



Mendocino WineGrowers, Inc.  
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June 22, 2020

Carmel J. Angelo  
Chief Executive Officer  
Executive Office  
501 Low Gap Road, Room 1010  
Ukiah CA 95482

Christian M. Curtis  
County Counsel  
Administration Center  
501 Low Gap Road, Room 1030  
Ukiah, CA 95482

Ms. Angelo and Mr. Curtis:

The Mendocino WineGrowers, Inc. appreciates the deliberative pathway established by the Mendocino County Executive Office and Mendocino County Counsel to permit businesses to reopen in a safe and responsible manner during this global pandemic. Members of Mendocino WineGrowers find the County's Safe Business Operations Protocol (or Checklist) to be very practical and useful, and appreciate the concept of self-certification as a condition of reopening. The following language in the self-certification, however, is problematic and we request that it be removed from the self-certification: *"In particular, any business that violates the Health Officer's orders risks committing negligence per se, may expose itself to civil liability for all damages created by any viral transmission that occurs at their place of business."*

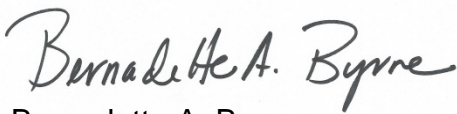
This self-certification language adds unnecessary risk and liability for businesses because it is a simplistic and incomplete summary of the California law of negligence *per se*. We are also concerned that the certification language goes beyond applicable law, and in doing so may invite litigation. Some of our members are not reopening because of the self-certification itself. The law of negligence *per se* is complex, and may be best exemplified by California Evidence Code section 669 that merely establishes a rebuttable *evidentiary presumption* that a person or business fails to exercise due care when that business violates a statute, ordinance or regulation, and that violation caused an injury that the statute, ordinance or regulation was designed to prevent. This presumption may be rebutted by a showing that the business did what was reasonably expected of a person of ordinary prudence, acting under similar circumstances, who desired to comply with the law. There is disagreement whether all State

and County health orders qualify as “statutes, ordinances or regulations” for purposes of the negligence *per se* standard. Similarly, there is disagreement what it means to “violate” a health order that gives businesses discretion in selecting among various protocols and tailoring specific protocols to unique situations. In short, the law of negligence in the COVID-19 era is complicated.

While removal of that sentence does not downplay the significant legal risks of reopening, this simple change will give many of our members enough comfort to proceed with reopening in a safe and responsible manner. Mendocino WineGrowers also requests that the County allow businesses the opportunity to recertify under this new language.

Thank you for considering our recommendations.

Sincerely,

A handwritten signature in black ink that reads "Bernadette A. Byrne". The signature is written in a cursive, flowing style.

Bernadette A. Byrne  
Executive Director  
Mendocino WineGrowers, Inc.