

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Steven C. Bailey (SBN 146382)  
[Designated Counsel for Service]  
Martha E. Romero (SBN 128144)  
**BAILEY & ROMERO**  
2535 Kettner Blvd., Suite 2A1  
San Diego CA 92101  
(619) 323-1389  
[steven@baileyandromero.com](mailto:steven@baileyandromero.com)

Attorneys for Plaintiffs Tuck’s Restaurant and Bar,  
Kenneth R. Paige, Chad Page, Buckman Enterprises, LLC,  
Robin Buckman, and The Nevada County Restaurant  
Coalition

**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT CALIFORNIA**

TUCK’S RESTAURANT AND  
BAR, a California corporation,  
KENNETH R. PAIGE; CHAD  
PAIGE; BUCKMAN  
ENTERPRISES, LLC, a California  
limited liability company; ROBIN  
BUCKMAN; and THE NEVADA  
COUNTY RESTAURANT  
COALITION, an unincorporated  
membership association;

*plaintiffs,*

v.

NEVADA COUNTY,  
CALIFORNIA; KATHARINE  
ELLIOTT; and DOES 1-10  
inclusive,

*defendants.*

No. 2:20-CV-02256-KJM-CKD

**FIRST AMENDED COMPLAINT**

**JURISDICTION**

1. This action asserts claims pursuant to 42 U.S.C. § 1983. The court has jurisdiction

1 over this civil action pursuant to 28 U.S.C. §§ 1331 and 1337. Declaratory relief is authorized  
2 on the facts alleged pursuant to 28 U.S.C. § 2201. Injunctive relief is authorized pursuant to 28  
3 U.S.C. § 1343(a).

4 2. Venue of this civil action in the Judicial District for the Eastern District of  
5 California is proper pursuant to 28 U.S.C. § 1391 (b) (1) and (2). Defendants maintain offices,  
6 exercises their authority in their official capacities, and have taken the actions at issue in this  
7 matter in the Judicial District for the Eastern District of California.

8 **PARTIES**

9 4. Plaintiff Tuck’s Restaurant and Bar (“Friar Tuck’s”) is a for-profit California  
10 corporation operating under the name Friar Tuck’s Restaurant and Bar, which is and was at all  
11 relevant times engaged in providing dining and bar service to customers from a storefront  
12 location in Nevada City, Nevada County, California.

13 5. Plaintiffs Kenneth Paige and Chad Paige are the sole shareholders of Friar  
14 Tuck’s.

15 6. Plaintiff Buckman Enterprises, LLC (“Old Town Café”) is a California limited  
16 liability company operating under the name Old Town Café, which is and was at all relevant  
17 times engaged in providing dining and bar service to customers from a storefront location in  
18 Grass Valley, Nevada County, California.

19 7. Plaintiff Robin Buckman is the sole member of Buckman Enterprises, LLC.

20 8. Plaintiff Nevada County Restaurant Coalition (the “Coalition”) is a membership  
21 association of businesses providing dining and drinking establishments in Nevada County,  
22 California. The Coalition is named as a representative of the interests of its members.

23 9. Defendant Nevada County, California is a political subdivision of the state of  
24 California.

25 10. Defendant Kathrine Elliot is and was at material times pleaded herein County  
26 Counsel for Nevada County. Defendant Elliott is named in her personal and official capacities.

27 ///

28 ///

**PANDEMIC RESTRICTIONS**

1  
2 11. On or about March 4, 2020, California Governor Gavin Newsom proclaimed a  
3 State of Emergency in response to the spread of COVID-19. Governor Newsom’s emergency  
4 proclamation was issued pursuant to Section 8625 of the California Government Code.

5 12. On March 19, 2020, Governor Newsom, invoking the authority granted him  
6 under sections 8567, 8627 and 8655 of the California Government Code, issued Executive  
7 Order N-33-20, directing all residents to “immediately heed” the State Public Health Officer’s  
8 directives. The Order further directed all Californians to stay home “except as needed to  
9 maintain continuity of operations of the federal critical infrastructure sectors.” The Order was  
10 issued “to protect the public health”, “mitigate the impact of COVID-19”, “bend the curve, and  
11 disrupt the spread of the virus.”

12 13. On or about March 19, 2020, Sonia Angell, who was then serving as the  
13 California State Public Health Officer, acting pursuant to the authority conferred by Governor  
14 Newsom’s Orders, issued an Order which designated a list of “Essential Critical Infrastructure  
15 Workers.” The Order incorporated by reference the U.S. Government’s 16 critical  
16 infrastructure sectors whose assets, systems, and networks, whether physical or virtual, are  
17 considered so vital to the United States that their incapacitation or destruction would have a  
18 debilitating effect on security, economic security, public health or safety, or any combination  
19 thereof. The Order provided that “Californians working in these 16 critical infrastructure  
20 sectors [would] continue their work because of the importance of these sectors to Californians’  
21 health and well-being.” All other businesses and organizations were ordered either to cease all  
22 operations or to operate under substantial restrictions. Persons not employed in the 16 critical  
23 infrastructure areas were required to stay home except as necessary to obtain necessities such  
24 food, prescriptions, and healthcare.

25 14. Plaintiffs Friar Tuck’s, Old Town Café and Coalition members were required to  
26 cease providing indoor dining for their customers to comply with the March 19, 2020 Order of  
27 the State Public Health Officer. Plaintiffs were permitted to offer exclusively take-out and  
28 delivery service. A prohibition on providing indoor service to customers would bankrupt Friar

1 Tuck's, Old Town Café and Coalition members within a few months.

2 15. Friar Tuck's had previously offered both sit down dining and food service in a  
3 bar area. Friar Tuck's has been in business since 1973. Friar Tuck's is located in the historic  
4 downtown district of Nevada City, a small city in a rural area in the heart of the Gold Country.  
5 Friar Tuck's is, and has for decades, been a mainstay of the local community.

6 16. Prior to the implementation of the March 19, 2020 Orders, Old Town Café  
7 offered both sit down dining and food service in a bar or counter area. Old Town Café is the  
8 oldest continuously operating restaurant in Grass Valley, tracing its history back to the 1930's.  
9 Old Town Café specializes in serving breakfast and lunch. Old Town Café also offered dinner  
10 two nights a week. Old Town Café had also hosted the Talk of the Town show every month,  
11 which is a local radio program discussing local politics, businesses, and news. Furthermore,  
12 Old Town Café has for many years been offering free meals during Thanksgiving to 250 to  
13 500 persons, including many homeless persons. This benefit to the community is now in  
14 jeopardy.

15 17. Friar Tuck's and Old Town Café are both long-standing fixtures of the historic  
16 districts in Nevada County, and in addition to operating as restaurants, provided venues for  
17 numerous public and private events over the years.

18 18. On May 4, 2020, Governor Newsom, again acting pursuant to emergency  
19 powers under state law, issued Executive Order N-60-20. This Order permitted businesses to  
20 begin reopening in stages, as determined by the State Public Health Officer. It also directed the  
21 State Public Health Officer to develop criteria to determine "whether and how ... local health  
22 officers may ... issue directives less restrictive than measures ... implemented on a statewide  
23 basis pursuant to the statewide directives of the State Public Health Officer."

24 19. On May 7, 2020, the California State Public Health Officer issued an Order  
25 permitting the gradual reopening of businesses and activities in California in stages. The Order  
26 provided for four stages of gradual reopening, with the final stage, Stage 4, consisting of an  
27 end to all stay-at-home orders and a full reopening of businesses.

28 20. Under the May 7, 2020 Order, Friar Tuck's, Old Town Café and Coalition

1 members were permitted to resume providing indoor dining service.

2 21. In or about May 2020, plaintiffs Friar Tuck’s, Old Town Café and Coalition  
3 members resumed indoor dining service.

4 22. On July 13, 2020, the California State Public Health Officer issued a further  
5 Order directing all restaurants in the State of California to again cease indoor dining service.

6 23. On August 28, 2020, the California State Public Health Officer implemented a  
7 statewide Order that abandoned the previous, staged re-opening plan promulgated in the May  
8 7, 2020 Order. The August 28, 2020 Order remains in effect at the time of the filing of the  
9 Complaint with a September 30, 2020 modification to include an “equity” component.

10 24. The August 28, 2020 Order dictated that counties would be classified according  
11 to a new plan entitled “Blueprint for a Safer Economy” under which a color-coded “tier”  
12 system would be used. Under this system, each county is placed in one of four tiers, Purple,  
13 Red, Orange, and Yellow, ranging from most to least restrictive. Unlike the previous staged  
14 reopening plan under the May 7, 2020 Order, the current “tier” system under the August 28,  
15 2020 Order does not provide any criteria under which California’s businesses and economy  
16 would be permitted to fully reopen. Under the August 28, 2020 Order, under the respective  
17 tiers, restaurants are required to 1.) cease all indoor dining (Purple tier); 2.) limit indoor dining  
18 capacity to 25% (Red tier); or 3.) limit indoor dining capacity to 50 % (Orange and Yellow  
19 tiers).

20 **NEVADA COUNTY’S ENFORCEMENT**

21 **OF STATE AND COUNTY PUBLIC HEALTH ORDERS**

22 25. On March 4, 2020, the Director for Emergency Services for Nevada County  
23 entered an Emergency Proclamation of a public health and safety emergency by reason of  
24 COVID-19. The Proclamation invoked the authority of Section 8360 of the California  
25 Government Code, Section A-1112.6 of the County of Nevada Administrative Code, and  
26 Governor Newsom’s March 4, 2020 Emergency Order.

27 26. On March 5, 2020, Ken Cutler, who was then serving as the Public Health  
28 Officer for Nevada County, issued a Declaration of Local Health Emergency pursuant to

1 Section 101080 of the California Health and Safety Code.

2 27. On March 10, 2020, the Board of Supervisors of Nevada County enacted  
3 Resolution 20-062 proclaiming a local emergency by reason of COVID-19. The Proclamation  
4 invoked the authority of Sections 8630 and 54956.5 of the California Government Code.

5 28. On March 24, 2020, Ken Cutler, who was then serving as the Public Health  
6 Officer for Nevada County, issued an Order entitled “Clarification of Governor’s and State  
7 Officer’s ‘Stay-at-Home’ Order as related to Lodging Facilities. The Order was amended on  
8 May 21, 2020.

9 29. On April 15, 2020, Ken Cutler, who was then serving as the Public Health  
10 Officer for Nevada County, issued a Stay-at-Home Order pursuant to California Health and  
11 Safety Code sections 101030, 120100, et seq., and Section 2501 of Title 17 of the California  
12 Code of Regulations. The Order invoked and incorporated by reference, among others,  
13 Governor Newsom’s March 4, 2020 Emergency Order and March 19, 2020 Executive Order  
14 N-33-20, and the Supervisor Defendants’ March 10, 2020 Resolution 20-062. Dr. Cutler  
15 issued an Amended Order on April 27, 2020.

16 30. On October 1, 2020, the Nevada County Department of Public Health issued an  
17 Order restricting the conditions under which live music can be presented at bars, restaurants,  
18 and wineries.

19 31. The Orders, Proclamations and Resolutions implemented by Nevada County as  
20 alleged above were the official policy of Nevada County.

21 32. On July 21, 2020, Nevada County, acting pursuant to the Orders and  
22 restrictions imposed by the State Defendants and Nevada County, as alleged above, served  
23 Friar Tuck’s and Old Town Café with orders requiring immediate closure and threatening the  
24 imposition of fines, citing an “imminent and substantial health hazard.”

25 33. When Nevada County issued the notices of immediate closure, Old Town Café,  
26 in the exercise its constitutional rights to free speech and association to and seek a redress of  
27 grievances, asked patrons, family, and friends to write to the County Defendants to express  
28 opposition to the shutdown of local restaurants.



1 to forego the exercise of their Constitutional rights to free speech, lawful assembly, and to  
2 petition the government for a redress of grievances.

3 42. Plaintiffs have suffered property damage in the form of increased fines and  
4 reduced revenues during periods when Friar Tuck's and Old Town Café remained closed, both  
5 occurring by reason of the defendants' retaliation and coercion in violation of plaintiffs' First  
6 Amendment rights.

7 43. Plaintiffs have suffered damage to their protected liberty and property interests  
8 -including unwarranted fines, continued restrictions upon and closures of their businesses- by  
9 reason of the defendants' retaliation and coercion in violation of plaintiffs' First Amendment  
10 rights.

11 44. Plaintiffs have no adequate remedy at law and will suffer irreparable harm to  
12 their protected liberty and property interests unless the court enjoins the defendants' violations  
13 of their First Amendment rights.

14 45. Plaintiffs are entitled to declaratory relief and temporary, preliminary and  
15 permanent injunctive relief invalidating or restraining the defendants' violations of their First  
16 Amendment rights.

17 **PRAYER**

18 Plaintiffs prays for an Order awarding the following relief against the defendants.

19 A. Compensatory damages in the amount \$500,000 or such other amount proven at  
20 trial;

21 B. Punitive damages in the amount \$1,500,000;

22 C. Attorney's fee and costs;

23 D. All such other relief the court deems just and proper.

24 **JURY DEMAND**

25 Plaintiffs demand trial by jury.

26 ///

27 ///

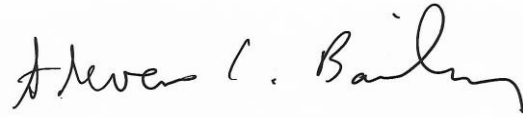
28 ///



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Date: October 25, 2022

BAILEY AND ROMERO



---

Steven C. Bailey  
*Attorneys for Plaintiffs Tuck's Restaurant and Bar,  
Kenneth R. Paige, Chad Page, Buckman Enterprises,  
LLC, Robin Buckman, and The Nevada County  
Restaurant Coalition*