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THE GATHERING INN

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,

Petitioners and Plaintiffs,

vs.

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,

Respondents and Defendants.

Case No. S-CV-0053711

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF THE GATHERING INN'S DEMURRER TO CITY OF LINCOLN'S SECOND AMENDED COMPLAINT

Date:	October 7, 2025
Time:	8:30 a.m.
Dept.:	42
Judge:	The Hon. Trisha J. Hirashima
Action Filed:	September 30, 2024
Trial Date:	Not yet set

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The Gathering Inn ("TGI") submits this brief in support of its demurrer to the Second Amended Complaint ("SAC") filed by the City of Lincoln (the "City").

I. INTRODUCTION AND SUMMARY OF ARGUMENT

After the Court's July 11 ruling sustaining the demurrer with leave to amend, the City filed a second amended complaint. But even with a complaint that is more than twice as long, aided by ten months of discovery and investigation, the City still fails to allege facts entitling it to relief:

- The City Attorney for Lincoln is still only a City Attorney, of a city with less than 750,000 residents, and not a City Prosecutor under the statutes that define these terms, meaning the City still lacks authority to bring its 17200 claim.
- There is still no statute or regulation imposing a duty to disclose, or even grant application instructions that required TGI to contact the City before applying for grant funding. Nor are there alleged facts showing non-speculative harm.
- The City's new theory that TGI committed fraud shortly before applying for the grant, by meeting with and voluntarily informing City Councilmember Holly Andreatta about the "possibility" of a facility in Lincoln, does not state a claim, because it was the truth and there was no duty to tell her more. At the time, the grant funding had not been obtained, and the State had not yet indicated to TGI that it was possible to seek funding for the Lincoln site instead of the Roseville site.
- The City's declaratory relief and "tort of another" claims fail as before.

The Court should sustain the demurrer without leave to amend.

II. THE 17200 CLAIM SHOULD BE DISMISSED BECAUSE THE CITY ATTORNEY IS A CITY ATTORNEY, NOT A CITY PROSECUTOR.

Although the City's amended claim under Business & Professions Code section 17200 (the "17200 claim") adds new allegations about City Attorney Kristine Mollenkopf's part-time prosecutorial duties (*see* SAC ¶¶ 186-188), Ms. Mollenkopf still is not a "full-time city prosecutor" with the right to bring a 17200 claim because she has other duties too, and moreover does not meet Government Code section 72193's definition of "city prosecutor." *See* Request for Judicial Notice ("RJN") Ex. A, Lincoln Municipal Code § 2.17.040(1)-(7) (listing city attorney's non-prosecutorial duties); *see also* July 11, 2025 Order at 7 ("The FAC's allegations that Counsel Mollenkopf works full time as a city attorney with duties other than prosecuting on behalf of the People of the State of California fails to allege she is a 'city prosecutor' within the meaning of

Government Code section 72193.").

The City alternatively contends that even if its 17200 claim for damages is dismissed due to lack of a full-time city prosecutor, the City may bring a 17200 claim for injunctive relief under section 17203. SAC ¶ 181. But section 17204 provides that its standing requirements apply to all "[a]ctions for relief pursuant to this chapter" (including actions for injunctive relief), and that for a city such as the City of Lincoln, such a claim "shall be prosecuted ***exclusively*** . . . by a city prosecutor in a city having a full-time city prosecutor." (Emphasis added.) Section 17203 does not change the result. The final sentence of section 17203 was added by Proposition 64 in 2004 to "prohibit[] private attorneys from filing lawsuits for unfair competition where they have no client who has been injured in fact." *Hale v. Sharp Healthcare*, 183 Cal. App. 4th 1373, 1382 n.3 (2010) (quotation marks and citation omitted). This final sentence provides that private plaintiffs may pursue claims on behalf of others "only if the claimant meets the standing requirements of Section 17204" (*i.e.*, "has suffered injury in fact and has lost money or property as a result of the unfair competition"); this sentence does not modify section 17204's "exclusive[]" list of which government officials can bring "[a]ctions for relief pursuant to this chapter." *Id.*; *see County of Santa Clara v. Astra U.S., Inc.*, 428 F. Supp. 2d 1029, 1033-34 (N.D. Cal. 2006) (rejecting argument that county counsel could sue based on Proposition 64 amendment to section 17203 without regarding to limitations in section 17204; intent of Proposition 64 was to "maintain" governmental authority to sue for general public, not change section 17204 limits on governmental plaintiffs).

III. THE DECEIT AND CONCEALMENT CAUSE OF ACTION SHOULD BE DISMISSED BECAUSE THERE WAS NO DECEIT AND CONCEALMENT.

The fraud claim fails because (A) TGI had no duty to disclose its application to the City, (B) there was no fraud in the conversation with Holly Andreatta, and (C) the City's "harm" is speculative and conclusory, even after amending the claim. The demurrer should be sustained.

A. TGI Was Not Under A Common Law, Statutory, Or Even Regulatory Duty To Disclose Its Grant Application To The City.

The City claims that it is a victim of fraud because "TGI had a duty to reach out to . . . the

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City Council and top City staff, and to seek and obtain their support for the proposed project at the Lincoln Site[.]" SAC ¶ 217; *see also id.* ¶¶ 47, 233 (similar allegations regarding alleged duty). These allegations are conclusions of law, and the Court need not accept them for purposes of demurrer. Instead, as *Rattagan v. Uber Technologies, Inc.*, 17 Cal. 5th 1 (2024) explains:

> A duty to disclose a material fact [for purposes of a fraud/deceit claim] can arise if
>
> (1) it is imposed by statute;
>
> (2) the defendant is acting as the plaintiff's fiduciary or is in some other confidential relationship with plaintiff that imposes a disclosure duty under the circumstances;
>
> (3) the material facts are known or accessible only to defendant, and defendant knows those facts are not known or reasonably discoverable by plaintiff (i.e., exclusive knowledge);
>
> (4) the defendant makes representations but fails to disclose other facts that materially qualify the facts disclosed or render the disclosure misleading (i.e., partial concealment); or
>
> (5) defendant actively conceals discovery of material fact from plaintiff (i.e., active concealment).
>
> Circumstances (3), (4), and (5) presuppose a preexisting relationship between the parties . . . [and] must necessarily arise from direct dealings between the plaintiff and the defendant; it cannot arise between the defendant and the public at large.

Id. at 40-41 (citations and quotations omitted; formatted for readability). As the Court previously held, the City has not alleged "a pre-existing relationship between the City and The Gathering Inn," (July 11, 2025 Ruling at 8-9), and no allegations were added in the SAC to show such a relationship. SAC ¶¶ 72; 110 (City not the seller of the property, or the funder of the grant).

The City does not allege or cite a duty to disclose "imposed by statute." The only statutory reference in the complaint is to Cal. Welfare & Institutions Code section 18999.97, which does not impose a duty to disclose on private parties, even those applying for grant funding. Section 18999.97's only language directed at grant *recipients* is that they should prioritize applications from qualified residents (*see* 18999.97(c)(2)(B)); it does not impose any requirements on grant *applicants* at all. The Court could stop here: the California Supreme Court has not said that a duty to disclose can arise as a matter of state agency regulations, and the City points to no statute that imposed such a duty on TGI. *Rattagan*, 17 Cal. 5th at 40.

But even if a regulation could impose a duty to disclose, the City's allegations (1) do not show that the application instructions are a regulation, or (2) that the application instructions were violated. These are issues the Court can resolve on demurrer because the existence of a legal duty, and issues of legal interpretation (e.g., interpretation of a document, and whether it constitutes a regulation), are questions of law for the Court. *Quigley v. First Church of Christ*, 65 Cal. App. 4th 1027, 1033 (1998); *S. Cal. Edison Co. v. Pub. Utils. Comm'n*, 85 Cal. App. 4th 1086, 1096 (2000).

1. As the Court previously held, the Joint Request for Applications is not an "all-county letter or similar instruction." The ACWDL describing a different grant program does not change this result.

As the Court has previously concluded, the Joint RFA itself isn't an all-county letter or similar instruction. July 11, 2025 Order at 14:20-23 ("[T]he Joint RFA and funding agreement are not provisions of law as they are not 'all-county letters or similar instruction' within the meaning of Cal. Welfare & Institutions Code section 18999.97(k).").[1] As the SAC now explains, and the request for judicial notice reinforces, there is a web page where one can find CDSS's all-county letters and similar instructions. *See* SAC Ex. A; RJN Ex. B. The Joint RFA is not on this page. Instead, what is found there are formal administrative letters and notices: All-County Letters, All County Welfare Director Letters, All Tribal Leaders Letters, and Child Care Bulletins. *See* SAC ¶¶ 24-28; *see also* SAC Ex. A; RJN Ex. B. The Joint RFA does not follow the format of these letters, some of which expressly state that they are intended to have regulatory effect by the department under a similarly phrased grant of authority. *Compare* SAC Ex. B with RJN Ex. C.[2]

[1] Although the Court reached this conclusion in context of the CDSS's demurrer with the benefit of CDSS's Request for Judicial Notice, this conclusion applies to TGI's present demurrer. TGI's concurrently filed Request for Judicial Notice ("RJN") provides the information necessary for the Court to reach this conclusion here—including the CDSS website, which shows that there was no all-county letter or similar instruction about the Capital Expansion funding, and that the only letter relating to the CCE Program is the ACWDL notice of availability about the Preservation funding.

[2] *See, e.g.*, Cal. Welf. & Inst. Code § 10206(a) (granting CDSS authority to "implement . . . by means of all-county letters, bulletins, or similar written instructions . . . until regulations are adopted . . . [with] the same force and effect as regulations."); RJN Ex. C (Child Care Bulletin No. 22-30, stating that certain changes in determining income eligibility for child care programs are "effective immediately" and referring to grant of statutory authority giving the guidance regulatory effect).

Trying to escape the Court's ruling that the Joint RFA and funding agreement are not provisions of law, the City now points to an All-County Welfare Director Letter ("ACWDL") dated June 10, 2022, and contends that because that ACWDL had a reference and hyperlink to the earlier Joint RFA, the Joint RFA was retroactively converted into a "similar instruction" having the "same force and effect" as a regulation, and that this imposed a duty to disclose. SAC ¶ 51; *see also* SAC ¶¶ 24-29, 48-53, 59, and 196(1) (allegations relating to the ACWDL/18999.97(k) argument), SAC Exs. F and G (June 2022 ACWDL and page used to navigate to it, through the amended December 2022 version). The Court should reject this convoluted argument.

First, the ACWDL applies only to County Welfare Directors, not private non-profits like TGI, who could not apply for the funding described in the ACWDL. *See* SAC Ex. F at 1 (ACWDL is directed to "All County Directors" and states: "The purpose of this letter is to notify all County Directors of noncompetitive allocations available for all counties with [certain] care facilities."). Second, the ACWDL "Notice of Funding Availability" is about a different grant program not at issue here: CCE "Preservation" funding. *Id.* (distinguishing between "non-competitive" "Preservation Funding" of $195 million and "competitive" "Capital Expansion" funding of $570 million). Third, far from establishing rules for CCE Capital Expansion eligibility, the ACWDL says that it is not doing so, and that the eligibility for that program was drafted earlier and is to be found elsewhere, expressly making this distinction in bold: "**The timeline, eligible uses, program guidelines, and eligibility for the CCE Capital Expansion Program are distinct from the CCE Preservation Funds outlined in this letter.**" SAC Ex. F at p. 2.[3] The reference in the ACWDL to the CCE Joint RFA is to distinguish the rules for that program from the Preservation Funds program, not to adopt the Joint RFA as a regulation.

[3] The Joint RFA and the City's allegations confirm that the eligibility rules for the Preservation program, established by the June 2022 ACWDL, are separate from eligibility rules in the Joint RFA for the Capital Expansion program. *See* SAC Ex. C (Joint RFA) at p. 4-5 (distinguishing between "Capital Expansion" and "Preservation" funds; Preservation funds "will be provided . . . [through a] process that will be announced in January 2022, **separate from this joint RFA**."); SAC Ex. B (CCE Program Update) at p. 3 (same); SAC ¶ 49 (as of June 2022, when the ACWDL was issued, "there were no published rules and procedures for the CCE Preservation projects, because the Joint RFA was only for applications for CCE Capital Expansion projects.").

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2. The Joint Request for Applications did not require TGI to communicate with the City, but instead only to explain how it had involved stakeholders.

Even if the Joint RFA was a statute, or even a regulation, the Court should nevertheless dismiss the fraud claim because the Joint RFA does not say applicants are required to seek or obtain approval from the cities where their projects are located. The City's argument that Form 6, or section 3.4, created a duty to seek and obtain City support is incorrect as a matter of law.

The Joint RFA did not expressly impose a requirement to contact the City, local school district, or anyone else. The only "must" under the "Approval and engagement" heading was for the BHCIP program (which is not at issue): for that program, the applicant "must include a letter of support from their county behavioral health agency [or tribal board, if applicable]." SAC Ex. C at p. 16 (§ 3.4). Community engagement was otherwise described broadly, using permissive and non-limiting language; the only requirement relating to community engagement was that the applicant "provides documentation" of what it had done. *Id.* ("Applicant provides documentation of active community engagement and support, particularly with people with lived experience.").

Form 6, the "Community Engagement Form," contained "Instructions" to "Explain how stakeholders . . . have been meaningfully involved in the visioning and development of this project," with spaces for information such as dates, the "Target Group," and "# of Participants." SAC Ex. D at p. 1. The reference to stakeholders is followed by a parenthetical introduced with "e.g.," showing that the list of stakeholders is to illustrate examples, not to require that all categories of stakeholders be contacted. *Id.*[4]; *see also* Black's Law Dictionary (12th ed. 2024) (defining "e.g." as "[f]or example"). To the extent that this sentence instructs an action, it is only a duty to truthfully report what had already been done with respect to community engagement: a duty to "explain." Reporting a less-than-desirable community engagement constitutes compliance, not a violation, of the instruction. If the form, or the Joint RFA more generally, had been intended to impose an affirmative duty to contact someone in the City government, it would not have commanded the applicant using only the verbs "explain" or "provid[e] documentation," would not

[4] The City incorrectly replaces "i.e." for "e.g." when referring to this text. SAC ¶¶ 199, 206, 217.

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have used "e.g." to refer to "civic leaders," and would instead have used a verb like "notify" or phrasing like the "must include a letter of support" requirement for the BHCIP program.

This interpretation is consistent with the purpose of the form and application, including as illustrated by a prior grant program ("HomeKey") allegedly used as a model.[5] The Joint Request for Applications is just what its title says: it is a "request," not a command, and applicants are free to make both successful and unsuccessful pitches for their projects. The consequence of a poor showing is to be denied funding, not a civil suit by third parties who think the applicant should have done a better job in the process of developing its application. As the HomeKey document illustrates, grant administrators can take into account different levels of community engagement in the overall assessment of the request for funding. SAC Ex. E at pp. 2-3. Under the HomeKey scoring methodology, TGI's application—which documented the need for expansion of the program that had been successfully providing medical respite in Placer County since 2009, support from the major regional hospital in Placer County (Sutter Health in Roseville), the Cal-AIM Medicaid administrator, and another major health plan, and that the program would be run by the same non-profit that administers the county's emergency shelter services—would arguably have scored quite well. But regardless of how TGI would have scored under the HomeKey rubric, Form 6 required TGI only to describe what it had done – to "[e]xplain how stakeholders . . . have been meaningfully involved . . ." The SAC confirms that TGI provided this documentation, including its letters of support from Sutter, Blue Cross, and California Health and Wellness, as well as a description of its years of experience running the medical respite program at a different location in Placer County. SAC ¶ 65 & Ex. J; SAC ¶ 99 & Ex. N at p. 1. CDSS could then assess TGI's application to make its discretionary determination of whether the overall application was

[5] The City contends that the prior HomeKey program documents should be used to interpret Form 6 at SAC ¶¶ 34-37, 44-47, and 199. However, the Court should not find that the Project Homekey scoring system, or any subjective intentions of the drafters of the Joint RFA relating to it, impose a fraud duty on The Gathering Inn. First, The Gathering Inn did not apply for a Project Homekey grant, because it was not a government agency eligible to do so. Imposing a fraud duty for not knowing about the agency drafters' intentions in the Joint RFA, whether informed by Project Homekey or not, would be an unwarranted expansion of fraud liability.

good enough to deserve funding. *See* August 11, 2025 Order at 2-3 ("The City argues . . . the third-party administrator's evaluation of CCE Program applications was purely an administrative function without any discretionary decision-making process. A review of the Joint RFA, the CCE statute, and the unredacted portions of the documents at issue shows that is not the case.").

The City also argues that Form 6 should be interpreted as requiring the City's support, based on a February 2023 email from an employee of the grant administrator. But the email isn't a statute, a regulation, an all-county letter, or even part of the Joint RFA, and in any event it still doesn't have any language requiring the City to be contacted. SAC ¶ 95 & Ex. M at p. 1 (requesting "[d]escription of community engagement and local support").[6] Thus, even if the Joint RFA or Form 6 could impose a legal duty on TGI (which they do not, as described above), they at most required TGI to explain what engagement and support had occurred. The Joint RFA or Form 6 cannot be read to impose a duty to contact the City, School District, or the general public before applying for CCE Capital Expansion grant funding.

B. Telling Lincoln City Council Member Holly Andreatta Over Breakfast That There Was A Possibility Of A Facility In Lincoln Was Not Fraud.

Discovery to date has exposed that the City's central claim – that the City was "kept . . . in the dark on [TGI's] plan to open a site in the City of Lincoln" (FAC ¶ 30; *compare also* SAC ¶ 220 ("TGI never notified anyone within the City of Lincoln . . . of its plans") is factually inaccurate. And so the City now pleads "in the alternative . . . TGI disclosed some facts regarding its plan to open a medical respite center in Lincoln to Plaintiff . . . ." SAC ¶ 221. The City now admits that TGI met with Councilmember Holly Andreatta of the Lincoln City Council, a few weeks prior to applying for funds from CDSS for the Lincoln location, in order to ask her views about the "possibility of opening a medical respite facility in Lincoln." SAC ¶¶ 86, 88. The City

[6] The City also ignores that TGI asked whether it was required to show city support and was told there was no such requirement. *See* RJN Ex. D (TGI's Chief Operating Officer asks whether "letters of support from the various types of organizations listed in the RFA [are] required" including specifically from the city where the site is located; AHP responds: "letters of support, while helpful and may demonstrate a strong application, they are not a requirement for CCE"). If emails from the grant administrator are used to interpret whether TGI had a duty to gain the City's or District's support, this July 2022 email is the one that directly addresses the issue.

faults TGI's Diederich for (allegedly) not saying more when he asked Andreatta "whether she would be open to the possibility," and claims it was fraud to "intentionally withhold" additional information about TGI's negotiations with the property owner and intention to apply for grant funding. SAC ¶¶ 88, 91. The City's alternative claim is meritless, because (1) there was no duty to disclose, (2) the question allegedly asked was not misleading, and (3) there is no justifiable reliance because if Councilmember Andreatta wanted more information she could have asked.

First, the City's claim fails because the "partial concealment" theory requires a transactional relationship, which—as the Court previously concluded—the City doesn't have. July 11, 2025 Order at 8-9; *Rattagan*, 17 Cal. 5th at 40-41; *Hoffman v. 162 North Wolfe LLC*, 228 Cal. App. 4th 1178, 1187-93 (2014) (reviewing case-law, rejecting fraud claim based on lack of transactional relationship; no duty to disclose prescriptive easement during conversation about property line incursions); *LiMandri v. Judkins*, 52 Cal. App. 4th 326, 336-38 (1997) (no duty to disclose lien rights issue during conversation about status of litigation, absent transactional relationship). The City was not engaged in the Gladding Ridge transaction, either as seller or funding source (SAC ¶¶ 72, 110), so as a matter of law, TGI had no duty to disclose more in the conversation with Andreatta as a matter of law.

Second, the brief exchange was not misleading as a matter of law, even assuming the truth of the City's allegations about the exchange.[7] As of the date of the Waffle Shop breakfast, TGI had received a letter from the State saying that its application for funding was either incomplete or rejected. SAC ¶¶ 81, 88. It had not yet heard that revision was possible, even if it hoped it would be. SAC ¶ 98. When it did enter a non-binding letter of intent a month later and submit additional information seeking funding for the Lincoln site, it still faced uncertainty about whether the revised application would be granted. *See* SAC ¶ 99, 104. Months later, even when funding was

[7] Diederich has also testified about the conversation. He said that of course it did not end after two sentences, since the point of the breakfast was to have a conversation about the opportunity. Andreatta asked questions, he answered what she asked, he educated her about medical respite, and told her TGI was going to seek state funding to buy an existing facility in Lincoln for this use. But at the demurrer stage, this testimony is ignored: the Court evaluates only whether Andreatta's version of events is sufficient to support a claim for fraud. As described above, it is not.

awarded, it was still told that funding was not guaranteed until a contract was agreed-upon. SAC Ex. P at p. 1 ("The CCE Capital Expansion grant award is not final until a contract has been fully executed . . . ."). Referring to the status in January 2023 as a "possibility of TGI opening a facility in Lincoln," over nineteen months before the funding was actually received, was not misleading.

Moreover, if Andreatta was interested in whether the possibility could become a reality, she could have asked questions. According to the complaint, she did not. SAC ¶ 89. This defeats the fraud claim in a third way: it shows lack of justifiable reliance. While the question of whether reliance is justifiable is one of fact, the issue may be decided as a matter of law if reasonable minds can only come to one conclusion. *Hinesley v. Oakshade Town Center*, 135 Cal. App. 4th 289, 299 n.4 (2005). A party does not justifiably rely when it does not "question, clarify, or confirm" the information it now claims was material. *See Hoffman*, 228 Cal. App. 4th at 1196-97 (any claimed reliance was unjustifiable in light of "failure to make further inquiry"); *Hinesley*, 135 Cal. App. 4th at 303 (plaintiff did not justifiably rely on landlord's statements about status of lease negotiations for adjacent tenants, "[i]n the complete absence of any actions taken to question, clarify, or confirm the contractual status of the three cotenants"). If Andreatta wanted to know anything more about the "possibility" of a TGI facility in Lincoln – like what the possibility was, or how likely it was – she could have asked. The SAC does not allege she justifiably or reasonably relied on the lack of further information she made no attempt to learn about.

C. The City's Theory Of Harm Is Based On Speculation That CDSS Would Have Decided Differently.

As the Court previously concluded (July 11, 2025 Order at 9), the City's fraud claim fails to plead cognizable harm. "[T]he mere possibility or even probability that damage will result from wrongful conduct does not render it actionable. Damage to be subject to a proper award must be such as follows the act complained of as a legal certainty." *Ferguson v. Lieff, Cabraser, Heimann and Bernstein, LLP*, 30 Cal. 4th 1037, 1048 (2003) (citations omitted); *see Small v. Fritz Companies, Inc.*, 30 Cal. 4th 167, 202 (2003) ("If the existence—and not the amount—of damages alleged in a fraud pleading is 'too remote, speculative or uncertain,' then the pleading cannot state a claim for relief.").

The City's damages theory is that if its support had been sought and withheld, and it instead had told CDSS that TGI should not receive grant funding, it would have been persuasive and the project would not have moved forward, thereby avoiding the attorney's fees it is spending to fight the project and the future police and fire services the City predicts will increase. This theory of damage is speculative, rendering the fraud claim insufficient as a matter of law.

Where the damage for alleged fraud "depends on the act of a third person or the happening of a certain event," a demurrer should be sustained. *Agnew v. Parks*, 172 Cal. App. 2d 756, 768 (1959). The claim that government actors would exercise their discretion in a particular way cannot satisfy the "reasonable certainty" requirement. *See McQuilkin v. Postal Tel. Cable Co.*, 27 Cal App. 698, 703 (1915) (granting demurrer for lack of causation/damages caused by tortious prevention of delivery of low construction bid to Regents; while Regents likely would have accepted low bid, they had discretion to reject it); *cf. Blank v. Kirwan*, 39 Cal. 3d 311, 330-31 (1985) ("In light of the city council's broad discretion to grant or deny a license application, plaintiff has pleaded and can plead no protectible 'expectancy,' but at most a hope for an economic relationship[.]").

The City's own pleading reinforces that there is no reasonable certainty that the grant funding for the Lincoln facility would have been declined, or that CDSS or TGI would have pivoted back to the Roseville site. For TGI, "[T]he Lincoln Site was initially a more preferable location for the medical respite facility than the Roseville Site" based on the size of the facility and potential to serve more of those in need. SAC ¶ 74. For the State, too, switching from Roseville to Lincoln was "an attractive selling point" because "CDSS wanted to maximize the total number of beds added by this project." SAC ¶ 93; *see also* ¶ 97 (providing more beds, and at a lower cost than Roseville, was "attractive" to AHP and thus CDSS); SAC Ex. J (Anthem letter of support: "Placer County is in desperate need of medical respite care housing . . ."). Moreover, many of the City's arguments – about the City's size, or the address of the facility relative to schools and hospitals – were apparent in the application itself.

IV. THE DECLARATORY RELIEF CLAIM SHOULD BE DISMISSED BECAUSE IT SEEKS A RULING REGARDING TGI'S PAST CONDUCT, NOT AN ONGOING RELATIONSHIP BETWEEN THE CITY AND TGI.

The SAC alleges that the City's declaratory-relief claim relates to "an actual and justiciable controversy . . . concerning the parties' respective rights, obligations and duties under both the Joint RFA, and under the PFA." SAC ¶ 203. Even before reaching the issue of whether this claim relates to past conduct—the grounds on which this claim was previously dismissed, *see* July 11, 2025 Order at 7-8—this claim can be dismissed because the City has no "rights, obligations and duties" under the Joint RFA and the PFA: the City does not claim to be a party to, or an intended beneficiary of, the Joint RFA or PFA, so the City lacks standing to litigate the parties' rights and obligations under these agreements. *See, e.g.*, *H.N. & Frances C. Berger Found. v. Perez*, 218 Cal. App. 4th 37, 44 (2013) (affirming dismissal of declaratory-relief claim because owner of subdivision lots lacked standing to obtain declaration of rights under road improvement agreements between subdivision developer and county transportation department).

Further, this claim should be dismissed because the SAC admits the alleged controversy relates to past conduct: "this conduct alleged herein describes past wrongdoings of Defendants, i.e., an application that was already submitted and approved, and a PFA that has already been entered into, all in violation of the Joint RFA." SAC ¶ 209. The Court's prior holding applies to the amended claim, and the demurrer should be sustained again. *E.g.*, *City of Gilroy v. Super. Ct.*, 96 Cal. App. 5th 818, 834 (2023) (purpose of declaratory relief is to "operate[] prospectively, and not merely for the redress of past wrongs," and "to set controversies at rest before they lead to repudiation of obligations, invasion of rights or commission of wrongs").

In an attempt to save its declaratory-relief claim, the City argues that the requested declaration—even if it relates to past conduct—"will provide preventive benefit." SAC ¶ 212. But the alleged "preventive benefit[s]" do not save the City's declaratory-relief claim. The first alleged "preventive benefit" is that if the PFA is declared void, "CDSS and/or Horne will have no legal basis in which to make further payments of CCE Program funds for the project." *Id.* This defense of the declaratory-relief claim fails for two main reasons. First, the City made this same argument in its Opposition to the previous demurrer, and the Court found the argument

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unpersuasive and dismissed the declaratory-relief claim. *See* Jan. 13, 2025 Opp'n at 20:12-17 (arguing that the declaratory-relief claim should not be dismissed because it would provide guidance as to remaining CCE funds (citing FAC ¶ 8)). Second, the City is not a party to nor an intended beneficiary of the PFA, and the City is not directly affected by the disbursement of CCE program funds; the City therefore lacks standing to pursue a judicial declaration as to whether CDSS and/or Horne may disburse further funds pursuant to the PFA. *E.g.*, *H.N. & Frances C. Berger Found.*, 218 Cal. App. at 43 (affirming dismissal of declaratory-relief claim because the plaintiff failed to carry its "burden of proving that the promise he seeks to enforce was actually made to him personally or to a class of which he is a member" (internal quotation omitted)); *D. Cummins Corp. v. U.S. Fid. & Guar. Co.*, 246 Cal. App. 4th 1484, 1490 (2016) (affirming dismissal of declaratory-relief claim because the plaintiff would not "be directly affected by[] any interpretation of the terms of the insurance policies or regulation in question.").

The second alleged "preventive benefit" is that if the PFA is declared void, "then the provision exempting TGI's project at the Lincoln Site from local land use authority will no longer apply," and the City may declare TGI's Lincoln facility to be a zoning violation. SAC ¶ 214. As with the first "preventive benefit," this argument fails because the City has—at most—an "indirect interest" in the validity and interpretation of the PFA. *See D. Cummins Corp.*, 246 Cal. App. 4th at 1490; *see also* , 218 Cal. App. 4th at 45 (affirming dismissal of declaratory-relief claim because "plaintiff was not a named party, not an intended signatory, not even expressly identified in any capacity, let alone as a third party beneficiary" of the contract that was the subject of the declaratory-relief claim).[8] Moreover, the exemption from zoning regulations applies because of

[8] The City also seeks a declaration that TGI is not a "qualified grantee" and the Lincoln Site is not a "qualified project" as those terms are used in AB 172 (Cal. Welf. & Inst. Code §§ 18999.97-18999.98). TGI is not the proper declaratory-relief defendant for a dispute about the meaning of these statutory terms. And as explained in CDSS's demurrer, to the extent the City's declaratory-relief claim concerns the meaning of the terms "qualified grantee" and "qualified project," the claim is redundant and derivative of the City's mandamus claim and should be dismissed for this reason. *Compare* SAC, Prayer for Relief ¶ 8 *with id.* ¶ 11 (mandamus and declaratory-relief claims both seek an order that TGI is not a "qualified grantee" and that the Lincoln Site is not a "qualified project" under AB 172); *see also Fox Paine & Co., LLC v. Twin City Fire Ins. Co.*, 104 Cal. App. 5th 1034, 1051-53 (2024) (dismissing declaratory-relief claim, in relevant part because "at least two aspects of plaintiffs' declaratory relief claim are derivative of other claims.").

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past conduct only. *See* SAC ¶ 158 & Welf. & Inst. Code § 18999.97(*l*) (Lincoln Site was exempted from local land use authority once the project received CCE funds).

V. THE "TORT OF ANOTHER" CLAIM SHOULD BE DISMISSED BECAUSE THERE WAS NO FRAUD AGAINST THE STATE, NOR CAN THE CITY SEEK LEGAL FEES FOR ALLEGED FRAUD AGAINST THE STATE.

In its Sixth Cause of Action, the City claims that TGI committed fraud against not just the City but also DHSS, AHP, and/or Horne (SAC ¶¶ 232-235). TGI's fraud claim against the City fails for all of the reasons explained above: no duty, no fraud, no reasonable certainty of damages.

The further claim that the City can recover attorney's fees because the State or its administrators AHP and/or Horne were defrauded also fails as a matter of law. While DHSS and Horne have claimed no fraud, and the claim is otherwise meritless, it fails as a matter of law because the City cannot seek damages for fraud against a third party, based on the third party's reliance rather than its own. The "tort of another" doctrine is merely "an application of the usual measure of tort damages." *Mega RV Corp. v. HWH Corp.*, 225 Cal. App. 4th 1318, 1337 (2014). It recognizes that one form of economic damages can be attorney fees incurred in litigation with third parties, suffered as a result of an alleged tort. *Id.* But here, the City's claim isn't based on a "tort of another" (*i.e.*, TGI) against the City. That claim is in its Fifth Cause of Action. Here, the City is claiming damages based on a fraud against someone else: misrepresentations or omissions it claims were relied upon by the State, AHP, or Horne. It tries to expand the doctrine so that it can claim a "tort of another against someone else." Such damages are not recoverable.

California law does not allow recovery of damages for reliance by a third party, as opposed to damages caused by plaintiff's own reliance. "It is settled that a plaintiff, to state a cause of action for deceit based on a misrepresentation, must plead that he or she actually relied on the misrepresentation." *Mirkin v. Wasserman*, 5 Cal. 4th 1082, 1088 (1993) (declining to adopt "fraud on the market" theory where shareholder plaintiffs did not hear or rely on misrepresentation). To establish causation for fraud requires that (1) "the plaintiff's actual and justifiable reliance on the defendant's misrepresentation must have caused him to take a detrimental course of action[;]" and (2) "the detrimental action taken by the plaintiff must have caused his alleged damage." *Beckwith v. Dahl*, 205 Cal. App. 4th 1039, 1062 (2012); *see Lesperance v. N. Am. Aviation, Inc.*, 217 Cal.

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App. 2d 336, 345 (1963) (affirming demurrer to fraud claim for failure to plead causation: "His asserted injury or damage must not only be directly alleged but its causal connection with his reliance on defendant's representations must be shown.").

Thus, under California law, a plaintiff cannot recover because someone else heard a misrepresentation and relied on it, even if the plaintiff claims that this caused plaintiff's injury in trying to right the wrong. *See Russell v. Maman*, No. 18-CV-06691-RS, 2020 WL 10964919, *4 (N.D. Cal. Apr. 10, 2020) (fraud claim cannot be based on false representation made to and relied upon by a third party whose reliance causes injury to plaintiff); *see also Pasternack v. Lab'y Corp. of Am. Holdings*, 27 N.Y.3d 817, 829 (2016) (same); *Wescott v. Daniel*, No. 21-CV-10011-JCS, 2022 WL 1105079, *5 (N.D. Cal. Apr. 13, 2022) (noting that injury based on a third party's reliance is not "a theory viable under California law"). An organization that spends money to counteract a fraud against others based on their alleged reliance does not have a viable claim for fraud. *Comm. On Children's Television, Inc. v. Gen. Foods Corp.*, 35 Cal. 3d 197, 220 (1983)[9] (sustaining demurrer to fraud claim which sought recovery of dentist organization's expenditures to counteract alleged misrepresentations to parents and children about sugary cereals). Because the City does not claim that it relied on the misstatements or omissions to CDSS or Horne – indeed, it claims that it was entirely ignorant of the application at the time – its expenditures on attorney fees to unwind the State's transaction are not caused by the City's reliance on those allegedly fraudulent statements, and are not recoverable.

VI. CONCLUSION

Even with the benefit of ten months of discovery and investigation, the City is still unable to plead facts entitling it to relief on the claims at issue. The demurrer should be sustained, and leave to amend should be denied.

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[9] On a separate issue, *Children's Television* was superseded with respect to 17200 standing by Proposition 64, as stated in *Californians for Disability Rts. v. Mervyn's, LLC*, 39 Cal. 4th 223, 228 (2006).

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