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EXEMPT FROM FILING FEES PURSUANT TO GOVERNMENT CODE SECTION 6103

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF PLACER

CITY OF LINCOLN, a California municipal corporation;
CITY OF LINCOLN, by and for the People of the State of California,

Plaintiff/Petitioner,

v.

THE GATHERING INN, a California public benefit non-profit corporation; CALIFORNIA DEPARTMENT OF SOCIAL SERVICES, a California state agency; HORNE LLP, a Delaware limited liability partnership; and DOES 1 through 15 inclusive,

Defendants/Respondents.

Case No. S-CV-0053711
Related with Case No. S-CV-0053727

CITY OF LINCOLN'S OPPOSITION TO CALIFORNIA DEPARTMENT OF SOCIAL SERVICES' DEMURRER TO SECOND AMENDED COMPLAINT/PETITION

[Filed concurrently with:

1. *Request for Judicial Notice in Support of Opposition to Demurrer]*

Date: October 7, 2025
Time: 8:30 a.m.
Dept.: 42
Judge Trisha J. Hirashima

Action Filed: September 30, 2024

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I. INTRODUCTION

The City of Lincoln ("City") brings this action because it had a right to participate in the siting of a homeless facility within its jurisdiction. The City was ignored and lied to, and as a result, the third largest homeless medical respite facility in California has been placed in this small town with no hospital, and insufficient first-responder resources to handle the deluge of calls for service that will follow. Placer County has the lowest rate of homelessness in Northern California, and the City's homelessness counts are among the lowest in the County. This proposed mega-facility for homeless services is not needed, and will do more harm than good if opened. At bottom, The Gathering Inn ("TGI") did not do what was required in applying for funds because it did not engage the City. It is not, and never was, a "qualified" grantee.

California Department of Social Services ("CDSS") demurs to the Second Amended Complaint ("SAC"), but it ignores the new pled facts, and it likewise argues facts that were not pled. CDSS also mischaracterizes the requested relief. The City is not asking the Court to rescind an agreement or to order CDSS to reverse a grant award. Rather the City merely asks the Court to compel CDSS to find that TGI is not "qualified" under the very regulatory scheme CDSS developed, and/or to declare such a finding itself. The Court must accept all pled facts as true, and CDSS cannot argue new facts, allegations or remedies that are not pled. (See *Hacker v. Homeward Residential, Inc.* (2018) 26 Cal.App.5th 270, 280.) The allegations of the SAC state a claim for writ of mandate and declaratory relief, and the demurrer should be overruled.

One question for this demurrer is whether the Joint Request for Applications ("RFA") imposes mandatory duties upon CDSS and applicants. It does. Unlike when the FAC was decided, we now know that the RFA was incorporated into a June 10, 2022 "All County Welfare Director Letter" ("ACWDL"). (SAC, ¶¶ 48-53, Ex. "F.") This constitutes a "similar instruction" to an "All County Letter," which gives the RFA regulatory force. CDSS argues that the ACWDL only regulates the CCE Preservation Program, not the Capital Expansion Program under which the project at issue was funded. It argues that even though both programs were born out of the same statute, only the CCE Preservation Program is subject to regulation, and that CDSS has total discretion under the CCE Capital Expansion Program, with no regulatory guardrails.

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This argument is belied by the law, the facts as pled, and common sense. As is discussed herein, CDSS did not have the Legislature's blessing to ignore its obligation to regulate how the CCE Program was operated, regardless of whether the funds are used for capital expansion or preservation. (Welf. & Inst. Code, § 18999.97, subds. (d), (k).) Indeed any state agency rule, procedure or process that is a rule of general applicability, i.e. it applies to all participants, is deemed by law to be a "regulation" if it gives clarity to, or provides guidance regarding the law the agency administers, regardless of the label the agency uses. (Gov. Code, § 11342.600; *State Water Resources Control Bd. v. Office of Admin. Law* (1993) 12 Cal.App.4th 697, 703 (*Office of Admin. Law*) ["[A]nything regulatory is a regulation whether or not so labeled by the agency."].)

This statute, from the Administrative Procedures Act ("APA"), provides the definition of "regulation," and it must guide us here. It was not briefed in the demurrer to the FAC, but it is briefed now, and the Court must analyze the statute and case progeny because it shows that the RFA is by law a "regulation," whether CDSS calls it a regulation or not. CDSS's argument for having discretion to award CCE Capital Expansion funds free of regulatory constraints is wrong because by law, such a world can never exist. CDSS must regulate this program, and the RFA is the only "regulation" there is for the CCE Capital Expansion Program.

Also, CDSS is wrong when it claims that there was no requirement for TGI to have engaged the City's leaders, and CDSS again ignores the pled facts. CDSS officials specifically added "civic leaders" to the definition of "stakeholders" who must be engaged, which they did because "***siting***," i.e., balancing the needs of program recipients with the needs and concerns of the local community, is a critical feature of the CCE Program. (See SAC, ¶¶ 35-39, 44-47.) It was not possible for CDSS to engage in "siting" when the needs of one side were ignored.

And while CDSS makes much ado of Form 6 using the term "example" before listing all stakeholders who must be engaged, Form 6 also uses the conjunctive "***and***" in connecting the listed stakeholders. (SAC, Ex. "D.") The use of the word "***and***" means that ***all*** of the exampled stakeholders, including "civic leaders" must be engaged, which is consistent with CDSS's intent in emphasizing the importance of "siting" for any project. The City pleads facts supporting that the RFA required TGI to engage civic leaders in Lincoln, which must be accepted as true.

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Finally, for the declaratory relief cause of action, this case is not about redressing past wrongs. The facts alleged show that TGI was not "qualified" to receive funds. While most of the funds have been paid out, there is still $1 million that is yet to be paid. (SAC, ¶ 133.) If TGI is not "qualified," by law CDSS cannot release the remaining funds. (See Welf. & Inst. § 18999.97, subd. (b)(2).) Also, even though CDSS already paid most of the funds, TGI would not be exempt from local laws it is "unqualified." AB 172 only exempts projects that receive funds "*pursuant to this section.*" (*Id.* at subd. (l).) "This section" (Section 18999.97) includes subdivision (b)(2), which requires that funds can only be paid to "qualified" grantees. Thus, a project recipient must be "qualified" in the first place to be exempt from local laws. TGI's project is not consistent with the City's Zoning Code (SAC, ¶ 158), and the City has an interest in enforcing its zoning laws to protect public health and safety. The Court must declare whether or not TGI is a "qualified" grantee. This is a ripe and justiciable controversy that will guide the parties' future conduct.

II. STATEMENT OF FACTS

The following is a summary of the facts alleged in the SAC, which are deemed true.

A. The City, Placer County, and the Local Community Needs

The City is relatively small, with 52,000 residents, and has a small number of police and firefighters who can respond to emergencies. The City has no hospital and no ambulance with advanced life support capabilities. The nearest hospital is 11 miles away. (SAC, ¶¶ 8-9.)

While homelessness is a statewide problem, in Placer County and in the City, the problem is relatively mild. Unlike neighboring Sacramento County, which has a significant homelessness problem, Placer County has the lowest rate of homelessness in all of Northern California, and the problem is even less severe within the City. (SAC, ¶¶ 15-18.) A much more severe problem for the City is in meeting the future housing needs of its aging population. There is a critical need for more full-time senior residential housing units to meet a rising demand. (SAC, ¶¶ 12-14.)

B. The Creation of the CCE Program, And the Critical "Siting" Requirement

In 2021, the Legislature passed AB 172, which added sections 18999.97-18999.98 to the Welfare and Institutions Code, and established the CCE Program. The CCE Program allows "qualified grantees" to undertake projects to acquire, build and/or rehabilitate properties and

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operate them as residential adult and senior care facilities, or to sustain facilities through operating reserves. (Welf. & Inst. Code § 18999.97, subd. (a).)

The Legislature authorized $860 million for CCE Capital Expansion projects, which were available to public and private sector applicants, and another $249 million for CCE Preservation projects, which were available to counties. (SAC, ¶ 21.) CDSS was tasked with administering the CCE Program, and developing criteria that applicants would need to meet to qualify for these funds. CDSS was authorized to hire a third-party administrator to assist. It first hired Advocated for Human Potential ("AHP"), and later replaced AHP with Horne LLP ("Horne"). CDSS was required to adopt regulations for the CCE Program, but in lieu of following the APA, the Legislature allowed CDSS to adopt regulation via its "All-County Letters" or "other similar instruction," which include ACWDLs. (SAC, ¶¶ 22-30.)

In late 2021, CDSS began working with California Department of Health Care Services ("DHCS"), which had received the Legislature's approval to establish a separate program related to behavioral health facilities. These agencies drafted the Joint RFA, which CDSS used for CCE Capital Expansion projects, but not CCE Preservation projects. These agencies recognized that "*siting*," a planning term used to describe balancing the needs of program recipients with the local community's needs and concerns, would be a key component of the CCE Program. To that end, the agencies prepared a communications plan for "siting" that included engaging local leaders in communities where projects would be built, and they also drafted a requirement for applicants to undertake community engagement. (SAC, ¶¶ 35-37.) The RFA provides in Section 3.4 ("General Program Requirements") that each "[a]pplicant provides documentation of active community engagement and support…." (SAC, Ex. "C," § 3.4.) Applicants were then required to report their community engagement efforts on a form called "Form 6." (SAC, ¶¶ 32-43, Exs. "B" - "D.")

Form 6, also called the "Community Engagement Tracking Form," required applicants to "[e]xplain how stakeholders (e.g., community-based organizations [CBOs], members of the target population, residents, civic leaders, ***and*** frontline staff) have been meaningfully involved in the visioning and development of this project." (SAC, Ex. "D," emphasis added.) In preparing the form, the agencies used the Project Homekey form to define "stakeholders." But the definition of

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"stakeholders" for that program did not include "civic leaders" because that program was only for local governments, which would obviously include themselves in "siting" decisions. In contrast, CCE Capital Expansion funds were going to be available to private sector applicants, and because "siting" was critical, CDSS and DHCS added "residents" and "civic leaders" to Form 6, to make sure that there was a proper balancing of the needs and concerns of the local community and its civic leaders against the needs of the other stakeholders. (SAC, ¶¶ 44-47, Exs. "D," "E.")

On June 10, 2022, CDSS issued an ACWDL regarding the CCE Preservation Program. While the purpose of this ACWDL was to provide notice to counties of the availability of, and requirements for, CCE Preservation funds, CDSS also wanted to make sure that counties were aware of the CCE Capital Expansion Program. Thus, in addition to stating the requirements for preservation funds, CDSS linked the RFA to the ACWDL, and informed all counties that if they were interested in such funds, which had different eligibility requirements, they should visit the website and read the attached RFA. (SAC, ¶¶ 48-53, Ex. "F," pp. 2-3.)

C. TGI Applied for Funds for a Project in Roseville, Then Switched it to Lincoln

On July 11, 2022, TGI applied for a CCE Capital Expansion Program award to build a 30-bed medical respite facility in Roseville. A medical respite facility is a place where homeless individuals can go after they are discharged from the hospital when they are too week or ill to recover on the street or in a shelter. TGI has an existing 10-bed medical respite facility in Auburn, which is the only medical respite facility in Placer County. TGI stated that it was only able to meet one-third of the overall County demand for medical respite for homeless persons at this facility. Thus, TGI proposed a new 30-bed facility at 300 Elefa Street in Roseville, which would allow it to meet the demand for medical respite in the County. (SAC, ¶¶ 57-61, Ex. "H.")

As part of the application, TGI submitted letters of support for a medical respite facility at the Roseville site from three healthcare providers. As required, TGI also conducted community engagement with Roseville civic leaders and residents, and it submitted a "Form 6," indicating that it had done such outreach, had achieved verbal support, and that a written letter of support from the Roseville City Council would be provided. However, the Roseville City Council voted not to support the project, and no letter of support was given. (SAC, ¶¶ 62-68, Exs. "I," "J.") The

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application was never denied, but after the Roseville City Council pulled its support, TGI began to look elsewhere. It found a site in Lincoln, which at the time was a senior living facility called Gladding Ridge. In late 2022, TGI negotiated with the property owner, and by January 7, 2023, TGI had a commitment to buy the property. (SAC, ¶¶ 69-77.)

The RFA states that, "[CCE] [a]pplications cannot be edited once submitted." (See SAC, Ex. "C," § 2.2.) TGI knew this restriction, but it did not want to lose its place in line for funding, which it feared would happen if it withdrew its application and submitted a new application for a project at the Lincoln site. TGI set up a meeting with AHP, where TGI asked for permission to break to the rules, and amend its application. (SAC, ¶¶ 78-84, 92-93.) On February 6, 2023, AHP relented, and on behalf of CDSS it sent an email informing TGI that it could submit an amended application for the site in Lincoln, which was labeled a "re-review." The email informed TGI that it would need to submit a new Form 6 with information regarding TGI's community engagement within Lincoln for the new site. (SAC, ¶¶ 92-97, Ex. "M.")

On February 13, 2023, TGI submitted its request for "reconsideration and re-review," where it changed out the Roseville Site for the Lincoln Site. It also now described the project as a 60-bed medical respite facility, and a 38-bed assisted living facility for low income individuals once TGI obtained a Residential Care Facility for the Elderly license. (SAC, ¶¶ 99-100, Ex. "N.") TGI did not undertake any community engagement in Lincoln as part of its amended application for the Lincoln site, and it never submitted a new Form 6. (SAC, ¶ 103.)

D. <u>TGI was Awarded Funds, and the Project then Changed even Further</u>

On May 8, 2023, CDSS awarded $6.4 million to TGI for this project, and after the award, the proposed project was subsequently edited even further. TGI's proposed project for the Lincoln site is now a 105-bed medical respite facility, with no senior assisted living facility. There is not sufficient demand for a medical respite facility of this size in Placer County. The true Countywide demand is only for a 20-bed medical respite facility. TGI is now planning to fill the 105 beds not only with medical respite patients, but also with individuals who are currently residing at TGI's other shelter facilities within the County, which will allow TGI to consolidate its homeless services operations. (SAC,¶¶ 121-123, 132, 136-137, Ex. "R."). Not only did TGI

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amend its application to change the site location, but the use intensity has now more than tripled, and the proposed use has changed from solely medical respite to a general homeless shelter use, that will not be limited to an adult or senior care facility. (*Ibid*.)

Horne and TGI entered into a Program Funding Agreement ("PFA"), and in August 2024, escrow closed on TGI's purchase of the site in Lincoln at a $4.9 million purchase price. TGI provided a 10% match, and the remainder of the escrow was paid from CCE Program funds. There is still $1 million in CCE Program funds remaining for a Capitalized Operating Subsidy Reserve ("COSR"), which is available if TGI is unable to break even when it starts operating a facility. (SAC, ¶¶ 124-134, Ex. "R.") At present, the site remains closed because even though TGI informed CDSS that the project was "turnkey" ready, the building is in need of substantial repairs. (SAC, ¶¶ 101, 140-147, Ex. "N.")

III. LEGAL STANDARD

To survive a demurrer a complaint "need only allege facts sufficient to state a cause of action." (*C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal.4th 861, 872.) The Court must accept as true not only those facts alleged in the complaint but also facts that may be implied or inferred from those expressly alleged. (*Marshall v. Gibson, Dunn & Crutcher* (1995) 37 Cal.App.4th 1397, 1403.) The Court must liberally construe the allegations in the complaint "with a view to substantial justice between the parties." (*Teva Pharmaceuticals USA, Inc. v. Superior Court* (2013) 217 Cal.App.4th 96, 102.) A demurrer should be overruled when the plaintiff has stated a cause of action under any possible legal theory, even one not necessarily stated in the complaint. (*Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 38.)

IV. LEGAL ARGUMENT

A. The City Sufficiently States Facts to Support a Writ of Mandate Claim

"Code of Civil Procedure section 1085, providing for writs of mandate, is available to compel public agencies to perform acts required by law." (*Kern County Hospital Authority v. Department of Corrections & Rehabilitation* (2023) 91 Cal.App.5th 1313, 1325, quotations and citation omitted.) To state a claim for relief, a petitioner must allege (1) a clear, present and usually ministerial duty on the part of the respondent, and (2) a clear, present and beneficial right

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of the petitioner to the performance of that duty. (*People ex rel. Younger v. County of El Dorado* (1971) 5 Cal.3d 480, 490-491.) Although mandate will not lie to force an agency's exercise of discretion in a particular manner, it will lie to correct an agency's abuses of discretion. (*CV Amalgamated LLC v. City of Chula Vista* (2022) 82 Cal.App.5th 265, 279-280.)

1. The City has a Beneficial Right to Writ Relief

"The requirement that a petitioner be 'beneficially interested' has been generally interpreted to mean that one may obtain a writ only if the person has some special interest to be served or some particular right to be preserved or protected over and above the interest held in common with the public at large." (*Citizens for Amending Proposition L v. City of Pomona* (2018) 28 Cal.App.5th 1159, 1173, quotations and citation omitted.)

The City has alleged facts demonstrating its beneficial right to have been involved in "siting." CDSS officials tasked with implementing the CCE Program believed that the balancing of project recipient needs versus local community needs and concerns was critical to the program, and because private entities were eligible to operate CCE Capital Expansion projects, the officials made it a point to add "civic leaders" to the definition of stakeholders, to insure that they would be involved in the development of proposed projects. (SAC, ¶¶ 32-43, Exs. "B" - "D.")

CDSS ignores these new facts, and instead returns to the same "playbook" it used when it demurred to the FAC. It argues that the City is not a party to the RFA, nor is it a party or third-party beneficiary of the PFA. (Demurrer, at pp. 10-11.) Both points are true, but it is a strawman argument because that is not what the City is claiming as its beneficial interest. The City's interest is the right to have been involved in "*siting*," such that the third largest medical respite facility in the state would not be placed in a small town that cannot afford to absorb the first responder costs, and in a county where there is only demand for a medical respite facility of 20 beds. (See SAC, ¶¶ 121-123, 149-160.) This right of the City to have been involved in the "siting" process is clear and unambiguous, and cannot be denied.

The City has more pressing needs, e.g., more full-time housing for seniors. There is no need for a 105-bed mega facility that might provide temporary shelter for a small number of medical respite patients, and the remainder of the beds will be filled by persons who are already

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receiving TGI's general homeless services elsewhere. (SAC, ¶¶ 121-122.) This project will not provide new benefit, rather it will shift where within the County homeless services are provided. (*Ibid.*) However, because the City's needs were ignored, it lost housing stock, and it will have to absorb first responder costs it cannot afford, while TGI will contribute nothing. (*Id.* at ¶¶ 155-160.) The City has an interest above that of the general public. (See *Monterey Mechanical Co. v. Sacramento Regional County Sanitation Dist.* (1996) 44 Cal.App.4th 1391, 1414.)

CDSS further argues that the City has not proved that TGI's failure to have conducted community engagement "resulted" in injury, noting that if TGI had done community engagement in Lincoln, and if CDSS still issued the award without modification, the City's injury would be no different. (Demurrer, p. 12.) Once again, CDSS ignores the pled facts and tries to re-write its own facts. TGI's application for a project in Roseville was never denied, and CDSS had before it letters of support from three hospitals, and verbal support from Placer County HHS, for a 30-bed medical respite facility in Roseville. (SAC, ¶ 65, Exs. "I" - "J.") In contrast, there were no letters of support, nor was there verbal support, for a 105-bed mega facility in Lincoln. (*Id.*, at ¶ 103.) The City alleges that if it had participated, it would have convinced TGI, and/or CDSS not to go forward with the ill-conceived project in Lincoln, but rather to open its project in Roseville, if at all. (*Id.*, at ¶¶ 165-169.) These alleged facts establish causation, and they must be deemed true.

CDSS again cites *County of San Diego v. San Diego NORML* (2008) 165 Cal.App.4th 798 (*NORML*) and *SJJC Aviation Servs., LLC v. City of San Jose* (2017) 12 Cal.App.5th 1043, but these cases do not help. *NORML* was a constitutional challenge to a statutory scheme (*NORML*, at pp. 808, 812), but the City raises no such challenge to AB 172. In *SJJC*, the Court found that the plaintiff did not have a beneficial interest because its proposal was nonconforming. (*SJJC Aviation Services, LLC*, at p. 1057.) The City is not an applicant, and unlike the plaintiff in that case, CDSS intended that civic leaders participate. Unlike the plaintiffs in *McDonald v. Stockton Metropolitan Transit Dist.* (1973) 36 Cal.App.3d 436, 443, and in *The H.N. & Frances C. Berger Foundation v. Perez* (2013) 218 Cal.App.4th 37, 43-47, the City is more than an "indirect beneficiary" of a public program, rather it is a stakeholder for "siting."

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Finally, CDSS argues that as a public agency, the City cannot establish public interest standing. (Demurrer, pp. 12-13.) That is not so, and CDSS's authorities are inapposite. This is not a case where the City is suing so that it need not have to enforce a state law. (See *NORML, supra,* 165 Cal.App.4th at 815.) Rather the City brings this case because CDSS did not follow its own regulations. Also, as CDSS concedes, the *City of Selma* case did not hold that public entities cannot have citizen standing. (*Consol. Irrigation Dist. v. City of Selma* (2012) 204 Cal.App.4th 187, 203.) For citizen standing, the beneficial interest standard is broad, and where a public right is involved, and the object of the writ is to procure enforcement of a public duty, any person may file suit if it is beneficially interested in having the public duty enforced. (*Doe v. Albany Unified School Dist.* (2010) 190 Cal.App.4th 668, 685.) The City has alleged such standing.

2. The RFA Imposes a Mandatory Duty upon CDSS

An agency has a ministerial duty to comply with its own rules and regulations where they are valid and unambiguous. (*Kern County Hospital Authority v. Department of Corrections & Rehabilitation, supra,* 91 Cal.App.5th at 1325.) This applies to regulations, and to published procedures. (*Galzinski v. Somers* (2016) 2 Cal.App.5th 1164, 1171; *Pozar v. Department of Transportation* (1983) 145 Cal.App.3d 269, 271 ["We can, however, direct an agency to follow its own rules when it has a ministerial duty to do so or when it has abused its discretion."].)

Under the APA, a "regulation" is broadly defined as any agency rule, order or standard of general application that is adopted to implement, interpret, or make specific a law that is enforced or administered by that agency. (Gov. Code, § 11342.600; *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 571; *Savient Pharmaceuticals, Inc. v. Department of Health Services* (2007) 146 Cal.App.4th 1457, 1470.) An agency rule is a "regulation" if (1) it applies generally to all participants, rather than in one specific case, and (2) it implements, interprets or makes specific the law the agency is charged with administering. (*Ibid.*; *Missionary Guadalupanas of Holy Spirit, Inc. v. Rouillard* (2019) 38 Cal.App.5th 421, 432 (*Rouillard*.) This applies regardless of the label the agency uses. (*Office of Admin. Law.*, 12 Cal.App.4th at 703.)

The City has alleged facts demonstrating that the RFA has the force of regulation, and that there were multiple mandatory duties CDSS failed and/or refused to follow, for which it should

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be compelled to do so now. First, the RFA plainly provides that "[a]pplications cannot be edited once submitted." (SAC, Ex. "C," § 2.2.) Thus, an applicant like TGI cannot apply for a project in one city, and later edit the application for a different city 11 miles away. Second, the RFA and Form 6 provide that all of the listed "stakeholders," including "civic leaders" must be engaged for proper "siting." (*Id.* at § 3.4, Ex. "D.") Thus, even if an applicant may edit its application and change the location to a different city, it must undertake new community engagement and involve civic leaders in the new city. (See SAC, Ex. "M".)[1] These requirements are generally applicable because all applicants for CCE Capital Expansion funds must comply, and the RFA implements and makes specific the CCE Program law that CDSS is charged with administering. (Welf. & Inst. Code, § 18999.97, subd. (d).) There is no question that the RFA, and these requirements therein, are "regulations," regardless of the label CDSS places on it. (See *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 803.)

CDSS argues multiple points for its claim that there is no mandatory duty under the RFA, but each fails. First, it argues that the RFA does not have the force of regulation, and that the ACWDL letter cited in the SAC only applies to CCE Capital Preservation, not Capital Expansion. (Demurrer, pp. 15-16.) CDSS's argument is rather extraordinary because it essentially thumbs its nose at the Legislature, which charged CDSS with developing program criteria for the entire CCE Program, not just the Capital Preservation aspect of it. (Welf. & Inst. Code, § 18999.97, subd. (d) ["The department shall develop criteria for the program…."].) CDSS cannot ignore this mandate, which it is seemingly doing here. Also, while the Legislature informed CDSS that it can use "All County Letters" or "other similar instruction" to bypass requirements of the APA, the Legislature never gave CDSS a license to ignore regulatory rule-making processes all together. (Welf. & Inst. Code, § 18999.97, subd. (k).) At bottom there must be regulatory guideposts, and the only guidepost that exists is the RFA because CDSS has not adopted any regulation under the APA for the CCE Program. (See City's Request for Judicial Notice ("RJN") filed concurrently herewith.)

[1] CDSS asserts that the "City cannot have it both ways" by claiming that CDSS should not have allowed a change in project location, but also by relying on the AHP email instructing TGI to do new community engagement after allowing the change location. (Demurrer, p. 15.) Not so. The City is allowed to plead in the alternative, and this inconsistency does not render the SAC subject to demurrer. (*Mendoza v. Rast Produce Co., Inc.* (2006) 140 Cal.App.4th 1395, 1402.)

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The RFA meets the definition of "regulation," which CDSS cannot dispute. Thus, it either has the force of regulation through the ACWDL, or it is an "***underground regulation***," i.e., a rule that functions like a regulation, but which was adopted without following APA rules. If that is the case, then the entire CCE Capital Expansion Program, and all awards issued pursuant to the RFA, may be void. (See *Rouillard, supra,* 38 Cal.App.5th at 432 ["A regulation that is adopted without complying with the APA procedures is known as an underground regulation. [Citation] Failure to comply with the APA procedures nullifies the regulation."].)[2]

Also, the argument that the RFA was not incorporated by reference into the ACWDL, and thus is not regulation, is likewise incorrect. While the ACWDL highlights that the rules for CCE Capital Expansion are different than for Capital Preservation, this language merely alerts the reader that there are two CCE Programs. By linking the RFA to the ACWDL, CDSS is informing the counties (and the public at large) that there are two CCE Programs with different rules, and through the link it provides a full set of the rules. CDSS in fact does incorporate the terms of the RFA by reference. (See *Wolschlager v. Fidelity National Title Ins. Co.* (2003) 111 Cal.App.4th 784, 790-791 ["All that is required is that the incorporation be clear and unequivocal and that the plaintiff can easily locate the incorporated document."].) It linked the RFA to the ACWDL because it wanted to inform counties (and the public) of both programs and both sets of rules. (SAC, ¶¶ 50-51.) Thus, the RFA constitutes regulation.

Second, CDSS argues that TGI was permitted to change the project site in is application because the RFA allows for applicants who are originally denied a project to receive technical assistance, and then to resubmit their applications. (Demurrer, at p. 15.) This argument fails because TGI's application for the Roseville project was never denied. It may have been deemed incomplete and thus not eligible, but up until the time TGI chose to change course and focus on the Lincoln site, CDSS was offering TGI technical assistance to complete the Roseville project application and help make it eligible. (SAC, ¶ 81, Ex. "L.")[3]

[2] If CDSS continues to take the position that the RFA does not have the force of regulation as adopted through the June 10, 2022 ACWDL, then the City hereby seeks leave to amend so that it can allege that ***all*** CCE Capital Expansion Program projects are now illegal and unenforceable.

[3] This argument is a clear example of CDSS trying to re-write the facts to fit its arguments, rather than accepting all facts in the SAC as true. CDSS asserts that TGI's application for the Roseville

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Third, CDSS argues that TGI was not required to engage Lincoln's leaders because Form 6 identifies "civic leaders" as one example of stakeholders that TGI could engage, and TGI had submitted a Form 6 before amending its application. (Demurrer, pp. 14-15.) This argument ignores the word "***and***" in Form 6, which means that "all" of the listed stakeholders had to be engaged. (See *Caltec Ag Inc. v. Department of Pesticide Regulation* (2019) 30 Cal.App.5th 872, 884 ["The use of the conjunction 'and' clearly establishes that the substance must satisfy two elements."]) It also ignores the February 6, 2023 email, where CDSS's agent told TGI that if it wanted to change locations, it had to do new engagement in Lincoln. (SAC, ¶ 95, Ex. "M.")[4]

Finally, CDSS argues that there is no ministerial duty because the PFA gives it discretion if TGI is in breach. (Demurrer, p. 17.) That may be true, but CDSS ignores the remedy sought. The City is not asking to unwind the PFA, or the award to TGI. The City is merely asking the Court to compel a ministerial finding that TGI is not "qualified." (SAC, ¶ 200.) The Legislature conferred CDSS with the power to determine the qualifications, and then to award projects only to those that qualify. (Welf. & Inst. Code § 18999.97, subds. (b), (d).) CDSS prepared the RFA, but TGI did not meet those qualifications for the reasons stated. Yet even though TGI was not qualified, CDSS refused to deem it "unqualified," even though it was required to do so.

3. The City has Alleged Facts Showing an Abuse of Discretion

An agency abuses its discretion when it fails to apply or properly interpret the governing law or consider all relevant factors, or if there was no rational connection between the relevant factors, the choice made, and the purposes of the enabling statute or regulation. (*Manderson-Saleh v. Regents of University of California* (2021) 60 Cal.App.5th 674, 693.)

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project was denied as incomplete. (Demurrer, p. 15.) Not so. CDSS informed TGI that the application was incomplete, but that it could work with AHP to make the application complete. (SAC, Ex. "L.") CDSS never denied the Roseville project application. But also to this point, if the application for the Roseville project had been denied, then TGI would still have been required to submit a new application for the Lincoln site, which would have required a new Form 6 to be submitted for engagement in Lincoln. CDSS's argument here makes no sense whatsoever.

[4] CDSS tries to minimize the importance of this email by claiming that it was written by a "third-party staff member." Again, CDSS is trying to re-write the facts. Nowhere in the SAC is that pled, rather, as is alleged in the SAC, this email was written on behalf of CDSS by its agent. Also this email is not adding to the terms of the RFA. As the City alleges, CDSS and its agent should not have allowed for this edit in the first place, but since they were allowing TGI to break the rules, they were at least ordering TGI to conduct engagement in the new community where TGI was proposing to locate its project, so that there would be proper siting. (SAC, ¶¶ 95-97.)

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The City has alleged facts showing that CDSS abused its discretion, and that a writ should issue. TGI should not have been permitted to amend its application to change the location. But even if that location change was allowable as an edit to an application, as CDSS's agent correctly noted, TGI had to do community engagement for the new site in Lincoln. (SAC, Ex. "M.") TGI ignored that requirement, and CDSS then abandoned its obligation to conduct a "*siting*" balancing test. "*Siting*" is a critical component and CDSS ignored it. In doing so, it abused its discretion.

CDSS notes that courts apply a deferential standard, and may not substitute their judgment for that of the agency. (Demurrer, pp. 17-18.) But discretion is not unlimited. This is not a case where CDSS conducted the required "*siting*" and decided that the need for a 105-bed medical respite facility outweighs the needs of the local community. The allegation here is not that CDSS made the wrong decision, rather it is that CDSS didn't do the "*siting*" analysis at all. For that, it abused its discretion. (See *CV Amalgamated LLC, supra,* 82 Cal.App.5th at 286 ["[T]he City's decision to limit its rescoring of CVA's applications to only one of the four categories was 'arbitrary, capricious,' and was also 'entirely without evidentiary support," citation omitted].)[5]

B. <u>The City Sufficiently States Facts to Support a Declaratory Relief Claim</u>

An action for declaratory relief lies when the parties disagree over whether a party has engaged in conduct in violation of applicable law, or relating to the parties' rights and obligations. (*Wilson & Wilson v. City Council of Redwood City* (2011) 191 Cal.App.4th 1559, 1582; *Alameda County Land Use Assn. v. City of Hayward* (1995) 38 Cal.App.4th 1716, 1723.)

The City properly alleges a cause of action for declaratory relief. It alleges that, for the reasons discussed above, TGI is not a "qualified" grantee under AB 172 and the regulation CDSS adopted, i.e. the RFA. The City alleges that there is a ripe controversy because the City has an interest in enforcing its law against an "unqualified" grantee. (SAC, ¶¶ 204-215.)

CDSS asserts that the declaratory relief claim fails because the claim is only about past wrongs. (Demurrer, pp. 18-20.) Not so. There is a ripe and present controversy as to whether the

[5] CDSS points to the letters of support that healthcare providers submitted, and argue that these letters demonstrate a proper exercise of discretion. The exact opposite is true. These letters were in support of a 30-bed medical respite facility in Roseville, where these hospitals are located, not a 105-bed mega facility in a separate community 11 miles away. (SAC, Ex. "J.")

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City can enforce its Zoning Code, and a judicial declaration is needed to guide future conduct. (See *Patel v. Athow* (1973) 34 Cal.App.3d 727, 733-734 ["The complaint set forth enough facts to require the court to determine the controversy between the parties, namely what is the effect on the renewal clause of the lease of the government regulations?"].) While there may be past wrongs here, what the parties can do about that is ripe and present controversy.[6]

CDSS argues that the City cannot enforce its Zoning Code regardless because AB 172 provides for an exemption of local laws for any project that "receives," CCE Program funds, and TGI has received such funds. (Demurrer, pp. 19-20.) CDSS misreads the statute. The exemption applies to any project that receives funds "***pursuant to this section***." (Welf. & Inst. Code, § 18999.97, subd. (l).) This is critical because "pursuant to" means "in accordance with," or "or in conformity with." (*In re J.G.* (2019) 6 Cal.5th 867, 875.) Thus, in order for a project to be exempt, it must have been awarded in conformity with all of Section 18999.97, including subdivision (b)(2), which requires that funds be awarded to "qualified" grantees. If TGI is not "qualified," then it did not receive funds "pursuant to" Section 18999.97, and it is not exempt from the Zoning Code. The parties need the Court to declare whether or not TGI is "qualified," to guide future conduct, and the declaration relief cause of action is properly pled.

V. CONCLUSION

For the foregoing reasons, the City requests the Court to overrule the demurrer, or in the alternative that it grant leave to amend.

Dated: September 22, 2025

BEST BEST & KRIEGER LLP

By: _____
CHRISTOPHER M. PISANO
Attorneys for Plaintiff/Petitioner
CITY OF LINCOLN

[6] CDSS characterizes the City's interest as an "interest in shutting the facility down." (Demurrer, p. 19.) That is inflammatory, and inaccurate. The City's interest here is in enforcing its local laws, including its Zoning Code. If the Court issues the declaration sought, TGI would be welcome to apply for a CUP to operate a facility, which would be decided by the City's Planning Commission at a public hearing. In making a decision, the Planning Commission would finally conduct the very "*siting*" balancing analysis that CDSS so cavalierly ignores, and that decision would be appealable to the Superior Court. In short, the Planning Commission will do CDSS's job for it, and make sure all stakeholders are meaningfully involved in the project.

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PROOF OF SERVICE

I, Monica Quinones, declare:

I am a citizen of the United States and employed in San Bernardino County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 2855 E. Guasti Road, Suite 400, Ontario, California 91761. On September 22, 2025, I served a copy of the within document(s):

CITY OF LINCOLN'S OPPOSITION TO CALIFORNIA DEPARTMENT OF SOCIAL SERVICES' DEMURRER TO SECOND AMENDED COMPLAINT/PETITION

☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.

☐ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, the United States mail at Ontario, California addressed as set forth below.

☐ by placing the document(s) listed above in a sealed ____ envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a ____ agent for delivery.

☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

☒ by transmitting via e-mail or electronic transmission the document(s) listed above to the person(s) at the e-mail address(es) set forth below.

Please see attached Service List.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on September 22, 2025, at Ontario, California.

Monica Quinones

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