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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

PLAINTIFF AND PETITIONER CITY OF LINCOLN'S OPPOSITION TO DEFENDANT THE GATHERING INN'S DEMURRER TO SECOND AMENDED COMPLAINT/PETITION

[Filed concurrently with:
1. Opposition to The Gathering Inn's Request for Judicial Notice.
2. 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 process of siting a large homeless facility within its boundaries, and it was denied that right by deceitful practices of The Gathering Inn ("TGI"), and a seemingly ambivalent state agency that was not interested in making sure that local community concerns were addressed. Placer County has the lowest rate of homelessness in Northern California, and the City's homelessness counts are among the lowest in the County. Yet now, because the City was deceived and ignored, 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 a facility of this size. This is unfair to the City, and its concerns must be addressed. The demurrer should be overruled.

TGI demurs to the Second Amended Complaint ("SAC"), but it largely ignores the new pled facts, and it likewise argues facts that were not pled at all. It cannot do that. All of the newly pled facts must be accepted as true, and TGI's additional facts have no place in a ruling on a demurrer. (See *Hacker v. Homeward Residential, Inc.* (2018) 26 Cal.App.5th 270, 280.) The allegations of the SAC state a claim for declaratory relief, deceit and unfair business practices.

First, the SAC states a claim for declaratory relief. TGI argues that the claim cannot be maintained because the City seeks only to redress past wrongs. Not so. The City does not seek to rescind the funding agreement, or even an order for co-defendant California Department of Social Services ("CDSS") to reverse the grant award. Regardless of the outcome in this case, TGI will still own the Lincoln property, and its status as an award recipient will remain unchanged. The City only asks the Court to declare that TGI is not "qualified" under AB 172 because it never submitted a complete application, and thus it had no right to an award. Such a declaration is prospective because it will guide future conduct regarding the City's right to enforce its local laws, and TGI's obligation to comply with those local laws.

If TGI is not a "qualified" grantee, then it would not be exempt from local land use laws because under the plain language of the statute, projects are only "exempt" if they receive funds "***pursuant to this section.***" (Welf. & Inst. Code, § 18999.97, subd. (l).) "This section" (i.e., Section 18999.97) includes subdivision (b)(2), which requires that funds only be paid to

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"qualified" grantees. (*Id.*, at subd. (b)(2).) Thus, a project recipient must be "qualified" in the first place to be exempt from land use laws. TGI's project is not consistent with the City's Zoning Code, and if it is not exempt, then TGI would need a Conditional Use Permit ("CUP") to operate. (SAC, ¶ 158.) If a CUP is required, there will finally be a proper "siting" analysis, where a duly appointed government body (the City's Planning Commission) will balance the needs of Placer County's homeless population for medical respite against the needs and concerns of the local community, and will do so in a public forum. At bottom, there must be a "siting" analysis before this facility can open, and if CDSS is going to abdicate its responsibility, then the obligation should fall upon the Planning Commission. But for that to happen, the Court must give guidance as to whether or not TGI is a "qualified" grantee, such that local land use laws can be enforced. The City seeks prospective relief, and under the circumstances, declaratory relief is appropriate.

Second, the SAC states a claim for deceit, and for damages under the tort of another doctrine. The crux of the issue here is whether TGI owed a duty to disclose its proposed facility to the City, and to meaningfully engage "civic leaders," i.e. the City Council, in its planning for a medical respite facility in Lincoln. As the alleged facts show, the Joint Request for Applications ("RFA") is indeed a regulation. It has to be, or the entire program is legally invalid. 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," which gives the RFA regulatory force. TGI 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 of programs were born out the same statute, only the CCE Preservation Program is subject to regulation, and that CDSS has total discretion under the CCE Capital Expansion Program, and there is no duty.

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

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deemed by law to be a "regulation" if it gives clarity to, or provides guidance regarding the law the agency administers. (Gov. Code, § 11342.600.) This statute, from the Administrative Procedures Act ("APA"), provides for the definition of "regulation," and it must guide us here in determining that the RFA is a regulation. This was not briefed in the demurrer to the FAC, but it is briefed now, and the Court must analyze the APA and case progeny because it shows that the RFA is by law a "regulation," and it imposed a duty upon TGI.

Also, TGI is wrong when it argues that the RFA did not require it to engage the City's leaders, or anyone for that matter. Section 3.4 of the RFA requires community engagement. It was not optional. Also CDSS 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.) TGI had a duty to reach out to the necessary stakeholders under the RFA and Form 6. TGI makes much ado of Form 6 using the term "e.g." ("example") before listing all stakeholders, but Form 6 also uses the conjunctive "***and***" in connecting the listed stakeholders. (SAC, Ex. "D.") 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, and that there is a legal duty upon which the deceit claims properly rest.

Finally, the City states an unfair business practices claim under Business and Professions Code Section 17200. TGI does not dispute that the City pleads facts showing its unfair business practices, rather it only challenges the City's standing to bring suit under Business and Professions Code Sections 17204 and 17203. In doing so, TGI points to legislative intent in the enactment of Section 17203, but this legislative intent flies in the face of the plain language. In ruling on the demurrer to the FAC the Court refused to consider legislative intent behind Section 17204 because it deemed statutory language to be unambiguous. If any statute is without ambiguity here, it is Section 17203. The City has standing.

II. STATEMENT OF FACTS

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

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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 eleven 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 Community Care Expansion Program ("CCE Program"). The CCE Program allows "qualified grantees" to undertake projects to acquire, build and/or rehabilitate properties and 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 Administrative Procedures Act ("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

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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. The RFA unequivocally 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.) Each applicant was required to report their community engagement efforts on a form called "Form 6." (SAC, ¶¶ 32-43, Exs. "B" - "D.")

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

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 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.)

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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. 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 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. (*Id.*)

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

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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 to TGI. (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, internal citation omitted.)

IV. LEGAL ARGUMENT

A. The City Sufficiently States Facts to Support a Declaratory Relief Claim

A person who desires a declaration of its rights or duties with respect to another may, in cases of actual controversy, bring an action related to the parties' respective rights and duties. (Code Civ. Proc., § 1060.) Declaratory relief is appropriate to obtain clarification of the parties' rights and obligations under an applicable law, including a party's right to enforce the obligations of another. (*Californians for Native Salmon etc. Assn. v. Dept. of Forestry* (1990) 221 Cal.App.3d 1419, 1427 (*Californians for Native Salmon.*); *Alameda County Land Use Assn. v. City of Hayward* (1995) 38 Cal.App.4th 1716, 1723.)

Declaratory relief is an equitable remedy; it may be brought to determine rights before any actual invasion of those rights occurs. (*Californians for Native Salmon*, at 1426; *Alameda County Land Use Assn.*, at 1723.) If a complaint states facts to support a declaratory relief claim, a court must exercise jurisdiction, and any doubt should be resolved in favor of granting declaratory relief. (*Salsbery v. Ritter* (1957) 48 Cal.2d 1, 7 ["In an action for declaratory relief, when the complaint shows the existence of an actual controversy among the parties, a general demurrer to

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the complaint should be overruled."]; *City of Tiburon v. Northwestern Pacific Railroad Co.* (1970) 4 Cal.App.3d 160, 170.)

Under the facts as pled in the SAC, the City has stated a declaratory relief cause of action against TGI, as well as CDSS, and the demurrer should be overruled. The City has an interest in enforcing its laws, and if TGI is not a "qualified" grantee, then regardless of the funding, TGI would not be exempt from land use laws, and it would have to apply for a CUP. That application would be heard by the Planning Commission, which would conduct a "siting" analysis, and it could potentially impose conditions of approval. (SAC, ¶ 158.) (*See also* Gov. Code § 65905.)

TGI raises multiple arguments, but each fails. First, it argues that it is exempt from land use laws solely due to the fact that it received funds under the CCE Program. (Demurrer, pp. 19-20.) TGI ignores that AB 172 limits the exemption to projects that receive funds "***pursuant to this section***." (Welf. & Inst. Code, § 18999.97, subd. (l).) This phrase 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 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 only to "qualified" grantees. Hence, if TGI is not "qualified," then it did not receive funds "pursuant to" Section 18999.97, and it is not exempt from zoning laws. TGI's status under this exemption is disputed. Declaratory relief is needed here to guide future conduct, and declaration relief is properly pled. (See *Baxter Healthcare Corporation v. Denton* (2004) 120 Cal.App.4th 333, 360.)

TGI also argues that the declaratory relief claim fails because it is a derivative to the writ of mandate claim against CDSS. (Demurrer, p. 18.) That is not correct. The standard of review for the writ of mandate claim is different because CDSS can (and has) argued that a writ cannot issue unless there is a breach of a mandatory duty that is clear on its face. (See CDSS Demurrer, p. 16.) There is no such standard for declaratory relief, and regardless, declaratory relief is a cumulative remedy, and may be sought with other claims. (Code Civ. Proc., § 1062; *Kirkwood v. Cal. State Automobile Assn. Inter-Insurance Bur.* (2011) 193 Cal.App.4th 49, 59 ["The mere fact that another remedy is available will not suffice as sufficient grounds for a court to decline a declaration, because declaratory relief is not intended to be exclusive or extraordinary."].)

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Finally, TGI argues that the City lacks standing to challenge its funding agreement because it is not a party to the agreement and cannot seek to enforce it. (Demurrer, p. 20.) TGI misunderstands the relief sought. The City is not seeking to enforce the funding agreement, or rescind it, or to force CDSS to seek a refund of the award. The City appreciates that CDSS may be able to maintain the agreement even if TGI is not qualified. However, as stated, if TGI is not "qualified," then it is not exempt from land use laws, and the City has an interest in enforcing its land use laws, including requiring a CUP.[1] (*See Upton v. Gray* (1969) 269 Cal.App.2d 352, 357.)

Thus, while the foundation of declaratory relief may be based on past wrongs under the RFA and program funding agreement, it is the ***effect*** of those past wrongs that presents a controversy here, and declaratory relief is proper. (*Patel v. Athow* (1973) 34 Cal.App.3d 727, 733-34.) There is no requirement that declaratory relief be based upon a dispute over a contract, only that there be an actual and justiciable controversy, which can include the potential for future legal challenges. (*City of Burbank v. Burbank-Glendale-Pasadena Airport Authority* (2003) 113 Cal.App.4th 465, 481 ["[I]f Burbank refused to implement Measure A without first receiving a judicial ruling on the measure's validity, proponents of the measure would likely have sued the City of Burbank had the city not brought its own suit as quickly as it did."]) That is the situation here. The City desires to enforce its Zoning Code, but it first seeks a judicial declaration because if the City were to try to enforce local law without this declaration of rights, a lawsuit from TGI would certainly ensue. This is the exact situation for which declaratory relief is appropriate. (*City of Gilroy v. Superior Court* (2023) 96 Cal.App.5th 818, 834 ["[Declaratory relief] serves to set controversies at rest before they lead to repudiation of obligations, invasion of rights or commission of wrongs…."].) The demurrer should be overruled.

B. <u>The City Sufficiently Pleads Facts to Support Deceit Claims</u>

1. *The City Pleads Facts to Support Concealment*

[1] TGI cites *Zetterberg v. State Dept. of Public Health* (1974) 43 Cal.App.3d 657, 661-62 for the proposition that a mere difference of opinion regarding the interpretation of a law does not confer standing to seek declaratory relief. (Demurrer, p. 20.) *Zetterberg* is easily distinguishable because the plaintiffs in that case were taxpayers who sought a declaration regarding the meaning of a state law. The Court found that plaintiffs had no special standing above any other member of the general public to seek an interpretation of law. (*Zetterberg, supra*, at 662.) Here, the City's interest is unique and special due to its interest in enforcing its Zoning Code.

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The elements of concealment are: (1) defendant concealed a material fact, (2) defendant was under a duty to disclose the fact to plaintiff, (3) it intentionally concealed the fact with the intent to defraud, (4) plaintiff was unaware of the fact and would not have acted as he did if he had known of the concealed or suppressed fact, and (5) as a result of the concealment, plaintiff was damaged. (*Rattagan v. Uber Technologies, Inc.*(2024) 17 Cal.5th 1, 43-44.)

Where there is a relationship of trust and confidence, it is the duty of one in whom the confidence is reposed to make a full disclosure of all material facts within his knowledge relating to the transaction in question, and any concealment of a material fact is fraud. (*Huy Fong Foods, Inc. v. Underwood Ranches, LP* (2021) 66 Cal.App.5th 1112, 1122.) A "confidential relationship" requiring disclosure may be founded on moral, social, domestic, or a personal relationship, and it does not require a strict fiduciary relationship. (*Ibid.*) A duty to disclose may arise without any confidential relationship where the defendant possesses or exerts control over material facts not readily available to plaintiff. (*Jones v. ConocoPhillips* (2011) 198 Cal.App.4th 1187, 1199.)

The City has pled detailed facts supporting concealment. TGI challenges the second and fourth elements, but the challenges fail. First, it argues that the City has not alleged a statutory or regulatory duty for TGI to have disclosed facts regarding its CCE Program application for a site in Lincoln. That is wrong, and TGI's legal argument is unsupported. TGI asserts that the City must allege a duty to disclose based on statute. (Demurrer, p. 8.) But that is not the law, and *Rattagan*, upon which TGI relies, does not so hold. Indeed, any special relationship between the parties beyond that of the general public, statutory or otherwise, can suffice. (*Jones*, *supra,* 198 Cal.App.4th at 1199.) Here, that special relationship between TGI and the City is alleged. TGI was applying for a funding award that specifically required it to undertake community engagement with all listed "stakeholders" and included in that list is "civic leaders." (SAC, Ex. "C," § 3.4; Ex. "D.") And when CDSS allowed TGI to break the rules and change the project location to Lincoln, CDSS instructed TGI to conduct all new community engagement in Lincoln, which necessarily means that TGI had a duty to engage the City Council and staff. (*Id*., Ex. "M.")

Second, TGI asserts that the RFA is not a regulation that imposes a duty to disclose. (Demurrer, pp. 9-10.) Not so. As we now know, the RFA is attached and incorporated in to the

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June 10, 2022 ACWDL, which CDSS did because it wanted to alert counties and the public at large of both facets of the CCE Program (Capital Expansion and Capital Preservation), and to publish the regulations for both facets of the program, including those within the RFA. CDSS has since removed the June 10, 2022 ACWDL from its website, but it was previously listed, and it was intended that the RFA would constitute regulation for the CCE Capital Expansion Program. (SAC, ¶¶ 48-53, Ex. "F.") TGI ignores these facts, but all must be accepted as true. Also, as is discussed in the City's opposition to CDSS's demurrer, under the definition of "regulation" in the APA, the RFA's requirements (including community engagement) are deemed to be regulation, regardless of the label CDSS uses, because (1) they are rules of general applicability, and (2) they implement the CCE Program as enacted in AB 172. (Gov. Code, § 11342.600; *see State Water Resources Control Bd. v. Office of Admin. Law* (1993) 12 Cal.App.4th 697, 703; *Savient Pharmaceuticals, Inc. v. Dept. of Health Services* (2007) 146 Cal.App.4th 1457, 1470.)[2]

Third, TGI asserts that even if the RFA is a regulation, it does not require communication with the City, rather it only requires TGI to explain how it had involved stakeholders. (Demurrer, pp. 11-12.) This argument fails because TGI ignores both the language of the RFA and Form 6, as well as the intent behind this regulation, which was to make sure that "siting," i.e. balancing the needs of program recipients against the needs and concerns of the community, occurred for every project. (SAC, ¶¶ 35-37.) On its face, Section 3.4 provides that "[t]o be eligible to receive funding," projects "***must***" meet certain requirements, including providing "***documentation of active community engagement and support***." (SAC, Ex. "C," § 3.4) TGI argues that this language only provides for a duty to document, and nothing more. This argument makes no sense. How can TGI provide the documentation without undertaking the "active community engagement"? It can't. Also, while Form 6 may use "e.g." in defining the "stakeholders," it also uses the conjunctive "***and***," meaning that all exampled stakeholders must be engaged. (*See Caltec*

[2] As the City points out in the opposition to CDSS's demurrer, if CDSS (and TGI) are correct in this argument that the RFA does not have the effect of regulation as a "similar instruction" through the June 10, 2022 ACWLD, then the City hereby seeks leave to amend to allege that entire CCE Capital Expansion Program, and all awards made thereunder, are illegal and void because the RFA is an ***underground regulation***. (*See Missionary Guadalupanas of the Holy Spirit, Inc. v. Rouillard* (2019) 38 Cal.App.5th 421, 432.)

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Ag v. Dept. of Pesticide Reg. (2019) 30 Cal.App.5th 872, 884.) That includes "civic leaders," i.e. the Lincoln City Council and key staff. The City's interpretation of the RFA and Form 6 must be accepted as true, and TGI owed a duty to engage and to meaningfully involve the City. (*See Aragon-Hass v. Fam. Security Insurance Services, Inc.* (1991) 231 Cal.App.3d 232, 239.) TGI failed to comply with this duty, choosing instead to conceal its efforts.[3]

Fourth, TGI argues that the City does not state a claim based on its partial disclosure to a City Council member because there was no duty to disclose more facts, and everything TGI said in the exchange was true. (Demurrer, pp. 13-14.) As stated above, there was a duty to disclose, insofar as TGI was obligated to undertake active community engagement in Lincoln and to meaningfully involve its civic leaders. And TGI's argument that nothing its CEO said during the breakfast was technically untrue misses the point. TGI's CEO only told the Councilmember certain facts, which led her to believe that there was no imminent project planned. It was at best a misleading "half-truth," where TGI owed a duty of full disclosure. ((*Rogers v. Warden* (1942) 20 Cal.2d 286, 288.) TGI also attempts to insert facts that are not pled in this argument, including that the Councilmember did not ask follow up questions, so she could not have detrimentally relied. That is not pled, and in any event, why would the Councilmember need to ask follow up questions when TGI's CEO phrased the project only as a hypothetical, and not tangible? (SAC, ¶ 89) TGI's CEO owed a duty to disclose that he had a verbal commitment to buy Gladding Ridge for a homeless medical respite facility and that TGI was applying for a state grant to fund the purchase. (SAC, ¶¶ 77, 82-90.)

Finally, TGI argues that the City has not alleged that it would have acted differently had it known of the true facts, and that its harm is speculative. (Demurrer, pp. 15-16.) This argument fails. It is not speculative for the City to allege that its opposition would have ended the project going forward in Lincoln. After all, TGI gave up on its Roseville proposal after the Roseville City

[3] TGI further argues that it complied with its duty to explain by submitting letters of support from three hospitals within Placer County. (Demurrer, p. 12.) These letters, and the initial Form 6 that TGI submitted, show that TGI undertook community engagement for its proposed project in Roseville, but that it did nothing comparable when it changed the project to Lincoln, even though CDSS's agent specifically told TGI to undertake new community engagement. Lincoln and Roseville are not the same community, and each has different community needs. (SAC, ¶¶ 95-96, Exs. "I," "J," "M.")

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Council pulled its support. (SAC, ¶¶ 69-70.) Had the Lincoln City Council known what TGI was doing, it too would have voiced opposition, and given that applications were not allowed to be edited, Lincoln's opposition would have caused the proposal to fail, and TGI would have gone back to its Roseville project, or it would have looked for something else. (SAC, ¶¶ 163-169.) This is not speculation because there is a habit and custom that indicates the likelihood of repeat conduct. (Evid. Code § 1105; see *Snibbe v. Superior Court* (2014) 224 Cal.App.4th 184, 190-91.) TGI may feel that other evidence will prove that damages are too uncertain to award, but that is a factual dispute that cannot be resolved on demurrer.

2. *The City Pleads Facts to Support the Tort of Another Claim*

The "tort of another" doctrine provides that "[a] person who through the tort of another has been required to act in the protection of his [or her] interests by bringing or defending an action against a third person is entitled to recover compensation for the reasonably necessary loss of time, attorney's fees, and other expenditures thereby suffered or incurred." (*Prentice v. North Am. Title Guaranty Corp., Alameda Division* (1963) 59 Cal.2d 618, 620.) It is applicable "where a defendant has wrongfully made it necessary for a plaintiff to sue a third person." (*Id.* at 621.) For the reasons discussed, TGI owed a duty, both to the City and to CDSS, and it breached its duty. TGI's acts forced the City to have to file suit against CDSS and Horne.

C. <u>The City Sufficiently Pleads Facts to Support an Unfair Competition Claim</u>

California's unfair competition statute prohibits unlawful, unfair, deceptive or misleading business practices. (Bus. & Prof. Code, § 17200; *Cel-Tech Communications, Inc. v. L.A. Cellular Telephone Co.* (1999) 20 Cal.4th 163, 180.) The City has pled numerous facts showing that TGI's conduct rises to the level of unfair competition under this statue. TGI does not dispute that such facts have been pled, rather it only raises a standing defense. This defense should fail because the City has standing under multiple statutes.

1. *The City has Standing under Section 17204*

Business and Professions Code Section 17204 identifies parties who may bring a Section 17200 action. Included on the list is a city attorney of a city having more than 750,000 residents,

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or, with consent of the district attorney, by a "city prosecutor in a city having a full-time city prosecutor in the name of the people of the State of California[.]" (Bus. & Prof. Code, § 17204.)

As is alleged in the SAC, the City Attorney, Ms. Mollenkopf, serves as a full time City employee, who has been conferred by City Ordinance with prosecutorial powers, which give her the right to prosecute violations of City law. As is also alleged, the state Constitution gives the City Council the power to enact local law, and its legislative powers within the City are as broad as those of the state Legislature, subject only to the limits of the state's general laws. Based on its constitutional authority, the City Council enacted a law making the City Attorney its full time, in-house counsel, and giving her the power to prosecute. (Cal. Const., art. XI, § 7.) Based on this authority, the full time, in-house City Attorney, who is vested under state law with the power to prosecute, and was given consent to bring this action by the District Attorney, has standing to bring this action under Section 17204. (SAC, ¶¶ 185-188.)

In its demurrer, TGI argues that Ms. Mollenkopf still fails to meet the definition of "city prosecutor" set forth in Government Code Section 72193, which was the Court's reasoning in sustaining the demurrer to the FAC. (Demurrer, pp. 6-7.) Respectfully, this argument fails because Government Code Section 72193 does not define the term "city prosecutor" at all, rather it merely provides a list of prosecutorial powers that a prosecutor may undertake in charter cities when such cities chose to create an office of city prosecutor. (Gov. Code, § 72193.) This statute is not a definitions statute, and it certainly does not provide that only charter cities can have city prosecutors, as TGI suggests. The City agrees that the terms "city attorney" and "city prosecutor" are not the same, however, as the City has alleged, Ms. Mollenkopf, is employed by the City (which makes her "full time"), and she is a "prosecutor"; a status that has been conferred on her by the City Council via the state Constitution. Based on the plain language of Section 17204, she brings this action in her capacity as City's prosecutor, and the City has standing.

2. *The City has Standing under Section 17203*

Business and Professions Code Section 17203 provides for a specific type of injunctive relief in Section 17200 actions known as a "public injunction," where the plaintiff brings the action for the benefit of the general public. (Bus. & Prof. Code, § 17203; *see McGill v. Citibank,*

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N.A. (2017) 2 Cal.5th 945, 954-55.) Section 17203 provides that the plaintiff can pursue a representative action on the public's behalf if he/she meets the standing requirement of Section 17204 and complies with the Code of Civil Procedure requirements for such actions, but that these standing requirements do not apply if the action is brought by public officials, including a city attorney or city prosecutor. (*Ibid.*) On its face, this statute excuses a city attorney or city prosecutor from meeting the Section 17204 standing requirement if the action seeks only public injunctive relief. That is the only relief sought in this claim, and thus the City has standing, even if it does not have standing under Section 17204.

TGI argues that Section 17203 does confer standing because the intent of the voters in passing Proposition 64 was not to expand government standing, rather it was to limit private attorneys from filing Section 17200 actions. (Demurrer, p. 7.) TGI's cited authorities do not support its argument. It cites *County of Santa Clara v. Astra U.S., Inc.* (N.D. Cal. 2006) 428 F.Supp.2d 1029, 1033, but this case merely held that a county is not a "person" under Section 17201. In fact, the opinion makes no reference to Section 17203, and does not support TGI's position. (*Ibid.*) TGI also cites *Hale v. Sharp Healthcare* (2010) 183 Cal.App.4th 1373, 1382 fn. 3, but while this case discusses the intent to limit private attorneys from bringing Section 17200 actions, it makes no mention of the standing of public attorneys. (*Ibid.*) The plain language of the statute governs here, and confers standing on the City even absent standing under Section 17204.

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

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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):

PLAINTIFF AND PETITIONER CITY OF LINCOLN'S OPPOSITION TO DEFENDANT AND RESPONDENT THE GATHERING INN'S DEMURRER TO SECOND AMENDED COMPLAINT/PETITION

☐ 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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