Case No. 25-3903, 25-2715

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

HOOPES VINEYARD, LLC, SUMMIT LAKE VINEYARDS & WINERY LLC, COOK'S FLAT ASSOCIATES, a California limited partnership,

Plaintiffs-Appellants,

v.

COUNTY OF NAPA,

Defendant-Appellee.

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

PLAINTIFFS-APPELLANTS' REPLY BRIEF

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INTRODUCTION

Napa County ("Napa") attempts to reframe the scope of the State Court case to make it seem broader than it was. The State Court explained that "[a]t issue was the County's assertion that the Hoopes Winery was exceeding the uses granted by its Small Winery Certificate of Exemption ('SWE')." 6-ER-1434. Specifically, the State Court sought to resolve whether Hoopes exceeded the scope of its permitted uses at its property because Hoopes' SWE[1] stated "no tours/public tastings."

The State Court focused on the language within Hoopes' SWE, so it was understandable that the State Court denied intervention to Smith-Madrone and Summit Lake as they each have their own property document. In its Statement of Decision ("SOD"), the State Court determined that "[t]he degree to which a winery can engage in [retail sales, tastings, marketing, agriculture, and accessory uses] is dependent on its entitlements." 6-ER-1447.

Because the issue focused on whether Hoopes' SWE allowed public tastings *at Hoopes' property*, abstention cannot be proper as to Smith-Madrone and Summit Lake, nor can it be proper as to Hoopes on any issues unrelated to public tastings.

[1] A SWE is a land use by right and is the legal equivalent of a use permit. 2-ER-133, ¶ 22.

ARGUMENT

I. THE STATE COURT CASE WAS LIMITED TO THE DISCRETE ISSUE OF PUBLIC WINETASTING UNDER HOOPES' SWE.

Napa frames the State Court case as expansive, suggesting all its winery-related ordinances and policies were at issue. The case, however, was a discrete nuisance matter dealing with a single property and the question was whether Hoopes was a nuisance per se because it hosted public winetastings.

Aside from infrastructure issues not at issue in this appeal, in its state complaint Napa alleged that "[i]n violation of the controlling Napa County Codes (NCC) Defendants use the Property for public wine tastings." 3-ER-474, ¶ 10 (emphasis added); ¶ 14 (alleging "public tastings" are not permitted); ¶ 32 (alleging the permit application provided no "public tastings" would take place). The apex issue was whether Hoopes was "exceeding the limited entitlements authorized by its SWE and the NCC" which limited Hoopes to "no tours/public tastings." 6-ER-1443. Ultimately, the State Court determined that Hoopes had engaged in "public tastings," 6-ER-1443, and then addressed Hoopes' defenses to such prohibition.

First, Hoopes defended that California Business and Professions Code section 23358 preempted the ban on "public tastings." The State Court disagreed finding the ordinance was not a complete ban. 6-ER-1446.

Next, Hoopes defended that it had not violated the NCC or its SWE because it was allowed to host tastings "by appointment," otherwise known as "private

tastings." 6-ER-1447. Despite Napa's state complaint being silent on the issue of "private tastings", *See* 3-ER-472,[2] post-trial, Napa attempted to reframe its case to include private tastings. At a hearing, the State Court questioned: "is it the County's position, just so I'm not misunderstanding anything, that because of 18.08.600, a winery with a small winery exemption cannot conduct tastings of any type, public or private? Is that the County's position?" 6-ER-1202. Napa responded: "Yes, Your Honor, that's correct." *Id.* But the State Court refrained from deciding the distinction between "public tastings" and "private tastings" because it found that the tastings Hoopes had hosted were "public tastings" and Hoopes' permit stated, "no tours/public tastings." 6-ER-1447. "Ultimately, whether Hoopes' SWE or the NCC allow for 'private tastings' of some sort" was not an issue the State Court felt it needed to address. *Id.*

Next, Hoopes defended that NCC sections 18.08.040 and 18.16.020 allowed "public tastings." 6-ER-1447. The State Court determined that while the NCC allowed various other activities, "[t]he degree to which a winery can engage in such activities is dependent on its entitlements." *Id.* For Hoopes, the State Court determined that the statement in its permit of "no tours/public tastings" overrode other potential aspects of the NCC. 6-ER-1447-48.

[2] The term also does not appear in the Second Amended Cross-Complaint. *See* 6-ER-1388-1420.

Hoopes also defended that the prohibition on "public tastings" violated Equal Protection. 6-ER-1448. The State Court rejected this defense without analysis. *Id*. Finally, the State Court rejected the defense that Napa's administrative procedures for nuisance abatements were unconstitutionally vague. 6-ER-1448-49.

In total, the State Court case was not a broad confirmation of Napa's entire regulatory scheme. It was limited to whether Hoopes engaged in "public tastings" and whether Napa's prohibition on "public tastings" was preempted and/or unconstitutional. There was no action to ban "private tastings," Hoopes' general sales of wine or use of out-of-county grapes, Hoopes' speech at events, or other claims, so there was no need for Hoopes to litigate those unrelated issues.

II. ON THE ISSUE OF TASTINGS, THE FEDERAL CASE FOCUSES ON PRIVATE WINETASTING.

While this case involves much more than winetastings, on that issue, the focus is on "private tastings." Plaintiffs alleged that the distinction between the public and private winetastings is found in the legislative history of the use permit exemption ordinance and "confirms that 'by appointment only' was considered a 'private tasting' and not public." 2-ER-153, ¶ 205. Plaintiffs alleged that the "[l]egislative history indicates that public tastings would not be allowed at the wineries with exemptions, but private tastings would be." 2-ER-153, ¶ 206. Napa's "code enforcement officers [have] acknowledged that 'private tasting' and 'public tasting' are distinct." 2-ER-197, ¶ 545.

Hoopes alleged it "is allowed to host Tastings by Appointment." 2-ER-133, ¶ 38. Hoopes also alleged that its predecessor-in-interest "always operated with wine samples and 'tastings by appointment.'" 2-ER-133, ¶ 42. Finally, Hoopes alleged that "the 2012 and 2015 databases reflect[] Hoopes' right to tastings by appointment." 2-ER-133, ¶ 45.

Summit Lake alleged the "Database [] states Summit Lake is allowed Tastings by Appointment." 2-ER-140, ¶ 83. It alleged that without notice, Napa "took away these entitlements as … later databases state Summit Lake is not allowed to do Tastings by Appointment, is not allowed any visitors whatsoever, and is not allowed any marketing events or marketing event visitors." 2-ER-140, ¶ 85. Historically, Summit Lake could have customers at its winery with the only limitation being that they needed to make an appointment. 2-ER-142, ¶ 108. Yet Napa asserts "that any visitors consuming wine at Summit Lake is a violation of the small winery use permit exemption and that Summit Lake must cease sales/tasting operations or improve the roadway." 2-ER-144, ¶ 123. "Summit Lake sought intervention … to defend against Napa County's changed positions." 2-ER-142, ¶ 110.

Smith-Madrone alleged that "[o]ne of the findings of the use permit was that the winery would not provide public tastings and that 'private arrangements will be required to visit the winery.'" 2-ER-145, ¶ 133. "A condition of approval was that '[w]ine tastings be limited to a private, invitation only, basis.'" 2-ER-145, ¶ 134.

"However, the use permit did not place any restrictions on the number of customers Smith-Madrone could see." 2-ER-145, ¶ 135. For over 50 years, Smith-Madrone allowed consumers to engage in by-appointment tasting and hosted marketing events. 2-ER-146, ¶ 141. Smith-Madrone also alleged that "Napa County now has a policy that some wineries are prohibited from private tours and tastings by appointment, are prohibited from marketing wine, and are prohibited from allowing the purchase and consumption of wine on their premises." 2-ER-146, ¶ 143. "Smith-Madrone sought intervention … to defend against the changed positions of Napa County." 2-ER-148, ¶ 158.

Each Plaintiff alleged an entitlement to private, by-appointment tastings. Even though allowed, "Napa County currently declares that small winery use permit exemptions … are prohibited from … 'tastings by appointment.'" 2-ER-158-59, ¶ 253. "Napa County officials have stated small winery exemptions might be able to have private tastings, but have not disclosed who, what, when, where or why, and has interpreted that Plaintiffs do not fall within this population despite entitlement through the same legal mechanism." 2-ER-185, ¶ 456.[3]

[3] In discovery, Napa admitted that Smith-Madrone was "allowed to host customers at its winery who make an appointment prior to their visit" but denied that Hoopes and Summit Lake were allowed to host these types of customers. 6-ER-1332, Requests 33-35.

As to tastings, therefore, Plaintiffs' instant case centers on "private tastings" while the State Court case centered on "public tastings." The two cases do not share commonality of issues. The extent to which private tastings are allowed was not at issue in the State Court, so the court did not determine that issue. But Plaintiffs need to know what "private tasting" means so they can offer "private tastings" and not disallowed "public tastings." Without guidance, they are paralyzed.

III. NAPA MISTATES THE INTERVENTION DECISION.

Napa's assertion that State Court determined Hoopes could represent all interests of Smith-Madrone and Summit Lake is incorrect. Smith-Madrone and Summit Lake asserted three interests. The court determined that Hoopes could adequately represent one interest. For the other two the court found Hoopes did not adequately represent their interests but that those interests were not sufficient for intervention because they would not be bound by the State Court decision and could file their own lawsuits.

The first interest was in "a determination that small wineries, established and in operation prior to enactment of the WDO, are allowed to conduct tastings, sales, and marketing events without limitation by the WDO or subsequent legislation because those activities were lawful" when they were permitted. 3-ER-393. The State Court determined that "assuming *arguendo* such interest satisfies the first prong for mandatory intervention, that interest is adequately represented by

Hoopes." 3-ER-399.[4]

The second and third interests, which Napa does not discuss, were "ensuring that the Determination would [not] have a res judicata effect on them" given they operated in different zoning districts or under different permitting documents and "preventing the County's enforcement against them of the [NCC] sections at issue in the underlying case while it is being litigated (i.e., a preliminary injunction)." 3-ER-394. While its "tentative ruling found that the Proposed Intervenors made a compelling showing that those interests would not be adequately represented by Hoopes," 3-ER-395, the State Court ultimately found that the interests were not sufficient for intervention. In reaching this determination, the State Court held:

> any judgment rendered in the Hoopes action will have no direct effect upon any person other than Hoopes. Although the Proposed Intervenors can analogize how their situations are similar to Hoopes (i.e., they are also pre-WDO small wineries) and how, therefore, a similar decision may be rendered in a separate action involving them as a party, any judgment rendered in Hoopes will have no direct effect upon the Proposed Intervenors. Stated another way, regardless of the judgment rendered in Hoopes, the Proposed Intervenors will be as free to pursue their business after the rendition of the judgment as they were before. They, therefore, would not gain or lose by the direct operation of the judgment.

3-ER-396. Further:

> It is true there may be an adjudication in this action that the County's

[4] This decision ended up being inconsistent with the SOD, wherein the State Court held that "[t]he degree to which a winery can engage in [public tastings] is dependent on its entitlements." 6-ER-1447. The State Court made no determination of entitlements other than as to Hoopes.

> enforcement and application of the subject NCC sections is valid or invalid, whatever the case may be, which might serve as a controlling precedent upon any action instituted by or against the Proposed Intervenors, and, to that extent, the Court recognizes that the Proposed Intervenors have an undeniable interest in the matter in litigation. However, since the judgment so rendered would not directly affect them, the Court cannot conclude that their interest is sufficiently direct.

Id. (emphasis added). Given the State Court confirmed that res judicata would not apply to either of the two proposed intervenors, there was no reason for an appeal.[5]

The Seventh Circuit addressed a similar issue in *General Auto Services Station LLC v. City of Chicago, Illinois*, 319 F.3d 902, 905 (7th Cir. 2003): "appeal exists to correct error. If the court was right to deny General Auto's motion, an appeal would have been pointless. And in Chicago's view the state court was right. After all, Chicago opposed its motion to intervene." *Id*. Having won the motion, "Chicago is estopped to argue in federal court that General Auto could have litigated in state court if only it had tried harder." *Id*. (citations omitted). The court concluded, "[w]e therefore take the state court's decision about intervention as correct, which means that the conditions for *Younger* abstention have not been satisfied." *Id*.

Here, if the intervention decision was correct, then the *Younger* conditions cannot be satisfied as to Smith-Madrone and Summit Lake. They did not have a

[5] In discovery in this case, Plaintiffs asked Napa to "[a]dmit that [all] Plaintiffs are allowed to engage in retail operation." Napa objected because "the right to sell any other product depends on the individual entitlements appliable to a property. Since the Plaintiffs each have different entitlements, Defendant is unable to admit or deny." 6-ER-1332, Request 32.

sufficiently direct interest to warrant intervention and so the judgment cannot directly affect them.

IV. NAPA'S SUPERFICIAL RECITATION OF CASE LAW ADDRESSING "INTERTWINED" INTERESTS IS MISLEADING.

Because the State Court determined that Summit Lake and Smith-Madrone did not have an interest sufficient to intervene, it follows that such "interest" could not be intertwined for abstention purposes. Napa seems to concede this point when it admits that nothing would "bar constitutional claims from all other wineries in the County." Appellee's Brief at 54, n. 4. Even if the State Court had determined they had a sufficient interest, however, that interest would still not be intertwined, and the case Napa relies upon, *Stockton v. Brown*, 152 F.4th 1124 (9th Cir. 2025), counsels against abstention.

In *Stockton*, the plaintiffs brought a four-count § 1983 case following state disciplinary proceedings against physicians for spreading COVID-19 misinformation. The federal plaintiffs included charged and uncharged physicians and non-physician advocates. *Id*. at 1132. This Court applied *Younger* and made individual determinations as to each claim and each plaintiff. The Court affirmed abstention as to Claims II, III and IV because they sought to enjoin the "ongoing investigation and prosecution" of the charged plaintiffs and each federal plaintiff "*expressly* requested 'permanent injunctive relief barring the Defendants from continuing all current investigations and prosecutions[] of physicians' that are

allegedly based on protected speech." *Id*. at 1134, 1138 (emphasis in original). But Claim I "requested declaratory and injunctive relief prohibiting 'future investigations, prosecutions, and sanctioning of physicians' based on their COVID-19-related speech." *Id*. at 1141. For the uncharged physician and advocates "who are not the subject of ongoing disciplinary proceedings—*Younger* abstention poses no bar to our consideration of Claim I." *Id*.

Judge Bress concurred, explaining that he would not have abstained as to the non-charged physician for Counts III and IV, which he interpreted as seeking to declare invalid/unconstitutional laws and practices. *Id*. at 1152. But the majority interpreted the claims differently based on "Plaintiffs' own framing" as only Count I "focus[ed] on future investigations and thus falling outside the ambit of *Younger* abstention." *Id*. at 1136, n. 4. Because the *Stockton* "Plaintiffs themselves expressly frame Claims III and IV as challenging 'current enforcement activities,'" the majority determined that this "unique circumstance" brought the claims within *Younger*. *Id.*, n. 5. However, if the claims had been framed as "more abstract legal challenge" seeking to declare invalid/unconstitutional laws and practices, then the majority agreed that these claims would not be barred. *Id*. Here, Smith-Madrone and Summit Lake's claims seek to vindicate their own rights rather than to enjoin or "challenge ongoing proceedings" against Hoopes.

The federal complaint explains Summit Lake's rights and how Napa's

ordinances and practices have harmed and will continue to harm Summit Lake:

- "[A]t some point in time Napa County, without notice to Summit Lake, took away [its] entitlements…" 2-ER-138, ¶ 85.
- "In 2019, Napa County stated that Summit Lake Winery was not entitled to any 'visitation' under the small winery exemption, despite nearly forty years of hosting the same, and claimed Summit Lake was in violation of its small winery use permit exemption." 2-ER-140, ¶ 91.
- "In October 2019, Napa County advised Summit Lake that in order to increase production, Summit Lake would need to repave a substantial portion of the road leading to its winery at a cost of over $1 million." 2-ER-141, ¶ 95.
- "[R]e-entitling as a new winery – as opposed to modification of existing entitlements – would force Summit Lake to abandon valuable pre-WDO land use entitlements associated with its small winery use permit exemption, including unlimited retail sales, and would require Summit Lake to submit to the 75% Napa County grape requirement." 2-ER-141, ¶ 100.
- "Summit Lake is unable to afford the substantial road improvement cost without risking the viability of its winery." 2-ER-142, ¶ 106.
- "Summit Lake cannot viably operate without customers at the winery." 2-ER-142, ¶ 107.
- "Summit Lake … has limited the amount of on-premises sales due to fear of County enforcement which has cost Summit Lake millions of dollars in damages in lost profits." 2-ER-144, ¶ 126.

These allegations are unrelated to Hoopes and the State Court case. The same is true as to Smith-Madrone:

- "One of the findings of the use permit was that the winery would not provide public tastings and that 'private arrangements will be required to visit the winery.'" 2-ER-145, ¶ 133.

- "[T]he use permit did not place any restrictions on the number of customers [or events] Smith-Madrone could see on a daily, weekly, or yearly basis." 2-ER-145, ¶¶ 135-36.

- "Historically, Smith-Madrone has allowed consumers to engage in 'tours and tastings' by appointment and has hosted 'marketing events' and has been so doing for over 50 years." 2-ER-146, ¶ 141.

- "Smith-Madrone has also allowed consumers to purchase wine on the premises and consume wine on the premises." 2-ER-146, ¶ 142.

- "[W]ithout explanation, notice, or a hearing, [the County] state[s] that Smith-Madrone is limited to 10 visitors per week and 520 visitors per year. (Exhibits 6, 13.)" 2-ER-146, ¶ 145.

- "These numbers and limits are not displayed anywhere in the use permit, conditions of approval, or findings for the use permit issued to Smith-Madrone." 2-ER-146, ¶ 148.

- "Because of the restrictions placed upon it by Napa County, Smith-Madrone is not able to freely [host customers] which has caused it to lose profits." 2-ER-147, ¶ 154.

- "The Napa County ordinance, policies and ordinance interpretations have also prevented Smith-Madrone from advertising and marketing its winery which has additionally caused Smith-Madrone to suffer damages from lost sales." 2-ER-147, ¶ 155.

Rather than reading the federal complaint as to each Plaintiff and judging its claim individually as this Court did in *Stockton*, the District Court erred by "throw[ing them] into the same hopper for *Younger* purposes" which the Supreme Court "cannot accept." *Doran v. Salem Inn, Inc.* 422 U.S. 922, 928 (1975). Each Plaintiff has its own constitutional rights to vindicate, and each Plaintiff's claims do not depend on the claims of the others. There is not a single allegation wherein any of the Plaintiffs, much less Summit Lake and Smith-Madrone, challenge the "current

enforcement activities" which was the "unique circumstance" at issue in *Stockton*.

Each Plaintiff could have filed a separate lawsuit with a separate complaint. The fact that they sought to conserve resources cannot be a reason to bar the courthouse doors.

V. THE DISTRICT COURT ERRED IN ABSTAINING AS TO HOOPES.

A. Napa placed only "public tastings" at issue in the State Court.

Napa asserts that "nearly all of the ordinances that Plaintiffs attack here are at issue in the County's nuisance abatement action." Appellee's Brief at 40. But, as discussed above, Napa alleged only that "[i]n violation of the controlling [NCC] Defendants use the Property for public wine tastings." 3-ER-447, ¶ 10. Napa alleged that Hoopes' public tastings "exceeded the allowable uses of a small winery under the small winery permit exemption pursuant to NCC section 18.08.600(C)." 3-ER-486, ¶ 58. The issue was whether Hoopes was "exceeding the limited entitlements authorized by its SWE and the NCC" which limited Hoopes to "no tours/public tastings." 6-ER-1443. Napa also alleged that by offering public tastings Hoopes engaged in unfair competition. 3-ER-487, ¶ 65.

Yet Napa argues that the State Court rejected every claim Hoopes brings here. Appellee's Brief at 42. But these other ordinances were not at issue in the state complaint and the SOD makes no ruling on them because a court can only grant relief "upon the issues tendered by the plaintiff's complaint." *Daugherty v. Board*

of Trustees of South Bay Union High Sch. District, 111 Cal.App.2d 519, 522 (1952) (quotation omitted). "It may be that the plaintiff might have united other causes of action with that set out in [its] complaint ... but as long as these several matters are not tendered as issues in the action, they are not affected by [a judgment]." *Id*.

The State Court determined that Hoopes offering "public tastings" "exceeded the Winery's SWE and more significantly, violates NNC section 18.08.600." 6-ER-1443. The State Court also rejected Hoopes' affirmative defenses of preemption, due process and equal protection as it related to section 18.08.600 and the prohibition on "public tastings." 6-ER-1446-1449. No other issues were before the State Court.

Finally, Napa argues that, even though the issues in the federal case were not actually litigated in state court, aside from "public tastings," Hoopes has yet to exhaust its administrative remedies. But Hoopes is not required to appeal issues which were not actually litigated. *A.M. v. Ventura Unified Sch. Dist.*, 3 Cal.App.5th 1252, 1263–64 (2016), as modified Oct. 19, 2016.[6]

B. There is no blanket rule that any federal claim would interfere with a state-court case.

The District Court concluded that the doors to federal courts are closed so long as any person is subject to state-court enforcement. This is not the rule. *See*

[6] Hoopes also was not required to bring unrelated claims in state court as California's compulsory cross-complaint statute, Code Civ. Proc. section 426.30, only requires bringing a claim which arises out of the same transaction or occurrence.

AmerisourceBergen Corp. v. Roden, 495 F.3d 1143, 1151 (9th Cir. 2007); *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976)).

Where issues in a federal suit are not part of a state case, *Younger* is inapplicable. *Habich v. City of Dearborn*, 331 F.3d 524, 530-31 (6th Cir. 2003). Even if claims stem from the same general set of events, when they raise substantially different issues, it is not appropriate to abstain. *Id.* at 530-31; *see also Rynearson v. Ferguson*, 903 F. 3d 920 (9th Cir. 2018); *Lebbos v. Judges of Superior Court, Santa Clara Cty*., 883 F.2d 810, 817 (9th Cir. 1989). In *Habich*, the city padlocked plaintiff's doors alleging she had rented her home without complying with a "local ordinance [that] required an inspection and a certificate of occupancy." *Id*. at 527. "[W]hile the padlocks were still on her home" plaintiff filed a § 1983 case in federal court alleging violations of Equal Protection unrelated to the padlocking and that padlocking her doors violated her constitutional rights. *Id*. The Sixth Circuit reversed the lower court's abstention decision because:

> the state court proceedings involved factual and legal issues that had no relevance to Habich's federal suit. Habich's § 1983 action focused entirely on events that occurred up to and including the City's padlocking of Habich's house: specifically, the earlier refusal to sell adjacent property to her, and the padlocking without notice or a hearing. The issues involved in this action were entirely federal, requiring the court to determine whether the City had violated Habich's equal protection and due process rights. In contrast, the proceedings in the state court focused on how the City could proceed after the padlocks had been removed. These were entirely state issues: had a landlord-tenant relationship been formed, was a certificate of occupancy required, and could an inspection be performed. As the federal suit

> would in no way interfere with the state proceedings, there was no basis for abstention.

Id.

Jacobo v. Los Angeles County, 2012 WL 13012480, *1 (C.D. Cal. Feb. 16, 2012), is similar. There, "[a]t the time Plaintiffs' initiated the federal lawsuit, virtually the same Section 1983 claims against the individual defendants were pending in state court." *Id*. Yet the court found that *Younger* did not apply because the federal case would not have the practical effect of enjoining the ongoing state proceeding. *Id*. at *5. The county argued, like Napa here, that "any final judgment rendered in this action could have a preclusive effect on those claims currently pending in state court." *Id*. But "under applicable Ninth Circuit and Supreme Court precedent … Defendants have to show more than the possibility of collateral estoppel in order to establish that the instant case will have the practical effect of enjoining the state court proceedings." *Id*.

Also, like Napa, Los Angeles County argued that in *Gilbertson* this Court receded from prior decisions which required direct interference and preclusion rules may be relevant. *Id*. at *6. "However, the Court in *Gilbertson* did not state that preclusion rules alone (or in all setting) would establish sufficient interference to warrant *Younger* abstention." *Id*. The court explained that in *Gilbertson*, "the federal plaintiff asserted a constitutional challenge to the actual state proceedings themselves related to the revocation of his land surveying license … so the federal

court, by the Section 1983 action, was being asked to hold the actual state proceedings unconstitutional, which is not the case here." *Id.* Instead, the case was closer to *AmerisourceBergen*, where the court held that "retaining jurisdiction over, and proceeding with, [the federal claim for damages] would not have enjoined or in any way impeded the ongoing litigation in [state court between the same parties]. Rather, the [state] proceedings would have been free to continue simultaneously with the federal suit, and [the federal plaintiff] would have simply been bound by the rulings of the California state courts under the doctrine of collateral estoppel …. Concurrent consideration, not abstention, is the solution, and the district court therefore erred in finding that the potential conflict was one the *Younger* doctrine required the court to avoid." *Id*. (quoting *AmerisourceBergen*, 495 F.3d at 1152).

Here, if a federal court were to determine that Napa cannot prevent Hoopes from hosting "private tastings," it would in no way interfere with the State Court's determination that Hoopes cannot engage in "public tastings." The same is true of the challenges based on prior restraint, commercial speech, dormant Commerce Clause, Due Process or any other claims which are unrelated to the issue of "public tastings."

C. Hoopes was not required to litigate its federal claims in State Court.

Hoopes should not have been required to go to state court after invoking a federal forum. *See England v. Louisiana State Bd. of Med. Exam'rs*, 375 U.S. 411,

415 (1964) (recognizing the "fundamental objections to any conclusion that a litigant who has properly invoked [federal jurisdiction] to consider federal constitutional claims can be compelled, without his consent and through no fault of his own, to accept instead a state court's determination of those claims").

In *Habich*, the district court abstained under *Younger* and ruled "the state court could also hear any constitutional issues that Habich raised, and Habich could amend her complaint to bring such claims in state court." 331 F.3d at 529. The Sixth Circuit reversed because:

> whether the federal plaintiff has an "opportunity" to have the issue addressed in state court for *Younger* purposes does not turn on whether the plaintiff could file a new complaint in state court that alleged her federal claims. Such a rule would not only extend *Younger* abstention far beyond its purpose of preventing "federal intervention in state judicial processes," *Moore v. Sims*, 442 U.S. 415, 423, [] (1979), but it would be contrary to *Gerstein* [*v. Pugh*, 420 U.S. 103 (1975)] and its progeny.

Id. at 531. The court continued, "[w]e are aware of no case in which a federal plaintiff is deemed to have the 'opportunity' to have his or her federal claim heard in a state proceeding solely because the plaintiff could have amended an existing complaint or filed a new complaint in state court. If that were the rule, *Younger* abstention would almost always be appropriate …." *Id*. "Unless the issue in the plaintiff's federal suit would be resolved by the case-in-chief or as an affirmative defense to the state court proceedings that exist, it cannot be said that the state proceedings afford the federal plaintiff an adequate opportunity to have his or her

claim heard for *Younger* purposes." *Id. See also Crown Point I, LLC v. Intermountain Rural Elec. Ass'n*, 319 F.3d 1211, 1215 (11th Cir. 2003) (finding plaintiff did not have opportunity to raise federal claims in state court where state court refused to hear federal claims due to collateral estoppel).

After the District Court abstained, Hoopes, to try to find a forum, sought to file an amended cross-complaint in the State Court to allege its non-compulsory claims. The State Court denied leave, finding that Hoopes waited too long and, because the first phase of trial was completed, Napa would be prejudiced. But the State Court did not enter judgment for Napa on the claims raised by Hoopes in the proposed amended cross-complaint; it determined that it would not allow those claims to be heard. And, as discussed above, the State Court case-in-chief and affirmative defenses all related to the issue of whether "public tastings" at Hoopes violated Hoopes' SWE. Just like in *Habich*, the federal claims are unrelated to the discrete "public tasting" claim and need not be brought in state court.

D. The District Court made improper credibility determinations as to Smith-Madrone and Summit Lake's retaliation claims.[7]

Unless the alleged harassment is so inconsequential that even allowing a claim "would trivialize the First Amendment," *Naucke v. City of Park Hills*, 284 F.3d 923, 928 (8th Cir. 2002), the determination of whether government action would chill an

[7] Napa does not allege that Hoopes failed to state a claim for retaliation.

ordinary person's speech is a matter for the factfinder. *See, e.g., Garcia v. City of Trenton*, 348 F.3d 726, 729 (8th Cir. 2003).

1. Napa's conduct was not business-as-usual code enforcement.

This Court in *Soranno's Gasco, Inc. v. Morgan*, 874 F.2d 1310, 1316 (9th Cir. 1989), rejected that there could be no retaliatory motive merely because Napa "could have" targeted Smith-Madrone and Summit Lake for enforcement "even in the absence of the protected activity." To prevail, Napa should have been required to prove that it "would have [taken enforcement action] in the absence of [Smith-Madrone and Summit Lake's] protected activity" and a defendant's motive is typically an issue of fact. *Id*. The District Court erred by not holding Napa to this burden. At a minimum, the parties need discovery of Napa's motive.

2. Napa tried to entrap Summit Lake.

The District Court determined that there could be no entrapment because Napa had previously stated that Summit Lake was not allowed visitors. This Court rejected a similar conclusion in *Gibson v. United States*, 781 F.2d 1334, 1341 (9th Cir. 1986), where the plaintiff alleged the government was "seeking to entrap [plaintiff] in contraband drug transactions." The government defended that there could be no chilling effect "due to generalized and legitimate law enforcement initiatives" but this Court disagreed because the plaintiffs "have alleged discrete acts of police surveillance and intimidation directed solely at silencing them." *Id*. at

1338. Here, the allegation is identical to that in *Gibson*: after Summit Lake sought to intervene, Napa emailed Summit Lake to entrap it into engaging in the very conduct it believed Summit Lake could not engage in. 2-ER-226-227, ¶¶ 777–781.

Similarly on repaving, Napa first informed Summit Lake it needed to spend over $1 million to repave a road, 2-ER-141, ¶ 95, later it informed Summit Lake it may be exempt from the requirement, 2-ER-143, ¶ 121, but once intervention was denied it retaliated against Summit Lake and refused to provide the exemption. 2-ER-144, ¶ 122. This is a similar fact pattern that gave this Court "serious concerns" in *RK Ventures, Inc. v. City of Seattle*, 307 F.3d 1045, 1063 (9th Cir. 2002). There, the city agreed to postpone an abatement proceeding "only after appellants agreed never to play rap music again." *Id*. This Court stated "[w]e have serious concerns if the City in fact conditioned its support of the continuance on, or linked its settlement offer to, such a content-based restriction." *Id*.[8]

On the issue of proximity in time, the very cases Napa cites contradict its argument that temporally proximity alone is insufficient. *See Kama v. Mayorkas*, 107 F.4th 1054, 1059 (9th Cir. 2024) ("Temporal proximity can support both a prima facie case of retaliation and a showing of pretext.").

[8] Napa argues it has documents which confirm rescinding its offer was not retaliatory. Those documents should be produced in discovery so the finder of fact can give them whatever weight they deserve.

3. The District Court erred by lumping Smith-Madrone with Summit Lake.

The District Court determined that both Smith-Madrone and Summit Lake's allegations of retaliation were contradicted by Paragraphs 91 and 105 in the complaint. But those two paragraphs only related to Summit Lake. 2-ER-140-42. The complaint is devoid of any allegation that Napa ever corresponded with Smith-Madrone regarding its activities. But there is evidence in the record that, after Smith-Madrone sought to intervene, Napa sought to set up a sting operation at Smith-Madrone. 2-ER-112-27, ¶¶ 778-80. The District Court's conclusion that Napa could not have retaliated against Smith-Madrone because it had engaged in enforcement efforts against Summit Lake does not pass muster.

4. The District Court improperly weighed credibility at the pleading stage.

"The intent to inhibit speech, like the existence of a conspiracy, can be demonstrated here through direct or circumstantial evidence [] and, here, the circumstances at least permit the inference that [Appellants were] under investigation for [their] speech." *Denney v. Drug Enforcement Admin.*, 508 F.Supp.2d 815, 829 (E.D. Cal. 2007) (cleaned up). "This is so because, '[q]uestions involving a person's state of mind ... are generally factual issues inappropriate for resolution by summary judgment.'" *Id*. (quoting *Braxton–Secret v. A.H. Robins Co.*, 769 F.2d 528, 531 (9th Cir. 1985)). Why Napa's agent sent the emails is a question

of motive which "can only be resolved by a factfinder." *Lowe v. City of Monrovia*, 775 F.2d 998, 1009 (9th Cir. 1985). The same is true of circumstances surrounding Napa's "discovery" of documents related to Summit Lake's repaving exemption.

Napa's argument that no chilling effect could occur because no benefit was lost would turn retaliation law "on its head" because a person "of ordinary firmness who was only engaging in lawful speech [] could, in fact, be chilled by a []investigation." *Denney*, 508 F. Supp. 2d at 830. The ultimate question of whether a person of ordinary firmness would be chilled is "an issue on which reasonable minds could disagree" and must therefore go to the factfinder. *Id.*

Finally, Napa is wrong that the retaliation must rise to a heightened level before it becomes actionable. Courts have found acts, which by themselves might be inconsequential, actionable. *See Garcia v. City of Trenton*, 348 F.3d 726, 727 (8th Cir. 2003) ("retaliatory issuance of parking tickets would chill the speech of a person of ordinary firmness").

E. The remainder of Napa's arguments are superficial.

A party may not "mention a possible argument in the most skeletal way, leaving the court to ... put flesh on its bones." *United States v. Williams*, 2021 WL

5756380, *2 (D. Alaska Dec. 3, 2021). Napa's scattershot approach to its "alternative" arguments should be rejected.

1. *Pullman* does not apply.

Pullman applies when "a federal court can avoid a constitutional determination by allowing a state court to construe state law." *Am. Int'l Underwriters (Philippines), Inc. v. Cont'l Ins. Co.*, 843 F.2d 1253, 1257 (9th Cir. 1988). Napa attempts to avoid that *Pullman* abstention "is generally inappropriate when First Amendment rights are at stake," *Wolfson v. Brammer*, 616 F.3d 1045, 1066 (9th Cir. 2010), by arguing Plaintiffs' claims are all premised on preemption. This is wrong. The constitutional claims stand on their own. Like the rest of Napa's arguments here, Napa overstates the scope of the State Court case. The State Court's determination related to "public tastings" is inapplicable to this case.

2. *Colorado River* does not apply.

This Court has "repeatedly emphasized that a *Colorado River* stay is inappropriate when the state court proceedings will not resolve the entire case before the federal court." *United States v. State Water Res. Control Board*, 988 F.3d 1194, 1204 (9th Cir. 2021). In the State Court "[a]t issue was the County's assertion that the Hoopes Winery was exceeding the uses granted by its [SWE]" by having public winetastings and Hoopes' defenses that the prohibition was preempted and/or unconstitutional. 6-ER-1434, 1446-49. The federal case revolves around different

issues, including private tastings. 6-ER-1311-19. And even if there were some overlap, "a partial *Colorado River* stay is generally not permissible." *State Water Resources*, 988 F.3d at 1205. Finally, the State Court determined that nothing in its decision would be binding on Smith-Madrone and Summit Lake so their claims cannot be resolved by the State Court.

3. Napa's *Monell* argument is misplaced.

Napa misinterprets Plaintiffs as bringing a *respondeat superior* claim under *Monell v. Department of Social Services,* 436 U.S. 658 (1978). Here, like in *Guillory v. Orange County*, 731 F.2d 1379, 1381-1382 (9th Cir. 1984), Plaintiffs base their claims "directly on alleged unconstitutional policies or customs of the local governmental entities and not on the doctrine of respondeat superior." Accordingly, dismissal would not be proper. *Id*.

4. Smith-Madrone and Summit Lake have standing to bring their First Amendment claims.[9]

When plaintiffs are "challenging the legality of government action or inaction ... there is ordinarily little question that the action or inaction has caused him injury, and that a judgment preventing or requiring the action will redress it." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561-62 (1992). The case relied upon by Napa, *Diamond S.J. Enterprises, Inc. v. City of San Jose*, 100 F.4th. 1059 (9th Cir. 2024),

[9] Napa does not allege that Hoopes lacks standing.

"reject[ed] the City's contention that Diamond lacks standing" and the plaintiff was allowed to "proceed without the necessity of first applying for, and being denied, a license." *Id.* (quotation omitted.) And Plaintiffs "themselves need not be the direct target of government enforcement. A history of past enforcement against parties similarly situated to the plaintiffs cuts in favor of a conclusion that a threat is specific and credible." *Lopez v. Candaele*, 630 F. 3d 775, 786-87 (9th Cir. 2010) (citation omitted).

5. The buy-local requirement is a per se violation of the Dormant Commerce Clause.[10]

Plaintiffs are currently not subject to the buy-local requirement, but they also cannot apply to expand their businesses without being subject to the buy-local requirement. Appellee's Brief at 62. Plaintiffs would apply for increased permissions, but the buy local grape-source requirement prevents them from doing so. 2-ER-159, 204-206, ¶¶ 257-59, 599-601, 615-18. Napa's view on this issue is a "heads I win, tails you lose" proposition. Notably, Napa does not attempt to defend the merits of its ordinance, likely because two federal courts recently struck down nearly identical restrictions: *Alexis Bailly Vineyard, Inc. v. Harrington*, 482 F. Supp. 3d 820, 824, 827 (D. Minn. 2020) and *Wineries of the Old Mission Peninsula Association v. Peninsula Twp.*, 2022 WL 2155097, *9 (W.D. Mich. June 3, 2022).

[10] Napa does not allege that Hoopes lacks standing to assert this claim.

6. Napa's finality argument is wrong under *Pakdel*.[11]

Napa's finality argument rests on the "since-disavowed prudential rule that certain takings actions are not 'ripe' for federal resolution until the plaintiff seeks compensation through the procedures the State has provided for doing so." *Pakdel v. City & County of San Francisco, California*, 594 U.S. 474, 476 (2021) (cleaned up). Under *Pakdel*, "nothing more than *de facto* finality is necessary." *Id*. at 479. Napa "is committed to a position … [so] the dispute is ripe for judicial resolution." *Id*.; *see also* 2-ER-161-166, 169-172, 180-183, ¶¶ 267-309, 323-52, 408-14 and 421-37.

7. The claims are timely.[12]

Napa "vastly overreads *Action Apartment*," as it applies only to physical taskings of real property when "the basis of a facial challenge is that the very enactment of the statute has reduced the value of the real property or has effected a transfer of a real property interest." *Scheer v. Kelly*, 817 F.3d 1183, 1187 (9th Cir. 2016). Napa's argument "also runs into a thicket of justiciability problems" as new wineries' "cases would be time-barred before they could even be brought, an absurd result." *Id*. at 1188. This Court "regularly hears—and upholds—facial challenges to decades-old statutes and has done so in the years since *Action Apartment*." *Id.*

[11] Napa does not allege that Hoopes' claims are not ripe.

[12] Napa does not allege that Hoopes' claims are untimely.

As to Appellant's preemption claims, "[i]t is well settled—perhaps because it is merely common sense—that a cause of action does not begin to 'accrue' until after some wrongful act is done." *Lee v. Bank of Am.*, 27 Cal. App. 4th 197, 205 (1994). Plaintiffs have alleged they did not discover the violations until within the last three years. 2-ER-172, ¶ 352. Taken as true, those claims are timely.

VI. CONCLUSION

Smith-Madrone and Summit Lake attempted to join the State Court case to defend their constitutional rights. The State Court kept them out because that case was limited in scope and a judgment would not affect their rights. Hoopes also attempted to litigate its constitutional rights in the State Court case and was also rejected because of the limited scope. Neither attempt closes the doors to the federal courts. This Court should reverse the District Court's decision and remand for further proceedings.

Dated: December 3, 2025

Respectfully submitted,

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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)(l) and Circuit R. 32-1 because this brief contains 6,977 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: December 3, 2025

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CERTIFICATE OF SERVICE

I hereby certify that on December 3, 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.

Dated: December 3, 2025

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