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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF PLACER

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

15 Petitioners and Plaintiffs,

16 vs.

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

20 Respondents and Defendants.
21

Case No. S-CV-0053711

**THE GATHERING INN'S NOTICE OF
DEMURRER AND DEMURRER TO CITY
OF LINCOLN'S FIRST AMENDED
COMPLAINT**

Date: February 11, 2025

Time: 8:30 a.m.

Dept.: 42

Judge: The Hon. Trisha J. Hirashima

Action Filed: September 30, 2024

Trial Date: Not yet set

23 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

24 **PLEASE TAKE NOTICE** that on February 11, 2025, in the above-entitled Court located
25 at 10820 Justice Center Drive, Roseville, California, 95661, Respondent and Defendant The
26 Gathering Inn ("TGI") shall bring for hearing its Demurrer to the First Amended Complaint
27 ("FAC") filed by Petitioner and Plaintiff the City Of Lincoln (the "City").

28 TGI's Demurrer is based on this Notice and Demurrer, the Memorandum of Points and

1 Authorities in Support of the Demurrer, the Declaration of Thomas B. Mayhew in Support of the
2 Demurrer, the Request for Judicial Notice in Support of the Demurrer, the pleadings and papers on
3 file in this action, and such other matters as may be presented prior to or at the hearing on the
4 Demurrer.

5 In compliance with Code of Civil Procedure § 430.41, counsel for all parties held a
6 videoconference on November 19, 2024 and December 19, 2024 to discuss the grounds for this
7 demurrer but could not reach an agreement to resolve the objections to the SAC. Declaration of
8 Thomas B. Mayhew in Support of TGI's Demurrer to the City's First Amended Complaint, ¶ 3.

9
10 **DEMURRER**

11 **Demurrer to Second Claim for Relief (Violation of California
Business and Professions Code Section 17200, *et seq.*)**

12 1. TGI demurs to the Second Claim for Relief for Violation of California Business
13 and Professions Code Section 17200, *et seq.* pursuant to Code of Civil Procedure § 430.10(e),
14 because the FAC fails to state facts sufficient to constitute a cause of action. Under Section 17204
15 of California Business and Professions Code Section, the City of Lincoln's City Attorney does not
16 have authority to prosecute a 17200 Unfair Practices Act claim in the name of the People of the
17 State of California.

18 **Demurrer to Fourth Claim for Relief (Declaratory Relief)**

19 2. TGI demurs to the Fourth Claim for Declaratory Relief pursuant to Code of Civil
20 Procedure § 430.10(e), because the FAC fails to state facts sufficient to constitute a cause of
21 action. The City does not allege that an actual controversy exists between it and TGI based on
22 legal rights and duties arising under a contract and thus fails to allege a concrete dispute that is
23 ripe for adjudication. *See* Code Civ. P. § 430.10(a). The City seeks a declaration regarding past
24 acts, which are not a proper subject for declaratory relief. The Fourth Claim for Declaratory
25 Relief is also redundant to the substantive causes of action (the Second Claim for Violation of
26 California Business and Professions Code Section 17200, *et seq.* and the Fifth Claim for Relief for
27 Deceit/Concealment).

1 **Demurrer to Fifth Claim for Relief (Deceit/Concealment (Civ. Code §§ 1709, 1710))**

2 3. TGI demurs to the Fifth Claim for Relief for Deceit/Concealment pursuant to Code
3 of Civil Procedure § 430.10(e), because the FAC fails to state facts sufficient to constitute a cause
4 of action. The City fails to plead any actionable misrepresentation or fraudulent omission,
5 reliance, or damages fails to support a claim for fraud. *See* Code Civ. P. § 430.10(e).

6 **Demurrer to Sixth Claim for Relief (Fraud and Concealment (Tort of Another Doctrine))**

7 4. TGI demurs to the Sixth Claim for Relief for Fraud and Concealment (Tort of
8 Another Doctrine) pursuant to Code of Civil Procedure § 430.10(e), because the FAC fails to state
9 facts sufficient to constitute a cause of action. The Sixth Claim for Relief for Fraud and
10 Concealment (Tort of Another Doctrine) is redundant to the Fifth Claim for Relief for
11 Deceit/Concealment. “Tort of another” doctrine is not an independent cause of action but a theory
12 of economic recovery. Even if “tort of another” doctrine was a cause of action, the City’s claim
13 would fail because the City cannot seek damages for fraud against a third party, based on the third
14 party’s reliance rather than its own.

15
16 Dated: December 20, 2024

FARELLA BRAUN + MARTEL LLP

17
18 By: 

Thomas B. Mayhew

19 Attorneys for Respondent and Defendant
20 THE GATHERING INN
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