

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

WINERIES OF THE OLD MISSION
PENINSULA ASSOCIATION, *et al.*,

Plaintiffs,

Case No: 1:20-cv-01008

v

PENINSULA TOWNSHIP, Michigan Municipal
Corporation,

Honorable Paul L. Maloney
Magistrate Judge Ray S. Kent

Defendant.

**PLAINTIFFS' TRIAL BRIEF AND PROPOSED FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

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I. INTRODUCTION

This Court has resolved multiple Constitutional and state law theories of liability in the Wineries' favor. Trial in this case will focus on three remaining areas: (1) liability on the commercial speech claims, (2) damages, and (3) injunctive relief.

First, there are outstanding commercial speech issues in the *Central Hudson* analysis. *See* ECF No. 559, PageID.21915-21921. These include the questions of whether certain provisions implicate speech, and for the sections that do implicate speech, whether Peninsula Township has met its burden under *Central Hudson*. *See id.*

Second, the Wineries will prove that the unconstitutional sections of the Peninsula Township Zoning Ordinance caused their damages. Under 42 U.S.C. § 1983, the Wineries may recover nominal, general, and/or compensatory damages from constitutional violations. *See, e.g., Uzuegbunam v. Preczewski*, 592 U.S. 279 (2021) (nominal damages “are instead the damages awarded by default until the plaintiff establishes entitlement to some other form of damages, such as compensatory or statutory damages.”). And while the Wineries acknowledge that this Court has ruled that they may not recover damages on a preemption theory due to the Michigan Government Tort Liability Act, *see* ECF No. 525, PageID.21136 (“The Wineries are unable to collect money damages from Count VIII.”), and that their regulatory takings claim has been dismissed, *see* ECF No. 559, PageID.21915, there are still a host of constitutional violations from which damages flow, including dormant Commerce Clause, the Due Process Clause, and the First Amendment. The Wineries will present evidence to quantify these damages.

Finally, the question of injunctive relief remains. This Court has already stated, however, that it “will enjoin the Township from enforcing all of the sections of the Township Ordinances that the Court has found unconstitutional or contrary to law.” *Id.*, PageID.21922. Later in this Trial Brief, the Wineries propose language for this Court’s future injunction.

II. PROPOSED WITNESS TESTIMONY AND EXHIBITS

Plaintiffs will present the following testimony and exhibits (as identified in ECF No. 573, PageID.22249-22284) at trial, though not necessarily in the order below.

A. Bowers Harbor Vineyard & Winery, Inc.

Spencer Stegenga will testify on behalf of Bowers Harbor.

B. Brys Winery, LLC

Patrick Brys will testify on behalf of Brys Winery.

C. Chateau Grand Traverse, Ltd.

Edward O’Keefe will testify on behalf of Chateau Grand Traverse.

D. Chateau Operations, Ltd.

Marie Chantal-Dalese will testify on behalf of Chateau Operations (“Chateau Chantal”).

E. Grape Harbor, Inc.

John Kroupa will testify on behalf of Grape Harbor (“Peninsula Cellars”).

F. Montague Development, LLC

Bruce Hawthorne will testify on behalf of Montague (“Hawthorne”).

G. OV the Farm, LLC

Todd Oosterhouse will testify on behalf of OV the Farm (“Bonobo”).

H. Tabone Vineyards, LLC

Mario Tabone will testify on behalf of Tabone.

I. Two Lads, LLC

Chris Baldyga will testify on behalf of Two Lads and may also testify on behalf of WOMP.

J. Winery at Black Star Farms, LLC

Sherri Fenton and Lee Lutes will testify on behalf of Black Star.

K. Villa Mari, LLC

Alex Lagina will testify on behalf of Villa Mari (“Mari”).

L. Eric Larson

Eric Larson, CPA/ABV, ASA, CBA, CMA, CFE, will testify as Plaintiffs' damages expert. He has been qualified as an expert in dozens of cases to testify as to valuation and financial matters. Peninsula Township has not objected to Larson's qualifications as an expert.

However, Peninsula Township has filed several motions in limine seeking to strike Larson's report and testimony for other reasons. (ECF No. 175, 189.) Magistrate Judge Kent denied those motions because this will be a bench trial, so the traditional *Daubert* gatekeeping doctrine does not apply. (ECF No. 228, 232.) This Court overruled Peninsula Township's objections to Magistrate Judge Kent's orders. (ECF No. 284.)

Peninsula Township recently filed a third motion in limine to strike Larson's report and testimony. (ECF No. 563, 564.) The Wineries will file a response arguing that the same rationale from the first two orders denying Peninsula Township's objections apply here. The Wineries will also show that the Township's motion is really a motion for summary judgment disguised as a motion in limine. Because the Township's first two motions were unsuccessful and because its third motion should also be denied, Larson should be admitted as an expert without further objection.

Larson will testify that he reviewed information provided by Plaintiffs, both before and during trial. Larson also will testify that he has had personal discussions with representatives from each Plaintiff Winery and that he has personally visited each Plaintiff Winery. Based on the information he reviewed, his discussions with representatives from each Plaintiff, and the evidence and testimony to be presented at trial, Larson will testify that, in his opinion, the damages resulting from Peninsula Township's enforcement of the unconstitutional Winery Ordinances has resulted

in \$120,538,873.75 in damages to Plaintiffs. This total amount is broken into five subcategories.¹

1. Lost profits from increased cost of grapes due to requirement of grapes grown on the Peninsula (Schedule 1)
2. Lost profits from limited hours of service (Schedule 3)
3. Lost profits from lost merchandise sales (Schedule 5)
4. Lost profits from lost event hosting (small events and meetings) (Schedule 6)
5. Lost profits from lost event hosting (large events and weddings) (Schedule 7)

The details of Larson's damages calculations are included in Larson's supplemental report dated July 6, 2022.

Plaintiffs will follow the calculations set forth in Larson's supplemental report (Exhibit 194). Peninsula Township and PTP also identified Larson's supplemental report (Exhibit WWWWWWWWW) as a trial exhibit. (*See* ECF No. 573, PageID.22358.) The Wineries did not object, so, in accordance with this Court's order, that exhibit will be admitted into evidence.

Plaintiffs incorporate by reference those conclusions here.

III. ISSUES RESOLVED PRIOR TO TRIAL

This Court already has ruled that many sections of the Peninsula Township Winery Ordinances are either unconstitutional, preempted by Michigan law, or otherwise unenforceable. (ECF Nos. 162, 525, 559.) Plaintiffs summarize the Court's ultimate findings from the prior summary judgment orders here for the Court's convenience.

¹ Following this Court's ruling that preemption claims under Michigan law do not give rise to damages because of the Michigan Government Tort Liability Act, Mich. Comp. Laws § 691.1401, *et seq.* (ECF No. 525, PageID.21134-21136), Plaintiffs are not seeking damages for catering (Schedule 2 of Larson's supplemental report, Exhibit 194) or restaurant/prepacked food sales (Schedule 4).

A. The requirements that Wineries purchase grapes from Peninsula Township farmers violate the dormant Commerce Clause.

This Court ruled that the following Winery Ordinance sections violate the dormant Commerce Clause because they require Farm Processing Facilities and Winery Chateaus to purchase a certain percentage of grapes from Peninsula Township farmers: 6.7.2(19)(a), 6.7.2(19)(b)(1)(ii), 6.7.2(19)(b)(1)(iii), 6.7.2(19)(b)(2)(i), 6.7.2(19)(b)(2)(v), 8.7.3(10)(u)(2)(e), 8.7.3(10)(u)(3), 8.7.3(10)(u)(5)(c), and 8.7.3(10)(u)(5)(d). (ECF No. 162, PageID.60010.)²

B. The term “Guest Activity” is unconstitutionally vague in violation of the Due Process Clause.

This Court ruled that “any subsection of Section 8.7.3(10) that uses the term ‘Guest Activity’ is unconstitutional and must be stricken from the Township Ordinances.” (ECF No. 162, PageID.6019.)³ This ruling strikes Section 8.7.3(10)(u) and every subsection as unconstitutional, to wit: Sections 8.7.3(10)(u); 8.7.3(10)(u)(1)(a); 8.7.3(10)(u)(1)(b); 8.7.3(10)(u)(1)(c); 8.7.3(10)(u)(1)(d); 8.7.3(10)(u)(1)(e); 8.7.3(10)(u)(1)(f); 8.7.3(10)(u)(1)(g); 8.7.3(10)(u)(2); 8.7.3(10)(u)(2)(a); 8.7.3(10)(u)(2)(b); 8.7.3(10)(u)(2)(c); 8.7.3(10)(u)(2)(c)(i); 8.7.3(10)(u)(2)(c)(ii); 8.7.3(10)(u)(2)(c)(iii); 8.7.3(10)(u)(2)(c)(iv); 8.7.3(10)(u)(2)(d); 8.7.3(10)(u)(2)(e); 8.7.3(10)(u)(3); 8.7.3(10)(u)(4); 8.7.3(10)(u)(4)(a)(i); 8.7.3(10)(u)(4)(a)(ii); 8.7.3(10)(u)(4)(a)(iii); 8.7.3(10)(u)(5); 8.7.3(10)(u)(5)(a); 8.7.3(10)(u)(5)(a)(i); 8.7.3(10)(u)(5)(a)(ii); 8.7.3(10)(u)(5)(a)(iii); 8.7.3(10)(u)(5)(b); 8.7.3(10)(u)(5)(c); 8.7.3(10)(u)(5)(d); 8.7.3(10)(u)(5)(e); 8.7.3(10)(u)(5)(f); 8.7.3(10)(u)(5)(g); 8.7.3(10)(u)(5)(h);

² This Court did not set aside its dormant Commerce Clause ruling after PTP’s intervention because Plaintiffs’ dormant Commerce Clause “claim does not affect PTP members’ property interests, nor was summary judgment granted to the Wineries . . . due to the Township’s failure to defend.” (ECF No. 301, PageID.10698.)

³ This Court did not set aside its vagueness/due process ruling because “although this claim may implicated PTP’s members’ property interest, PTP’s intervention does not change the Wineries’ entitlement to summary judgment” on vagueness and due process. (ECF No. 301, PageID.10698.)

8.7.3(10)(u)(5)(i); 8.7.3(10)(u)(5)(j); 8.7.3(10)(u)(5)(k); 8.7.3(10)(u)(6); 8.7.3(10)(u)(7); 8.7.3(10)(u)(7)(a); 8.7.3(10)(u)(7)(b); 8.7.3(10)(u)(8); 8.7.3(10)(u)(8)(a); 8.7.3(10)(u)(8)(b); 8.7.3(10)(u)(8)(c); and 8.7.3(10)(u)(8)(d).

C. Sections 8.7.3(10)(u)(1)(b) and 8.7.3(10)(5)(a) unconstitutionally compel speech in violation of the First Amendment.

In addition to being unconstitutionally vague, this Court ruled that Sections 8.7.3(10)(u)(1)(b) and 8.7.3(10)(5)(a) “compel speech because they require a Winery Chateau to promote Township agriculture at all Guest Activities by doing one of the following: (1) identifying ‘Peninsula Produced’ food or beverages, (2) providing ‘Peninsula Agriculture’ promotional materials, or (3) including tours through the Wineries or other agricultural locations.” (ECF No. 559, PageID.21911.)

D. Sections 8.7.3(10)(u)(2)(b) and 8.7.3(10)(u)(2)(c) are unconstitutional prior restraints on speech in violation of the First Amendment.

This Court ruled that Sections 8.7.3(10)(u)(2)(b) and 8.7.3(10)(u)(2)(c) are unconstitutional prior restraints on speech because the Township required the Wineries to seek township approval before hosting a meeting of a 501(c)(3) non-profit group or agricultural related groups while lacking definite criteria to make an approval determination. (ECF No. 559, PageID.21910.)

This Court ruled that Sections 8.7.3(10)(u)(2)(d), 6.7.2(19)(b)(6), 8.7.3(10)(u)(2)(a) are not unconstitutional prior restraints because they do not implicate speech. (ECF No. 559, PageID.21909.) However, as discussed above, Sections 8.7.3(10)(u)(2)(d) and 8.7.3(10)(u)(2)(a) remain unconstitutionally vague. (ECF No. 162, PageID.6019.)

E. The ban on catering in Section 8.7.3(10)(u)(5)(i) is preempted.

This Court ruled that Mich. Comp. Laws § 436.1547 preempts Section 8.7.3(10)(u)(5)(i), which says “Kitchen facilities may be used for on-site food service related to Guest Activity Uses

but not for off site catering.” (ECF No. 525, PageID.21134.)

F. The ban on amplified music in Section 8.7.3(10)(u)(5)(g) is preempted.

This Court ruled that “the ‘No amplified instrumental music is allowed’ language” of Section 8.7.3(10)(u)(5)(g) “is preempted by [Mich. Comp. Laws § 436.1916(11)] which expressly allows certain licensees to have musical instrument performances without a permit.” (ECF No. 525, PageID.21133.) However, because the limitation on the amplification level of music is merely a limitation and not a prohibition, “the regulation of the amplification level of music—a mere limitation—is not preempted.” (*Id.*)

G. This Court intends to issue an injunction.

This Court has indicated that it “will enjoin the Township from enforcing all of the sections of the Township Ordinance that the Court has found unconstitutional or contrary to law.” (ECF No. 559, PageID.21922.) The Wineries propose language for the injunction below.

IV. ISSUES REMAINING FOR TRIAL

A. Commercial speech.

The Wineries will prove that Sections 6.7.2(19)(a), 6.7.2(19)(b)(1)(v), 8.7.3(10)(m), 8.7.3(10)(u)(1)(b), 8.7.3(10)(u)(1)(d), 8.7.3(10)(u)(2)(a), 8.7.3(10)(u)(2)(b), 8.7.3(10)(u)(2)(c), 8.7.3(10)(u)(5)(a), 8.7.3(10)(u)(5)(h), 8.7.3(12)(i), and 8.7.3(12)(k) of the Peninsula Township Zoning Ordinance unconstitutionally restrict the Wineries’ rights to engage in commercial speech as protected by the First Amendment.

“The First Amendment, as applied to the States through the Fourteenth Amendment, protects commercial speech from unwarranted governmental regulation.” *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm’n of New York*, 447 U.S. 557, 561 (1980). Commercial speech encompasses “expression related solely to the economic interests of the speaker and its audience” and “speech proposing a commercial transaction.” *Rubin v. Coors Brewing Co.*, 514 U.S. 476,

493 (1995). It “serves to inform the public of the availability, nature, and prices of products and services, and thus performs an indispensable role in the allocation of resources in a free enterprise system.” *City of Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410, 421 (1993). “It is undisputed that commercial speech is entitled to the protection of the First Amendment.” *New York State Rest. Ass’n v. N.Y. City Bd. of Health*, 556 F.3d 114, 131 (2d Cir. 2009).

The question of whether a regulation of commercial speech is lawful is subject to the *Central Hudson* analysis. Under the *Central Hudson* test, if (1) the speech concerns lawful activity and is not misleading, then the government has the burden to (2) identify a substantial governmental interest, (3) show that the regulation directly advances that interest, and (4) show that the regulation is not more extensive than necessary to serve that interest. (ECF No. 559, PageID.21916 (citing *Cent. Hudson*, 447 U.S. at 566).)

1. The challenged sections implicate commercial speech.

a. This Court already ruled that Sections 6.7.2(19)(b)(1)(v), 8.7.3(10)(u)(1)(b), 8.7.3(10)(u)(5)(h), 8.7.3(12)(i), and 8.7.3(12)(k) implicate commercial speech.

This Court has already ruled that Sections 6.7.2(19)(b)(1)(v), 8.7.3(10)(u)(1)(b), 8.7.3(10)(u)(5)(h), 8.7.3(12)(i), and 8.7.3(12)(k) “relate to and regulate speech on their face—generally through limits on advertising” (ECF No. 559, PageID.21918.)

- **6.7.2(19)(b)(1)(v) – applies to Farm Processing Facilities.**
 - Ordinance text: “Logo merchandise may be sold provided:
 1. The logo merchandise is directly related to the consumption and use of the fresh and/or processed agricultural produce sold at retail;
 2. The logo is prominently displayed and permanently affixed to the merchandise;
 3. Specifically allowed are: a) gift boxes/packaging containing the approved products for the specific farm operation; b) Wine Glasses; c) Corkscrews; d) Cherry Pitter; and e) Apple Peeler; and
 4. Specifically not allowed are unrelated ancillary merchandise such as: a) Clothing; b) Coffee Cups; c) Bumper Stickers.”
 - This section implicates speech on its face

- **8.7.3(10)(u)(1)(b) – applies to Winery Chateaus**
 - Ordinance text: “Guest Activity Uses are intended to help in the promotion of Peninsula agriculture by: a) identifying ‘Peninsula Produced’ food or beverage for consumption by the attendees; b) providing ‘Peninsula Agriculture’ promotional brochures, maps and awards; and/or c) including tours through the winery and/or other Peninsula agriculture locations.”
 - This Court has already declared this section unconstitutionally vague. (ECF No. 162, PageID.6019.)

 - **8.7.3(10)(u)(5)(h) – applies to Winery Chateaus**
 - Ordinance text: “No outdoor displays of merchandise, equipment or signs are allowed.”
 - This Court has already declared this section unconstitutionally vague. (ECF No. 162, PageID.6019.)

 - **8.7.3(12)(i) - applies to Remote Winery Tasting Rooms**
 - Ordinance text: “Retail sale of non-food items which promote the winery or Peninsula agriculture and has the logo of the winery permanently affixed to the item by silk screening, embroidery, monogramming, decals or other means of permanence. Such logo shall be at least twice as large as any other advertising on the item. No generic or non-logo items may be sold. Promotional items allowed may include corkscrews, wine glasses, gift boxes, t-shirts, bumper stickers, etc.”

 - **8.7.3(12)(k) – applies to Remote Winery Tasting Rooms**
 - Ordinance text: “Signs and other advertising may not promote, list or in any way identify any of the food or non-food items allowed for sale in the tasting room.”
- b. The Wineries will prove that Sections 6.7.2(19)(a), 8.7.3(10)(m), 8.7.3(u)(1)(d), 8.7.3(10)(u)(2)(a), 8.7.3(10)(u)(2)(b), 8.7.3(10)(u)(2)(c), 8.7.3(10)(u)(2)(d), and 8.7.3(10)(u)(5)(a) also implicate commercial speech.**

At the summary judgment stage, this Court found a question of fact as to whether other sections of the Peninsula Township Zoning Ordinance implicate speech. (ECF No. 559, PageID.21918.) And although this Court “reject[ed] a catch all label at summary judgment,” it did not grant summary judgment to any party with respect to those provisions. (*See id.*) Therefore, the question of whether Sections 6.7.2(19)(a), 8.7.3(10)(m) 8.7.3(10)(u)(1)(d),⁴ 8.7.3(10)(u)(2)(a),

⁴ This Court previously ruled that Section 8.7.3(10)(u)(1)(d) “unquestionably regulate[s] commercial speech,” (ECF No. 162, PageID.6008), but did not list it in ECF No. 559.

8.7.3(10)(u)(2)(b), 8.7.3(10)(u)(2)(c), 8.7.3(10)(u)(2)(d), and 8.7.3(10)(u)(5)(a) implicate commercial speech is an issue for trial.

- **6.7.2(19)(a) – applies to Farm Processing Facilities**
 - Ordinance text: “Activities such as weddings, receptions and other social functions for hire are not allowed, however, participation in approved township wide events is allowed.”

- **8.7.3(10)(m) – applies to Winery-Chateaus**
 - Ordinance text: “Accessory uses such as facilities, meeting rooms, and food and beverage services shall be for registered guests only. These uses shall be located on the same site as the principal use to which they are accessory and are included on the approved Site Plan. Facilities for accessory uses shall not be greater in size or number than those reasonably required for the use of registered guests.”

- **8.7.3(10)(u)(1)(d) – applies to Winery-Chateaus**
 - Ordinance text: “Guest Activity Uses do not include wine tasting and such related promotional activities as political rallies, winery tours and free entertainment (Example – ‘Jazz at Sunset’) which are limited to the tasting room and for which no fee or donation of any kind is received.”

- **8.7.3(10)(u)(2)(a) – applies to Winery-Chateaus**
 - Ordinance text: “ Wine and food seminars and cooking classes that are scheduled at least thirty days in advance with notice provided to the Zoning Administrator. Attendees may consume food prepared in the class.”

- **8.7.3(10)(u)(2)(b) – applies to Winery-Chateaus**
 - Ordinance text: “ Meetings of 501- (C)(3) non-profit groups within Grand Traverse County. These activities are not intended to be or resemble a bar or restaurant use and therefore full course meals are not allowed, however light lunch or buffet may be served.”

- **8.7.3(10)(u)(2)(c) – applies to Winery-Chateaus**
 - Ordinance text: “ Meetings of Agricultural Related Groups that have a direct relationship to agricultural production, provided that:
 - i. The meetings are scheduled at least one month in advance with the Zoning Administrator given adequate advance notice of the scheduling so that the Zoning Administrator can give prior approval;

 - ii. The Zoning Administrator shall use the following types of Agricultural Related Groups as a guide for determining “direct relationship to agricultural production”;
 - (a) Food/wine educational demonstrations;
 - (b) Cooking show showcasing Peninsula produce and wine;

- (c) Farmer’s conferences;
- (d) Regional farm producers;
- (e) Cherry Marketing Institute and Wine Industry Conference
- (f) Farm Bureau Conference
- (g) Future Farmers of America and 4-H;
- (h) Michigan State University/agricultural industry seminars.

iii. These meetings may include full course meals to demonstrate connections between wine and other foods.

iv. An appeal of the Zoning Administrators determination can be made to the Township Board.”

- **8.7.3(10)(u)(2)(d) – applies to Winery-Chateaus**
 - Ordinance text: “ Guest Activity Uses do not include entertainment, weddings, wedding receptions, family reunions or sale of wine by the glass.”

- **8.7.3(10)(u)(5)(a) – applies to Winery-Chateaus**
 - Ordinance text: “ Requirements for Guest Activity Uses (a) All Guest Activity Uses shall include Agricultural Production Promotion as part of the activity as follows:
 - i. Identify “Peninsula Produced” food or beverage that is consumed by the attendees;
 - ii. Provide “Peninsula Agriculture” promotional materials;
 - iii. Include tours through the winery and/or other Peninsula agricultural locations.

At trial, the Wineries will present evidence that the Sections 6.7.2(19)(a), 8.7.3(10)(m) 8.7.3(10)(u)(1)(d), 8.7.3(10)(u)(2)(a), 8.7.3(10)(u)(2)(b), 8.7.3(10)(u)(2)(c), 8.7.3(10)(u)(2)(d), and 8.7.3(10)(u)(5)(a) do relate to or regulate commercial speech and provide to this Court the clarity that was lacking when the Court denied the Wineries summary judgment.

“[E]ven a communication that does no more than propose a commercial transaction is entitled to the coverage of the First Amendment.” *Edenfield v. Fane*, 507 U.S. 761, 767 (1993). But speech can also be commercial even if it does not propose a commercial transaction. *Bolger v. Youngs Drug Prods. Corp.*, 463 U.S. 60 (1983). If any of the three *Bolger* factors are present the speech is likely commercial: (1) is the speech an advertisement; (2) does the speech refer to a

specific product or service; and (3) does the speaker have an economic motivation for the speech. *See Greater Baltimore Ctr. for Pregnancy Concerns, Inc. v. Mayor & City Council of Baltimore*, 721 F.3d 264, 285 (4th Cir. 2013); *U.S. Healthcare, Inc. v. Blue Cross of Greater Phila.*, 898 F.2d 914, 933 (3d Cir. 1990)). Commercial speech is not subject to “rigid classifications” dependent on any definite set of characteristics. *Bolger*, 463 U.S. at 81, (1983) (Stevens, J., concurring).

Commercial speech can take many forms. For example, activities which seek to “have prospects enter their stores and purchase Plaintiffs’ products . . . [are] commercial speech.” *FF Cosmetics FL Inc. v. City of Miami Beach, Florida*, 129 F. Supp. 3d 1316, 1321 (S.D. Fla. 2015).⁵

Product demonstrations are also commercial speech. In *Board of Trustees of State University of New York v. Fox*, 492 U.S. 469 (1989), the Supreme Court determined that Tupperware parties were commercial speech because they “propose a commercial transaction.” These “Tupperware parties...consist[] of demonstrating and offering products for sale to groups of 10 or more prospective buyers at gatherings assembled and hosted by one of those prospective buyers (for which the host or hostess stands to receive some bonus or reward).” *Id.* at 472. The Court concluded that “[t]here is no doubt that the AFS ‘Tupperware parties’ the students seek to hold ‘propose a commercial transaction.’” *Id.* at 473.

Similarly, cookware demonstrations in university residence halls are commercial speech. *Am. Future Sys., Inc. v. Pennsylvania State Univ.*, 752 F.2d 854, 857 (3d Cir. 1984). Product representatives compared their merchandise with other merchandise and ultimately asked whether any students wanted to purchase the products. *Id.* It did not matter than only “ten to twenty percent of the students at a particular demonstration usually agreed to purchase” the products. *Id.* at 857.

⁵ *See also Nordyke v. Santa Clara County*, 110 F.3d 707, 710 (9th Cir. 1997) (guns shows are commercial speech); *Northern Indiana Gun & Outdoor Shows, Inc. v. Hedman*, 104 F. Supp. 2d 1009 (N.D. Ind. 2000) (same).

Nor did it matter that students may have attended the demonstration not to purchase a product, but with the intention of entering to win a trip to Florida. *Id.* The product demonstrations were commercial speech because they were “essentially an advertisement of AFS’s wares, it specifically refers to AFS’s products, and AFS’s motivation for engaging in the speech is purely economic.” *Id.* at 862.

Here, the Winery witnesses will testify that they host promotional activities and events to get customers in the doors to sample their products and (hopefully) buy bottles to take home or sign up for wine club memberships. The Winery witnesses will testify that every time a person visits their winery—for any purpose—there is a new opportunity to teach guests about what makes their winery unique, whether it be flavor of their wine, the age of their vines, variety of their grapes, the history of winery ownership and development, or unique perks to joining their wine club. When people visit a winery for promotional activities contemplated by Sections 6.7.2(19)(a), 8.7.3(10)(m) 8.7.3(10)(u)(1)(d), 8.7.3(10)(u)(2)(a), 8.7.3(10)(u)(2)(b), 8.7.3(10)(u)(2)(c), 8.7.3(u)(2)(d), and 8.7.3(10)(u)(5)(a), the winery has a captive audience to which it can offer especially impactful wine education, promotions, marketing and messaging. Winery representatives will testify that they sell wine club memberships at a higher rate to customer who attend, for example, a meeting or a wine dinner versus guests who visit the tasting room during regular hours. They will further testify that when they provide education, promotions, marketing and/or other messaging to customers who attend a meeting, promotional activity or a wine dinner, for example, those customers purchase more wine to take home.

In short, the Winery witnesses will testify that Sections 6.7.2(19)(a), 8.7.3(10)(m) 8.7.3(10)(u)(1)(d), 8.7.3(10)(u)(2)(a), 8.7.3(10)(u)(2)(b), 8.7.3(10)(u)(2)(c), 8.7.3(u)(2)(d), and 8.7.3(10)(u)(5)(a) regulate their ability to “have prospects enter their stores and purchase [their]

products,” *FF Cosmetics*, 129 F. Supp. 3d at 1321. They will further testify that those sections prevent them from “demonstrating and offering products for sale to groups of 10 or more prospective buyers at gatherings assembled and hosted by one of those prospective buyers,” *Fox*, 492 U.S. at 472. And they will testify that those sections bar them from hosting activities requested by specific customers and using those activities as a chance to “compare[] their merchandise with other merchandise and ultimately asked whether any [customers] wanted to purchase the products.” *Am. Future Sys.*, 752 F.2d at 857. Just as product demonstrations and marketing opportunities were commercial speech in *FF Cosmetics*, *Fox*, and *American Future Systems*, the Wineries’ proposed marketing activities and demonstrations are commercial speech because they are a way to get customers in the door so the Wineries can offer to sell them wine.

PTP and the Township may claim that this Court has already determined in ECF No. 559 that some of the sections of the Winery Ordinances do not implicate commercial speech. PTP and the Township are incorrect as this Court’s Opinion and Order is nothing more than an interlocutory order denying the Wineries’ summary judgment motion. While this Court did state that it “accepts PTP’s argument for sections 6.7.2(19)(a) and 8.7.3(10)(u)(2)(d); these provisions do not implicate First Amendment protection” the Court did not thereafter grant PTP summary judgment on the Wineries’ First Amendment claims. (*See* ECF No. 559, PageID.21906.) Instead, this Court denied the Wineries’ motion for summary judgment on their First Amendment claims. Notably, this Court referenced section 8.7.3(10)(u)(2), among other ordinance sections, and stated that it was “unclear whether all of these sections implicate speech” and “as explained above, the Court will reject the catch all label at summary judgment.” (*Id.*, PageID.21918.) The Court continued, “[t]he Court will deny Plaintiffs summary judgment motion as related to these provisions.” (*Id.*) Then, for five sections of the Ordinances, the Court concluded that they “relate to and regulate speech

on their face” but summary judgment to the Wineries was not granted as the Court determined there were triable issues as to the *Central Hudson* factors. (*Id.*, PageID.21918, 21921.)

“When a court denies a summary-judgment motion because of a genuine issue of fact (as the court did here) it ‘decides only one thing—that the case should go to trial’; the denial ‘does not settle or even tentatively decide anything about the merits of the claim.’” *Hill v. Homeward Residential, Inc.*, 799 F.3d 544, 550 (6th Cir. 2015) (quoting *Switzerland Cheese Ass'n, Inc. v. E. Horne's Mkt., Inc.*, 385 U.S. 23, 25 (1966)). Further, even if the Court did intend to decide certain sections of the Winery Ordinances did not relate to or regulate commercial speech, that order is still a non-final order which can be revised at any time under Fed. R. Civ. P. 54(b).

2. Peninsula Township’s interest is limited to preserving agriculture.

This Court already determined that Peninsula Township’s proffered governmental interest of preserving agriculture is substantial for purposes of the *Central Hudson* analysis. (ECF No. 559, PageID.21919.)

The Wineries filed a motion in limine to exclude evidence of any other alleged governmental interests from Peninsula Township or PTP. (ECF No. 560, 561.) Peninsula Township and PTP apparently intend to submit approximately 130 sets of meeting minutes from the Township Board and Planning Commission but have not identified any other governmental interests with specificity and never updated their interrogatory answers on the issue with specific responses. Therefore, the Wineries will proceed as though preserving agriculture is the Township’s only governmental interest.

3. The challenged sections do not preserve agriculture.

Peninsula Township and PTP bear the burden to show that the challenged sections “directly advance” the stated interest of preserving agriculture. “[T]he restriction must directly advance the state interest involved; the regulation may not be sustained if it provides only ineffective or remote

support for the government's purpose." *Central Hudson*, 447 U.S. at 564. Therefore, the Township and PTP must show that the regulations advance the government interest of preserving agriculture "in a direct and material way" and this "is not satisfied by mere speculation or conjecture; rather, a government body seeking to sustain a restriction on commercial speech must demonstrate that the harms it recites are real and that its restrictions will alleviate them to a material degree.'" *Rubin*, 514 U.S. at 487 (quoting *Edenfield*, 507 U.S. at 770-71). "[T]he government must come forward with some quantum of evidence, beyond its own belief in the necessity for regulation, that the harms it seeks to remedy are concrete and that its regulatory regime advances the stated goals." *Pagan*, 492 F.3d at 771. Evidence, "such as studies, empirical data or professional literature" are necessary "to substantiate the connection between the government interest and the regulation at issue." *Interstate Outdoor Advert. v. Zoning Bd. of Tp. of Cherry Hill*, 672 F. Supp. 2d 675, 679 (D.N.J. 2009); see also *Edenfield*, 507 U.S. at 770-71; *Burkow v. City of Los Angeles*, 119 F. Supp. 2d 1076, 1080 (C.D. Cal. 2000). "Without "concrete evidence of relevant complaints, the fact that some of [the citizens] may feel 'anxious' is woefully insufficient to demonstrate that [the Township] 'faces real harms, which are materially palliated by the [Ordinances].'" *Aptive Environmental, LLC v. Town of Castle Rock, Colorado*, 959 F.3d 961, 996 (10th Cir. 2020).

The Township and PTP will not meet this burden. They have not identified as an exhibit any "studies, empirical data or professional literature" necessary to link their proffered governmental interest to the challenged sections. *Interstate Outdoor*, 672 F. Supp. 2d at 679. At most, they will offer either the testimony of Dr. Daniels or PTP members like John Wunsch or Grant Parsons. None of those witnesses can testify that the challenged sections preserve agriculture in a "direct and material way." *Rubin*, 514 U.S. at 487. Further, testimony from

witnesses to the enactment of legislation is inadmissible. *Presque Isle Twp. School District No. 8 Board of Education v. Presque Isle County Board of Education*, 111 N.W.2d 853, 856 (Mich. 1961) (“Such evidence cannot properly be admitted.”); *Simon Property Group, Inc. v. Taubman Centers, Inc.*, 240 F. Supp. 2d 642, 648 (E.D. Mich. 2003) (that “argument is unpersuasive and is directly contrary to Michigan law”); *In re Lindstrom*, 331 B.R. 267, 271 n.3 (E.D. Mich. B.R. 2005) (“[T]he Court does not consider the affidavit to be useful in divining the legislative intent because it is not an expression of the legislature’s intent at the time of the passage of the act, but is more in the nature of one legislator’s after the fact explanation of what he believes the meaning of the words to be.”); *Michigan United Conservation Clubs v. Lujan*, 949 F.2d 202, 209 (6th Cir. 1991) (“[W]e decline to give significance to sponsors’ private thoughts expressed subsequent to the enactment of a bill or an amendment.”). And even if that testimony were admissible, it represents the sort of purported general citizen anxiety that is “woefully insufficient” to support the Township’s burden. *Aptive Environmental*, 959 F.3d at 996.

In contrast, the Wineries will present the deposition testimony from former Township Supervisor Rob Manigold. This testimony will be admitted without objection because neither Peninsula Township nor PTP presented specific objections to pages and lines of Manigold’s testimony. (See ECF No. 573, PageID.22411-22413 (identifying testimony) and ECF No. 343 (“Indicate any objections to proposed deposition testimony[.]”).) This testimony has already been submitted and this Court has already reviewed it and understands that “these challenged sections of the PTZO likely do not advance the stated interests, and . . . the Township never considered less-restrictive means.” (ECF No. 559, PageID.21919-21920 (citing ECF No. 136-1, PageID.4770).)

PTP's objections about its absence from Manigold's deposition are misplaced. PTP's counsel need not have been present. "[T]he presence of an adversary with the same motive to cross-examine the deponent and identify of issues in the case in which the deposition was taken" resolves its concerns. *Ikerd v. Lapworth*, 435 F.2d 197, 205 (7th Cir. 1970). PTP and Peninsula Township had entered into their joint defense agreement on October 27, 2021. (ECF No. 395-1, PageID.14751.) Manigold was deposed several days thereafter.

PTP's general objection also does not change that Manigold, the Township Supervisor at the time of his deposition, made statements as the agent of a party-opponent (the Township) and those statements, whether made in a deposition or otherwise, are admissible as non-hearsay under Federal Rule of Evidence 801(d)(2).

Winery witnesses will also testify how the challenged sections harm their businesses and put agriculture at risk. The primary uses on their properties are all agricultural—to grow grapes, make wine, and sell wine. Representatives from each Winery will testify that the challenged ordinance sections hinder their efforts to preserve agriculture by making it harder to do business. Winery witnesses will testify that if restrictions on their ability to host private activities like meetings, food seminars and cooking classes continue, they are economically impacted. For example, Sections 8.7.3(10)(m) and 8.7.3(10)(u)(2)(a) restrict the manner in which, and the audience to which, the Wineries can first-person market their wine. By restricting their ability to choose how and to whom they sell their wine, the Winery representatives will explain that the Township is making it harder for them to sell wine which, in turn, makes it less likely that they will have money available to reinvest into their grape growing operations. With less money to reinvest, Winery representatives will testify that the more feasible financial option for them may be to sell their land to a residential developer. That option, necessarily, would take the land out of

agriculture in direct contradiction to the stated governmental interest.

4. Even if they do preserve agriculture, the challenged sections are not the least restrictive means to do so.

Even if Peninsula Township and PTP can show that the challenged sections directly advance the preservation of agriculture (they cannot), the challenged sections should fall because they are not the least restrictive means of achieving the Township's goals. "[I]f the governmental interest could be served as well by a more limited restriction on commercial speech, the excessive restrictions cannot survive." *Central Hudson*, 447 U.S. at 564. This means that the restrictions must be "narrowly drawn" because the "regulatory technique may extend only as far as the interest it serves." *Id.* at 565. If the restriction goes "further than is necessary to serve the interest asserted," then it is not narrowly drawn. *Matal v. Tam*, 582 U.S. 218, 246 (2017).

Peninsula Township and PTP will not meet their burden to show that there were no less restrictive means to achieve their goals of preserving agriculture than by enacting the challenged sections. *Cent. Hudson*, 447 U.S. at 566.

In contrast, Winery witnesses will testify that they are already necessarily preserving agriculture by operating wineries. Winery-Chateaus are required to have at least 50 acres; Farm Processing Facilities must have at least 40 acres; and the Remote Winery Tasting Room must have at least 150 acres. That land is all preserved in agriculture.

The Wineries will also present testimony from Rob Manigold that the Township did not consider any less restrictive means before passing the challenged sections. As stated above, that admission is admissible for multiple reasons and has already been considered by this Court.

Finally, the Wineries will also present the expert rebuttal testimony of Gary McDowell, Teri Quimby, and David Moss. McDowell will testify that the Township's regulations contradict the Michigan Farm Market GAAMPs promulgated by the Michigan Department of Agriculture

and Rural Development. McDowell will further testify that the State of Michigan has made a policy decision that farm markets promote and preserve agriculture, and he will explain that the challenged sections prohibit traditional farm market activities and put agriculture at risk. Quimby will testify that the challenged sections also contradict the State of Michigan's policy decisions regarding wine makers and small wine makers set forth in the Liquor Control Code. Moss will identify less restrictive ways to preserve agriculture than the by the challenged sections.

Finally, while not a stated governmental interest, PTP has expressed concerns over noise and traffic. While the Wineries do not believe these concerns to be legitimate, a less restrictive means would be to enforce a generally applicable noise ordinance, setbacks, parking requirements, and traffic controls like hiring parking attendants for larger events.

B. Damages.

Plaintiffs seek damages under 42 U.S.C. § 1983, which states that a party acting under color of state law who violates the Constitution and laws of the United States “shall be liable to the party injured in an action at law[.]” “[Section] 1983 serves as a vehicle to obtain damages for violations of both the Constitution and of federal statutes.” *Communities for Equity v. Michigan High Sch. Athletic Ass’n*, 459 F.3d 676, 681 (6th Cir. 2006). “[T]he basic purpose of a § 1983 damages award should be to compensate persons for injuries caused by the deprivation of constitutional rights.” *Farrar v. Hobby*, 506 U.S. 103, 112 (1992) (citation omitted).

“[A] plaintiff who establishes the violation of her constitutional rights is entitled to recover nominal damages, as well as compensatory damages for any ‘actual injury.’” *Taylor v. City of Saginaw*, 620 F. Supp. 3d 655, 671 (E.D. Mich. 2022) (citing *Uzuegbunam v. Preczewski*, 141 S. Ct. 792, 800 (2021)). “Traditional tort concepts of causation inform the causation inquiry on a § 1983 claim.” *Powers v. Hamilton Cnty. Pub. Def. Comm’n*, 501 F.3d 592, 608 (6th Cir. 2007). “To recover damages under § 1983, the plaintiff must bring out facts that establish a causal

connection between the constitutional violation and the damages they seek.” *Halpern 2012, LLC v. City of Ctr. Line*, 404 F. Supp. 3d 1109, 1121 (E.D. Mich. 2019), *aff’d sub nom. Halpern 2012, LLC v. City of Ctr. Line, Michigan*, 806 F. App’x 390 (6th Cir. 2020). Further, in a § 1983 case a party is entitled to recover “general damages” even if there is no showing of actual injury. *Walje v. City of Winchester, Ky.*, 773 F.2d 729, 732 (6th Cir. 1985).

The Wineries will prove that the Winery Ordinances were the cause in fact and proximate cause of their alleged injuries. *Powers*, 501 F.3d at 608. *See also Molnar v. Care House*, 574 F. Supp. 2d 772, 786 (E.D. Mich. 2008) (“The causation requirement in § 1983 is not satisfied by mere causation in fact; the plaintiff must also establish proximate causation.”), *aff’d*, 359 F. App’x 623 (6th Cir. 2009). “[C]ourts have framed the § 1983 proximate-cause question as a matter of foreseeability, asking whether it was reasonably foreseeable that the complained of harm would befall the § 1983 plaintiff as a result of the defendant’s conduct. Even if an intervening third party is the immediate trigger for the plaintiff’s injury, the defendant may still be proximately liable, provided that the third party’s actions were foreseeable.” *Powers*, 501 F.3d at 609.

“Damages must be established to a reasonable certainty, but the existence of some uncertainty as to the amount of damages does not foreclose recovery.” *Benson v. City of Wellston*, 201 F. App’x 350, 353 (6th Cir. 2006). “Once the existence of damages has been shown, all that an award of damages requires is substantial evidence in the record to permit a factfinder to draw reasonable inferences and make a fair and reasonable assessment of the amount of damages.” *Grantham & Mann, Inc. v. Am. Safety Prod., Inc.*, 831 F.2d 596, 602 (6th Cir. 1987).

Lost profits are recoverable as damages in a § 1983 action. *See Tri-County Industries, Inc. v. District of Columbia*, 200 F.3d 836 (D.C. Cir. 2000) (\$5 million lost profits award in § 1983 due process action); *Snodgrass–King Pediatric Dental Associates, P.C. v. DentaQuest USA Insurance*

Co., Inc., 295 F. Supp. 3d 843, 871 (M.D. Tenn. 2018) (\$7.4 million lost profits award in § 1983 First Amendment retaliation claim); *Fla. Transp. Servs., Inc. v. Miami-Dade Cnty.*, 703 F.3d 1230, 1234 (11th Cir. 2012) (\$3.55 million lost profits award in § 1983 dormant Commerce Clause action); *Chalmers v. City of Los Angeles*, 762 F.2d. 753 (9th Cir. 1985) (awarding lost profits suffered by t-shirt vendor due to vague ordinance).

A “reasonable degree of certainty” is not absolute precision. *Benson*, 201 F. App’x at 353 (“Nor is it especially worrisome that an element of uncertainty might have had an effect on the calculation of damages[.]”). Thus, lost profits are recoverable even where a business was not engaged in the activity from which lost profits were sought. As the Southern District of Ohio summarized:

While the nature of a new venture may make it difficult to recover lost profits by establishing all of the elements of the general rule, such damages are not barred as a matter of law. This is consistent with the weight of modern authority, as explained in Robert L. Dunn, *Recovery of Damages for Lost Profits* § 4.3 (5th ed.1998):

Most recent cases reject the once generally accepted rule that lost profits damages for a new business are not recoverable. The development of the law has been to find damages for lost profits of an unestablished business recoverable when they can be adequately proved with reasonable certainty. What was once a rule of law has been converted into a rule of evidence.

Id. In a similar vein, the Seventh Circuit has quoted approvingly the following statement by the Alabama Supreme Court:

[T]he weight of modern authority does not predicate recovery of lost profits upon the artificial categorization of a business as “unestablished,” “existing,” or “new” particularly where the defendant itself has wrongfully prevented the business from coming into existence and generating a track record of profits. Instead the courts focus on whether the plaintiff has adduced evidence that provides a basis from which the jury could with “reasonable certainty” calculate the amount of lost profits.... [T]he risk of uncertainty must fall on the defendant whose wrongful conduct caused the damages.

Mid–America Tablewares, Inc. v. Mogi Trading Co., 100 F.3d 1353, 1366 (7th Cir.

1996) (quoting *Super Valu Stores, Inc. v. Peterson*, 506 So.2d 317, 327–30 (Ala. 1987)); see also *DSC Communics. Corp. v. Next Level Communics.*, 107 F.3d 322, 329–30 (5th Cir. 1997) (affirming award of profits based on expert testimony regarding projected sales of “revolutionary new product” yet to enter market); *In re Merritt Logan, Inc.*, 901 F.2d 349, 357–59 (3rd Cir. 1990) (affirming award of profits for new venture, based on plaintiff’s contemporaneous projections of expected sales and expert testimony that forecasts were reasonable); *Computer Sys. Eng’g, Inc. v. Qantel Corp.*, 740 F.2d 59–67 (1st Cir. 1984) (affirming award of profits to new business based on expert testimony).

Energy Capital Corp. v. United States, 300 F.3d 1314, 1326–27 (Fed.Cir. 2002). In sum, the most recent authorities hold that lost profits are not per se unavailable in cases involving new businesses.

Hamm v. City of Gahanna, Ohio, 2002 WL 31951272, at *10–11 (S.D. Ohio Dec. 23, 2002), aff’d, 109 F. App’x 44 (6th Cir. 2004).

A good example of lost profits for a new business is *Tri-County Industries*, 200 F.3d 836. The plaintiff sued under § 1983 for a violation of due process rights for the suspension of a building permit for a soil treatment facility. *Id.* at 839. The plaintiff presented evidence of its costs incurred and evidence of more than \$11 million in lost profits it would have made had the District not violated its due process rights. *Id.* The plaintiff presented evidence of lost profits through eight witnesses, including “projections of tons of contaminated soil the facility would treat per hour and the number of hours it would operate per day to estimates of equipment and labor costs.” *Id.* at 841. The plaintiff also presented an economist who “projected the profitability” of the plaintiff’s facility. *Id.* After the jury awarded \$5 million in lost profits, the D.C. Circuit affirmed because evidence of lost profits may be “uncertain or inexact” as long as it is “sufficiently well-founded to avoid characterization as ‘mere speculation or guess.’” *Id.* at 841–42 (quoting *Samaritan Inns, Inc. v. District of Columbia*, 114 F.3d 1227, 1235 (D.C. Cir. 1997)). Ultimately, the award was appropriately within a “reasonable range.” *Id.* at 842.

Here, Plaintiffs seek damages across five categories.⁶ These damages are authorized because Plaintiffs have proven numerous constitutional violations under 42 U.S.C. § 1983. Plaintiffs will testify that their damages were caused by the constitutional violations because, absent the unconstitutional restrictions, they would have engaged in the activities barred by the Winery Ordinances. Therefore, their damages were caused by the constitutional violations.

Each category and amount of damages is assessed in turn.

1. Lost profits from increased cost of grapes due to requirement of grapes grown on the Peninsula (Schedule 1).

Witnesses for Tabone Vineyards and Two Lads will testify that Sections 6.7.2(19)(a), 6.7.2(19)(b)(1)(ii), 6.7.2(19)(b)(1)(iii), 6.7.2(19)(b)(2)(i), and 6.7.2(19)(b)(2)(v) from the Farm Processing Facility Ordinance required them to source grapes from inside Peninsula Township where they could have been sourced at a lower price from elsewhere. Witnesses for Bonobo, Bowers Harbor, and Chateau Chantal will testify that Sections 8.7.3(10)(u)(2)(e) and 8.7.3(10)(u)(3) from the Winery Chateau Ordinance required them to source grapes inside Peninsula Township where they could have been sourced at a lower price from elsewhere. These witnesses will testify that the respective sections of the Peninsula Township Ordinances caused them to incur these increased grape costs. The Court already ruled that these Sections violated the dormant Commerce Clause. (ECF No. 162, PageID.6001.) Compensatory damages are recoverable under § 1983 for dormant Commerce Clause violations. *See, e.g., Fla. Transp. Servs.*, 703 F.3d at 1234.

⁶ Following this Court's ruling that preemption claims under Michigan law do not give rise to damages because of the Michigan Government Tort Liability Act, Mich. Comp. Laws § 691.1401, *et seq.* (ECF No. 525, PageID.21134-21136), Plaintiffs are not seeking damages for catering (Schedule 2 of Larson's supplemental report, Exhibit 194) or restaurant/prepacked food sales (Schedule 4).

As outlined in Schedule 1 of Eric Larson’s Supplemental Report (Exhibit 194), witnesses for these Plaintiffs and Eric Larson will testify that these Plaintiffs suffered the following damages:

Plaintiff	Damages from Increased Grape Costs
OV the Farm, LLC	\$24,138
Bowers Harbor Vineyard & Winery, Inc.	\$5,325
Chateau Operations, Ltd	\$85,450
Tabone Vineyards, LLC	\$4,000
Two Lads, LLC	\$66,655
Total Grape Cost Damages	\$185,568

2. Lost profits from limited hours of service (Schedule 3).

This Court ruled that § 8.7.3(10)(u)(5)(b), which imposed a 9:30 PM closing time on Guest Activities, is unconstitutionally vague and unenforceable because it includes uses the vague term “Guest Activity.” (ECF No. 162, PageID.6019.) Rob Manigold, the former Township Supervisor, testified that although the PTZO didn’t require all wineries to close at 9:30 PM, the hours restriction in 8.7.3(10)(u)(5)(b) “inferred” a 9:30 closing time on all Plaintiffs’ businesses and that is what the Township enforced. Therefore, Plaintiffs proved that the 9:30 PM closing time was unconstitutionally vague in violation of the Due Process Clause and that the closing time was enforced against all Plaintiffs. Witnesses for the Plaintiffs will testify that, but for Peninsula Township’s enforcement of a vague closing time in § 8.7.3(10)(u)(5)(b), they would have stayed open later and made more money. Damages are recoverable for due process violations when a law is void for vagueness. *See, e.g., Kolender v. Lawson*, 461 U.S. 352, 362 (1983) (affirming statute is unconstitutionally vague and remanding for trial on damages); *Chalmers*, 762 F. 2d. 753 (awarding lost profits suffered by t-shirt vendor due to vague ordinance.) Plaintiffs and Eric Larson

will testify that Plaintiffs suffered the following annual damages due to early closing hours:

Plaintiff	Annual Lost Profit Damages for Limited Hours of Service
OV the Farm, LLC	\$328,500
Winery at Black Star Farms, LLC	\$492,750
Bowers Harbor Vineyard & Winery, Inc.	\$492,750
Brys Winery, LLC	\$854,100
Chateau Operations, Ltd	\$394,200
Chateau Grand Traverse, Ltd	\$328,500
Grape Harbor, Inc	\$394,200
Montague Development, LLC	\$100,193
Tabone Vineyards, LLC	\$133,042.50
Two Lads, LLC	\$241,448
Villa Mari, LLC	\$492,750
Total Annual Lost-Profit Damages	\$4,252,433.50
Total Damages over 6 ½ year damages period, less \$2,319,867 COVID impact adjustment⁷	\$27,241,690.25

3. Lost profits from lost merchandise sales (Schedule 5).

This Court ruled that “Sections 6.7.2(19)(b)(1)(v) (regulating logos and merchandise), 8.7.3(10)(u)(1)(b) (promotion of Peninsula Township), 8.7.3(10)(u)(5)(h) (outdoor displays), 8.7.3(12)(i) (regulating logo size), and 8.7.3(12)(k) (promotion of food on signs) relate to and

⁷ These calculations reflect only 3.5 years for Tabone given that it was not open for business during the entire damages period.

regulate speech on their face—generally through limits on advertising.” (ECF No. 559, PageID.21918.) At trial, Peninsula Township and PTP bear the burden to show under *Central Hudson* that these sections advance Peninsula Township’s stated governmental interest of preserving agriculture and are the least restrictive means to do so. (*See id.* at PageID.21918-21921.) As explained above, Peninsula Township and PTP cannot meet that burden.

These sections relate to the sale of merchandise by Farm Processing Facilities (Winery at Black Star Farms, LLC; Tabone Vineyards, LLC; and Two Lads, LLC) and Remote Winery Tasting Rooms (Grape Harbor, Inc.). Representatives from these Plaintiffs will testify that these Sections caused them to lose out on merchandise sales. Representatives from these Plaintiffs and Eric Larson will testify that these Plaintiffs suffered the following total damages:

Plaintiff	Annual Lost Profit Damages for Merchandise Sales Restrictions
Winery at Black Star Farms, LLC	\$30,000
Grape Harbor, Inc.	\$27,500
Tabone Vineyards, LLC	\$15,000
Two Lads, LLC	\$17,907
Total Annual Lost-Profit Damages	\$90,407
Total Damages over 6 ½ year damages period including (\$64,849) COVID impact adjustment⁸	\$542,645.50

4. Lost profits from lost event hosting of small events and meetings (Schedule 6).

This Court has invalidated multiple unconstitutional barriers preventing the Wineries from hosting small events and meetings.

⁸ These calculations reflect only 3.5 years for Tabone given that it was not open for business during the entire damages period.

For the Winery-Chateaus, this Court has already ruled that the entire “Guest Activity Use” scheme is vague and unenforceable. (ECF No. 162, PageID.6019.) Witnesses from Bonobo, Bowers Harbor, Brys, Chateau Chantal, Chateau Grand Traverse, Hawthorne, and Villa Mari will testify that the vagueness of the “Guest Activity Use” language and the Township’s varying and inconsistent interpretations caused them to refrain from engaging hosting small events and meetings for fear of Township enforcement.

Relatedly, this Court has ruled that Sections 8.7.3(10)(u)(2)(b) (regulations on 501(c)(3) groups) and 8.7.3(10)(u)(2)(c) (meetings of agricultural related groups) are an unlawful prior restraint. (ECF No. 559, PageID.21910.) Witnesses from Bonobo, Bowers Harbor, Brys, Chateau Chantal, Chateau Grand Traverse, Hawthorne, and Villa Mari will testify that the prior restraint, including the lack of a definition of “agricultural” group, caused them to refrain from engaging hosting small events and meetings for various groups for fear of Township enforcement.

Also, for the Winery-Chateaus, this Court has ruled that the 1.25 ton per-guest requirement for Guest Activity Uses in Section 8.7.3(10)(u)(3) violates the dormant Commerce Clause. (ECF No. 162, PageID.6001.) Section 8.7.3(10)(u)(3) required the Winery-Chateaus to purchase grapes from Peninsula Township farmers to qualify for the vague “Guest Activity Uses.” Representatives from Bonobo, Bowers Harbor, Brys, Chateau Chantal, Chateau Grand Traverse, Hawthorne, and Villa Mari will testify that they prioritize selling their own estate grown wine and/or sourcing grapes, juice, or wine from grape varieties that cannot be grown within Peninsula Township. These representatives will testify that the Township’s requirement to purchase grapes from other vineyards in Peninsula Township limited their ability to host small events and meetings.

This Court may also invalidate additional barriers as unlawful restrictions on Plaintiffs’ commercial speech. As explained above, representatives from Plaintiffs will testify that Sections

6.7.2(19)(a), 8.7.3(10)(m) 8.7.3(10)(u)(1)(d), 8.7.3(10)(u)(2)(a), 8.7.3(10)(u)(2)(b), 8.7.3(10)(u)(2)(c), 8.7.3(u)(2)(d), and 8.7.3(10)(u)(5)(a) unconstitutionally restrict their commercial speech by limiting the ways in which they advertise their wine for sale and to whom they may advertise. Representatives from these Plaintiffs will testify that these sections caused them to lose profits from wine sales during accessory uses like small events and meetings.

Without those unconstitutional barriers, the Wineries would have been left with the traditional “principal” and “accessory” uses allowed by the Peninsula Township Zoning Ordinance. Under the PTZO, a “winery” is defined as a “state licensed facility where agricultural fruit production is maintained, juice is processed into wine, stored in bulk, packaged, and sold at retail or wholesale to the public with or without the use of a wine tasting facility. The site and buildings are used principally for the production of wine.” (Exhibit 1 at 17.) The Winery-Chateau Ordinance states that “The principal use permitted upon the site shall be a winery.” Therefore, the principal uses at Winery-Chateaus are growing grapes, making wine, and selling wine.

The PTZO allows “accessory uses,” which are defined as a “use customarily incidental and subordinate to the principal use or building located on the same lot as the principal use or building.” (Exhibit 1 at 2.) The Winery-Chateau Ordinance allows for accessory uses. “In addition to the principal and support uses, accessory uses for each such use shall be permitted provided, that all such accessory uses shall be no greater in extent than those reasonably necessary to serve the principal use.” Section 8.7.3(1)(d)(1).⁹ Representatives from these Plaintiffs will testify that small events and meetings would be “accessory uses” because they are customarily incidental and subordinate to the primary uses of growing grapes, making wine, and selling wine. This is

⁹ “Support uses” are “[g]uest rooms, manager’s residence, and single family residences.” Section 8.7.3(10)(d). These are distinct from accessory uses.

consistent with the Michigan Farm Market GAAMPs promulgated pursuant to Michigan’s Right to Farm act which allows farm, like the Plaintiffs, the host on-farm “Promotional and educational activities at the farm market incidental to farm products with the intention of selling more farm products. These activities include, but are not limited to, farm tours (walking or motorized), demonstrations, cooking and other classes utilizing farm products, and farm-to-table dinners.” Specifically, the winery witnesses will testify that small events and meetings help the wineries sell more wine which, in turn, allows the wineries to reinvest money into their grape growing and wine-making operations. Each representative will also testify that they would host small events and meetings no more than reasonably necessary to aid in their principal uses. Ultimately, representatives from these Plaintiffs will testify that the unconstitutional ordinances outlined above caused them to refrain from engaging in these accessory uses.

Plaintiffs and Eric Larson will testify that Plaintiffs suffered the following annual damages due to their inability to host small events and meetings typically involving approximately twenty customers:

Plaintiff	Annual Lost Profit Damages Small Events
OV the Farm, LLC	\$108,160
Winery at Black Star Farms, LLC	\$54,080
Bowers Harbor Vineyard & Winery, Inc.	\$208,208
Brys Winery, LLC	\$163,592
Chateau Operations, Ltd	\$106,470
Chateau Grand Traverse, Ltd	\$22,308
Grape Harbor, Inc	\$53,235
Montague Development, LLC	\$54,080

Tabone Vineyards, LLC	\$182,182
Two Lads, LLC	\$260,260
Villa Mari, LLC	\$218,855
Total Annual Lost-Profit Damages	\$1,431,430
Total Damages over 6 ½ year damages period, less \$757,226 COVID impact adjustment¹⁰	\$8,757,749

5. Lost profits from lost event hosting of large events and weddings (Schedule 7).

Plaintiffs have broken out their damages claim to separately distinguish larger events, that may be things like corporate retreats, rehearsal dinners, retirement parties, wedding receptions and similar activities which would include more than the twenty or so customers that constitute a smaller event. For the same reasons stated above with respect to small events and meetings from Schedule 6, Plaintiffs and Eric Larson will testify that Plaintiffs suffered the following annual damages due to their inability to host large events and weddings:

Plaintiff	Annual Lost Profit Damages Large Events
OV the Farm, LLC	\$1,267,500
Winery at Black Star Farms, LLC	\$1,344,200
Bowers Harbor Vineyard & Winery, Inc.	\$2,184,000
Brys Winery, LLC	\$1,394,250
Chateau Operations, Ltd	\$2,281,500
Chateau Grand Traverse, Ltd	\$612,625
Grape Harbor, Inc	\$163,719

¹⁰ These calculations reflect only 3.5 years for Tabone given that it was not open for business during the entire damages period.

Montague Development, LLC	\$422,500
Tabone Vineyards, LLC	\$572,910
Two Lads, LLC	\$1,901,250
Villa Mari, LLC	\$1,014,000
Total Annual Lost-Profit Damages	\$13,158,454
Total Damages over 6 ½ year damages period, less \$7,237,150 COVID impact adjustment¹¹	\$83,811,221

6. Alternatively, this Court could award the Wineries general damages.

Alternatively, this Court could award the Wineries “general damages.” “[G]eneral damages represent compensatory damages for a harm so frequently resulting from the tort that it is the very basis of the cause of action, Restatement (Second) of Torts § 904 (1979); that is, in these cases, the major purpose of the suit may be to obtain a public declaration that the plaintiff was improperly treated and general damages serve the purpose of vindicating the injured party.” *Walje*, 773 F.2d at 731. As the Sixth Circuit has explained, “general damages are appropriate where the very violation itself causes harm, so too must Section 1983 permit the recovery of general damages for First Amendment violations, which by their very nature weaken and damage the guarantee of free speech.” *Id.* at 732. General damages may be “necessary in order to fully vindicate the challenged substantive right and to deter future conduct that threatens its practical significance.” *Id.*

In sum, this Court could award the Wineries general damages to fully vindicate their rights and deter Peninsula Township from repeating unconstitutional conduct (like Amendment 201).

¹¹ These calculations reflect only 3.5 years for Tabone given that it was not open for business during the entire damages period.

C. Injunctive Relief.

After an ordinance has been ruled unconstitutional or unlawful, its enforcement must be enjoined to prevent further violations. *See, e.g., H.D.V.-Greektown, LLC v. City of Detroit*, 568 F.3d 609, 619 (6th Cir. 2009) (“The district court’s refusal to enjoin the City from enforcing the challenged provisions of its zoning ordinances was thus clearly an abuse of discretion, assuming that the ordinance is indeed unconstitutional.”). To obtain a permanent injunction, the Wineries must show: (1) that they have “suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff[s] and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction.” *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006).

First, the Wineries have suffered, and will continue to suffer, an irreparable injury without an injunction because the challenged sections of the Peninsula Township Zoning Ordinance violate the Constitution. “The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976). *See also Bonnell v. Lorenzo*, 241 F.3d 800, 809 (6th Cir. 2001) (“[I]f it is found that a constitutional right is being threatened or impaired, a finding of irreparable injury is mandated.”). This factor favors the Wineries.

Second, monetary damages are inadequate to compensate for the Wineries’ constitutional injuries. *See, e.g., Elrod v. Burns*, 427 U.S. at 373; *JDC Mgmt., LLC v. Reich*, 644 F. Supp. 2d 905, 940 (W.D. Mich. 2009) (“The deprivation of a constitutional right certainly constitutes harm that cannot be adequately remedied with a later payment of money damages.” (Maloney, J.)). This factor favors the Wineries because they have proven constitutional violations.

Third and fourth, neither Peninsula Township nor Protect the Peninsula nor the public in

general has an interest in the enforcement of an unconstitutional ordinance. “[E]ven a temporary infringement of First Amendment rights constitutes a serious and substantial injury, and the city has no legitimate interest in enforcing an unconstitutional ordinance. For similar reasons, the injunction plainly is not adverse to the public interest. The public has no interest in enforcing an unconstitutional ordinance.” *KH Outdoor, LLC v. City of Trussville*, 458 F.3d 1261, 1272 (11th Cir. 2006). *See also Connection Distrib. Co. v. Reno*, 154 F.3d 281, 288 (6th Cir. 1998) (“[I]t is always in the public interest to prevent the violation of a party’s constitutional rights.” (quoting *G & V Lounge, Inc. v. Michigan Liquor Control Comm’n*, 23 F.3d 1071, 1079 (6th Cir. 1994)); *Planned Parenthood Ass’n of Cincinnati, Inc. v. City of Cincinnati*, 822 F.2d 1390, 1400 (6th Cir. 1987) (“Finally, the last factor—whether the public interest is served by the injunction—is also met, since the public is certainly interested in the prevention of enforcement of ordinances which may be unconstitutional”). This factor also favors the Wineries. For these same reasons, Protect the Peninsula cannot claim that it will be harmed by an injunction because it has no interest in the continued enforcement of an unconstitutional ordinance.

In all, each factor favors the Wineries. Consistent with that authority and rationale, this Court has already stated that it “will enjoin the Township from enforcing all of the sections of the Township Ordinances that the Court has found unconstitutional or contrary to law.” (ECF No. 559, PageID.21922.) Therefore, the Wineries request that this Court grant a permanent injunction. “Every order granting an injunction and every restraining order must: (A) state the reasons why it issued; (B) state its terms specifically; and (C) describe in reasonable detail--and not by referring to the complaint or other document--the act or acts restrained or required.” Fed. R. Civ. P. 65(d). Accordingly, the Wineries request that the Court enter an injunction in the following form:

Peninsula Township is permanently enjoined from enforcing Sections 6.7.2(19)(a), 6.7.2(19)(b)(1)(ii), 6.7.2(19)(b)(1)(iii), 6.7.2(19)(b)(2)(i), 6.7.2(19)(b)(2)(v), 8.7.3(10)(u)(2)(e), 8.7.3(10)(u)(3), 8.7.3(10)(u)(5)(c), and 8.7.3(10)(u)(5)(d) of the Peninsula Township Zoning Ordinance and those portions of any of the Wineries' special use permits and land use permits reflecting the language from Sections 6.7.2(19)(a), 6.7.2(19)(b)(1)(ii), 6.7.2(19)(b)(1)(iii), 6.7.2(19)(b)(2)(i), 6.7.2(19)(b)(2)(v), 8.7.3(10)(u)(2)(e), 8.7.3(10)(u)(3), 8.7.3(10)(u)(5)(c), and 8.7.3(10)(u)(5)(d) because those sections violate the dormant Commerce Clause.

Peninsula Township is permanently enjoined from enforcing any provision in the Peninsula Township Zoning Ordinance and those portions of any of the Wineries' special use permits containing the phrase "Guest Activity Use," because the phrase "Guest Activity Use" is unconstitutionally vague in violation of the Due Process Clause. This includes Section 8.7.3(10)(u) and subsections 8.7.3(10)(u); 8.7.3(10)(u)(1)(a); 8.7.3(10)(u)(1)(b); 8.7.3(10)(u)(1)(c); 8.7.3(10)(u)(1)(d); 8.7.3(10)(u)(1)(e); 8.7.3(10)(u)(1)(f); 8.7.3(10)(u)(1)(g); 8.7.3(10)(u)(2); 8.7.3(10)(u)(2)(a); 8.7.3(10)(u)(2)(b); 8.7.3(10)(u)(2)(c); 8.7.3(10)(u)(2)(c)(i); 8.7.3(10)(u)(2)(c)(ii); 8.7.3(10)(u)(2)(c)(iii); 8.7.3(10)(u)(2)(c)(iv); 8.7.3(10)(u)(2)(d); 8.7.3(10)(u)(2)(e); 8.7.3(10)(u)(3); 8.7.3(10)(u)(4); 8.7.3(10)(u)(4)(a)(i); 8.7.3(10)(u)(4)(a)(ii); 8.7.3(10)(u)(4)(a)(iii); 8.7.3(10)(u)(5); 8.7.3(10)(u)(5)(a); 8.7.3(10)(u)(5)(a)(i); 8.7.3(10)(u)(5)(a)(ii); 8.7.3(10)(u)(5)(a)(iii); 8.7.3(10)(u)(5)(b); 8.7.3(10)(u)(5)(c); 8.7.3(10)(u)(5)(d); 8.7.3(10)(u)(5)(e); 8.7.3(10)(u)(5)(f); 8.7.3(10)(u)(5)(g); 8.7.3(10)(u)(5)(h); 8.7.3(10)(u)(5)(i); 8.7.3(10)(u)(5)(j); 8.7.3(10)(u)(5)(k); 8.7.3(10)(u)(6); 8.7.3(10)(u)(7); 8.7.3(10)(u)(7)(a); 8.7.3(10)(u)(7)(b); 8.7.3(10)(u)(8); 8.7.3(10)(u)(8)(a); 8.7.3(10)(u)(8)(b); 8.7.3(10)(u)(8)(c); and 8.7.3(10)(u)(8)(d).

Peninsula Township is permanently enjoined from enforcing Sections 8.7.3(10)(u)(2)(b) and 8.7.3(10)(u)(2)(c) of the Peninsula Township Zoning Ordinance and those portions of any of the Wineries' special use permits reflecting the language from Sections 8.7.3(10)(u)(2)(b) and 8.7.3(10)(u)(2)(c) because those sections are an unlawful prior restraint on speech in violation of the First Amendment.

Peninsula Township is permanently enjoined from enforcing Sections 8.7.3(10)(u)(1)(b) and 8.7.3(10)(5)(a) of the Peninsula Township Zoning Ordinance and those portions of any of the Wineries' special use permits reflecting the language from Sections 8.7.3(10)(u)(1)(b) and 8.7.3(10)(5)(a) because those sections unlawfully compel the Wineries to speak in violation of the First Amendment.

Peninsula Township is permanently enjoined from enforcing Sections 6.7.2(19)(a), 6.7.2(19)(b)(1)(v), 8.7.3(10)(m), 8.7.3(10)(u)(1)(b), 8.7.3(u)(1)(d), 8.7.3(10)(u)(2)(a), 8.7.3(10)(u)(2)(b), 8.7.3(10)(u)(2)(c), 8.7.3(10)(u)(2)(d), and 8.7.3(10)(u)(5)(a), 8.7.3(10)(u)(5)(h), 8.7.3(12)(i), and 8.7.3(12)(k) of the Peninsula Township Zoning Ordinance and those portions of any of the Wineries' special use permits or land use permits reflecting the language from those sections because those sections violate the Wineries' First Amendment rights to engage in commercial speech.

Peninsula Township is permanently enjoined from enforcing a ban on catering by the Wineries, including Section 8.7.3(10)(u)(5)(i) of the Peninsula Township Zoning Ordinance and those portions of any of the Wineries' special use permits reflecting the language from Section 8.7.3(10)(u)(5)(i), because it preempted by Mich. Comp. Laws § 436.1547.

Peninsula Township is permanently enjoined from enforcing a ban on amplified music at any of the Wineries, including Section 8.7.3(10)(u)(5)(g) of the Peninsula Township Zoning

Ordinance and those portions of any of the Wineries' special use permits reflecting the language from Section 8.7.3(10)(u)(5)(g), because it is preempted by Mich. Comp. Laws § 436.1547. However, Peninsula Township may regulate the volume of amplified music through its generally applicable noise ordinance.

Peninsula Township is permanently enjoined from enforcing a 9:30 p.m. closing time on Black Star, Peninsula Cellars, Tabone, and Two Lads because there are no closing time restrictions contained in the Farm Processing Facility Ordinance, Section 6.7.2(19), or the Remote Winery Tasting Room Ordinance, Section 8.7.3(12). Peninsula Township is permanently enjoined from enforcing a 9:30 p.m. closing time on the remaining Plaintiff Wineries because the 9:30 p.m. closing time only applied to "Guest Activity Uses" which has been ruled vague in violation of the Due Process Clause.

Peninsula Township is permanently enjoined from enforcing a ban on weddings at Bonobo, Bowers Harbor, Brys, Chateau Chantal, Chateau Grand Traverse, Hawthorne, and Villa Mari because Peninsula Township's officials have admitted there is no ban on weddings in Section 8.7.3(10) of the Peninsula Township Zoning Ordinance.

Finally, "[a]fter a zoning ordinance has been declared unconstitutional . . . a judge may provide relief in the form of a declaration that the plaintiff's proposed use is reasonable, assuming the plaintiff's burden has been met, and an injunction preventing the defendant from interfering with that use." *Schwartz v. Flint*, 395 N.W.2d 678, 692–693 (Mich. 1986). The Wineries have presented evidence that their proposed uses of serving food as permitted by their MLCC and MDARD licenses, engaging in promotional and education activities, hosting small and large activities, and selling merchandise are allowable accessory uses that are incidental and subordinate to the primary uses of growing grapes, making wine, and selling wine. The Wineries have further

presented evidence that they qualify as “Farm Markets” under the Michigan Department of Agriculture’s Generally Accepted Agricultural and Management Practices (“GAAMPs”) and that their proposed uses are promotional and educational activities allowed under the GAAMPs. The Court declares that the Wineries’ proposed uses of serving food as permitted by their MLCC and MDARD licenses, engaging in promotional and education activities, hosting small and large activities, and selling merchandise are reasonable and that Peninsula Township is enjoined from interfering with those uses. The Wineries’ proposed uses are subject to generally applicable setback, fire code capacity, and noise ordinance limitations.

D. Attorneys’ Fees.

Plaintiffs intend to move for recovery of their attorneys’ fees under 42 U.S.C. § 1988 following this Court’s trial opinion.

V. PROPOSED FINDINGS OF FACT

The parties have agreed that the following facts are uncontroverted and may be accepted as established facts. (See ECF No. 573, PageID.22359-22364.)

a. Plaintiff Wineries of the Old Mission Peninsula (WOMP) Assoc. (“WOMP”) is a Michigan nonprofit corporation. Its members include each of the Wineries listed below except OV the Farm, LLC.

b. Plaintiff Bowers Harbor Vineyard & Winery, Inc. (“Bowers Harbor”) has a Small Wine Maker license from the State of Michigan which includes an Outdoor Service Area permit, a Sunday Sales AM permit, and a Living Quarters permit.

c. Plaintiff Brys Winery, LLC (“Brys”) has a Small Wine Maker license from the State of Michigan. Brys also has an On-Premises Tasting Room Permit issued by the State of Michigan which includes an Outdoor Service Area and a Sunday Sales AM permit.

d. Plaintiff Chateau Grand Traverse, Ltd. (“Chateau Grand Traverse”) has a Wine Maker License and a Small Distiller License from the State of Michigan which includes an Outdoor Service Area permit, a Sunday Sales AM permit, and a Direct Connection permit.

e. Plaintiff Chateau Operations, Ltd. (“Chateau Chantal”) has a Small Wine Maker License, a Brandy Manufacturer License and a Small Distiller License from the State of Michigan which includes an Outdoor Service Area permit, a Sunday Sales AM permit, a Sunday Sales PM permit, a Direct Connection permit, a Living Quarters permit, a Beer and Wine Tasting Permit and a Dance-Entertainment Permit.

f. Plaintiff Grape Harbor, Inc. (“Peninsula Cellars”) has a Small Wine Maker License and an Off-Premises Tasting Room Permit issued by the State of Michigan which includes an Outdoor Service Area permit and a Sunday Sales AM permit.

g. Plaintiff Montague Development, LLC (“Hawthorne”) previously operated through an agreement with Chateau Chantal and currently operates through an agreement with Hawthorne Vineyards, LLC. Hawthorne Vineyards, LLC has a Small Wine Maker License and On-Premises Tasting Room Permit issued by the State of Michigan with an Outdoor Service Area permit and a Sunday Sales A.M permit.

h. Plaintiff OV the Farm, LLC (“Bonobo”) has a Wine Maker License, a Small Distiller License, and an On-Premises Tasting Room Permit issued by the State of Michigan which includes an Outdoor Service Area permit and a Sunday Sales AM and Sunday Sales PM permits.

i. Plaintiff Tabone Vineyards, LLC (“Tabone”) has a Small Wine Maker License and On-Premises Tasting Room Permit issued by the State of Michigan which includes an Outdoor Service Area permit and a Sunday Sales AM permit. Peninsula Township recommended that the MLCC consider for approval Tabone’s application for a Small Wine Maker License.

j. Plaintiff Two Lads, LLC (“Two Lads”) has a Small Winer Maker license and an On-Premises Tasting Room Permit issued by the State of Michigan which includes an Outdoor Service Area permit, a Sunday Sales AM permit, an Entertainment permit and an Off-Premises Storage permit.

k. Plaintiff Villa Mari LLC (“Villa Mari”) has a Small Winer Maker license and an On-Premises Tasting Room Permit issued by the State of Michigan which includes an Outdoor Service Area permit and a Sunday Sales AM permit.

l. Winery at Black Star Farms, L.L.C. (“Black Star”) has a Small Wine Maker license, a Small Distiller license and an On-Premises Tasting Room Permit issued by the State of Michigan which includes two Outdoor Service Area permits and a Sunday Sales AM permit.

m. Ten of the non-WOMP Plaintiffs (the “Wineries”) hold the Wine Maker or Small Wine Maker licenses for wineries in Peninsula Township, Michigan, and Plaintiff Montague Development, LLC, owns the land where Hawthorne’s winery sits.

- i. Bowers Harbor’s address is 2896 Bowers Harbor Rd, Traverse City, MI 49686.
- ii. Brys’ address is 3309 Blue Water Rd, Traverse City, MI 49686.
- iii. Chateau Grand Traverse’s address is 12239 Center Rd, Traverse City, MI 49686.
- iv. Chateau Chantal’s address is 15900 Rue de Vin, Traverse City, MI 49686
- v. Peninsula Cellars’ tasting room address is 11480 Center Rd, Traverse City, MI 49686.
- vi. Peninsula Cellars holds a Small Wine Maker license at 2464 Kroupa Road, Traverse City, MI 49686-9731.
- vii. Hawthorne’s address is 1000 Camino Maria Dr, Traverse City, MI 49686.
- viii. Bonobo’s address is 12011 Center Rd, Traverse City, MI 49686.
- ix. Tabone’s address is 14916 Peninsula Dr, Traverse City, MI 49686.
- x. Two Lads’ address is 16985 Smokey Hollow Rd, Traverse City, MI 49686.
- xi. Villa Mari’s address is 8175 Center Rd, Traverse City, MI 49686.
- xii. Black Star’s address is 360 McKinley Rd E, Traverse City, MI 49686.

n. The Wineries' wineries and tasting rooms are all located within the A-1 Agricultural District established by the Peninsula Township's Zoning Ordinance (the "PTZO"), which became effective June 5, 1972.

o. Defendant Peninsula Township is a civil general law township within Grand Traverse County, Michigan.

p. Intervenor-Defendant Protect the Peninsula, Inc. ("PTP") is a Michigan nonprofit corporation.

q. The PTZO has been amended from time to time, including by the addition of sections and subsections permitting new and expanded winery-related land uses in A-1. For purposes of this lawsuit, the sections containing subsections that Plaintiffs challenge are:

- i. Section 6.7.2(19) Use Permitted by Right – Farm Processing Facility (the "Farm Processing Ordinance");
- ii. Section 8.7.3(10) Winery-Chateau (the "Chateau Ordinance"); and
- iii. Section 8.7.3(12) Remote Winery Tasting Room (the "Remote Winery Tasting Room Ordinance").

r. Black Star and Two Lads have land use permits for Farm Processing Facilities under former Section 6.7.2(19) of the PTZO.

s. Bonobo, Bowers Harbor, Brys, Chateau Chantal, Chateau Grand Traverse, Hawthorne, and Mari have special use permits (SUPs) for Winery-Chateaus under former Section 8.7.3(10) of the PTZO.

t. Peninsula Cellars has an SUP for a Remote Winery Tasting Room under former Section 8.7.3(12) of the PTZO.

u. A Farm Processing Facility was a "use by right" in the A-1 Agricultural District and did not require the Township's issuance of an SUP but does require a land use permit.

v. Winery-Chateaus were special uses in the A-1 Agricultural District and require an SUP.

w. Remote Winery Tasting Rooms are special uses in the A-1 Agricultural District and require an SUP.

x. Each winery Plaintiff operates a Winery and a Tasting Room in Peninsula Township, Michigan. Each Winery and Tasting Room is located within the A-1 Agricultural District as defined in the PTZO. The PTZO has been amended numerous times since it was first adopted in 1972.

y. Plaintiff WOMP is a trade association whose members are licensed Michigan wineries.

z. Plaintiff Chateau Grand Traverse received SUP 66 authorizing a Winery-Chateau on parcel in the A-1 District owned by Chateau Grand Traverse, which remains its operative SUP.

aa. Plaintiff Chateau Chantal received SUP 95 authorizing a Winery Chateau on a parcel in the A-1 District owned by Chateau Chantal.

bb. Plaintiff Bowers Harbor received SUP 132 authorizing a Winery-Chateau on parts of 3 parcels in the A-1 District that are owned by Schoenherr Vineyards LLC and Langley Vineyards LLC.

cc. Plaintiff Peninsula Cellars received SUP 62 authorizing a Remote Winery Tasting Room on a parcel in the A-1 District owned by Kroupa Enterprises, LLC.

dd. Plaintiff Brys Winery, LLC (“Brys”) received SUP 115 authorizing a Winery-Chateau on a parcel in the A-1 District owned by Brys.

ee. Plaintiff Black Star received a land use permit authorizing a Farm Processing Facility on a parcel in the A-1 District owned by the Robert N. Mampe Trust.

ff. Plaintiff Two Lads received a land use permit authorizing a Farm Processing Facility on a parcel in the A-1 District owned by BOQ, Inc.

gg. Plaintiff Hawthorne received SUP 135 authorizing a Winery-Chateau on a parcel in the A-1 District owned by Hawthorne.

hh. Plaintiff Bonobo received SUP 118 authorizing a Winery Chateau on a parcel in the A-1 District owned by Oosterhouse Vineyards LLC.

ii. Plaintiff Mari received SUP 126 authorizing a Winery-Chateau on a parcel in the A-1 District owned by Mari.

Based on the testimony and evidence to be presented, Plaintiffs proposed that this Court make the following additional findings of fact:

1. Peninsula Township enforced the Winery Ordinances against all of the Wineries.
2. The Michigan Liquor Control Code and the Wineries' Wine Maker and Small Wine Maker licenses allow the Wineries to source grapes, juice, or finished wine from anywhere in the world.
3. The Wineries acquired their respective Wine Maker and Small Wine Maker licenses with the expectation that they would be able to use them to the full extent allowed by the United States Constitution and Michigan law and have invested in those licenses accordingly.
4. Bowers Harbor also has an Extended Retail Food Establishment license issued by the Michigan Department of Agriculture and Rural Development ("MDARD").

5. Peninsula Township recommended that the Michigan Liquor Control Commission (“MLCC”) approve the On-Premises Tasting Room Permit for Brys. Brys also has an Extended Retail Food Establishment License issued by MDARD.

6. Chateau Grand Traverse also has an Extended Retail Food Establishment license issued by MDARD.

7. Chateau Chantal also has an Extended Retail Food Establishment License issued by MDARD.

8. Peninsula Township recommended that the MLCC approve the Off-Premises Tasting Room Permit for Peninsula Cellars. Peninsula Cellars also has an Extended Food Establishment License issued by MDARD.

9. Hawthorne also has an Extended Retail Food Establishment license issued by MDARD.

10. Peninsula Township recommended that the MLCC approve the On-Premises Tasting Room Permit for Bonobo. Bonobo also has an Extended Retail Food Establishment license from MDARD.

11. Tabone also has a Retail Food Establishment license from MDARD.

12. Peninsula Township recommended that the MLCC approve the On-Premises Tasting Room Permit for Two Lads. Two Lads also has an Extended Retail Food Establishment License issued by MDARD.

13. Peninsula Township recommended that the MLCC approve Villa Mari’s On-Premises Tasting Room Permit.

14. Villa Mari also holds a Small Wine Maker license at 4595 Murray Road, Traverse City, MI 49686.

15. Peninsula Township recommended that the MLCC approve Black Star's On-Premises Tasting Room Permit. Black Star also has an Extended Retail Food Establishment License issued by MDARD.

16. Tabone has operated as a "Farm Processing Facility" under Section 6.7.2(19) of the PTZO.

17. The Farm Processing Facility Ordinance applies to Black Star, Tabone, and 2 Lads.

18. The Winery Chateau Ordinance applies to Bonobo, Bowers Harbor, Brys, Chateau Chantal, Chateau Grand Traverse, Hawthorne, and Mari.

19. The Remote Winery Tasting Room Ordinance applies to Peninsula Cellars.

20. Peninsula Township has required Wineries to submit grape crush and/or tonnage reports to participate in Guest Activity Uses.

21. The Winery Ordinances do not contain any restriction on the hours of operation for a Winery's tasting room.

22. Peninsula Township has enforced a 9:30 p.m. closing time for the Wineries' tasting rooms.

23. The Wineries' Wine Maker and Small Wine Maker licenses allow the Wineries to cater.

24. Peninsula Township, through its Winery Ordinances, has prohibited the Wineries from catering.

25. The Wineries' Wine Maker and Small Wine Maker licenses allow the Wineries to play both amplified and non-amplified music, including instrumental music.

26. Peninsula Township, through the Winery Ordinances, has prohibited the Wineries from playing amplified instrumental music.

- a. On September 9, 2021, Peninsula Township sent a letter to Plaintiff Peninsula Cellars advising that “amplified music is not an allowable use” and that “any continuation of amplified music will be a violation” which would result in a “civil infraction citation.”

27. The Wineries’ Wine Maker and Small Wine Maker licenses allow the Wineries to operate restaurants.

28. The Wineries are farms which grow and produce agricultural products.

29. The activities the Wineries wish to engage in are accessory uses at wineries and farms in Michigan.

30. The Michigan Department of Agriculture through its GAAMPs has determined that Michigan farms, like the Wineries, are allowed to engage in “Promotional and educational activities at the farm market incidental to farm products with the intention of selling more farm products. These activities include, but are not limited to, farm tours (walking or motorized), demonstrations, cooking and other classes utilizing farm products, and farm-to-table dinners.”

31. Peninsula Township has not allowed the Wineries to serve food without restriction.

32. Peninsula Township, through its Winery Ordinance, has not allowed Farm Processing Facilities and Remote Winery Tasting Rooms to sell merchandise.

33. Peninsula Township, through its Winery Ordinances, has enforced a ban on small and large events at the Wineries, with limited exceptions depending on the type of group that wishes to attend the event. For example:

- a. On August 13, 2001, Peninsula Township notified Plaintiff Peninsula Cellars that it was not allowed to host events and “any such activity would require Township Board approval.”
- b. On June 19, 2014, Peninsula Township required Bowers Harbor to cancel a wedding reception, live music, and a Summer Solstice Patio Party, cease taking

reservations for those activities, and “[c]ease advertising for these activities in all forms.”

- c. On July 28, 2015, Peninsula Township informed Bowers Harbor that it was not allowed to host “Yoga in the Vines.”
 - d. On December 28, 2015, Peninsula Township informed Bonobo that an event it held for PNC was not a permissible guest activity use under the Winery Ordinances.
 - e. On January 12, 2016, Bowers Harbor had to email Peninsula Township to receive permission to host a Wine Label Art Competition.
 - f. On May 5, 2016, Peninsula Township served a notice of violations against Bowers Harbor for Bowers Harbor’s planned event for Goodwill Industries of Northern Michigan Derby Party.
 - g. On July 14, 2017, Peninsula Township threatened Bowers Harbor with enforcement action regarding a dining in the vines event.
 - h. On August 3, 2017, Peninsula Township threatened Bowers Harbor with enforcement action if it continued to host events.
 - i. On May 31, 2018, Peninsula Township threatened Bowers Harbor with enforcement action if it hosted a “Floral Education Series” and “Yoga in the Vines.”
 - j. In April 2019, Peninsula Township forced Bonobo to cancel a Sip + Paint event.
 - k. In May 2019, Peninsula Township threatened enforcement action against Bonobo for hosting Spanish lessons.
 - l. On July 11, 2019, Peninsula Township threatened enforcement action against Bonobo for a portrait painter event.
 - m. On March 26, 2021, Peninsula Township told Bonobo it could not host an Easter Dinner program.
34. The Chateau Ordinance does not prohibit the Wineries from hosting weddings.
 35. The Remote Tasting Room Ordinance does not prohibit the Wineries from hosting weddings.
 36. Except for weddings where all of the attendees spent the night at a bed and breakfast operated on the Winery property, Peninsula Township has precluded the Wineries from hosting weddings.
 37. Each of the Wineries has received requests to host weddings.

38. Private residences in the agricultural zone in Peninsula Township are allowed to host events, including weddings, without the need to receive approval from Peninsula Township.
39. Peninsula Township, through its Winery Ordinances, has limited the groups who may have events or meetings at a Winery to groups which are related to agriculture or 501(c)(3) non-profits located within Grand Traverse County.
40. Peninsula Township has denied permission for a Winery to host a meeting or event because the group attending the meeting was not agriculturally related or was not a Grand Traverse County 501(c)(3).
41. Peninsula Township, through its Winery Ordinances, has required the Wineries to obtain Township approval before a Winery may host a small or large event.
42. Peninsula Township, through its Winery Ordinances, prohibits Farm Processing Wineries from hosting social events for hire. For example:
 - a. On June 25, 2014, Plaintiff 2 Lads canceled two events after Peninsula Township advised it that the events may be in violation of the Winery Ordinances.
43. Peninsula Township, through its Winery Ordinances, has required the Wineries to promote Peninsula Township agriculture at small and large events.
44. The Commerce Clause to the United States Constitution prohibits a local government from enforcing restrictions on where the Wineries may source grapes and produce for purchase.
45. The Commerce Clause to the United States Constitution prohibits a local government from dictating the use and purchase of local grapes and produce.

46. Peninsula Township, through its Winery Ordinances, has dictated the source of grapes and produce the Wineries may purchase from and has also dictated that the Wineries must use and purchase grapes grown in Peninsula Township.
47. Peninsula Township has required some of the Wineries to provide evidence to the Township that it has acquired 1.25 tons of grapes for each person the Winery wishes to qualify to have at a meeting or event for the following year. These grapes must be either (1) grown by the Winery on land other than the land where their Winery is located (2) or purchased from another Peninsula Township grape grower. For example:
 - a. On March 22, 2019, Peninsula Township advised Plaintiff Brys that its grape purchases for the prior year qualified it for “13 people at each Guest Event” which in this instance was a fundraiser for Big Brothers and Big Sisters. The event was moved off Brys’ winery property.
 - b. On April 4, 2019, Bonobo informed Peninsula Township of the grape purchases it made to qualify for guest activity uses.
 - c. On July 12, 2022, Peninsula Township denied Plaintiff Brys’ request to host a political fundraiser for “approximately 100-125 attendees” because Brys had not purchased or grown enough grapes to qualify for the number of attendees.
48. Rob Manigold was the Peninsula Township Supervisor from 1988 to 2014, and then again from 2016 to 2022.
49. Christina Deeren was hired as the Peninsula Township Zoning Administrator in December 2016. She was eventually promoted to Peninsula Township’s Director of Zoning and Zoning Administrator and served in that role until February 2023.
50. David Sanger has been the Peninsula Township Ordinance Enforcement Officer from April 2017 to the present.
51. Peninsula Township’s proffered governmental interests for the Winery Ordinances are:
 - a. Preserving the agricultural production industry and providing permanent land use for the same;
 - b. Maintaining the Township’s character;

- c. Providing economically feasible public sewer and water systems to serve a future population; and
- d. Establishing a complete buildout population scenario and permitting the vertical integration of agricultural production without changing the agriculturally zoned lands of the Township to commercial property inconsistent with the use of those respective districts.

52. The Wineries have collectively suffered \$185,568.00 in damages through the year 2020 due to Peninsula Township's requirement that the Wineries purchase grapes from within Peninsula Township.

53. The Wineries have collectively lost \$27,241,690.25 in profit due to Peninsula Township's enforcement of a 9:30 p.m. closing time for tasting rooms.

54. The Wineries' Wine Maker and Small Wine Maker licenses allow the Wineries to operate restaurants and serve food to their customers with no restrictions.

55. Due to Peninsula Township's ban on merchandise sales at Farm Processing Facilities and Remote Winery Tasting Rooms, Black Star, Peninsula Cellars, Tabone, and Two Lads have collectively lost \$542,645.50 in profits from merchandise sales.

56. The First Amendment allows the Wineries to advertise their wine through commercial speech and allows the Wineries to freely associate with the groups of their choosing. This includes through small and large events at the Wineries.

57. Due to Peninsula Township's restrictions on the types of events and the groups that may attend those events, the Wineries have collectively lost \$8,757,749.00 in profit from their inability to host small events.

58. Due to Peninsula Township's restrictions on the types of events and the groups that may attend those events, the Wineries have collectively lost \$83,811,221.00 in profit from their inability to host large events.

VI. PROPOSED CONCLUSIONS OF LAW

Plaintiffs propose that this Court render the following conclusions of law.

- A.** Sections 6.7.2(19)(a), 6.7.2(19)(b)(1)(ii), 6.7.2(19)(b)(1)(iii), 6.7.2(19)(b)(2)(i), 6.7.2(19)(b)(2)(v), 8.7.3(10)(u)(2)(e), 8.7.3(10)(u)(3), 8.7.3(10)(u)(5)(c), and 8.7.3(10)(u)(5)(d) of the Peninsula Township Zoning Ordinance are unconstitutional violations of the dormant Commerce Clause. (ECF No. 162, PageID.6001.)
- B.** The term “Guest Activity” is unconstitutionally vague in violation of the Due Process Clause. Sections 8.7.3(10)(u); 8.7.3(10)(u)(1)(a); 8.7.3(10)(u)(1)(b); 8.7.3(10)(u)(1)(c); 8.7.3(10)(u)(1)(d); 8.7.3(10)(u)(1)(e); 8.7.3(10)(u)(1)(f); 8.7.3(10)(u)(1)(g); 8.7.3(10)(u)(2); 8.7.3(10)(u)(2)(a); 8.7.3(10)(u)(2)(b); 8.7.3(10)(u)(2)(c); 8.7.3(10)(u)(2)(c)(i); 8.7.3(10)(u)(2)(c)(ii); 8.7.3(10)(u)(2)(c)(iii); 8.7.3(10)(u)(2)(c)(iv); 8.7.3(10)(u)(2)(d); 8.7.3(10)(u)(2)(e); 8.7.3(10)(u)(3); 8.7.3(10)(u)(4); 8.7.3(10)(u)(4)(a)(i); 8.7.3(10)(u)(4)(a)(ii); 8.7.3(10)(u)(4)(a)(iii); 8.7.3(10)(u)(5); 8.7.3(10)(u)(5)(a); 8.7.3(10)(u)(5)(a)(i); 8.7.3(10)(u)(5)(a)(ii); 8.7.3(10)(u)(5)(a)(iii); 8.7.3(10)(u)(5)(b); 8.7.3(10)(u)(5)(c); 8.7.3(10)(u)(5)(d); 8.7.3(10)(u)(5)(e); 8.7.3(10)(u)(5)(f); 8.7.3(10)(u)(5)(g); 8.7.3(10)(u)(5)(h); 8.7.3(10)(u)(5)(i); 8.7.3(10)(u)(5)(j); 8.7.3(10)(u)(5)(k); 8.7.3(10)(u)(6); 8.7.3(10)(u)(7); 8.7.3(10)(u)(7)(a); 8.7.3(10)(u)(7)(b); 8.7.3(10)(u)(8); 8.7.3(10)(u)(8)(a); 8.7.3(10)(u)(8)(b); 8.7.3(10)(u)(8)(c); and 8.7.3(10)(u)(8)(d) of the Peninsula Township Zoning Ordinance use that phrase and are therefore unconstitutional and unenforceable.
- C.** Sections 8.7.3(10)(u)(1)(b) and 8.7.3(10)(5)(a) unconstitutionally “compel speech because they require a Winery Chateau to promote Township agriculture at all Guest Activities by doing one of the following: (1) identifying ‘Peninsula Produced’ food or beverages, (2) providing ‘Peninsula Agriculture’ promotional materials, or (3) including tours through the Wineries or other agricultural locations.” (ECF No. 559, PageID.21911.)
- D.** Sections 8.7.3(10)(u)(2)(b) and 8.7.3(10)(u)(2)(c) are unconstitutional prior restraints on speech because the Township required the Wineries to seek township approval before hosting a meeting of a 501(c)(3) non-profit group or agricultural related groups while lacking definite criteria to make an approval determination. (ECF No. 559, PageID.21910.)
- E.** Sections 6.7.2(19)(a), 6.7.2(19)(b)(1)(v), 8.7.3(10)(m), 8.7.3(10)(u)(1)(b), 8.7.3(u)(1)(d), 8.7.3(10)(u)(2)(a), 8.7.3(10)(u)(2)(b), 8.7.3(10)(u)(2)(c), 8.7.3(10)(u)(2)(d), and 8.7.3(10)(u)(5)(a), 8.7.3(10)(u)(5)(h), 8.7.3(12)(i), and 8.7.3(12)(k) unconstitutionally restrain commercial speech in violation of the First Amendment.

- F.** Mich. Comp. Laws § 436.1547 preempts Section 8.7.3(10)(u)(5)(i), which says “Kitchen facilities may be used for on-site food service related to Guest Activity Uses but not for off site catering.” (ECF No. 525, PageID.21134.)
- G.** Mich. Comp. Laws § 436.1916(11) preempts the “No amplified instrumental music is allowed” language in Section 8.7.3(10)(u)(5)(g). (ECF No. 525, PageID.21133.)
- H.** Bowers Harbor Vineyard & Winery, Inc. is entitled to \$18,757,522 in compensatory damages caused by Peninsula Township’s enforcement of unconstitutional sections of its Zoning Ordinance as set forth herein.
- I.** Brys Winery, LLC is entitled to \$15,677,623 in compensatory damages caused by Peninsula Township’s enforcement of unconstitutional sections of its Zoning Ordinance as set forth herein.
- J.** Chateau Grand Traverse, Ltd. is entitled to \$6,262,314.50 in compensatory damages caused by Peninsula Township’s enforcement of unconstitutional sections of its Zoning Ordinance as set forth herein.
- K.** Chateau Operations, Ltd. is entitled to \$18,169,555 in compensatory damages caused by Peninsula Township’s enforcement of unconstitutional sections of its Zoning Ordinance as set forth herein.
- L.** Grape Harbor, Inc. is entitled to \$4,151,251 in compensatory damages caused by Peninsula Township’s enforcement of unconstitutional sections of its Zoning Ordinance as set forth herein.
- M.** Montague Development, LLC is entitled to \$3,749,024.50 in compensatory damages caused by Peninsula Township’s enforcement of unconstitutional sections of its Zoning Ordinance as set forth herein.
- N.** OV the Farm, LLC is entitled to \$11,101,178 in compensatory damages caused by Peninsula Township’s enforcement of unconstitutional sections of its Zoning Ordinance as set forth herein.
- O.** Tabone Vineyards, LLC is entitled to \$3,164,970.75 in compensatory damages caused by Peninsula Township’s enforcement of unconstitutional sections of its Zoning Ordinance as set forth herein.
- P.** Two Lads, LLC is entitled to \$15,802,277.50 in compensatory damages caused by Peninsula Township’s enforcement of unconstitutional sections of its Zoning Ordinance as set forth herein.
- Q.** Winery at Black Star Farms, LLC is entitled to \$12,486,695 in compensatory damages caused by Peninsula Township’s enforcement of unconstitutional sections of its Zoning Ordinance as set forth herein.

- R.** Villa Mari, LLC is entitled to \$11,216,432.50 in compensatory damages caused by Peninsula Township's enforcement of unconstitutional sections of its Zoning Ordinance as set forth herein.

Respectfully Submitted,

MILLER, CANFIELD, PADDOCK AND
STONE, P.L.C.

By: /s/ Joseph M. Infante

Joseph M. Infante (P68719)

Stephen M. Ragatzki (P81952)

Christopher J. Gartman (P83286)

99 Monroe Avenue NW, Suite 1200

Grand Rapids, MI 49503

(616) 776-6333

Dated: April 23, 2024

CERTIFICATE OF SERVICE

I hereby certify that on April 23, 2024, I filed the foregoing Plaintiffs' Trial Brief and Proposed Findings of Fact and Conclusions of Law via the Court's CM/ECF System, which will automatically provide notice of the filing to all registered participants in this matter.

/s/ Joseph M. Infante
Joseph M. Infante