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EXEMPT FROM FILING FEES PURSUANT TO GOVERNMENT CODE SECTION 6103

BEST BEST & KRIEGER LLP

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
Hon. Trisha J. Hirashima

**CITY OF LINCOLN'S OPPOSITION TO CALIFORNIA DEPARTMENT OF SOCIAL SERVICES' DEMURRER**

Date: 2/11/2025
Time: 8:25 a.m.
Dept.: 42
Action Filed: September 30, 2024

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## TABLE OF CONTENTS

**Page**




BEST BEST & KRIEGER LLP
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300 SOUTH GRAND AVENUE, 25TH FLOOR
LOS ANGELES, CALIFORNIA 90071

## TABLE OF AUTHORITIES

**Page**

**State Cases**



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LOS ANGELES, CALIFORNIA 90071

**TABLE OF AUTHORITIES**
(continued)

**Page**



**State Statutes**





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LOS ANGELES, CALIFORNIA 90071

**TABLE OF AUTHORITIES**
(continued)

**Page**




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## I. INTRODUCTION

The City of Lincoln ("City") filed this lawsuit because it was deceived by The Gathering Inn ("TGI"). The City should have been included in the process of determining where to locate a new medical respite facility for homeless individuals. It wasn't. Likewise, the State of California was deceived. It was tricked into considering, and then approving a $6.4 million grant award, when TGI clearly had not met ***all*** of the eligibility requirements for the award. California Department of Social Services ("CDSS"), which is the agency responsible for administering the grant program, now demurs. It asserts that this action should fail because it has discretion to ignore the program's eligibility requirements. It doesn't. The demurrer should be overruled.

In 2021, the Legislature passed AB 172, which added sections 18999.97-18999.98 to the Welfare and Institutions Code. This law provides for the Community Care Expansion Program ("CCE Program"), which is intended to fund the acquisition, construction and/or rehabilitation of adult and senior care facilities. (First Amended Complaint ["FAC"] ¶¶ 3, 8.) CDSS operates the program. (*Id.*, ¶ 3.) AB 172 does not require CDSS to adopt implementing regulations through the process mandated by the Administrative Procedures Act, rather it allowed CDSS to implement and administer the CCE Program through "all-county letters" (i.e. communications to program beneficiaries), **or** "***similar instruction***," which has "***the same force and effect as regulations***." (Welf. & Inst. Code § 18999.97, subd. (k) [emphasis added].) This statute informs CDSS that while it does not have to enact formal regulation, all of its "instructions" to program applicants and/or beneficiaries are to be deemed, and would have the same force and effect, as formally adopted regulation. This includes CDSS's Request for Applications ("RFA"), wherein CDSS published the eligibility requirements to participate in the CCE Program.

One such eligibility requirement is community outreach. AB 172 exempts qualified projects from local land use laws. (Welf. & Inst. Code § 18999.97, subd. (l).) However, neither the Legislature nor CDSS wanted the needs of local communities to be ignored. They wanted local communities to have voice in the process. (FAC, ¶ 13.) As such, CDSS required applicants to engage the local community and seek support for the project as part of the application. (FAC, ¶ 14, Ex. "A," § 3.4.) This includes seeking support from "civic leaders," i.e. city councils. (*Id.*,

*see also* Ex. "B.") While obtaining a letter of support from a city council may not have been a stated requirement in the RFA, applicants were at least required to engage civic leaders, and to involve them in the development of the applicant's proposed project. (*Ibid.*)

This requirement, and CDSS's desire that the local civic leaders have a voice in the process, was ignored. TGI did not reach out to the City Council or anyone else in Lincoln to explain its project and to seek support. When it first submitted its application, and through the award of funding, TGI failed to engage in community outreach, and offered no documentation showing local support for the project. (*Id.*, ¶ 29.) Instead, TGI provided documents showing its attempt to obtain community support for its failed project in Roseville. (*Id.*, ¶¶ 15-18.) Roseville and Lincoln are different cities and the projects in each were different. TGI's efforts to engage the Roseville community does not qualify. Based on the plain language of CDSS's own regulations, TGI did not meet ***all*** eligibility requirements. CDSS had a mandatory duty to deny TGI's application, and it now has a mandatory duty to seek a return of the funds.

## II. STATEMENT OF FACTS

On or about July 11, 2022, TGI applied to become a CCE Program participant. (FAC, ¶ 16.) In its initial application, TGI proposed to open a 20-bed medical respite center in *Roseville*, California. (*Id.*, ¶ 16 [emphasis added].) Section 3.4 of the RFA provides that "community engagement and support" is a general program requirement for receiving funds. (FAC, Ex. "A," § 3.4.) The RFA includes as an attachment "Form 6," which states that applicants must explain how "stakeholders," defined to include "community-based organizations [CBOs], members of the target population, residents, *civic leaders*, ***and*** frontline staff," were meaningfully involved in the visioning and development of the project. (FAC, Ex. "B" [emphasis added].)

TGI initially applied for CCE Program funding to build a 20-bed medical respite center for persons experiencing homelessness at 300 Elefa Street in Roseville. (FAC, ¶ 16.) As part of its application, TGI submitted a completed "Form 6," indicating that it had engaged in multiple meetings with officials from the City of Roseville, and, consistent with the funding requirements, that a letter of support from the Roseville City Council would be provided following the July 20, 2022 Roseville City Council meeting. (*Id.*, ¶ 18; Ex. "C".)

TGI's application was discussed at two Roseville City Council meetings, where civic leaders and the citizenry had an opportunity to weigh in. Community members voiced concern at these meetings, and the Roseville City Council decided not to provide a letter of support. TGI did not inform CDSS that the Roseville City Council had withdrawn its support. (*Id.*, ¶¶ 19-20.)

On or about September 22, 2022, CDSS sent a letter to TGI, informing that its application for CCE Program funds required clarification regarding the long-term operational sustainability. (*Id.*, ¶ 21.) CDSS told TGI that it needed to provide further information to Advocates for Human Potential, Inc. ("AHP"), CDSS's third-party administrator, by October 6, 2022, but that further extensions could be afforded if needed. (*Ibid.*; *see also* ¶ 5.) On January 13, 2023, CDSS sent TGI another correspondence, in which it again informed TGI that its application was incomplete, and that TGI was ineligible. (*Id.*, ¶ 23.) CDSS informed TGI that its incomplete application could be corrected, but that it needed to reach out to AHP within ten business days. (*Ibid.*)

It was around this time in early January 2023 that TGI found the Lincoln site at 1660 Third Street as an alternative to the Roseville project. (*Id.*, ¶ 24.) After receiving the January 13, 2023 correspondence from CDSS, and after locating the Lincoln site, TGI reached out to AHP to discuss the application. (*Id.*, ¶ 25.) This meeting occurred on February 6, 2023, at which time TGI informed AHP that the Roseville site was no longer their desired option for a medical respite facility, and that they were attempting to secure the Lincoln site as an alternative. (*Ibid.*)

Later in the day on February 6, 2023, AHP sent an email to TGI, informing it that by changing the location to the Lincoln site, it appeared that TGI was proposing a new project, and that TGI would have to start the process over, and submit a new application. (*Id.*, ¶ 26, Ex. "F.") AHP informed that in the alternative, TGI could request a re-review of its existing application by submitting additional information. (*Ibid.*) AHP, acting in its capacity as CDSS's agent, informed TGI that it needed to submit an updated "Form 6," and describe the community engagement and local support for the proposed project at the Lincoln site. (FAC, Ex. "F".) AHP instructed TGI that in order to proceed with the application for the Lincoln site, TGI needed to submit, among other things, a "*[d]escription of community engagement and local support, including support letters for the specific address proposed, an updated Community Engagement Tracking Form,*

*[i.e. a "Form 6"], and a detailed description of any community opposition to your proposed project (and how you have or propose to overcome that opposition).*" (FAC, Ex. "F," at ¶ 8.)

One week later, on February 13, 2023, TGI submitted its request for reconsideration and re-review of its application from July 11, 2022, and on the same date TGI executed a letter of intent to buy the Lincoln site. (*Id.*, ¶ 27.) In this request for re-review that TGI changed out the Roseville site for the Lincoln site. (*Ibid.*) But TGI did not submit an updated "Form 6," as AHP had required. (*Ibid.*) TGI did not submit any proof of community engagement and support for the new Lincoln site, nor did TGI provide any description of community opposition, and TGI's plans to overcome the opposition. (*Id.*, ¶ 29, see also Ex. "G".) Instead, TGI relied on the same letters of support it had received for the proposed project in Roseville, which were all from healthcare providers, and it now offered those letters as evidence of support for the Lincoln site. (*Ibid.*) TGI never reached out to anyone in Lincoln, including the City Council, to seek support, until after it had been awarded CCE Program funds and had closed escrow on the Lincoln site.

In or around May 2023, CDSS granted TGI's application, and awarded TGI $6,440,670 in CCE Program funds for the acquisition and operation of its planned medical respite facility at the Lincoln Site. (*Id.*, ¶ 29.) At no point during this process did the City know that TGI was planning on opening the third largest medical respite center in the State of California within Lincoln. (*Id.*, ¶¶ 28, 84.) The City had no opportunity to participate in the process, and to voice its concern that Lincoln, with only 52,000 residents and no hospital within its jurisdiction, does not have the public safety infrastructure in place that is needed to handle a 105-bed respite facility. The City likewise did not have an opportunity to point out that its homeless population has dwindled due to the City's extensive efforts at addressing homelessness within its boundaries, and that therefore such a facility was not needed to serve the local homeless population. Also, the City did not have an opportunity to point out that the proposed project is within 1,000 feet of a middle school, and that it is not safe to put a facility of this nature and of that magnitude in such close proximity to a school. (*Id.*, ¶¶ 32-34.) In short, the City's needs were ignored, which is exactly what the Legislature, and CDSS's regulations, wanted to prevent.

TGI purposefully kept Lincoln in the dark because it learned its lesson from its failed attempt to open a site in Roseville. TGI made the conscious decision that it would not engage the local community in Lincoln and would not make any attempt to seek local support from civic leaders. Instead, TGI decided to conceal its plans from local community stakeholder until after the funds were awarded, and the site was purchased. (*Id.*, ¶¶ 29-31.)

## 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. ) A demurrer is treated as admitting the truth of all material facts properly pleaded on the face of a complaint. (*Serrano v. Priest* (1971) 5 Cal.3d 584, 591.) 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 complaint satisfies this standard where "the complaint as a whole contain[s] sufficient facts to apprise the defendant of the basis upon which the plaintiff is seeking relief." (*Doheny Park Terrace Homeowners Assn. v. Truck Insurance Exchange* (2005) 132 Cal.App.4th 1076, 1099.)

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; *Aubry v. Tri-City Hosp. Dist.* (1992) 2 Cal.4th 962, 967.) If the complaint does not state a cause of action, but there is a "reasonable possibility" that the defect may be cured, leave to amend must be granted. (*Williams v. Housing Authority of Los Angeles* (2004) 121 Cal.App.4th 708, 719.)

## IV. LEGAL ARGUMENT

### A. THE CITY ALLEGES SUFFICIENT FACTS TO ESTABLISH 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.) To obtain relief, a petitioner must demonstrate "(1) no plain, speedy, and adequate alternative remedy exists; (2) a clear, present, ... ministerial duty on the part of the respondent; and (3) a correlative clear, present, and beneficial right in the petitioner to the performance of that duty." (*Id.* at 1325.)

CDSS argues that the City failed to allege facts to establish that "it has a beneficial interest in the enforcement of CDSS's alleged ministerial duty to rescind TGI's grant, or (2) that CDSS is subject to any such ministerial duty." (Demurrer, at pp. 10:19-22.) CDSS is incorrect.

**1. The City alleges standing to bring a writ of mandate claim.**

"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 [internal citation omitted].)

The City sufficiently alleges that it has a special and beneficial interest in the outcome. (See FAC, ¶ 68.) Under the RFA, the City, and in particular "civic leaders", i.e. the City Council, has an interest in receiving notice and providing input to any project within its jurisdiction that applies for CCE Program funding. (*Ibid.*) "Form 6," which is a part of the RFA, mandates that applicants engage "stakeholders", which is defined to include "civic leaders" (i.e. the City Council), and to meaningfully involve them "in the visioning and development of [the] project. (FAC, Ex. "B", pp. 1, 3.) TGI was therefore required to involve the City in the development of the project. TGI was aware of this, as it specifically engaged the Roseville City Council when it initially applied for a 20-bed facility in Roseville. (FAC, ¶ 29, Ex. "C.")

But nothing for the Lincoln City Council when the project site changes to Lincoln? That cannot be. The City had a direct and substantial interest in participating in the development of the project because it will shoulder the public health and safety consequences. For this reason CDSS required that applicants like TGI work with civic leaders to develop these projects. The City was ignored, and it now has a right to bring this action. (See *Monterey Mechanical Co. v. Sacramento*

*Regional County Sanitation Dist.* (1996) 44 Cal.App.4th 1391, 1414 [holding that the plaintiff has the right to require a public entity to follow the proper procedure in awarding a contract].)

CDSS argues that the City does not allege a "special, direct, substantial, and concrete injury." (Demurrer, at p. 11:18.) It contends that the City's "wholly conclusory allegations fail to support any finding of the requisite interest" and that its allegation regarding "all members of the general public" precludes a determination "that the City has any special interest beyond that held in common with the public at large." (*Id.* at 11:22-25.) CDSS is wrong. CDSS cites to *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, where plaintiffs sought a "determination that they are not obligated to comply with their duties under the statutory scheme because the statutory scheme is unconstitutional." (*NORML*, 165 Cal.App.4th at 815.) Specifically, plaintiffs alleged that "because the federal Controlled Substances Act … prohibits possessing or using marijuana for any purpose," the Medical Marijuana Program Act and certain provisions of the California's Compassionate Use Act of 1996 "are unconstitutional under the Supremacy Clause of the United States Constitution." (*Id.* at 808, 812.) *NORML* does not apply because the City is not challenging the constitutionality of AB 172 or of CDSS's regulations, rather it is seeking to compel CDSS to follow with its own published procedures, which in this case function as regulations due to Section 18999.97(k).

In *SJJC*, the Court found that the plaintiff, a project applicant, did not have a beneficial interest in the project because the applicant had submitted a nonconforming proposal. (*SJJC Aviation Services, LLC v. City of San Jose* (2017) 12 Cal.App.5th 1043, 1057.) The City is not an applicant, but is instead a public entity that faces the repercussions of being kept in the dark while this proposed program was developed. The City is an interested party in TGI's application, and CDSS's administration of that application. TGI's proposed medical respite facility at the Lincoln site will offer 105 medical respite beds for homeless individuals. (FAC, ¶ 28.) This is a substantial increase from the proposed 20-bed facility in Roseville, and if constructed it will be

the third largest medical respite facility in California, with the only two larger facilities being located in Los Angeles and San Francisco. (*Ibid.*)

The City does not have the public safety resources to deal with such a facility. (*Id.*, ¶¶ 32-33.) Moreover, a facility of this size is not needed for the small homeless population within Lincoln, and there is no nearby hospital. (*Ibid.*) As such, TGI will have to import many homeless persons in to the City, and City resources will be strained in dealing with this new use. The City's concerns are the exact reason the requirement to engage civic leaders is set forth in the RFA and "Form 6". The City has legitimate public safety concerns, which were utterly ignored.

CDSS argues that some of the City's allegations are too conclusory to demonstrate an injury-in-fact. (Demurrer, at pp. 11-12.) Not so. CDSS ignores the City's allegations that it was not given the opportunity to participate, but should have been. (See e.g., FAC, ¶ 68.) CDSS ignores the allegation that TGI is trying to open the third largest medical respite facility in the state in a small town with limited public resources available to it. This is not a speculative injury. The City has alleged that it will be overburdened by the project. (See *City of Fillmore v. Board of Equalization* (2011) 194 Cal.App.4th 716, 734.) Even if CDSS is correct, which it is not, the City can easily cure this deficiency with more facts as to why locating the third largest medical respite center for the homeless in the state in a small town with a population of only 52,000 people is bad for public safety, and it will cause significant harm to the City.

Finally, CDSS argues that the City "does not allege that it is a third-party beneficiary to TGI's grant of funding agreement." (Demurrer, at p. 12:11-12.) CDSS cites *H.N. & Frances C. Berger Foundation v. Perez* (2013) 218 Cal.App.4th 37 and *McDonald v. Stockton Met. Transit Dist.* (1973) 36 Cal.App.3d 436, 443 (*McDonald*) to support its argument that the City cannot enforce a contractual obligation. (Demurrer, at p. 12.) This argument is a red herring. The City is not trying to enforce a contractual obligation, rather it is trying to compel CDSS to enforce its own regulations and program requirements.

Should the Court find that the City failed to allege a beneficial interest, then the City requests leave to amend to more fully and specifically allege facts showing a public interest exception to the beneficial interest requirement. "[W]here the question is one of public right and

the object of the mandamus is to procure the enforcement of a public duty, the [petitioner] need not show that he has any legal or special interest in the result, since it is sufficient that he is interested as a citizen in having the laws executed and the duty in question enforced." (*Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155, 166.) This exception "promotes the policy of guaranteeing citizens the opportunity to ensure that no governmental body impairs or defeats the purpose of legislation establishing a public right." (*Ibid.*) The City has alleged, and if needed can more fully allege, that it has an interest in CDSS applying regulations in a uniform manner when determining the eligibility of an application. (See e.g., *V.S. v. Allenby* (2008) 169 Cal.App.4th 665, 670 ["There is no question that the proper determination of eligibility requirements . . . is a matter of public right."].) It is unfair to other applicants, who have engaged civic leaders to develop projects that the local community can support, when TGI intentionally ignored this requirement in Lincoln. The demurrer should be overruled.

**2. The City alleges CDSS's ministerial duty to rescind TGI's grant.**

CDSS argues that the FAC fails to establish its ministerial duty to rescind TGI's grant award. (Demurrer, at p. 13:7-8.) This argument is without merit. The law provides that "[a] public entity 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* (2023) 91 Cal.App.5th 1313, 1325; *Citizens for Amending Proposition L v. City of Pomona* (2018) 28 Cal.App.5th 1159, 1186; *Gregory v. State Bd. of Control* (1999) 73 Cal.App.4th 584, 595.) This proposition extends to a public entity's own published procedures. (*Galzinski v. Somers* (2016) 2 Cal.App.5th 1164, 1171.) Indeed, "the duty of [the public agency] officials to carry out its obligations is of ministerial character." (*Glendale City Employees' Assn., Inc. v. City of Glendale* (1975) 15 Cal.3d 328, 345.)

CDSS implemented rules and regulations when it published the RFA pursuant to Section 18999.97(l)[1]. (FAC, ¶ 11.) The RFA unambiguously states, "To be eligible to receive funding,

[1] Welfare and Institute Code section 18999.97(l) states, "Notwithstanding the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), the department may implement and administer this chapter through all-county letters *or similar instruction* that *shall have the same force and effect as regulations*." (Welf. & Inst. Code, § 18999.97(l) [emphasis added].)

projects *must* meet the following requirements as they relate to the applicant and project types." (FAC, Ex. "A", § 3.4 [emphasis added].) One requirement here is engagement, including "documentation of active community engagement and support." (*Ibid.*) CDSS admits this. (See Demurrer, at p. 7 ["Applicants were required, among other things, to "provide[] documentation of active community engagement and support, particularly with people with lived experience."].)

TGI provided no such documentation for the project in Lincoln, and therefore did not qualify for the award. AHP, which was CDSS's agent, confirmed this. (FAC, Ex. "F," ¶ 8.) CDSS and its administrator may only consider qualified applications, and is under a ministerial duty to rescind the grant award because the application did not qualify. (See *Galzinski*, *supra*, 2 Cal.App.5th at 1173 [finding that defendants had a ministerial duty arising from the mandatory terms in the department's published procedure].) CDSS has failed to comply with its procedure, and thus mandamus is appropriate in this matter. (See *CV Amalgamated LLC v. City of Chula Vista* (2022) 82 Cal.App.5th 265, 283 ["The City's failure to follow its own procedures provides the basis for the issuance of a traditional writ of mandate."].)

CDSS argues that the City does not allege a ministerial duty. It argues that the "RFA does not require CDSS to demonstrate support from City officials" and so "the City cannot establish that CDSS was obliged to reject TGI's grant application and now has a ministerial duty to rescind its grant award." (Demurrer, at p. 13:26-28.) CDSS ignores the plain language of the RFA, which states, "To be eligible to receive funding, projects *must* meet the following requirements as they relate to the applicant and project types." (FAC, Ex. "A," § 3.4 [emphasis added], see also Ex. "B," [Form 6, which defines "stakeholders" who must be engaged to include "civic leaders."].) Applicants have no discretion to omit required documents, nor may CDSS and its administrator overlook an applicant's failure to meet the requirements. (*Ibid.*).

CDSS cites Section 18999.97(l), and argues that the statute precludes construing the community engagement provision to require a showing of support city officials. (Demurrer, at p. 14:12-15.) CDSS fails to acknowledge the temporal aspect of the statute.

Section 18999.97, subd. (l) states:

> Any project that receives funds pursuant to this section shall be deemed consistent and in conformity with any applicable local plan, standard, or requirement, and any applicable coastal plan, local or otherwise, shall be allowed as a permitted use, within the zone in which the structure is located, shall not be subject to a conditional use permit, discretionary permit, or any other discretionary reviews or approvals, and shall be deemed as a ministerial action under Section 15268 of Title 14 of the California Code of Regulations.

This subsection provides that projects that have already been awarded funds (which can only include applications that complied with the RFA requirements) are exempt from local land use laws. The statute says nothing about what is needed to qualify in the first place, which the Legislature authorized CDSS to determine. CDSS determined that local engagement and support are a prerequisite for qualifying for an award. While the Legislature and CDSS may prohibit municipalities from using land use authority to stop qualified projects, it is clear from the RFA that municipalities. and local interests therein, must be involved in the process of determining who is qualified in the first place. TGI is not a qualified applicant.

Finally, CDSS argues that "[t]he City's reading of the RFA and proposed writ would, in effect, grant local officials a veto over CCE-funded projects." (Demurrer, at p. 14:16-17.) This is incorrect. The RFA does not give cities a veto, rather it gives them a voice, and a seat at the table. The RFA specifically requires applicants to work with cities to develop projects that can be acceptable to everyone. The City was never given an opportunity to participate in the process. (See FAC, ¶ 86.) The City's reading of AB 172 and the RFA is the only logical reading. It should have been involved in the process, but it wasn't. As such, TGI is not qualified.

CDSS also argues that there is no ministerial duty because the funding agreement gives TGI the opportunity cure any deficiency, and it gives CDSS discretion to determine if a project participant has cured the deficiency. (Demurrer, at p. 14-15.) This misstates what the City is arguing in this case. CDSS and its third party administrator could not have entered into an agreement with TGI before funds were awarded, and that award should not have happened because TGI did not qualify. The ministerial duty arise from the RFA, not the contract.

CDSS also argues that the City fails to establish "any statute or other source of law" requiring it to rescind the grant award. (Demurrer, at p. 15:28; 16:1.) It attempts to distinguish the RFA from its all-county letter by arguing that the "RFA and Program Agreement [ ] do not provide operational and administrative instruction to implementing counties and entities. (*Id.* at 16:22-23.) CDSS's attempt at drawing a distinction fails.

In AB 172, the Legislature informs that any "similar instruction" to an all-county letter has the force and effect of regulation. (Welf. & Inst. Code, § 18999.97(l).) This grant of regulatory power to CDSS here is incredibly broad. The Legislature is essentially telling CDSS that all of its instructions to applicants and participants are to be deemed regulations, which must be complied with. This makes sense. The Legislature has authorized $860 million of taxpayer money to be given to private grantees like TGI to build senior housing facilities. The Legislature would not authorize such a program with no administrative or regulatory guideposts. It could not have intended for there to be no requirements for this program. CDSS's interpretation leads to an absurdity. There has to be regulatory guidance for a program of this size, and the RFA is it. The only logical conclusion is that the RFA has the force of regulation, and applicants must comply in order to qualify to receive a grant award.

CDSS also argues that its determinations as to the sufficiency of TGI's grant application are "acts leading up to the award" of funding, and thus are legislative and discretionary in character. (Demurrer, at p 17:18-20.) This argument mischaracterizes CDSS's duty. CDSS has a duty to determine whether applicants, such as TGI, are eligible for funding based on identified criteria in the RFA. This is ministerial. (See e.g., *International Brotherhood of Teamsters, Local 848 v. City of Monterey Park* [reversing superior court's sustaining of demurrer and finding that a public agency could not award preference to a bidder who failed to submit a required declaration, which was a prerequisite for the program award].)

The cases CDSS cites are distinguishable. In *In Fair Education Santa Barbara v. Santa Barbara Unified School Dist.* (2021) 72 Cal.App.5th 884, petitioner brought a petition for writ of mandate to enforce a public bidding procedure. (*Fair Education Santa Barbara*, 72 Cal.App.5th at 891.) The Public Contract Code at issue in that case provides exceptions from the bidding

process, which involve a public entity making a decision as to whether an exception applies. (Pub. Contract Code, § 20111(d) ["This section shall not apply to professional services or advice, insurance services, or any other purchase or service."].) In contrast, there are no exceptions for the requirement of community engagement, and there is no discretion to ignore it. Similarly, the regulation in *Joint Council of Interns & Residents v. Board of Supervisors* (1989) 210 Cal.App.3d 1202 is different than the regulation here because that regulation provided discretion by authorizing "the county to contract for personal services which might otherwise be provided by civil service employees 'when the Board of Supervisors finds that [the] work can more economically or feasibly be performed by independent contractors.'" (*Joint Council of Interns*, 210 Cal.App.3d at 1207 [citing Proposition A].) On its face, such a regulation provides for discretionary decision-making. No such discretion exists here.

### B. THE CITY ALLEGES SUFFICIENT FACTS TO BRING A DECLARATORY RELIEF CLAIM.

The City's claim for a declaration that TGI failed to comply with the RFA does not fail because it is "duplicative of the predicate for its claim for a writ of mandate." (Demurrer, at p. 18:1-4.) As explained previously, the City sufficiently brings a writ of mandate claim, and as explained below, the City sufficiently brings an independent declaratory relief claim.

"An action for declaratory relief lies when the parties are in fundamental disagreement over the construction of particular legislation, or they dispute whether a public entity has engaged in conduct or established policies in violation of applicable law." (*Alameda County Land Use Assn. v. City of Hayward* (1995) 38 Cal.App.4th 1716, 1723.) Privity of contract between the plaintiff and defendant is not a requirement for a declaratory relief claim. (*Siciliano v. Fireman's Fund Ins. Co.* (1976) 62 Cal.App.3d 745, 753 ["Section 1060 does not require the existence of a legal instrument between parties as a predicate for declaratory relief."].)

The City has stated a claim for declaratory relief because the City and CDSS dispute the construction of legislation and implementing regulation, as well as the resulting program funding agreement, which by its plain language adopts the regulatory requirements of the RFA. (FAC, ¶¶ 65, 73-80, Ex. "H," Art. 9.1.) The parties also dispute whether TGI has engaged in conduct that

violates applicable law (i.e., AB 172 and the RFA). (See FAC, ¶ 6; Demurrer, at pp. 13-17.) Accordingly, the City has sufficiently alleged a declaratory relief claim.

CDSS argues that the City has not stated a cause of action because it has not alleged that it is a party to the agreement or the RFA. (Demurrer, at pp. 18-19.) CDSS is incorrect. In *Siciliano v. Fireman's Fund Ins. Co.* (1976) 62 Cal.App.3d 745, the Court rejected defendant's argument that plaintiff could not sue for declaratory relief simply because there was no privity of contract between the parties. The Court found that plaintiff, the former lawyer of a co-defendant, had a perfected a lien in certain litigation, and that when the case settled and funds were paid by defendant insurance company, plaintiff had an interest in the settlement and could proceed with a declaratory relief action against the defendant insurance company, even though it was not a party to the retainer agreement. (*Id.* at 753.) The Court found that plaintiff, as the former lawyer of co-defendant, was an equitable assignee of settlement funds paid by defendant, and thus had stated a cause of action for declaratory relief, even without privity of contract. (*Ibid*.)

In *Sperry & Hutchinson Co. v. California State Bd. of Pharmacy* (1966) 241 Cal.App.2d 229, plaintiff trading company sued defendant, a state agency, for declaratory relief because it had adopted a regulation that prohibited pharmacists from giving trading stamps, which were critical to plaintiff's business. The Court found plaintiff's interest in the adoption and application of the regulation to be "obvious and direct," and thus the Court held that plaintiff had stated a cause of action for declaratory relief. (*Id.* at 233 [" We believe the allegations of respondent's complaint show that it is directly affected by the board's regulation, and hence that respondent has standing to challenge its validity."] While the City is not challenging the validity of the RFA, the City is certainly challenging how CDSS has applied it in this case, as well as CDSS's interpretation of same. As such, the City states a cause of action for declaratory relief.

CDSS also argues that the City's claim does not involve a proper subject of declaratory relief because the City "improperly seeks (1) a declaration regarding an alleged past violation, rather than resolution of any present controversy between the parties to the grant, and (2) to control CDSS's past discretion in deciding to award a grant to TGI." (Demurrer, at p. 18:11-18.) This is incorrect. TGI's failure to comply with the regulations and its breach of the program

funding agreement are not just past acts, rather they are ongoing. TGI still has not yet opened the Lincoln site for patients because the facility does not meet Building Code requirements. (FAC, ¶ 42.) This is fluid and ongoing, and declaratory relief is proper.

Also, even if TGI's failure to comply with the regulations is a past act, which it isn't, the mootness exception for public interest applies. '"[I]f a pending case poses an issue of broad public interest that is likely to recur, the court may exercise an inherent discretion to resolve that issue even though an event occurring during its pendency would normally render the matter moot.'" (*Gilb v. Chiang* (2010) 186 Cal.App.4th 444, 460 [citing *Edelstein v. City and County of San Francisco* (2002) 29 Cal.4th 164, 172].) "*Edelstein* thus applied to a declaratory relief action the familiar rule that a court may decide a moot case where the issue is one of public interest capable of repetition yet likely to evade review." (*Ibid.*)

CDSS has awarded $570 million of the $860 million earmarked for CCE Program funds. (FAC, ¶ 8.) If CDSS believes that there are no regulations, and that applicants do not have to comply with the basic requirements of the RFA in order to receive millions of taxpayer dollars, which seems to be CDSS's position, then there is absolutely an issue of broad public interest for which a declaration is necessary. If nothing else, the Court needs to provide guidance (and guideposts) for the $290 million remaining in the fund. The Court should overrule the demurrer.

## 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: January 13, 2025

BEST BEST & KRIEGER LLP

By: _____
CHRISTOPHER M. PISANO
PATRICIA URSEA
CINDY Z. SHI
Attorneys for Plaintiff/Petitioner
CITY OF LINCOLN

**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 January 13, 2025, I served a copy of the within document(s):

**CITY OF LINCOLN'S OPPOSITION TO CALIFORNIA DEPARTMENT OF SOCIAL SERVICES' DEMURRER**

☐ 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.

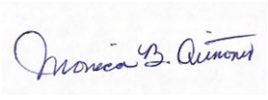
☒ by transmitting via e-mail or electronic transmission the document(s) listed above to the person(s) at the e-mail address(es) set forth below.

*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 January 13, 2025, at Ontario, California.



Monica Quinones

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