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9 **UNITED STATES DISTRICT COURT**  
10 **EASTERN DISTRICT OF CALIFORNIA, SACRAMENTO DIVISION**  
11

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

16 Plaintiffs,

17 v.

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

20 Defendants.  
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Case No. 2:20-cv-02256-KJM-CKD

**DECLARATION OF NEVADA COUNTY  
COUNSEL KATHARINE ELLIOTT IN  
SUPPORT OF NEVADA COUNTY  
DEFENDANTS’ MOTION FOR  
SUMMARY JUDGMENT OR, IN THE  
ALTERNATIVE, SUMMARY  
ADJUDICATION**

Judge: Hon. Kimberly J. Mueller

Date: January 26, 2024

Time: 10:00 a.m.

Crtrm: 3

Trial Date: None Set

1 I, Katharine Elliott, declare as follows:

2 1. I am the County Counsel for Nevada County (the “County”). I have served in this  
3 position since November 1, 2019. As County Counsel, I was responsible for oversight of the  
4 various County departments’ compliance with COVID-19-related requirements in 2020 and 2021.

5 2. I make this declaration in support of the Nevada County Defendants’ Motion for  
6 Summary Judgment, or, in the Alternative, Summary Adjudication in this action. I have personal  
7 knowledge of the facts set forth herein, except as to those stated on information and belief, and, as  
8 to those, I am informed and believe them to be true. If called as a witness, I could and would  
9 competently testify to the matters stated herein.

10 3. Between March 2020 and June 2021, the State of California and the County issued  
11 and enforced various public health orders and restrictions to combat the spread of COVID-19 (the  
12 “Public Health Orders”). Certain of these Public Health Orders required that food service  
13 establishments – including those in the County – temporarily alter their operations. The County,  
14 through its Department of Environmental Health (the “Department”), endeavored to ensure that  
15 food service establishments located within its boundaries complied with the Public Health Orders  
16 during this time period. The County’s primary goals in doing so were to assist in stopping the  
17 spread of COVID-19 throughout the County and State as a whole, to ensure the safety of the  
18 County’s citizens from this deadly virus, and to assist food service establishments in developing  
19 and maintaining safe practices so that they could continue their business activities.

20 4. On August 3, 2020, I attended a meeting with the owners of Plaintiffs Tuck’s  
21 Restaurant and Bar (“Tuck’s Restaurant”) and Buckman Enterprises, LLC d/b/a Old Town Café  
22 (“Old Town Café”). I understood that the two restaurants had repeatedly violated the Public  
23 Health Orders, that the Department had issued the restaurants Notices of Violation and closure  
24 orders because of their continued violations, and that, when the restaurants still refused to comply  
25 with the Public Health Orders, the Department had also imposed fines and suspended the  
26 restaurants’ permits. I understood that the restaurants requested a meeting to discuss their fines  
27 and permit suspensions. I attended the meeting because I understood that the restaurant owners  
28 would be represented by counsel.

1           5.       The attendees at the meeting were Tuck’s Restaurant owners Ken Paige and Chad  
2 Paige, along with Ken Paige’s wife Donna Paige; Old Town Café’s owner Robin Buckman and  
3 his wife Lisa Buckman; Steven Bailey, counsel for the restaurant owners; myself; and Director of  
4 Environmental Health Amy Irani. At the meeting, Director Irani and I reiterated the importance of  
5 complying with the Public Health Orders, and explained that if the restaurants committed to  
6 complying with the Public Health Orders, their permits could be reinstated and their fines could be  
7 reduced. Tying such fine reductions and permit reinstatement to compliance with the Public  
8 Health Orders accorded with the County’s goals of stopping the spread of COVID-19, ensuring  
9 the safety of County citizens, and assisting food service establishments in developing and  
10 maintaining safe business practices.

11           6.       Based on the restaurants’ representations that they would comply with the Public  
12 Health Orders and efforts to do so, their permits were reinstated after the August 3, 2020 meeting.  
13 The County also agreed to stay enforcement of the fines for a period of time, and the fines were  
14 subsequently reduced, also based on the restaurants’ compliance commitment and efforts.  
15 However, I am informed and believe that neither restaurant ever paid these reduced fines.

16           7.       I understand that, in this litigation, Plaintiffs claim that the County conditioned the  
17 reinstatement of Tuck’s Restaurant’s and Old Town Café’s permits and a reduction in the fines  
18 imposed on the two restaurants on Plaintiffs’ ceasing to oppose and/or encourage others to oppose  
19 the Public Health Orders, including by writing letters to County officials expressing such  
20 opposition. However, the County’s enforcement of the Public Health Orders with regard to  
21 Tuck’s Restaurant and Old Town Café, including the County’s decision to reinstate the two  
22 restaurants’ permits and reduce their fines if they came into compliance with the Public Health  
23 Orders, was not in any way connected with Plaintiffs’ opposition to the Public Health Orders, and  
24 would have been the same regardless of whether or not Plaintiffs publicly opposed the Public  
25 Health Orders and/or encouraged others to do so. The County’s only goal for agreeing to reinstate  
26 permits or reduce fines was to ensure compliance with the Public Health Orders, and to assist  
27 restaurants in coming into compliance. If a restaurant committed to comply with the Public  
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1 Health Orders and/or took steps to comply, the County would reinstate its permit or reduce its  
2 penalties.

3 8. Indeed, restaurants whose owners did *not* publicly oppose the Public Health Orders  
4 but still violated the Public Health Orders were still the subject of enforcement efforts, and  
5 restaurants whose owners *did* publicly oppose the Public Health Orders yet still complied with the  
6 Public Health Orders were not the subject of enforcement efforts.

7 9. For example, one restaurant in the County, Calla Lily Crepes, repeatedly violated  
8 the Public Health Orders and refused to come into compliance. The County issued a Notice of  
9 Violation and closure order to Calla Lily Crepes due to its non-compliance with the Public Health  
10 Orders. Due to the restaurant's continued refusal to comply with the Public Health Orders, the  
11 County eventually obtained a court order to prevent the owner of that restaurant from continuing  
12 to operate in violation of the Public Health Orders. I am informed and believe that the owner of  
13 Calla Lily Crepes did not engage in any substantial public opposition to the Public Health Orders  
14 or encourage others to do so.

15 10. Prior to the August 3, 2020 meeting, I was not aware that Plaintiffs had publicly  
16 opposed the Public Health Orders or had encouraged others to do so. I was also not aware prior to  
17 the August 3, 2020 meeting of Plaintiffs communicating with County officials or encouraging  
18 others to communicate with County officials about their opposition to the Public Health Orders.

19  
20 I declare under penalty of perjury under the laws of the United States of America that the  
21 foregoing is true and correct.

22 Executed on this 17 day of November, 2023, at Nevada City, California.

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24   
Katharine Elliott

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