

ORIGINAL

FILED

APR 25 2007

Clerk of the Napa Superior Court  
By: J. O'Wen  
Deputy

1 GARY LIEBERSTEIN  
2 District Attorney, County of Napa  
3 Daryl A. Roberts (SBN 111981)  
4 Richard A. Zimmerman (SBN 197862)  
5 Deputy District Attorneys  
6 931 Parkway Mall  
7 Napa, CA 94559  
8 Tel: (707) 253-4211  
9 Fax: (707) 299-4322

CASE MANAGEMENT CONFERENCE  
DATE: 10/2/07  
TIME: 8:30 am  
PLACE: Courtroom A  
825 Brown Street, Napa CA 94559

8 ROBERT WESTMEYER  
9 County Counsel, County of Napa  
10 Robert W. Paul (SBN 114558)  
11 Deputy County Counsel  
12 1195 Third Street, Suite 301  
13 Napa CA 94559  
14 Tel: (707) 253-4521  
15 Fax: (707) 259-8220

DELAY REDUCTION CASE

16 Attorneys for Plaintiff

17 SUPERIOR COURT OF CALIFORNIA  
18 IN AND FOR THE COUNTY OF NAPA

17 PEOPLE OF THE STATE OF CALIFORNIA,  
18 THE COUNTY OF NAPA,

) NSC No. 26-37569

19 Plaintiffs,

) COMPLAINT FOR  
20 vs. ) CIVIL PENALTIES AND  
21 ) EQUITABLE RELIEF

21 AMALIA B. PALMAZ, Individually and as  
22 Trustee of the Amalia B. Palmaz Living Trust,  
23 JULIO PALMAZ, and CEDAR KNOLL  
24 VINEYARDS, INC.,

25 Defendants.)

26 The People of the State of California, by and through Gary Lieberstein, District  
27 Attorney for the County of Napa, and the County of Napa ("the County"), allege on  
28

1 information and belief the following:  
2

3 **JURISDICTION AND VENUE**

4 1. The authority of the District Attorney to bring this action is derived from the  
5 statutory law of the State of California, specifically Business and Professions Code §§17200,  
6 17203, 17204, and 17206, Fish & Game Code §1615, Code of Civil Procedure § 731 and  
7 Government Code § 26528. The authority of the County Counsel to bring this action is  
8 derived from Napa County Code §1.20.020.

9 2. Defendants transact business by conducting, operating and maintaining a vineyard  
10 and vineyard operations within Napa County, State of California. The violations of law  
11 herein alleged have been carried out within Napa County, California.

12 **DEFENDANTS**

13  
14 3. Defendant Amalia B. Palmaz does business in Napa County under the fictitious  
15 name of "Palmaz Vineyards", and is a trustee of the Amalia B. Palmaz Living Trust  
16 (hereinafter "the Trust"), which is a living trust organized under the laws of the State of  
17 California. At all times herein mentioned, she caused and/or engaged in the violations of law  
18 hereinafter alleged in Napa County, California.

19 4. Defendant Julio Palmaz does business in Napa County who, at all times herein  
20 mentioned, caused and/or engaged in the violations of law hereinafter alleged in Napa  
21 County, California.

22 5. Defendant Cedar Knoll Vineyards, Inc., is a California corporation and the owner  
23 of a portion of the property described herein.

24 6. Whenever in this complaint reference is made to any act of Defendants, or to any  
25 of them, such allegations shall be deemed to mean the act of each and every Defendant acting  
26 individually and jointly.

27 7. Whenever in this complaint reference is made to any act of Defendant or to  
28

1 Defendants generally, such allegations shall be deemed to mean that the owners, officers,  
2 directors, agents, representatives, or employees of these Defendants did or authorized such  
3 act or acts while engaged in the direction, operation, management, control, or conduct of the  
4 affairs of these Defendants.

### 6 GENERAL ALLEGATIONS

7 8. The Trust and Defendants Amalia Palmaz, Julio Palmaz and Cedar Knoll  
8 Vineyards own or possess the real estate parcels identified as Napa County Assessor's Parcel  
9 Numbers 033-110-056, 033-110-058, 033-110-062, 033-110-072, 049-270-019, and 049-  
10 270-020, each within Napa County, California.

11 9. Starting on various dates and continuing through the early part of 2006,  
12 Defendants carried out, or caused to be carried out, work on, in and around these parcels of  
13 property. This work included excavating a cave on parcel 049-270-019-000, and depositing  
14 the spoils from the cave excavation on parcels 033-110-056-000 and 033-110-058-000. This  
15 work also included construction of retaining walls, roads, fences, raising the elevation of the  
16 land, grading and planting vineyards on such land, appurtenant improvements needed for the  
17 vineyards, and the construction, erection, installation and/or remodeling of various structures  
18 or improvements without having first obtained necessary permits to do so. Most of the land  
19 on these two parcels where the cave spoils were deposited contained slopes in excess of 5%.

20 10. The spoils deposited on parcel 033-110-058-000 were used to make what is  
21 known as the "1200 Vineyard." During the construction of the 1200 Vineyard, Defendants  
22 buried approximately 250 linear feet of an unnamed ephemeral tributary of Hagen Creek with  
23 cave spoils, and they constructed a significant portion of the 1200 Vineyard within the stream  
24 setback of Hagen Creek. The materials dumped in this unnamed ephemeral tributary of  
25 Hagen Creek were deleterious to fish or plant life, and they substantially changed the bed,  
26 channel or bank of a river or stream designated by the Department of Fish & Game.

27 11. Defendants failed to apply for and obtain grading permits, building permits,  
28

1 approved Erosion Control Plans, or Fish & Game Code §1602 agreements for any aspect of  
2 the construction of the 1200 Vineyard and related structures, as required by law.

3 12. The spoils deposited on parcel 033-110-058-000 were used to make what is  
4 known as the "1400 Vineyard." During the construction of the 1400 Vineyard, Defendants  
5 buried known archeological sites and areas of wetlands. Defendants failed to apply for and  
6 obtain grading permits, building permits, or approved Erosion Control Plans for any aspect of  
7 the construction of the 1400 Vineyard and related structures, as required by law.

8 13. Sometime in 2002 to 2003, Defendants reconstructed or caused to be recon-  
9 structed a spring box from what was a non-functional, deteriorated dam in the immediate  
10 proximity to the spring located above the 1200 Vineyard, and they constructed or caused to  
11 be constructed two bridges over Hagen Creek. These projects substantially diverted the  
12 natural flow, or substantially changed the bed, channel or bank of any river or stream  
13 designated by the Department of Fish & Game. Once the spring box project was completed,  
14 Defendants diverted the water from the spring for domestic and agricultural uses.

15 14. In early 2006, Defendants cleared or caused to be cleared a ten to thirty foot  
16 swath of the creek bed and bank of Hagen Creek. Over 2,000 linear feet of Hagen Creek  
17 were cleared of vines, shrubs, grasses and trees. This activity substantially changed the bed,  
18 channel or bank of a river or stream designated by the Department of Fish & Game.

19 15. The activity of Defendants, described in paragraphs 9-14, above, was not  
20 reasonably discovered until 30 April 2004.

21  
22 **FIRST CAUSE OF ACTION**  
23 **(By the People Against All Defendants)**  
24 **Fish & Game Code §1615**

25 16. The People incorporate by reference herein paragraphs 1 through 15, inclusive, of  
26 this complaint.

27 17. Beginning at an exact date that is unknown to the People, but within three years  
28 prior to 30 April 2004, Defendants, and each of them, substantially diverted or obstructed the

1 flow of a stream, river, or lake, or substantially changed the bed, channel, or bank of any  
2 stream, river, or lake without first having procured from the Department of Fish & Game an  
3 agreement to do so, in violation of Fish & Game Code §1602.

4 18. The People are entitled to civil penalties and equitable relief pursuant to Fish &  
5 Game Code §1615.

6 **SECOND CAUSE OF ACTION**  
7 **(By the People Against All Defendants)**  
8 **Fish & Game Code §5650.1**

9 19. The People incorporate by reference herein paragraphs 1 through 15, inclusive, of  
10 this complaint.

11 20. Within the last three years prior to 30 April 2004, Defendants, and each of  
12 them, deposited, permitted to pass into, or placed where they could pass into waters of the  
13 State of California, substances which were deleterious to fish or plant life.

14 21. The People are entitled to civil penalties and equitable relief pursuant to Fish  
15 & Game Code §5650.1.

16 **THIRD CAUSE OF ACTION**  
17 **(By the People Against All Defendants)**  
18 **Business & Professions Code §17200, et. seq.**

19 22. The People incorporate by reference herein paragraphs 1 through 21, inclusive, of  
20 this complaint.

21 23. Beginning at an exact date that is unknown to the People, but within four years of  
22 the filing of this complaint, Defendants, and each of them, engaged in a course of conduct  
23 constituting acts of unfair competition, as defined by Business & Professions Code §17200,  
24 including but not limited to the following:

25 (A) All of the violations set forth in the First and Second Causes of Action,  
26 above, and the Fifth Cause of Action, below.

27 (B) Engaging in activity for which a soil erosion control plan was required,  
28 including but not limited to engaging in earthmoving activity or grading within an erosion

1 hazard area, without having first obtained an approved soil erosion control plan from the  
2 County of Napa, in violation of Napa County Code §18.108.070.

3 (C) Engaging in earth-moving and earth-filling activity for which a grading  
4 permit was required, without having first obtained an approved grading permit from the County  
5 of Napa, in violation of Uniform Building Code §3309.8, as adopted by Napa County Code  
6 §15.08.080.

7 (D) Engaging in grading or earthmoving activities between October 15 and  
8 April 1, in violation of Napa County Code §18.108.070(L).

9 (E) Engaging in grading, earthmoving activities, removal of vegetation, or using  
10 land for agricultural purposes within a stream setback area, in violation of Napa County Code  
11 §18.108.025.

12 (F) Erecting, constructing, improving, enlarging, altering, repairing,  
13 improving, converting or demolishing any buildings or structures, without first obtaining an  
14 appropriate permit to do so, in violation of Napa County Code §15.04.070.

15 (G) Discharging waste that could affect the quality of waters of the state without  
16 a report of waste discharge, in violation of Water Code §§13260 and 13264.

17 (H) Discharging waste without a permit, in violation of Water Code §13387(a).

18 24. The People are entitled to civil penalties, pursuant to Business & Professions  
19 Code §17206, and injunctive relief, pursuant to Business & Professions Code §§17203 and  
20 17204.

21 **FOURTH CAUSE OF ACTION**

22 **(By the People Against Defendants Amalia Palmaz and Julio Palmaz Only)**  
23 **Business & Professions Code §17207**

24 25. The People incorporate by reference herein paragraphs 1 through 21, inclusive, of  
25 this complaint.

26 26. On or about 12 September 2000, a Final Judgment Pursuant to Stipulation was  
27 entered against Defendants Amalia Palmaz, Julio Palmaz, and the Trust in the case of *People*  
28

1 of the State of California v. Cedar Knoll Vineyards, et. al., Napa County Superior Court No.  
2 26-09613 (hereinafter, "the 2000 Judgment").

3 27. Paragraph 3(A) of the 2000 Judgment prohibited Defendants from engaging in  
4 any activity for which a soil erosion control plan would be required, unless they first obtained  
5 an approved soil erosion control plan from Napa County. Paragraph 3(C) of the 2000  
6 Judgment prohibited Defendants from substantially diverting or obstructing the natural flow  
7 or substantially changing the bed, channel or bank of any river, stream or lake unless  
8 Defendants first notify the Department of Fish & Game, obtain from the Department of Fish  
9 & Game an agreement pursuant to Fish & Game Code §1603 [recently recodified as Fish and  
10 Game Code §1602], and do not exceed the scope of or fail to abide by and follow each and  
11 every provision and condition of said agreement

12 28. Defendants Amalia Palmaz, individually and as trustee of the Trust, and Julio  
13 Palmaz have intentionally violated the terms of the 2000 Judgment by having done the  
14 following:

15 (A) Engaged in activity for which a soil erosion control plan was required,  
16 without having first obtained an approved soil erosion control plan for such activity from Napa  
17 County;

18 (B) Substantially diverted or obstructed the natural flow, and substantially  
19 changed the bed, channel or bank, of rivers and streams without having first notified the  
20 Department of Fish & Game and obtained from the Department of Fish & Game an  
21 agreement pursuant to Fish & Game Code §1603 [recently recodified as Fish and Game Code  
22 §1602].

23 29. The People are entitled to civil penalties, pursuant to Business & Professions  
24 Code §17207, which provides that any person who intentionally violates any injunction  
25 prohibiting unfair competition shall be liable for a civil penalty of not to exceed Six  
26 Thousand Dollars (\$6,000.00) for each violation.

27  
28

**FIFTH CAUSE OF ACTION**  
**(By the People and the County Against All Defendants)**  
**Public Nuisance and County Code Penalties**

1  
2  
3 30. The People and County incorporate by reference herein paragraphs 1 through 21,  
4 inclusive, of this complaint.

5 31. Defendants are allowing a public nuisance to exist with respect to their property  
6 as a result of the activity described in paragraphs 9 through 15, above, including but not  
7 limited to:

8 (A) Engaging in activity for which a soil erosion control plan was required,  
9 including but not limited to engaging in earthmoving activity or grading within an erosion  
10 hazard area, without having first obtained an approved soil erosion control plan from the  
11 County of Napa, in violation of Napa County Code §18.108.070.

12 (B) Engaging in earth-moving and earth-filling activity for which a grading  
13 permit was required, without having first obtained an approved grading permit from the County  
14 of Napa, in violation of Uniform Building Code §3309.8, as adopted by Napa County Code  
15 §15.08.080.

16 (C) Engaging in grading, earthmoving activities, removal of vegetation, or using  
17 land for agricultural purposes within a stream setback area, in violation of Napa County Code  
18 §18.108.025.

19 (D) Erecting, constructing, improving, enlarging, altering, repairing,  
20 improving, converting or demolishing any buildings or structures, without first obtaining an  
21 appropriate permit to do so, in violation of Napa County Code §15.04.070.

22 32. Defendant's activities constitute violations of various provisions of the Napa  
23 County Code, and constitute a public nuisance per se, pursuant to Napa County Code  
24 §1.20.020. Each and every day the violations continued constituted a distinct and separate  
25 violation, pursuant to Napa County Code §1.20.160. Said violations also subject Defendants  
26 to civil penalties of up to One Thousand Dollars (\$1,000.00) for each distinct and separate  
27 violation, pursuant to Napa County Code §1.20.155.B.

28



1           33. The People are authorized to bring this action to abate the public nuisance by  
2 Code of Civil Procedure §731, Government Code §26528, and the County is authorized to  
3 bring this action pursuant to Napa County Code §1.20.020.

4           34. The continued maintenance of the aforesaid public nuisance will cause irreparable  
5 injury to the community and the public at large, and should be enjoined by the Court.

6           35. The People and the County have no plain, speedy, or adequate remedy at law by  
7 reason of the foregoing.

8  
9           **WHEREFORE**, the People and the County pray as follows:

10           1. For a preliminary and permanent injunction restraining and enjoining Defendants  
11 and all those acting under, by, through, or on behalf of them, from engaging in or performing,  
12 directly or indirectly, any acts as set forth in the First, Second, Third, Fourth and Fifth Causes  
13 of Action.

14           2. That Defendants and each of them be ordered to pay a civil penalty for each  
15 unlawful act as described in the First Cause of Action, pursuant to Fish & Game Code §1615.

16           3. That Defendants and each of them be ordered to pay a civil penalty for each  
17 unlawful act as described in the Second Cause of Action, pursuant to Fish & Game Code  
18 §5650.1.

19           4. That Defendants and each of them be ordered to pay a civil penalty for each  
20 unlawful act as described in the Third Cause of Action, pursuant to Business & Professions  
21 Code Section 17206.

22           5. That Defendants and each of them be ordered to pay a civil penalty for each  
23 unlawful act as described in the Fourth Cause of Action, pursuant to Business & Professions  
24 Code Section 17207.

25           6. That Defendants and each of them be ordered to pay a civil penalty to the County  
26 of Napa for each unlawful act as described in the Fifth Cause of Action, pursuant to Napa  
27 County Code Section 1.20.155.B.

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

7. That the People and County recover their costs of suit herein.

8. That the People and County be given such other and further relief as the nature of this case may require and this Court deems proper to fully and successfully dissipate the effects of the unlawful acts complained of in this complaint.

Date: 4/25/07

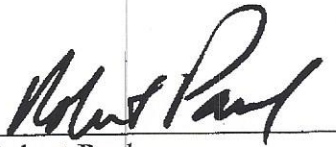
GARY LIEBERSTEIN  
District Attorney

By: 

Daryl A. Roberts  
Deputy District Attorney

Dated: 4-25-07

Robert Westmeyer  
County Counsel

By: 

Robert Paul  
Deputy County Counsel