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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 and 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 and Respondents.

Case No. S-CV-0053711

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT AND RESPONDENT CALIFORNIA DEPARTMENT OF SOCIAL SERVICES' DEMURRER TO PLAINTIFF AND RESPONDENT CITY OF LINCOLN'S SECOND AMENDED COMPLAINT/PETITION

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

Trial Date: Not set
Action Filed: September 30, 2024

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INTRODUCTION

The Legislature established the Community Care Expansion (CCE) Program in 2021 to expand residential care capacity for adults and seniors at risk of experiencing homelessness. Last year, the California Department of Social Services (CDSS) awarded a grant under the CCE Program to The Gathering Inn (TGI) to operate a medical respite and assisted living facility in the City of Lincoln. Petitioner the City of Lincoln (City) alleges that TGI was not qualified for CCE Program funding because it did not engage with the City Council and other local stakeholders in advance about its proposed project, as the City claims was required, and that TGI improperly amended its application after submitting it. But the City does not seek engagement with TGI about its project; instead, through its second amended complaint and petition (SAP), it aims to shutter TGI's respite facility before it opens, denying vulnerable county residents critically needed rehabilitation and reintegration services. As was the case with its first amended complaint and petition (FAP), the City in its SAP fails to state a claim for a writ of mandate or declaratory relief as it fails to allege any basis for the Court to order CDSS to "deem" TGI and its Lincoln project not to be qualified for a CCE grant, as the City requests.

CDSS's demurrer to the SAP's third cause of action for a writ of mandate must be sustained because the City lacks the requisite beneficial interest in enforcing CCE Program requirements as the City is neither a party to nor an intended beneficiary of the CCE Program Request for Applications (RFA) or of CDSS's grant to TGI. The City, in any event, fails to and cannot allege facts demonstrating that CDSS failed to follow RFA requirements in awarding a grant to TGI and thereby violated any ministerial duty or abused its discretion.

The City's claim for declaratory relief, set out in its fourth cause of action, is derivative of its mandamus claim and fails for the same reasons. The City's claim fails, moreover, because it again improperly seeks to redress an alleged "past wrong" and does not allege facts demonstrating the existence of any "actual controversy" between the City and CDSS requiring judicial resolution in order to provide preventive guidance for the parties.

Accordingly, CDSS's demurrer should be sustained without leave to amend.

BACKGROUND

I. THE COMMUNITY CARE EXPANSION PROGRAM AND REQUEST FOR APPLICATIONS

To better address the needs of aging and disabled low-income and unhoused Californians, the Legislature made $860 million available under the CCE Program to be awarded by the CDSS to qualifying applicants for the purchase, construction, or rehabilitation of properties to be used as "residential adult and senior care facilities." (Welf. & Inst. Code, § 18999.97 (Section 18999.97 or CCE Statute), subd. (a).) CDSS was authorized to contract with a third-party administrator to facilitate the grant awards and provide operational services for the CCE Program. (*Id.* at subd. (b)(1).) CDSS initially contracted with Advocates for Human Potential, Inc. (AHP) to provide these services, and subsequently named Horne LLP (Horne) as the third-party administrator in late May 2023. (See SAP ¶ 22.)

CDSS issued a Request for Applications (RFA) for CCE Program funding in January 2022. (See SAP, Exh. C.) Applicants for CCE funding were required, among other things, to "provide[] documentation of active community engagement and support, particularly with people with lived experience." (*Id*. at p. 16.) Applicants were provided a "Community Engagement Tracking Form" (Form 6) to record their community engagement efforts. (See SAP ¶¶ 42–43, Exh. D.)

II. THE GATHERING INN AND ITS APPLICATION FOR CCE FUNDING

TGI is a non-profit organization that operates shelters and other programs in Placer County for persons experiencing homelessness. (SAP ¶¶ 2, 56.) Among its programs, TGI operates a medical respite program capable of serving 10 patients at a given time. (See SAP ¶ 57, Exh. N at § 11.) Medical respite generally includes the provision of room, board, and other services to help patients recover after discharge from a hospital or other illness or injury when they are too ill or frail to recover on their own, and family or other caretakers are unavailable. (See SAP ¶ 61.) TGI provides services to approximately 100 individuals annually at its current respite facility, but has previously turned away about 200 persons each year who need medical respite. (See SAP ¶ 60 & Exh. N at § 11.) Its existing respite program also provides other supportive services to its clients, including linking clients with "primary and specialty care physicians, home health

agencies, mental health providers, substance abuse programs, income assistance, employment, housing, transportation, and more." (See *id*., Exh. N.)

In July 2022, TGI applied for a CCE Program grant to acquire property in Roseville on which it intended to construct a new medical respite facility. (SAP ¶¶ 60–61.) TGI submitted letters of support for its application from hospital and health care providers Sutter Health, Anthem Blue Cross, and California Health & Wellness. (*Id*. at ¶ 65; SAP, Exh. J at pp. 1–5.) TGI stated that it had obtained support from Placer County Health and Human Services and verbal support from the Roseville City Council. (SAP ¶ 65.)

On January 13, 2023, CDSS's third-party administrator AHP advised TGI that its application was "incomplete or otherwise ineligible for CCE funding." (See SAP ¶ 81 & Exh. L.) TGI was advised that it could correct its application and that AHP would work with TGI to "amend or complete" it so that the project could "be reviewed again for eligibility for funding." (SAP ¶ 81 & Exh. L.) TGI met with AHP on February 6, 2023, and AHP in a follow-up email that day noted that TGI appeared to be proposing that its application be considered for a new site address. (SAP ¶ 94 & Exh. M.) AHP advised TGI in the email that if it decided to request a re-review of its application in connection with the new address, TGI would need to submit additional documentation and information within one week. (SAP ¶¶ 95, 97.)

TGI submitted a request for re-review within that week, noting that the project would include a 60-bed medical respite facility in the City of Lincoln in an existing residential care facility for seniors. (See SAP ¶ 99 & Exh. N at § 24.) TGI stated that it would also seek to license the facility's memory care unit as a 38-bed assisted–living facility. (See SAP ¶ 100; Exh. N, §§ 8, 24.) Based on this application, CDSS awarded TGI a $6.45 million grant to purchase the Lincoln facility and for certain operating expenses. (SAP ¶ 110.)

III. PROCEDURAL BACKGROUND AND THE CITY'S CLAIMS AGAINST CDSS

The City filed this action on September 30, 2024, and later filed a first amended petition (FAP). The FAP alleged six causes of action, two of which were asserted against CDSS. The FAP's third cause of action sought a writ of mandate pursuant to Code of Civil Procedure section 1085 (section 1085), alleging that due to TGI's alleged failure to document community

engagement and other alleged deficiencies, CDSS had a ministerial duty to deny TGI's application and abused its discretion by not doing so. In its fourth cause of action, the City sought related declaratory relief. CDSS and the Director demurred, and this Court in its Ruling on Submitted Matters issued July 9, 2025 (July 9 Order) sustained the demurrers to each of those causes of action with leave to amend. (July 9 Order, at 14–16.)

The City served CDSS with its SAP on July 24, 2025. The third and fourth causes of action to the SAP reallege, as amended, claims for mandamus and declaratory relief against CDSS. The City seeks a writ directing CDSS to "deem" TGI not to be a qualified CCE Program grantee and its proposed Lincoln facility not to be a qualified CCE project, and to cease further CCE funding for the project. The City seeks related declaratory relief and an order stating that TGI's project funding agreement is void *ab initio*. (SAP ¶¶ 194–200, 201–215, and pp. 70–71 [prayer].)

APPLICABLE LEGAL STANDARDS

A petitioner seeking writ relief has the burden to plead and prove entitlement to the extraordinary remedy of a writ of mandate. (See *Cal. Correctional Peace Officers Assn. v. State Personnel Bd.* (1995) 10 Cal.4th 1133, 1153.) In reviewing the sufficiency of a petitioner's allegations, properly pleaded material facts are deemed admitted, but courts do not "assume the truth of contentions, deductions or conclusions of law." (*City of Dinuba v. County of Tulare* (2007) 41 Cal.4th 859, 865.) A demurrer must be sustained if the petition does not allege facts sufficient to constitute a cause of action or if judicially noticeable matters establish that such facts are lacking. (See *McKenney v. Purepac Pharmaceutical Co*. (2008) 167 Cal.App.4th 72, 78.)

I. THE CITY AGAIN FAILS TO ALLEGE ANY BASIS FOR A WRIT OF MANDATE

The City in its SAP fails to allege facts sufficient to establish a cause of action for a writ of mandate because: (1) it is neither a party to nor intended beneficiary of TGI's CCE grant or the CCE Statute, and thus lacks a beneficial interest in the enforcement of CDSS's alleged ministerial duty to deem TGI or its Lincoln project to not be qualified for a grant; and (2) it fails to demonstrate that CDSS is subject to any such ministerial duty or abused its discretion by awarding a CCE grant to TGI. The City therefore fails to meet the requirements to state a claim for writ relief. (See *AIDS Healthcare Foundation v. Los Angeles County Dept. of Pub. Health*

(2011) 197 Cal.App.4th 693, 700; Code Civ. Proc., §§ 1085, 1086.)

A. The City Lacks a Beneficial Interest in Enforcing the RFA

First, the City fails to, and cannot, allege facts sufficient to establish that it has any right to performance of CDSS's alleged duty under law to "deem" TGI and its Lincoln project not qualified for a CCE grant, and thus again fails to demonstrate a beneficial interest necessary to pursue its mandamus claim. To support issuance of a writ, a petitioner must demonstrate, among other things, "a clear, present and beneficial right in the petitioner" to the performance of the respondent's alleged ministerial duty. (*People ex rel. Younger v. County of El Dorado* (1971) 5 Cal.3d 480, 491.) This "beneficial interest" requirement generally requires that "'one may obtain the 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. [Citation.]'" (*SJJC Aviation Servs., LLC v. City of San Jose* (2017) 12 Cal.App.5th 1043, 1053 (*SJJC*).) The petitioner's interest "'must be direct and substantial. [Citation.]'" (*Ibid*.)

The City fails to, and cannot, allege facts demonstrating any "right" to performance of CDSS's alleged duty to deem TGI and its Lincoln project unqualified for a CCE grant. The City does not, nor could it, allege that it is a party to the RFA or TGI's grant or funding agreement or an intended third-party beneficiary of these documents. Indeed, TGI's funding agreement specifies that it "shall not be construed so as to give any other person or entity, other than the Parties and CDSS, any legal or equitable claim or right." (Exh. S, Art. 19.) The City thus cannot demonstrate a "direct and substantial" interest in enforcing alleged CCE grant requirements.

In *McDonald v. Stockton Metropolitan Transit Dist*. (1973) 36 Cal.App.3d 436 (*McDonald*), for example, the court held that Stockton bus users were only "indirect beneficiaries" of a federal grant to the city's transportation district that, among other things, called for construction of 20 bus stop shelters, and that the bus riders therefore lacked a beneficial interest in enforcing the district's alleged duty to apply federal grant funds towards construction of the shelters. (36 Cal.App.3d at p. 443.) Similarly, in *The H.N. & Frances C. Berger Foundation v. Perez* (2013) 218 Cal.App.4th 37, 43-47 (*Berger Foundation*), the court held the owner of lots in a subdivision, though clearly interested in the performance of road improvement

agreements and a related performance bond between the developer, county, and insurer, was not an intended third party beneficiary of those agreements and thus lacked a beneficial interest in their enforcement. The City similarly lacks any beneficial "right" to enforce CCE grant requirements and demand that CDSS be ordered to "deem" TGI or its project not "qualified." Recognizing the City's standing here would permit any person who is affected by a government-sponsored project, or who is among the class of persons with whom a project sponsor is encouraged to consult about such a project, to demand that courts second-guess government grant or contract award decisions. No law supports or compels such a result.

The City purports to rely on language in the CCE Statute providing that CDSS develop the methodology for distributing funds to "qualified grantees" as the source of its purported duty to deem TGI and its project not to be qualified and of the City's alleged right to performance of that duty. (See SAP ¶¶ 30, citing Welf. & Inst. Code, § 18999.97, subd. (d); 196; 199.) But the CCE Statute does not define qualifications for a grant, leaving it instead to CDSS "to develop criteria for the program." (Welf. & Inst. Code, § 18999.97, subd. (d).) And neither the CCE Statute nor the RFA require the Department to retroactively "deem" applicants or their projects not to be qualified for a grant or to have their funding terminated if they are determined after a grant has been awarded not to have met an application criteria. To the contrary, TGI's grant funding agreement—which the City itself contends "adopts" the program requirements of the RFA (Opp'n to CDSS Dem. to FAP at 18:27)—leaves it within CDSS's discretion to determine what remedy to impose for any failure to comply with program requirements if not cured. (SAP, Exh. S, Art. 9.) The City cannot establish any "right" to demand that this Court compel CDSS to "deem" TGI or its project not qualified for a grant.

Having a beneficial interest also requires more than that a party be interested or "impacted" by a law or official action; rather, it requires the petitioner to show "'[a]t a minimum,'" that it ""'personally has suffered some actual or threatened injury as a result of the putatively illegal conduct of the defendant. [Citation.]'"" (*County of San Diego v. San Diego NORML* (2008) 165 Cal.App.4th 798, 814 (*NORML*).) In this respect, the beneficial interest standard "'is equivalent to the federal "injury in fact" test,'" which requires a party to prove that it has suffered ""'an

invasion of a legally protected interest that is '(a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical. [Citation.]'"'" (*SJJC*, *supra*, 12 Cal.App.5th at p. 1053.) The City fails to allege any direct, substantial, and imminent injury.

The City alleges that allowing the respite facility to open will cause the City to incur costs in connection with emergency incidents at the facility. (SAP ¶ 199(2), (3).) However, these allegations are misplaced, first, because the City cannot establish that any such injury follows "as a result" of CDSS's alleged failure to perform a purported duty to "deem" TGI and its project to be unqualified for a grant. Had TGI conducted engagement with City leaders and applied for and been awarded the same grant without any "edits," the purportedly anticipated impact of the facility as alleged by the City would be no different. CDSS's alleged failure to follow RFA requirements and "deem" TGI and its project unqualified, therefore, are not the causes of the City's alleged future threatened harm. In addition, the SAP does not allege facts showing that potential demands on public safety resources are occurring or imminent. (See SAP ¶¶ 143–144 [site will not open until "all code violations are cured, and a certificate of occupancy is issued].)

The City's allegations that it has a beneficial interest because it will have to "re-work" an update to the City's housing plan to account for the loss of the previous assisted living facility formerly operating at the site of TGI's project is even further afield. (SAP ¶ 199(5).) The City's own allegations indicate that the prior owner of the facility had independent reasons to sell it, including that it had many "problems," including "costs, deferred maintenance, infrastructure challenges, and an overall loss of profitability" as an assisted living center (problems that the City does not allege it sought to assist with despite the facility allegedly being a "key component" of its plan for meeting the housing needs of seniors). (See SAP ¶¶ 75, 160.)

The City also cannot establish that it has "public interest" or "citizen" standing to seek to enforce CCE grant requirements. The City's pursuit of an order regarding a private entity's qualification for a CCE grant does not seek to enforce a "public right" under law, as necessary for this exception to the beneficial interest requirement to apply. (*Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155, 166.) Moreover, the City, as a general law city (SAP ¶ 1), is a political subdivision of the state (*Steinkamp v. Teglia* (1989) 210 Cal.App.3d 402,

404), and therefore is not a "citizen" entitled to assert citizen standing. (See *Consol. Irrigation Dist. v. City of Selma* (2012) 204 Cal.App.4th 187, 203 [considering but finding unnecessary to address whether exception applies to government entity].) Exempting a city from any need to allege a beneficial interest in a suit against the State would be inconsistent with the related principle that subdivisions of the State lack standing to challenge the validity of provisions of state law "that are not applicable to them and that do not injuriously affect them." (*NORML*, *supra*, 165 Cal.App.4th at p. 818.)

For these reasons, the SAP fails to demonstrate that the City has a beneficial interest in performance of CDSS's alleged duty to deem TGI and its project unqualified for a CCE grant.

B. The City's Amendments Do Not, and Cannot, Establish that CDSS Is Subject to a Ministerial Duty to Deem TGI and Its Project Ineligible for a CCE Grant or to Discontinue TGI's Funding

Even if the Court were to determine that the City has a "beneficial interest" in seeking its claimed mandamus relief, the City fails in the SAP to allege facts sufficient to show that CDSS has failed to perform a ministerial duty under law that can be enforced though a writ of mandate.

The SAP advances the same principal allegations and argument in support of its claim for a writ of mandate asserted by the City in connection with its FAP, including: that the CCE Program RFA constitutes a "regulation" or "published internal rule" enforceable by mandamus (see FAP ¶¶ 11, 69, 74; Opp'n to Dem. to FAP at 14:14–15:14; SAP ¶ 196(1)); that the RFA required TGI to document that it had consulted with City officials regarding its proposed project and that TGI failed to provide such documentation (FAP ¶¶ 14, 29, 66; SAP ¶ 196(4)-(5)), and that CDSS accordingly now has a duty effectively to reverse its grant award, by rescinding its acceptance of TGI's "participation" in the CCE Program and to terminate TGI's funding agreement (FAP ¶ 65) or as alleged now, to retroactively "deem" TGI not to be a "qualified grantee" or its project a "qualified project" under the CCE Statute (SAP ¶ 196). The Court appropriately sustained CDSS's demurrer to the City's mandamus claim in the FAP, and the SAP provides no basis for the Court to rule differently with respect to CDSS's demurrer to the SAP here.

The City's central contention, that the Court must order CDSS to deem TGI unqualified for a grant for allegedly failing to enforce the community engagement requirement, fails because TGI

provided documentation of community engagement with its application before it was resubmitted for review in connection with the Lincoln site, as the SAP acknowledges. (SAP ¶ 65 & Exh. I.) For this reason, the Court concluded petitioner Western Placer Unified School District in its related action (Case No. S-CV-0053727 (*WPUSD*)) did not in its FAC "sufficiently allege defendants violated their own rules." (See *WPUSD*, Ruling on Submitted Matters (July 9, 2025), at 5:28–6:10.) And for the same reason here, the City likewise fails to allege and cannot establish that CDSS did not comply with a ministerial duty or abused its discretion by allegedly failing to enforce the community engagement requirement in awarding a grant to TGI.

Contrary to the City's conclusory allegations, neither the RFA nor the application's Form 6 required TGI to demonstrate engagement with any particular stakeholders, including local elected officials. (See SAP ¶ 199(1); Exh. C, § 3.4; Exh. D.). The SAP's argument regarding the history and interpretation of Form 6 cannot overcome a plain reading of its text, which merely identifies *examples* of stakeholders with whom an applicant might engage in developing its project. (*Id.*, Exh. D.) CDSS's assessment of the adequacy or strength of TGI's demonstration of community engagement in support of its proposed project at the Lincoln site necessarily were determinations left to CDSS and AHP's discretion in reviewing TGI's application as a whole. "[A] public entity's award of a contract, and all of the acts leading up to the award, are legislative in character," and thus discretionary rather than ministerial. (*Fair Ed. Santa Barbara v. Santa Barbara Unified School Dist.* (2021) 72 Cal.App.5th 884, 891, internal quotations and citations omitted.) "[T]he letting of contracts by a governmental entity necessarily requires an exercise of discretion guided by consideration of the public welfare." (*J. Council of Interns & Residents v. Bd. of Supervisors* (1989) 210 Cal.App.3d 1202, 1211.) The SAP, therefore, fails to allege facts sufficient to demonstrate that TGI was not a qualified applicant or that CDSS failed to follow the RFA by awarding a grant to TGI.

The City in the SAP reasserts the same argument this Court already found unpersuasive that an email from a staff member with CDSS's third-party administrator AHP independently established an application requirement that TGI document community engagement specifically with City leaders and other stakeholders in the City of Lincoln. (See SAP ¶ 196(4); see FAP ¶ 26

& Exh. F; Opp'n at 15:6–7.) However, an email from a third-party staff member, even if acting as an agent of CDSS, cannot add to the terms of an RFA or impose on CDSS a ministerial duty "which the *law* specially enjoins" and that may be enforced in mandamus. (Code Civ. Proc., § 1086, italics added.) Nor can a third-party email constitute a public entity's "published procedure" potentially enforceable by a writ. (See *Galzinski v. Somers* (2016) 2 Cal.App.5th 1164, 1172 (*Galzinski*).) The City alleges, in any event, that the emailed instructions were improper to begin with because they allowed TGI to "edit" its application, allegedly in violation of the RFA. (See SAP ¶ 97.) The City cannot rely on the same allegedly *improper* email instructions as the source of an alleged ministerial duty. The City cannot have it both ways.

The SAP's allegations that CDSS is subject to a ministerial duty to deem TGI or its project not qualified because TGI was allowed to revise its application for the Lincoln site are misplaced, regardless. (See SAP ¶¶ 94, 196(3).) First, the City has no special right to or interest in performance of CDSS's alleged duty to enforce the RFA's provision that applications may not be "edited" once submitted. (See *McDonald*, *supra*, 36 Cal.App.3d at p. 443.) Second, the RFA specifically recognizes that an applicant *may* make changes to an application initially denied funding before it is resubmitted for later review. The RFA provides that applications that "are not awarded initially will be provided [technical assistance] for resubmission." (See SAP, Exh. C, at § 2.5.) That is precisely what the SAP recognizes occurred here: TGI's initial application for a grant to construct a medical respite facility in Roseville was determined to be "incomplete or otherwise ineligible for CCE funding," and after meeting with and receiving assistance from CDSS's third-party administrator AHP, TGI was advised that it could submit its application for "re-review" in connection with the Lincoln site, which it did. (See SAP ¶¶ 81, 92–95, 99 & Exhs. L–N.)

This Court in its July 9 Order rejected the City's argument that the RFA and funding agreement are "'all county-letters or similar instruction' within the meaning of Welfare and Institutions Code section 18999.97," which otherwise would have the "force and effect" of regulations, and thus concluded that the RFA and funding agreement "are not provisions of law" that may be enforced by a petition for writ of mandate. (July 9 Order at 14:20-23.) The Court

was correct: all-county letters and related notices are distinct types of documents, listed on CDSS's own website, that CDSS issues generally to provide administrative guidance, information, and instructions to counties and other entities that implement CDSS-administered programs. (See Request for Judicial Notice (RJN), Exh. A [CDSS "Letters and Notices" webpage].) The RFA and its attachments, including Form 6, are not included among such documents. (See *ibid*.)

In its SAP, the City alleges that a 2022 All County Welfare Director's Letter (ACWDL) included a link to the RFA and asserts that this transformed the RFA into an "all-county letter[] or similar instruction" having the force and effect of a regulation because the ACWDL purportedly incorporated the RFA "by reference." (SAP ¶ 51; see also ¶¶ 48, 196(1).) The City's argument strains credulity and provides no basis for the Court to change its prior conclusion. The 2022 ACWDL relates to the availability of CCE Capital *Preservation* funding, a different part of the CCE Program than the Capital *Expansion* grants involved here, and the ACWDL merely provided a link to the RFA and other information available online in notifying counties about the availability of funds under this separate program. (See SAP, Exh. F at 2.) The ACWDL expressly stated, in bold, that rules governing the Capital *Expansion* program "**are distinct from the CCE Preservation Funds outlined in this letter**," and thus clearly expressed that the RFA's terms were *not* incorporated by reference. (*Ibid*.)

The City also alleges in the SAP that the community engagement and "no edit" provisions of the RFA impose ministerial duties on CDSS, enforceable by a writ of mandate, because they constitute "published internal rules" of the Department. (SAP ¶ 196(2).) The City previously advanced this argument in support of its FAP (Opp'n to Dem. to FAP at 14:14–15:14) and the Court implicitly rejected it, as it should here. An agency's failure to follow published rules may be enforceable by a writ of mandate only where the rules are "'unambiguous'" and themselves establish a mandatory duty that may be considered "ministerial." (*Galzinski*, *supra*, 2 Cal.App.5th at pp. 1170–1171, quoting *Gregory v. State Bd. of Control* (1999) 73 Cal.App.4th 584, 594.) No such duties are, or can be, alleged here. The RFA does not impose an unambiguous mandatory duty on CDSS to retroactively deem TGI an unqualified grantee

ineligible for further CCE Program funding for non-compliance with an application requirement. To the contrary, the Court already has recognized in connection with the City's argument in support of the FAP that even if the RFA or TGI's funding agreement had the "force and effect" of regulations, "it cannot be said recission [of TGI's application] is a ministerial duty," because "the plain language" of TGI's funding agreement gives CDSS discretion to determine what remedy to impose if TGI were to be determined to have failed to meet a program requirement. (July 9 Order at 14:23–15:3; see SAP, Exh. S, Art. 9.1–9.3.) Mandamus cannot be used to "'control the discretion conferred upon a public officer or agency,'" as the City seeks to do through its claim. (*Berger Foundation*, *supra*, 218 Cal.App.4th at p. 46, quoting *State Bd. of Ed. v. Honig* (1993) 13 Cal.App.4th 720, 741.) "[T]he choice of sanctions" for a grantee's failure to comply with the terms of a government grant "is the government's, not the [plaintiffs'] or the court's." (*McDonald*, *supra*, 36 Cal.App.3d at p. 443.) CDSS had discretion, moreover, to waive noncompliance with certain application requirements if it would not have disadvantaged other applicants. (*Ghilotti Construction Co. v. City of Richmond* (1996) 45 Cal.App.4th 897, 904.)

C. The City Fails to Allege Facts Showing that CDSS Abused Its Discretion

The City alleges, in the alternative, that CDSS "abused its discretion" in awarding a grant to TGI. (See SAP ¶¶ 197–198.) However, the SAP fails to and cannot demonstrate that CDSS's award constituted an abuse of discretion.

The City's allegations that CDSS abused its discretion in awarding a grant to TGI because it allegedly failed to "conform to regulation and procedures required by law" and approved an "edited" application (SAP ¶ 197) mirror its "ministerial duty" allegations and so fail for the reasons discussed above. And to the extent the City alleges that CDSS abused its discretion in general in approving TGI's project, its allegations fail to support a claim for abuse of discretion as a matter of law. (SAP ¶ 198.) In reviewing agency action for an abuse of discretion, courts must apply an "'extremely deferential'" test, under which the court considers whether the agency's action was "'arbitrary, capricious, or entirely lacking in evidentiary support,'" or failed to follow procedure that "'the law requires.'" (*Weinstein v. County of Los Angeles* (2015) 237 Cal.App.4th 944, 965 quoting *County of Los Angeles v. City of Los Angeles* (2013) 214 Cal.App.4th 643, 654.)

The court "'may not substitute its judgment for that of the agency, and if reasonable minds may disagree as to the wisdom of the agency's action, its determination must be upheld.'" (*Ibid.*) If the reasonableness of the decision "is fairly debatable," the agency's determination "will not be disturbed." (*Ibid.*, internal quotation marks and citation omitted.)

Here, the SAP's allegations and exhibits show that CDSS had information that, among other things, TGI already had a proven track record of providing medical respite services and other supportive housing services in Placer County that were "model programs built on strong community relationships with key stakeholders in [the] community," that major hospitals and a leading health care plan in the county believed TGI was a trusted and responsible community partner, and that there was a "desperate need" need in the county for expanded medical respite capacity. (SAP, Exhs. J, N, see also ¶¶ 57, 60.) The SAP therefore fails to and cannot allege facts sufficient to establish that no reasonable person could believe that TGI should be awarded a CCE grant for its Lincoln facility. The City thus fails to allege facts sufficient to demonstrate an abuse of discretion.

For all the independent reasons above, the Court should sustain CDSS's demurrer to the SAP's third cause of action for a writ of mandate without leave to amend.

II. THE CITY AGAIN FAILS TO ALLEGE ANY VALID BASIS FOR DECLARATORY RELIEF

The City also again fails in its fourth cause of action to state a valid claim for declaratory relief. Similar to the relief sought in its mandamus claim, the City asks the Court to declare that TGI and its Lincoln project were not "qualified" for a CCE grant. (SAP ¶ 211.) The City also seeks a declaration that, in the event the Court makes such a "finding," TGI's funding agreement be declared void. (*Ibid.*) As with the City's prior iteration of this claim in the FAP, the City's amended claim fails both because it is derivative of its claim for a writ of mandate that fails to state a cause of action, and because the City still improperly seeks to redress an alleged "past wrong" and otherwise fails to demonstrate the existence of any justiciable "actual controversy."

The City's claim depends on its contentions that TGI did not meet the RFA's community engagement and support requirement and that TGI should not have been allowed to amend its grant application to propose a new location. (SAP ¶¶ 204–207.) As such, its claim asserts the

same underlying basis as its mandamus claim and should be dismissed for all of the independent reasons discussed in the argument above. (See *Fox Paine & Co., LLC v. Twin City Fire Ins. Co.* (2024) 104 Cal.App.5th 1034, 1051–1053 [demurrers properly sustained where "at least two aspects of plaintiffs' declaratory relief claim are derivative of other claims"].)

The City's allegations fail, in any event, to demonstrate any basis for declaratory relief. Like its claim under the FAP, dismissed by the Court on the basis that the allegations "pertain to alleged past wrongs" (July 9 Order at 16:13-14), the City's declaratory relief claim under the SAP again improperly seek to redress a past violation—CDSS's alleged improper award of a CCE grant to TGI or to deem TGI or its project unqualified. (See SAP ¶¶ 209–211.) Indeed, the City admits that its claim pertains to alleged "past wrongdoings" by respondents. (*Id.* ¶¶ 209–210.) A complaint about "past acts" by a party, however, "'does not constitute an actual controversy *relating to the legal rights and duties of the respective parties* within the meaning of Code of Civil Procedure section 1060. [Citation.]'" (*City of Gilroy v. Superior Court* (2023) 96 Cal.App.5th 818, 834, italics in original.) Declaratory relief "'operates prospectively, and not merely for the redress of past wrongs. It serves to set controversies at rest before they lead to repudiation of obligations, invasion of rights or commission of wrongs; in short, the remedy is to be used in the interests of preventive justice, to declare rights rather than execute them. [Citation.]'" (*Babb v. Superior Court* (1971) 3 Cal.3d 841, 848.)

Here, the SAP alleges no relationship with CDSS governed by a written instrument under which there is a need to clarify the parties' respective rights and obligations in order to serve the interests of "preventive justice." The City alleges an interest in a declaration regarding whether TGI or its project are qualified for a CCE grant, in order to determine whether it may use its alleged authority under a zoning ordinance to prohibit use of the facility as a medical respite center on the ground that is a "nuisance." (SAP ¶ 214.) But the City's interest in shutting the facility down does not demonstrate the existence of any "actual controversy" with CDSS, and is a red herring in any event. The CCE Statute supersedes local zoning requirements and discretionary permit review of "[a]ny project that *receives funds*" pursuant to the Statute. (Welf. & Inst. Code, § 18999.97, subd. (*l*), italics added.) TGI's project is unquestionably a project that

has received funds under the CCE Program. (See SAP ¶¶ 110, 124.) Its exemption under the CCE Statute from local zoning requirements or discretionary permit review thus is not dependent on whether TGI or its project retroactively are deemed not "qualified" for a CCE grant.

Moreover, because the City is neither a party to nor intended beneficiary of the RFA or TGI's grant or funding agreement, the City lacks standing to seek a judicial determination regarding whether a CCE grantee or project grantee are "qualified." A non-party to a written instrument must demonstrate that it is an "intended" or "third party" beneficiary, rather than a mere incidental beneficiary, of the instruments it seeks to enforce. (*Berger Foundation*, *supra*, 218 Cal.App.4th at pp. 43–46; *Graham v. Bank of America, N.A.* (2014) 226 Cal.App.4th 594, 615.) A mere difference of opinion regarding the interpretation of an ordinance or statute does not confer standing to seek declaratory relief. (*Zetterberg v. State Dept. of Public Health* (1974) 43 Cal.App.3d 657, 661–662.) The City's claim, in fact, does not seek a declaration of *its own* rights under the CCE Statute, but rather of the rights of TGI. As no cognizable controversy between the City and CDSS exists, the City lacks standing for its declaratory relief claim.

For the same reasons, the City lacks standing to seek a declaration that TGI's funding agreement is void as violative of public policy. (See SAP ¶ 211.) The City alleges that such a determination would, purportedly, be merely the "effect" of findings by the Court that TGI and its project are not "qualified." (*Ibid*.) The declaration sought by the City, therefore, is dependent upon the Court issuing the other declarations it desires, and thus does not seek to resolve any present "actual controversy." The City's allegations that TGI or its project were not qualified for a CCE grant, in any event, provide no cognizable basis for a conclusion that TGI's funding agreement is void as against public policy. (See *Bovard v. American Horse Enterprises, Inc.* (1988) 201 Cal.App.3d 832, 840 [factors in determining whether contract violates public policy].)

For all these reasons, CDSS's demurrer to the City's fourth cause of action should be sustained without leave to amend.

CONCLUSION

For the reasons above, CDSS's demurrer to the City's third and fourth causes of action should be sustained without leave to amend.

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Respectfully submitted,

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