summit Lake and Smith-Madrone’s rights. The Third Circuit called that rationale absurd:

If, for example, a state court is requested to enforce a local criminal obscenity law against a pornographic publication, and grant of that relief would mean the publication would cease distribution in that area, it is inconceivable that a federal court would hold a reader barred from asserting his first amendment interest in reading the magazine on the ground that should the magazine lose in state court, his interests would be resolved because there would be nothing left to read. Absurd as such a holding sounds, it is in essence the conclusion of the Corpus Christi court. We decline to rely on such a precedent.

*New Jersey-Philadelphia Presbytery*, 654 F.2d at 880 (citation omitted). The Third Circuit concluded “that nonparties to the state enforcement proceedings who assert independent constitutional interests may advance those interests in a separate federal action” and the contrary result would be “a very great extension of the *Younger* rule, which would, in effect, ignore the teachings of *Steffel* and *Doran*.” *Id.* See also *Utah Animal Rights Coalition v. Beaver County*, 2023 WL 3634376, \*8 (D. Utah Mar. 24, 2023) (“Requiring the federal courts to step aside when no state criminal prosecution is pending against the federal plaintiff would turn federalism on its head”). In other words, “parallel challenges to the constitutionality of a state statute or policy are typically not barred by *Younger*.” *Spargo v. New York State Comm’n on Jud. Conduct*, 351 F.3d 65, 83 (2d Cir. 2003).

Despite this wealth of precedent, much of it binding, the District Court determined that “[a]ny factual differences between the parties (such as whether they historically operate pursuant to a small winery exception or permit) does not have legal significance in this case. The legal analysis is thus inextricably intertwined.” 1-ER-19-20. But Summit Lake and Smith Madrone are not litigating the rights of Hoopes. They are bringing claims to vindicate their own constitutional rights. Where a “Plaintiff seeks to vindicate its own [constitutional]” rights the “claims are not ‘entirely derivative’ of any right of a defendant in the [state case]; nor are they ‘unavoidably intertwined and inseparable’ from those claims.” *Nat’l Institute for*

*Fam. and Life Advocates (NIFLA) v. James*, No. 24-CV-514 (JLS), 2024 WL 3904870, at \*7 (W.D.N.Y. Aug. 22, 2024) (quoting *Spargo*, 351 F.3d at 84). Such a “case instead aligns with those where Courts refused to apply *Younger* to third party claims.” *Id.* at \*8 (citations omitted).

“Indeed, the district court’s abstention and its expectation that [Summit Lake and Smith-Madrone] try its luck in state court does little to promote efficiency, comity, or federalism. Instead, the district court effectively imposed an exhaustion requirement on [Summit Lake and Smith-Madrone], requiring it to first identify and litigate potential state-law claims before raising its federal constitutional concerns.” *Peridot Tree*, 94 F. 4th at 935. “Abstention here ‘accomplish[es] nothing except to require still another lawsuit, with added delay and expense for all parties.’” *Id.* (quoting *Cty. of Allegheny v. Frank Mashuda Co.*, 360 U.S. 185, 196 (1959)). That exhaustion requirement is even more improper where, as here, the state court denied Smith-Madrone and Summit Lake intervention. That leaves Smith-Madrone and Summit Lake no forum to litigate their constitutional rights.

#### **4. The District Court Misapplied Inapplicable Cases.**

The District Court not only erred in ignoring binding precedent, but also erred in applying the cases it relied upon. According to the District Court, the focus is on whether “the legal analysis of the plaintiffs’ claims” is the same as the legal analysis in the state court. 1-ER-16 (quoting *Spargo*, 351 F.3d at 84). While the District Court

cited to *Spargo*, that case does not support its statement. Rather, the *Spargo* court stated:

Because McNally and Kermani could have a protected interest in hearing Spargo speak and in associating politically with Spargo only if Spargo has an underlying First Amendment right to engage in such speech and political activity, the legal analysis of the plaintiffs' claims are unavoidably intertwined and inseparable. McNally's and Kermani's claims are largely the mirror-image of Spargo's First Amendment challenge, and it would be impossible for the District Court to analyze plaintiffs' claims independently without first analyzing Spargo's constitutional right to engage in the charged conduct, a matter which, under *Younger*, must be resolved in the pending state disciplinary proceeding.

351 F.3d at 84. The District Court thus misapprehended *Spargo's* holding. *Spargo* is merely an example of a *Hicks*-type derivative *Younger* case where the federal plaintiff's claims could not exist separate and apart from the state-court defendant's defenses and, thus, rose and fell with the state court defendant.

The District Court also cited *Women's Community Health Center of Beaumont, Inc. v. Texas Health Facilities Commission*, 685 F.2d 974, 982 (5th Cir. 1982), as suggesting that abstention is proper when a case "involve[d] only a single question." 1-ER-16. But that likewise misapprehends that court's holding. There, patients and doctors were litigating whether one specific medical center could continue to operate. *Women's Community Health*, 685 F.2d at 982. "The only relief requested [was] an order for the continued operation of the Center." *Id.* Here, Smith-Madrone and Summit Lake seek relief related to their own businesses. The District

Court's misapprehension is apparent when considering the next line from the opinion where it recognized that *Doran* required a different result when federal plaintiffs seek relief as to their own rights: "Cf. *Doran*, 422 U.S. at 928-29, 95 S.Ct. at 2566 (each plaintiff claimed injury to operation of its own establishment)." *Id.*

The District Court also determined that abstention is appropriate where "the state-court defendant ..., 'adequately represent plaintiffs' interests in the state ... proceedings." 1-ER-17 (quoting *Spargo*, 351 F.3d at 85). This is not a test set forth in *Spargo*. The court actually said:

plaintiffs seek to directly interfere with the pending disciplinary proceeding against Spargo by requesting that the District Court permanently enjoin defendants from pursuing the disciplinary proceeding or otherwise enforcing the challenged judicial conduct rules. In addition, there is no suggestion that Spargo would fail to adequately represent plaintiffs' interests in the state disciplinary proceeding, and it appears that McNally and Kermani could seek to appear as amici curiae ... or attempt to bring a separate declaratory judgment action challenging the constitutionality of the rules.

*Spargo*, 351 F. 3d at 85. Here, Smith-Madrone and Summit Lake filed their own actions challenging the constitutionality of the ordinances regulating them; different ordinances than those that regulate Hoopes. They did not ask the District Court to enjoin the Napa Lawsuit.

Finally, the District Court determined that "the federal plaintiffs must 'seek to directly interfere with the pending [state] proceeding.'" 1-ER-17 (quoting *Spargo* 351 F.3d at 85). As noted above, this is not found in *Spargo* and the court there noted

that the plaintiffs were seeking to enjoin the state disciplinary proceedings. The District Court then quoted *Herrera*, stating that “‘all the federal plaintiffs’—including nonparties to the state proceedings—‘seek the same relief from the state court proceedings,’ and their federal claims therefore ‘present the same risk of interference’ in those proceedings.” *Id.* (quoting *Herrera*, 918 F.3d at 1047.) But the preceding sentences put this statement in context:

The Herreras are all related to the same corporation, Palmdale Lodging. In fact, Mona—though not a named defendant in the state action—is a co-founder of state-defendant Palmdale Lodging. And the children, with their parents, reside at the motel which is the subject of the state action. Furthermore, the federal claims arise from a single proceeding to abate code violations at Palmdale Lodging's motel and the corresponding investigation. Such relationship goes beyond identity of interests; rather, the family members were allegedly deprived of their civil rights collectively during the investigation, and the ongoing nuisance proceeding related to the motel which Bill and Mona operate and at which the family resides.

*Herrera*, 918 F.3d at 1047. Here, however, the Wineries are all unrelated entities without common ownership, control or management. Likewise, the District Court's citation to *Hicks* for the proposition that “[a]s we have pointed out, the federal action sought to interfere with the pending state prosecution” leaves out important context.

1-ER-17. The full quote provides the context:

two employees of the theater had been charged and four copies of “Deep Throat” belonging to appellees had been seized, were being held, and had been declared to be obscene and seizable by the Superior Court. Appellees had a substantial stake in the state proceedings, so much so that they sought federal relief, demanding that the state statute be

declared void and their films be returned to them. Obviously, their interests and those of their employees were intertwined ....

*Hicks*, 422 U.S. at 349.

The District Court also cited *Casa Marie, Inc. v. Superior Court of Puerto Rico District of Arecibo*, 988 F.2d 252 (1st Cir. 1993), but failed to note that in *Green* this Court distinguished that case because the *Casa Marie* court “appears to have recognized that parallel lawsuits raising the same claims would not have implicated the *Younger* doctrine.” *Green*, 255 F.3d at 1103 n. 17.

Typically, cases where courts have found non-parties to a state prosecution inexplicably intertwined with that prosecution involve employment relationships. *See Colonial First Prop., LLC v. Henrico County Virginia*, 166 F. Supp. 2d 1070 (E.D. Va. 2001); *Marsico v. Elrod*, 469 F. Supp. 825 (N.D. Ill. 1979). Other common situations involve political supporters. *See Citizens for a Strong Ohio v. Marsh*, 123 F. App’x 630 (6th Cir. 2005); *Wisconsin Mfrs. & Com. v. Wisconsin Elections Bd.*, 978 F. Supp. 1200 (W.D. Wis. 1997); *Spargo*, 351 F.3d 65.

A recent decision from the Southern District of California demonstrates the correct application of *Younger*. In *Culture of Life*, 2025 WL 1677783, a state-enforcement action related to abortion treatment was pending when a non-party brought its own federal lawsuit alleging violations of the “free exercise of religion, the right to free speech, and the right to make reproductive decisions.” *Id.* at \*3. The court focused on whether the relief sought by the federal plaintiffs “seeks to enjoin

or has the practical effect of enjoining the ongoing state judicial proceeding.” *Id.* at \*7 (quoting *Arevalo v. Hennessy*, 882 F.3d 763, 765 (9th Cir. 2018)). The defendant argued the federal plaintiff had a “sufficiently close relationship or sufficiently intertwined interests” with the state defendant and the claims “arise directly out of the Enforcement Action” and mirrored the defenses in the Enforcement Action. *Id.* While the court agreed the parties had “a longstanding close relationship,” their relationship was not “legal in nature” and was not sufficiently intertwined for *Younger* purposes. *Id.* at \*8.

*Cornwell v. California Board of Barbering & Cosmetology*, 962 F. Supp. 1260, 1263 (S.D. Cal. 1997), is instructive and involved constitutional challenges to the California Attorney General’s determination that African hair braiding constituted cosmetology and required a license. The plaintiff wanted to open her own salon but the licensing requirement prevented her from doing so. *Id.* at 1264. At the time she brought her federal complaint, an unrelated salon and one of its hairstylists were being prosecuted for operating without a license. *Id.* at 1268. Relying on *Steffel* and *Doran*, the court determined that “[a]s to Dr. Cornwell, her claims are not barred by the proceedings pending against Braderie and Ms. Sylva.” *Id.* at 1268-70.

There is overwhelming binding precedent that courts do not apply *Younger* to legally distinct entities seeking to vindicate their own constitutional rights. Smith-

Madrone, Summit Lake and Hoopes are separate entities. Their only relationships are associational and voluntary. 2-ER-131-32, ¶¶ 7-12. At most, they share “a mere commonality of interest” which “is not sufficient to justify abstention.” *Green*, 255 F.3d at 1100. “This case instead aligns with those where Courts refused to apply *Younger* to third party claims.” *NIFLA*, 2024 WL 3904870, at \*8. They also are not seeking to enjoin the enforcement of any ordinance against Hoopes. Smith-Madrone and Summit Lake are seeking to enjoin enforcement of unconstitutional ordinances against themselves. They are entitled to litigate those claims in a federal forum and the decision of the District Court must be reversed.

**D. The District Court Improperly Abstained as to Hoopes.**

The District Court assumed that *Younger* precludes Hoopes from bringing any federal lawsuit against Napa, regardless of the claims Hoopes presents, because there might be some overlap in facts, issues, or legal analysis in the Napa Lawsuit. But “[i]f the mere possibility of inconsistent federal and state court judgments justified *Younger* abstention, *Younger* would swallow whole both *Colorado River* abstention and preclusion.” *ReadyLink*, 754 F.3d at 754 (citation omitted).<sup>3</sup> The possibility that a state and a federal court “could come out differently on the question of

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<sup>3</sup> The District Court dismissed this principle because *ReadyLink* did not involve a parallel criminal proceeding. 1-ER-14 n.3. But this principal comes from *AmerisourceBergen*, 495 F.3d at 1151, and the case the District Court relied upon, *Herrera*, cited to *AmeriSource* and *ReadyLink* for this very principle. *Herrera*, 918 F.3d at 1049.

constitutionality ... is insufficient to require abstention.” *Brown v. Damiani*, 154 F. Supp. 2d 317, 326 (D. Conn. 2001) (citing *Doran*, 422 U.S. at 927-28).

The District Court erred on two elements of *Younger* abstention by concluding that Hoopes had an adequate opportunity to raise its constitutional claims in the state court and that it was required to raise all its constitutional claims in the state court. *See Rynearson*, 903 F.3d at 924.

**1. Hoopes Did Not Have an Adequate Opportunity to Raise its Federal Claims.**

A “necessary predicate for a *Younger* dismissal ... is, ‘the opportunity to raise and have timely decided by a competent state tribunal the federal issues involved.’” *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 594 (1975) (citation omitted). The District Court failed to determine whether Hoopes’ claims have been or could be timely decided in the state court. Instead, it erroneously determined that so long as a state court defendant is allowed to raise some constitutional claims, regardless of whether the court actually hears those claims, *Younger* abstention is appropriate.

**a. The District Court erred in determining Hoopes should have previously raised constitutional claims rather than analyzing whether it still had a chance to raise such claims.**

“Properly framed, the third requirement for *Younger* abstention asks whether there remains an opportunity to litigate the federal claim in a state-court proceeding at the time the federal court is considering whether to abstain.” *Duke v. Gastelo*, 64

F.4th 1088, 1096 (9th Cir. 2023). The question “is not focused on the number of opportunities a state provides for challenging constitutional errors [but] whether there remains an opportunity to litigate the federal claim in a state-court proceeding.” *Id.* at 1095-96. The *Duke* majority rejected the dissent’s position that the question is only whether the plaintiffs “‘had an opportunity,’ or whether their constitutional claims ‘could have been raised.’” *Id.* at 1096 (emphasis in original). This Court distinguished *Juidice v. Vail*, 430 U.S. 327 (1977), the case relied upon by the District Court here, because in that case the “plaintiffs had a prospective opportunity to raise their constitutional claims in New York court in the very contempt proceedings they sought to enjoin.” *Id.*

The District Court, like the dissent in *Duke*, misapplied this rule and determined that Hoopes waived its constitutional claims by not raising them earlier in the Napa Lawsuit: “Plaintiffs suggest that Hoopes did not have the opportunity to raise their federal claims in state court because Napa County amended its state-court complaint just one month before trial. But there is no reason Hoopes could not have asserted its claims before the amendment.” 1-ER-12. This is not the proper test; the test is whether Hoopes still had the prospective opportunity to raise its constitutional claims in state court. The District Court did not answer that question.

Had the District Court attempted to answer that question, it would be clear that Hoopes has no such opportunity. In October 2022, Napa filed suit alleging,

relevant to this case, that Hoopes' operations were a public nuisance because Hoopes used its ABC permit and allowed customers to consume wine and engage in tastings on its property and that Hoopes used animals in advertising. 2-ER-138, ¶ 65. Hoopes filed a Cross-Complaint alleging that state law preempted Napa's enforcement of NCC section 18.08.600 and that the way Napa enforced section 18.08.600 violated Hoopes' procedural due process rights, created a "class of one" and that the term "tours and tastings" in the ordinance was unconstitutionally vague. Hoopes' claims were stayed so Napa's could proceed first. 2-ER-138, ¶ 71. One month before trial, the court granted Napa leave to file an amended complaint. Because of the timing, Hoopes could not file its own motion for leave to amend its Cross-Complaint to add claims.

Hoopes later filed a motion for leave to file a third amended Cross-Complaint, but leave is subject to the state court's discretion. Cal. Code Civ. Proc. § 576. Napa opposed the amendment, and the state court has not ruled on the motion for leave, which has been pending since March 2025. It is unclear whether Hoopes still has an opportunity to raise its federal claims in state court.

**b. Because the State Court bifurcated Hoopes's constitutional claims, Hoopes did not have an adequate opportunity for timely review of its existing claims.**

By bifurcating the case, the state court also denied Hoopes timely review of the claims in its Cross-Complaint. The timeliness requirement dictates that a party

have “the opportunity to present his federal constitutional claims” “*before*” a ruling is made on the state’s claims *Meredith*, 321 F.3d at 819. (emphasis in original). *Meredith* involved an enforcement action against a property owner over a road sign. *Id.* at 810. The plaintiff attempted to raise constitutional claims, but the administrative law judge refused to review those arguments and ordered the sign removed. *Id.* The plaintiff appealed and his request to stay the removal order was denied. *Id.* at 811.

The plaintiff then filed a federal action. The district court denied the state’s motion to dismiss “because the court was not convinced that Meredith would have an adequate opportunity in state court to raise his federal constitutional claims regarding [an] amended sign.” *Id.* “The court noted that the ALJ had refused to review the amended content of Meredith’s sign, that Meredith’s federal constitutional claims therefore were not before the Oregon Court of Appeals, and that the amendment was ‘critical’ to a proper evaluation of Meredith’s claims due to its political nature.” *Id.* This Court agreed that the plaintiff did not have “a ‘full and fair’ opportunity to present his federal claims” because the ALJ refused to hear them before issuing a final order. *Id.* at 818-19. This Court concluded, “[i]n sum, we hold that Meredith never had the opportunity, before he was required by law to remove his sign, to have a state court consider the merits of his federal constitutional claims.

Due to the unique posture of this case, it therefore was appropriate for the district court not to abstain from hearing Meredith's case." *Id.*

Hear, a similar fact pattern played out. Napa filed its Complaint and two months later, Hoopes filed its Cross-Complaint which included some constitutional claims. Hoopes subsequently filed a First and Second Amended Cross-Complaint alleging that Napa violated its Equal Protection rights and violated California's Bane Act. 6-ER-1388. The latter was filed on May 15, 2023, 6-ER-1420, but no action has been taken on it.

Yet in December 2023, Napa filed a Second Amended Complaint, alleging that all commercial activity on Hoopes' property was prohibited and disclosing a Napa attorney had engaged in an undercover sting operation. In January 2024, the state court granted Napa's motion to bifurcate so that Napa's claims went to trial before Hoopes' constitutional claims. 6-ER-1434. Trial began eleven days later. In November 2024, the Court entered its Statement of Decision, but that Statement explicitly noted that it did not address Hoopes' Cross-Complaint and left open the possibility that it would never hear Hoopes' claims: "the Court will consider any subsequent motions filed by the County that address the propriety of moving forward with Hoopes' Second Amended Cross-Complaint." 6-ER-1451.

Hoopes filed its Second Amended Cross-Complaint in December 2022. Nearly three years later and the state court has yet even set those claims for trial.<sup>4</sup> As in *Meredith*, the state court has refused to hear Hoopes' claims, and it is unclear whether it will ever hear those claims. Certainly, Hoopes has not had a timely and adequate review of its federal claims.

**2. Because Hoopes Does Not Seek a Stay of the State Court Proceedings, its Claims Do Not Threaten Actual Interference.**

Even if this Court were to determine that Hoopes had a timely and adequate opportunity to litigate its federal claims in state court, the District Court still erred in determining that the federal action would effectively enjoin the state proceedings. For *Younger* to apply, “[t]he requested relief must seek to enjoin—or have the practical effect of enjoining—ongoing state proceedings.” *ReadyLink*, 754 F.3d at 758. The District Court did not determine how such interference might occur, other than to say, “[i]ndeed, it goes without saying that Plaintiffs’ request for injunctive relief would actually enjoin the state proceedings, Plaintiffs’ other requests – for declaratory relief and damages – would have the same effect in practice.” 1-ER-14. Respectfully, it does not “go without saying.”

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<sup>4</sup> Subsequent developments after an abstention ruling are relevant. *See Middlesex*, 457 U.S. at 436-37 (finding there is “no reason to ignore this subsequent development”).

*Younger* abstention involves interference that “would have the same practical effect on the state proceeding as a formal injunction.” *Gilbertson*, 381 F.3d at 977-78. But the possibility that a federal judgment might resolve an issue in the state court is not sufficient “interference,” even if it has a res judicata effect. *AmerisourceBergen*, 495 F.3d at 1151. Instead, the relief sought in the federal action must threaten actual interference with, not just relate to, the state proceeding. *Quackenbush*, 517 U.S. at 716; *see also New Orleans Pub. Serv., Inc. v. Council of City of New Orleans*, 491 U.S. 350, 372 (1989) (finding insufficient that a federal court’s disposition of a case “may well affect, or for practical purposes, pre-empt, a future ... [or] even pending ... state court action ... there is no doctrine that the availability or even the pendency of state judicial proceedings excludes the federal courts”).

The District Court assumed any action it took would interfere with the state court proceedings. That is not true in practice. For example, in *Planned Parenthood League of Massachusetts v. Bellotti*, 868 F.2d 459, 465 (1st Cir. 1989), the plaintiff challenged a state law regulating abortions. Discussing “interference,” the court noted that “whenever a federal court finds violations of constitutional rights ... state interests are affected. In virtually all such cases, the way in which state courts treat future cases is affected.” *Id.* But such cases do not interfere with state proceedings because the court is not asked to, for example, monitor the conduct of a state judge.

*Id.* at 467. Instead, “[t]he instant case challenges the statute as unconstitutional. This is therefore not a case threatening interference with ongoing state proceedings or practices.” *Id.*

Similarly, in *Green*, the district court dismissed a federal action challenging a state law on constitutional grounds because there was a pending state-court action challenging the same law on the same federal grounds. 255 F.3d 1086. This Court reversed, observing that the “threshold condition” for abstention under *Younger* is present only “when the relief sought in federal court would in some manner directly ‘interfere’ with ongoing state judicial proceedings—and that, further, such interference is not present merely because a plaintiff chooses to instigate parallel affirmative litigation in both state and federal court.” *Id.* at 1097 (citing *New Orleans*, 491 U.S. 350). While recognizing that a judgment in such situations “may, through claim or issue preclusion, influence the result in state court,” this was not the sort of “interference” sufficient to trigger *Younger* abstention. *Id.* at 1093.

The same scenario played out in *City of Montclair*, 264 F.3d at 831:

Here, the Association merely filed parallel affirmative litigation in both federal and state court. The Association did not request the federal court to enjoin on-going state court proceedings, nor did it seek any other relief that would interfere with its state court action within the meaning of *Younger* and its progeny. As in *Green*, the mere pendency of a parallel state court proceeding challenging the City's rent control ordinance is insufficient to trigger *Younger* abstention.

Likewise, in *San Jose Silicon Valley Chamber of Commerce Political Action Committee v. City of San Jose*, No. C 06-04252 JW, 2006 WL 8449287, at \*3 (N.D. Cal. Sept. 20, 2006), the court recognized that “courts in the Ninth Circuit draw a distinction between injunctions sought against an allegedly unconstitutional state judicial procedure (in which case, *Younger* abstention is appropriate) and an allegedly unconstitutional state act (where *Younger* abstention is not appropriate).” The court declined to abstain because the plaintiff “has not requested the Court to stay a state or municipal administrative proceeding due to its unconstitutionality. Rather, COMPAC seeks declaratory and injunctive relief against the enforcement of a local ordinance that it alleges is unconstitutional.” *Id.*

In *Jonathan Club v. City of Los Angeles*, 680 F. Supp. 1405, 1407 (C.D. Cal. 1988), the city filed a state-court action against the federal plaintiff alleging it had violated an ordinance. The plaintiff, however, had filed a federal action the day prior, seeking declaratory and injunctive relief that the ordinance was unconstitutional. The federal court denied the city’s motion to dismiss on *Younger* grounds, stating:

the Club is not seeking a stay of the state proceedings as such, but is seeking to enjoin the City from enforcing the ordinance. Although the City has suggested that the relief sought by the Club is tantamount to an injunction against the state proceedings, the court disagrees. If the Club were attempting to enjoin the State court proceedings, considerations of comity would mandate abstention. A request for an injunction against the City’s enforcing the ordinance raises no such considerations.

*Id.* at 1409. The court noted that “the *Younger* Court itself specifically distinguished *Younger* from cases where, as here, an injunction is sought against allegedly unconstitutional state action as distinguished from a state proceeding.” *Id.* (citing *Younger*, 401 U.S. at 47 n. 4). “The relief sought by the Club in this case is essentially the same—injunctive relief against a municipality enforcing an ordinance which the Club believes to be unconstitutional.” *Id.* The *Jonathan Club* court concluded, “since the Club has only asked this court to enjoin the enforcement of the allegedly unconstitutional ordinance by the City and has not sought to enjoin the state proceeding itself, *Younger v. Harris* has no application, and the City is free to proceed in the state court.” *Id.* at 1410.

As discussed above, the state court case relates only to NCC section 18.08.600 while in this case the Wineries challenge many other code sections, Napa’s interpretations of those sections, and other conduct which the Wineries contend violated their constitutional rights. Rather than reviewing the federal claims and the specific relief sought, the District Court made a blanket determination that so long as one common ordinance was at issue then *Younger* abstention was mandated. This was error. Courts have determined that “[a] provision-by-provision *Younger* analysis appears prudent ... for the fact that one provision may not be enforceable in light of *Younger* does not necessarily warrant ... dismissing the entire action” *Joseph A.*, 275 F.3d at 1272; *see also Joseph v. City of San Jose*, 2020 WL 1031899 (N.D. Cal.

March, 3, 2020); *Addiction Specialists, Inc. v. Twp. of Hampton*, 411 F.3d 399, 413 (3rd Cir. 2005) (abrogated on other grounds). Courts may not abstain based on the mere “potential for conflict.” *Herrera*, 918 F.3d at 1151. There must be “evidence or argument to show that the constitutionality of the alleged behavior has been or is likely to become an issue in the ongoing state criminal case.” *Sekerek v. City of Nat’l City*, No. 19cv1360-LAB (MSB), 2020 WL 4435416, at \*4 (S.D. Cal. Aug. 3, 2020).

In *Herrera*, this Court followed the “provision-by-provision” guidance from *Joseph A.* and analyzed each allegation to determine whether a decision “would create a federal court judgment with preclusive effect over the ongoing state action.” 918 F.3d at 1018. As to one claim, the court determined that “[a]lthough the allegations of Fourth Amendment violations arise from investigations conducted in the course of the state enforcement action, we fail to see how determinations on such claims by the federal court would intrude in the ongoing state nuisance proceeding in the impermissible way that the Herreras’ other damages claims would.” *Id.* at 1049. “A ruling in favor of the Herreras on such claims would presumably not invalidate the basis for the code-violation enforcement proceedings, and the Fourth Amendment claims themselves are not at issue in such proceedings.” *Id.* (citing *AmerisourceBergen*, 495 F.3d at 1151–52). This Court concluded: “We recognize that such decision raises the possibility of piecemeal litigation .... Recalling our oblig[ation] to decide cases within the scope of federal jurisdiction, this claim must

be severed and the district court shall consider it on the merits upon remand.” *Id.* (internal quotation omitted).

Here, the state court case is based upon Hoopes’ alleged violation of NCC 18.08.600. Hoopes filed a Cross-Complaint alleging that this ordinance was unconstitutional and/or preempted. That claim is still pending. Later, the Wineries filed this federal action alleging that NCC 18.08.600 was unconstitutional and/or preempted. But they also raised constitutional and preemption challenges to other Napa ordinances not at issue in the state action:

NCC 1.30.030(A) (7-ER-1574, ¶¶ 471, 643);

NCC 1.30.040 (7-ER-1597, ¶ 643);

NCC 15.12.010 (7-ER-1609, ¶ 739);

NCC 18.08.040 (7-ER-1542, 1544, 1556, 1586, ¶¶ 229, 242, 326, 560);

NCC 18.08.040(H)(1) (7-ER-1557, 1586, ¶¶ 327, 560);

NCC 18.08.040(H)(2) (7-ER-1520, 1542, 1545, 1557, ¶¶ 22, 224, 247, 327);

NCC 18.08.170 (7-ER-1587, ¶¶ 568);

NCC 18.08.370 (7-ER-1542-43, 1559, 1579, 1602-03, 1608, ¶¶ 231, 345, 507, 680, 689, 728);

NCC 18.08.377 (7-ER-1546, ¶ 260);

NCC 18.08.620 (7-ER-1543, 1545, 1602, 1607, ¶¶ 232, 250, 679, 727);

NCC 18.08.640 (7-ER-1543, ¶ 233);

NCC 18.16.020(A) (7-ER-1520, 1542, ¶¶ 23, 224);

NCC 18.16.020(G) (7-ER-1520, ¶ 24);

NCC 18.16.020(I) (7-ER-1520, ¶ 24);

NCC 18.16.030 (7-ER-1545, 1608, ¶¶ 250, 728);

NCC 18.16.030(G)(5) (7-ER-1580, ¶ 511);

NCC 18.16.030(I)(5) (7-ER-1580, ¶ 511);

NCC 18.16.030(A) (7-ER-1542, ¶ 224);

NCC 18.20.020 (7-ER-1608, ¶ 728);

NCC 18.20.020(H) (7-ER-1603, ¶¶ 684-86);

NCC 18.20.020(G) (7-ER-1603-04 ¶¶ 688-91);

NCC 18.20.030 (7-ER-1545, 1608, ¶¶ 250, 728);

NCC 18.104.040 (7-ER-1520, 1522, 1543-44, ¶¶ 22, 37, 236, 238);

NCC 18.104.250 (7-ER-1597, ¶ 642);

NCC 18.104.250(B) (7-ER-1546, 1590, 1593, 1595, ¶¶ 255, 592, 616, 625);

NCC 18.104.250(C) (7-ER-1546, 1591, 1593, 1595, ¶¶ 256, 593, 616, 625);

NCC 18.144.040 (7-ER-1588, ¶ 578); and

Napa Road and Street Standard sections 14(i), 15, and 17 (7-ER-1586-87, ¶  
563, 564, 573).

The Wineries went so far as to provide the District Court with a comparison of the state and federal cases, 6-ER-1313-1319, to show just how different the two

cases were but the District Court dismissed these efforts as “miss[ing] the point” and finding “[w]hat matters” is that Hoopes should have raised these claims in the state court. 1-ER-12.

The District Court did not explain how a determination that any of these other ordinances are unconstitutional would interfere with the Napa Lawsuit dealing with a single definitional ordinance. If a federal court struck down any of these other ordinances, or Napa’s policies and interpretations thereof, that decision would not interfere with the Napa Lawsuit. Any other conclusion would insulate entire regulatory frameworks from federal court scrutiny where any one subpart thereof is at issue in one case.

Finally, without analysis, the District Court determined that Hoopes’ First Amendment retaliation claim, “go[es] to the heart of the state proceedings” and would have the practical effect of enjoining the state proceeding. 1-ER-13. Such a conclusion has no basis. Lindsay Hoopes is one of the owners of Hoopes and her personal residence was not part of the winery property at issue in the state action. 2-ER-225, ¶ 764. Yet, during the state proceeding, Napa cited her personal residence for unstated “violations” of the NCC. *Id.*, ¶¶ 766-67. Hoopes alleged that this action was retaliation for Hoopes filing its Cross-Complaint. *Id.*, ¶ 769. This claim is ancillary to the state court proceedings, does not seek to enjoin the state court proceeding and does not even relate to NCC section 18.08.600.

Hoopes has not asked the District Court to enjoin on-going state proceedings. Rather, Hoopes wants some court to hear its constitutional claims. After the state court declined to do so, Hoopes filed its federal action, but now the District Court is abstaining. Under this Court's rationale from *Green* and *City of Montclair*, Hoopes' actions do not trigger *Younger* abstention.

## **II. THE DISTRICT COURT ERRED IN DISMISSING THE FIRST AMENDMENT RETALIATION CLAIMS BECAUSE IT FAILED TO TAKE THE WELL-PLEADED ALLEGATIONS AS TRUE.**

### **A. Standard of Review.**

Rule 12(b)(6) dismissals are reviewed de novo. *See Benavidez*, 993 F.3d at 1141. A plaintiff need only plead “enough facts to state a claim to relief that is plausible on its face.” *Twombly*, 550 U.S. at 570. A claim is plausible when a plaintiff “pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678. Courts “accept factual allegations in the complaint as true and construe the pleadings in the light most favorable to the nonmoving party.” *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008).

### **B. Smith-Madrone and Summit Lake Plausibly Pled a Claim for First Amendment Retaliation.**

To state a First Amendment retaliation claim, a plaintiff must allege “that (1) he was engaged in a constitutionally protected activity, (2) the defendant's actions would chill a person of ordinary firmness from continuing to engage in the protected

activity and (3) the protected activity was a substantial or motivating factor in the defendant's conduct.” *O'Brien*, 818 F.3d at 932.

The District Court’s conclusory order does not address this standard but, from its content, it appears that the District Court agreed the Wineries were engaged in protected activity. In a footnote, the District Court stated that it would not accept as true the Wineries’ allegations that Napa’s actions would chill a person of ordinary firmness. 1-ER-4 n. 1. But it made no other finding on this issue.<sup>5</sup> The District Court only discussed the third element, concluding that Plaintiffs “do not provide even circumstantial evidence of retaliatory animus” because the “entrapment attempts against them” were standard efforts by Napa to enforce its ordinances against other wineries in Napa County. 1-ER-5. In essence, the District Court’s conclusion was that so long as a local government has enforced its laws, and the alleged retaliatory conduct enforced the same law, there can be no retaliation claim. This is not the correct analysis.

“Otherwise lawful government action may nonetheless be unlawful if motivated by retaliation for having engaged in activity protected under the First

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<sup>5</sup> This allegation was well-pled and the refusal to accept it as true was improper. Minimal government actions have been held to be sufficiently chilling because “[t]he effect on freedom of speech may be small, but since there is no justification for harassing people for exercising their constitutional rights [the government action] need not be great in order to be actionable.” *Garcia v. City of Trenton*, 348 F.3d 726, 729 (8th Cir. 2003). In *Garcia*, issuing \$35 parking tickets was found to be sufficiently chilling. *Id.*

Amendment.” *O’Brien*, 818 F.3d at 932. “For example, in *Skoog v. County of Clackamas*, 469 F.3d 1221, 1235 (9th Cir. 2006), [this Court] held that a plaintiff need not establish the absence of probable cause for a police officer’s seizure of the plaintiff’s personal property to make out a First Amendment retaliation claim.” *Id.* “An act [by the government] taken in retaliation for the exercise of a constitutionally protected right is actionable under § 1983 even if the act, when taken for a different reason, would have been proper.” *Bloch v. Ribar*, 156 F.3d 673, 681-82 (6th Cir. 1998) (citations omitted).

In *O’Brien*, this Court reversed dismissal of a First Amendment retaliation claim because the district court held the plaintiff to a higher standard than required. On a motion to dismiss, a “claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *O’Brien*, 818 F.3d at 933 (citing *Iqbal*, 556 U.S. at 678 and *Twombly*, 550 at 570 (internal quotations omitted)). Allegations that a student was disciplined “ma[de] it at least ‘plausible’ that defendants’ actions were substantially motivated by opposition to O’Brien’s protected speech and expressive conduct.” *Id.* at 935-36 (citations omitted).

“At the pleading stage, a plaintiff adequately asserts First Amendment retaliation if the complaint alleges plausible circumstances connecting the defendant’s retaliatory intent to the suppressive conduct.” *Arizona Students’ Ass’n*

*v. Arizona Bd. of Regents*, 824 F.3d 858, 870 (9th Cir. 2016). A plaintiff may establish motive using direct or circumstantial evidence. *Ulrich v. City & County of San Francisco*, 308 F.3d 968, 979 (9th Cir. 2002) (citing *Allen v. Iranon*, 283 F.3d 1070, 1074 (9th Cir. 2002)). As courts have noted, however, “proof of an official’s retaliatory intent rarely will be supported by direct evidence of such intent.” *Bloch*, 156 F.3d at 681-82 (citing *McDonald v. Hall*, 610 F.2d 16 (1st Cir. 1979)). “As with proof of motive in other contexts, this element of a First Amendment retaliation suit ... involves questions of fact that normally should be left for trial.” *Alpha Energy*, 381 F.3d at 929–30 (quoting *Ulrich*, 308 F.3d at 979)). *See also Lowe v. City of Monrovia*, 775 F.2d 998, 1009 (9th Cir. 1985) (explaining that “any indication of discriminatory motive ... may suffice to raise a question that can only be resolved by a factfinder”); *Friedman v. Quest Int’l Fragrances Co.*, 58 F. App’x 359 (9th Cir. 2003) (“It is settled law in this Circuit that circumstantial evidence is sufficient to withstand summary judgment, especially in cases where direct proof of wrongdoing is difficult to obtain.”). “Accordingly, claims involving proof of a defendant’s intent seldom lend themselves to summary disposition.” *Bloch*, 156 F.3d at 681-82 (cleaned up).

Facts showing retaliatory motive include the “proximity in time between the protected speech and the alleged retaliation.” *Allen*, 283 F.3d at 1077. “To demonstrate that retaliation was a substantial or motivating factor behind an adverse

... action, a plaintiff can ... introduce evidence that the speech and adverse action were proximate in time, such that a jury could infer that the action took place in retaliation for the speech ....” *Vargas v. City of Tracy*, 2025 WL 578475, at \*4 (E.D. Cal. Feb. 21, 2025) (cleaned up). A “three-to-eight-month time range ... ‘easily’ supports an inference of retaliation.” *Alpha Energy*, 381 F.3d at 929 (quoting *Coszalter v. City of Salem*, 320 F.3d 968, 977 (9th Cir. 2003)). *See also Ulrich*, 308 F.3d at 980-81 (noting that “[t]he proximity in time between each of these adverse actions and Dr. Ulrich’s speech is well within time frames we have held sufficient for a jury to infer discriminatory motive.”); *Keyser*, 265 F.3d at 744 (explaining that a short “proximity in time between the protected action and the allegedly retaliatory [conduct]” supports a retaliation claim).

Smith-Madrone and Summit Lake filed their intervention motions on September 7, 2023 and September 8, 2023, respectively. 2-Er-226, ¶¶ 771. Shortly thereafter, on October 2, 2023, a Napa County agent sent an email to Smith-Madrone seeking to entrap the winery into hosting a purportedly illegal birthday party. 2-ER-081, 085. It is theoretically possible that Napa’s agent, “Mr. Stewart,” was truly asking about having an event at Smith-Madrone and was not using the request to try to entrap Smith-Madrone. Discovery should resolve this issue. But even without discovery and based on the bare allegations, and the email and declaration of which the District Court took judicial notice, it is certainly plausible that Napa County sent

the emails in an attempt to entrap Summit Lake and Smith-Madrone into purportedly violating the NCC so that Napa County could take enforcement action against them in retaliation for their attempt to intervene in the state court case. Smith-Madrone, and Summit Lake (who alleges receiving a similar email in the same timeframe, 2-ER-227, ¶ 781), have stated a claim.

Summit Lake also plausibly alleged animus related to Napa's retaliation regarding local road improvements. In 2019, Napa advised Summit Lake that Summit Lake needed to spend approximately \$1 million to improve a local road and then in 2022 Napa threatened Summit Lake that if Summit Lake did not agree to the improvements, Summit Lake would not be allowed any customers. 2-ER-228, ¶ 787. Thereafter, Napa advised Summit Lake that it had discovered records which showed that Summit Lake might be exempt from the road standards. *Id.*, ¶ 788. But, once Summit Lake tried to intervene, Napa, in retaliation, changed its course and on October 31, 2023, advised Summit Lake that it was not exempt. *Id.* ¶¶ 788-92. This occurred less than two months after Summit Lake sought intervention. 2-ER-226, ¶ 771. On this issue, the District Court focused on the fact that Napa had in 2019 and 2022 told Summit Lake the road standards applied to it, but the court failed to address that Napa later advised Summit Lake that it might be exempt and then pulled this exemption once Summit Lake sought intervention. *See* 1-ER-4.

Summit Lake and Smith-Madrone alleged that Napa's retaliatory conduct occurred "less than a month after Smith-Madrone and Summit Lake sought to intervene." 2-ER-226-29, ¶¶ 777-795. So, either Napa's conduct was (1) shockingly coincidental or (2) causally linked to the attempted intervention. The latter is more plausible than the former. The same is true of Napa's withdrawal of the exemption to the road standards. But the District Court ignored these allegations, and the cases cited above. The District Court was required to construe the allegations as true and in Smith-Madrone and Summit Lake's favor. *Manzarek*, 519 F.3d at 1031. Taken as true, the one-month timeframe "easily" supports an inference of retaliation. *Alpha Energy*, 381 F.3d at 929. The District Court's decision should be reversed.

### CONCLUSION

For the above reasons, Appellants respectfully request that this Court reverse the District Court's dismissal under *Younger* and its dismissal of the First Amendment retaliation claims.

Dated: September 12, 2025

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**CERTIFICATE OF COMPLIANCE, FED. R. CIV. P. 32(G)(1)**

1. This brief complies with the type-volume limitation of Fed. R. App. P. 5(c)(1) and Circuit R. 32-1 because this brief contains 13,441 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6), because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman type.

Dated: September 12, 2025

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on September 12, 2025, I electronically filed the foregoing document with the Clerk of the Court using the ECF system that will send notification of such filing upon all ECF filing participants.

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