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CITY AND COUNTY OF SAN FRANCISCO

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

UNLIMITED JURISDICTION

RAMONA MAYON,

Plaintiff,

vs.

MAYOR LONDON BREED AND
DIRECTOR SHIREEN MCSPADDEN OF
DEPT OF HOMELESSNESS AND
SUPPORTIVE HOUSING OF CITY AND
COUNTY OF SAN FRANCISCO, ONLY IN
THEIR OFFICIAL CAPACITY, AND DOES
1-50,

Defendants.

Case No. CGC-24-611907

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
DEFENDANTS' DEMURRER TO
PLAINTIFF'S COMPLAINT**

Hearing Date: March 27, 2024
Time: 9:30 a.m.
Place: Dept. 302

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INTRODUCTION

Plaintiff, as a self-represented litigant, has sued Defendants Mayor London Breed, the Director Department of Homelessness and Supportive Housing Services, Shireen McSpadden (“Director McSpadden”), and the City and County of San Francisco (the “City Defendants”). Because the pleading does not satisfy the requirements to bring a lawsuit against a municipality, or state a claim upon which relief can be granted, the demurrer should be sustained without leave to amend. (Code Civ. Proc., § 430.10 (e) and (g).)

Plaintiff did not comply with the Tort Claims Act, which is an essential prerequisite for jurisdiction and to initiate an action against the City Defendants. Plaintiff’s negligence and fraud causes of action are not cognizable as the City Defendants are immunized from liability as a matter of law, and each of the requisite elements are missing. Plaintiff’s reference to declaratory relief is similarly defective as there is no “actual controversy.” After describing the panoply of homeless services provided, the Complaint asks the Court to rewrite a number of statutes and local ordinances to convert her into a “tenant” and the City Defendants into landlords. The laws specifically and clearly define a tenant as a person living in a “residential dwelling unit” who pays rent. Plaintiff lives in her own RV and does not pay rent to anyone. “Such a pretended construction would not be construction at all but would be legislation.” It is a cardinal rule that “[c]ourts have no power to legislate.” (*People v. Pacific Guano Co.* (1942) 55 Cal.App.2d 845, 849.) Ms. Mayon’s position also contradicts virtually every term of her signed agreement. Under San Francisco’s Safe Parking Program, Plaintiff expressly agreed that she was a guest, not a tenant, and that she had “no right or interest under California or San Francisco landlord tenant laws.” A declaratory relief claim addresses ripe and “actual controversies” of a legal right or obligation regarding property or a written instrument; it is not a method to force taxpayers or the City Defendants to, *inter alia*, fund gift cards to “Home Depot, Loews, O’Reillys, Autozone”; build a workshop structure or storage sheds; or change the menu of the free, catered food services provided to the homeless living at a safe sleeping site. The demurrer should be sustained without leave to amend.

I. FACTUAL BACKGROUND

Before a lawsuit may be filed against a municipality, the plaintiff must file a government

claim. The only government claim submitted by Plaintiff was three years ago, on March 4, 2021. (Ikels Decl., Exh. A (the March 4, 2021 “Government Claim”); *and see* Request for Judicial Notice (“RJN”).) Ms. Mayon’s Government Claim alleged that “residents” in “their houses” were intimidating and discriminating against her, based on “hatred of nomadic people such as myself,” because she had parked her RV on the Great Highway. (*Id.*) Because there was no allegation of injury, causation, damages, or legal theory advanced against the City, San Francisco denied the Government Claim on March 26, 2021 and notified Plaintiff she had six months to file a lawsuit. (RJN, Exh. A.) Notably, neither the Mayor nor Director McSpadden are mentioned in the Government Claim.

The Government Claim has no connection to the allegations set forth in the Complaint, filed on January 26, 2024. The Complaint names the following defendants: Mayor London Breed, Director “Shireen McSpadden of Dept of Homelessness and Supportive Housing City and County of San Francisco.”¹ It also names as “Real Parties of Interest: Episcopal Community Services, Bayview Hunter's Point, Foundation; and Urban Alchemy” (collectively, the “Third Parties”). The complaint asserts two claims, “negligence per se” and “deceit,” based on the following allegation:

I am one of the 35 vehicle-dwelling households under the care and custody of the non-profits' contracted with the Dept of Homelessness and Supportive Housing (HSH)'s Vehicle Triage Center (VTC) @ 500 Hunter's Point Expressway, San Francisco. I seek an act of declaratory relief, for myself, and the others, out here suffering intolerable living conditions.

(*Id.*, p. 1:13-17.) Plaintiff lives in her own RV, and says that she has formed a “Tenants Union.” The significance of the “union” is unclear. Plaintiff is not, and does not want, to be a tenant, live in a building structure, or pay rent. She believes it is “culturally insensitive to be told constantly that we need to move out of our RVs into SROs or “other housing options.” (*Cf.*, p. 10, parag. “O”, to Compl., p. 3-4.) She also acknowledges signing the Bayview Vehicle Triage Center Participant Agreement, which “clearly states we who enter the VTC do not have tenants' rights.” (*Id.*, p. 1, lines 22-23.) The

¹ “Department of Homelessness and Supportive Housing City and County of San Francisco” is not a properly joined defendant because it is not an actual entity, it does not have power to sue or be sued, and is not an independent public corporation. (*See Bauer v. County of Ventura* (1955) 45 Cal.2d 276, 288-289; compare Gov. Code, §§ 23000, 23004(a).) We presume Plaintiff intended to sue the City and County of San Francisco, although not properly named. Director McSpadden, moreover, has not been personally served. (Ikels Decl., at ¶ 2.) The Court therefore should quash the summons and dismiss Director McSpadden. (C.C.P. § 418.10.)

1 Agreement is attached as Exhibit C to the Complaint and states:

2 Welcome to the City and County of San Francisco's Bayview Vehicle Triage Center. Safe
3 Parking programs provide emergency temporary parking for people living in their vehicles.
4 Every guest receiving safe parking does so at the invitation of the City and County of San
5 Francisco's Department of Homelessness and Supportive Housing. This Safe Parking program
6 does not provide permanent parking or housing, and guests staying at this site **do not have
7 tenancy rights.**

8 (Compl., Exh. C, p. 1 (emphasis in original.) The Agreement emphasizes that it “is a temporary
9 program ...The City of San Francisco may terminate or extend the program at any time. **This
10 program creates no right or interest enforceable under California or San Francisco landlord
11 tenant laws.**” (*Id.*, (emphasis added).) Plaintiff also promised to comply with the “community
12 guidelines, adhere to the fire safety rules of the State Fire Marshall, understood “hoarding” and visitors
13 are not allowed, and follow “quiet hours.” (*Id.*, p. 2-3.)

14 Under the section entitled “Points and Authorities”, Plaintiff cites to the California
15 Constitution, Gov. Code § 65662 (discussing navigation centers associated with homeless services),
16 and a hodgepodge of laws related to the City’s “Housing First” homeless policy goals. (*Id.*, pp. 3-13.)
17 Plaintiff includes Exhibit E, a Sept 29, 2023 report to the SF Homelessness and Behavioral Health
18 Committee Meeting, because she believes it “show[s] the cost to the taxpayer for our sites runs \$400
19 per night, per site (figured at 35 spaces used). That level of expenditure does not show up in the living
20 conditions at the VTC, which is why I have included HSH's subcontractors as Real Parties of Interest.”
21 (*Id.*, p. 2:5-9.) But, in fact, Exhibit B, C and E to the Complaint describe the significant budgetary and
22 policy decisions that led to the Safe Parking Program, and the myriad and costly homeless and
23 supportive services, including receiving free and safe parking for her RV. Ms. Mayon’s takes issue
24 with the services received because: (i) the solar powered lights are “dimmer” than city street lights (*id.*
25 p. 3, bottom half); (ii) the ADA and non-ADA shower(s) should be open “24/7,” despite the obvious
26 safety concerns of using showers at night and contractual “quiet hours” that must be followed (*id.*, p.
27 7(J)-(K) *compared to* Exh. C, p. 3); (iii) the catered food deliveries have a limited menu and should
28 not be hand-delivered, and the Court should order the City to build a kitchen facility (*id.*, p. 5(E)); (iv)
the Fire Marshall’s fire laws, that ban propane tanks, generators, hoarding and parking cars next to
RVs because they pose serious fire hazards and dangers for fire evacuation, are not believable (*cf.* Exh.

C, p. 2 to Exh. B, p. 4); and the “wellness checks” and offers of substance and mental health services are offensive (*id.*, p. 9 (last paragraph). Exhibit B includes self-titled “Tenants Union of Bayview VTC” forms, with handwritten names and requests to change “everything,” provide “better food,” and “stop this communist regime that violates my basic human rights.” (*Id.*, Exh. B, p. 47, 60.)²

The Complaint appears to be demanding that the Court order San Francisco taxpayers to fund a host of additional projects, including but not limited to: (a) pay for gift cards to “Home Depot, Loews, O’Reillys, Autozone” (*id.*, p. 13(8)), (b) build storage units, workshops, and structures for laundry, mechanics, and kitchens along with plumbing, in addition to the free laundry and catered food services (and despite the “hoarding” ban) (*id.*, pp. 7(K), 13(7) –(10)), (d) hire “staff who is knowledgeable in the care and upkeep of RVs” and pay for replacement RVs (*id.*, p. 10 (P), p. 16 (26) and (27)); (e) allow the use of propane tanks (despite the Fire Marshall’s rules and the provision of electricity) (*cf.* Exh. C, p. 2 to Exh. B, p. 4-5, 13(10); and (f) provide free WIFI (*id.*, pp. 15 (22) and (14)).

Other than the caption page, neither the Mayor nor Director McSpadden are mentioned in the pleadings. During the meet and confer process, Plaintiff confirmed that she had not filed a government claim. Her stated goal, in essence, is to compel the Court to rewrite state laws and local ordinances, ignore her signed contract, and “declare” her a “tenant,” so that she can compel the City taxpayers to pay for a host of additional services and build structures. (Ikels Decl., at ¶ 4, Exh. B.)

II. LEGAL ARGUMENT

A. Legal Standard

It is worth observing that Plaintiff is not entitled to special treatment by a court even though she is representing herself without the assistance of an attorney. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984-985.) A court holds *pro per* litigants to the same standards as a practicing attorney. (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246-1247.) While the implications of this rule may be harsh, it is not intended to penalize self-represented litigants, but to ensure the stability and smooth operation of the courts.

² There many internal inconsistencies in the 82-page pleading. A few examples include acknowledging the free food, free laundry, and free electricity, but insisting on using the dangerous propane tanks; and asking for an “ADA compliant shower” at Exh. B, p. 14, despite acknowledging ADA showers were installed. (*Id.*, p. 7.)

1 A demurrer lies to pleadings that fail to state a cause of action or that are uncertain. (C.C.P. §
2 430.10(e) and (g).) Both grounds exist here. A trial court has discretion to sustain a demurrer without
3 leave to amend “if it is apparent the complaint's defects cannot be cured,” and “[t]he burden of proving
4 the reasonable possibility of such a curative amendment falls squarely on the plaintiff.” (*Jenkins v.*
5 *JPMorgan Chase Bank, N.A.* (2013) 216 Cal.App.4th 497, 506–507, as modified (June 12, 2013),
6 *disapproved on another ground in Yvanova v. New Century Mortgage Corp.* (2016) 62 Cal.4th 919,
7 citations and quotation marks omitted); *Arce v. Childrens Hospital Los Angeles* (2012) 211
8 Cal.App.4th 1455, 1497, fn. 19 (‘[t]he plaintiff has the burden of proving that an amendment would
9 cure the defect,’ ” and where the plaintiff has “not offered any proposed amendment, [the plaintiff has]
10 not carried [its] burden”); *Long v. Century Indemnity Co.* (2008) 163 Cal.App.4th 1460, 1468
11 (“[l]eave to amend should not be granted where ... amendment would be futile”).)

12 Here, because Plaintiff did not (and cannot) comply with the Tort Claims Act, and the
13 negligence and “deceit” claims are not cognizable, the demurrer should be sustained without leave to
14 amend.

15 **B. Plaintiff Did Not Allege or Present Any Theory of Relief in A Government Claim;**
16 **the Demurrer Should Therefore Be Sustained Without Leave to Amend.**

17 California law requires that before suing a public entity for damages or a tort, a plaintiff must
18 comply with the Tort Claims Act. (Gov. Code § 905, *et seq.*) The Tort Claims Act “established a
19 standardized procedure for bringing personal injury claims against local governmental entities.”
20 (*Hernandez v. City of Stockton* (2023) 90 Cal.App.5th 1222, 1230 (*citing Ardon v. City of Los Angeles*
21 (2011) 52 Cal.4th 241, 246).) With certain enumerated exceptions that do not apply, “no suit for
22 money or damages may be brought against a public entity on a cause of action for which a claim is
23 required to be presented . . . **until** a written claim thereof has been presented to the public entity and
24 **has been** acted upon by the board, or has been deemed to have been rejected by the board. . . .” (Govt.
25 Code § 945.4 (emphasis added).) “The purpose of the claims presentation requirement is to facilitate
26 early investigation of disputes and settlement without trial if appropriate, as well as to enable the
27 public entity to engage in fiscal planning for potential liabilities and to avoid similar liabilities in the
28 future.” (*Baines Pickwick Ltd. v. City of Los Angeles* (1999) 72 Cal.App.4th 298, 303; *see also, Gong*

1 v *City of Rosemead* (2014) 226 Cal.App.4th 363, 371, 374 (citing Govt Code § 911.2, presentation of
2 claim for money or damages prior to filing suit is a condition precedent to lawsuit); *see also* (*Crow v.*
3 *State of Cal.* (1990) 222 Cal.App.3d 192, 202, *disapproved on another ground by Regents of Univ. of*
4 *Cal. v. Super. Ct.* (2018) 4 Cal.5th 607, 634, fn. 7; *and see Baines Pickwick Ltd. v. City of Los Angeles*
5 (1999) 72 Cal.App.4th 298, 303.)).)

6 The filing of a claim is a condition precedent to the maintenance of an action against a public
7 entity and is therefore an element that a plaintiff is required both to allege and prove. (*Del Real v. City*
8 *of Riverside* (2002) 95 Cal. App. 4th 761, 770.) The Court may take judicial notice of the presentation
9 of a claim, its contents, the date of denial, and the contents therein. (*Gong v. City of Rosemead* (2014)
10 226 Cal.App.4th 363, 368 fn. 1, 376; *see also* RJN, Exh. 1.) “A court may take judicial notice of
11 something that cannot reasonably be controverted, even if it negates an express allegation of the
12 pleading.” (*Poseidon Development, Inc. v. Woodland Lane Estates, LLC* (2007) 152 Cal.App.4th
13 1106, 1117, as modified (July 24, 2007); *see also* C.C.P. § 430.30(a); Request for Judicial Notice
14 (“RJN”).)

15 A demurrer for failure to state a cause of action is the proper vehicle to challenge
16 noncompliance with government claim presentation requirements. (*State of California v. Superior*
17 *Court (Bodde)* (2004) 32 Cal.4th 1234, 1243.) The rules are rigorous and strictly enforced. *First*, a
18 claim must be presented to the public entity “not later than six months after the accrual of the cause of
19 action.” (Gov. Code § 911.2.) *Second*, an action against a governmental entity or employee covered by
20 the claim-presentation requirement must be filed in court within six months following written notice of
21 rejection of the claim by the public entity. (Gov. Code § 945.6(a)(1); *Silva v. Crain* (9th Cir. 1999) 169
22 F.3d 608, 611.) *Third*, compliance with the Tort Claims Act must be affirmatively pled in the
23 complaint. (*State of Cal. v. Super. Ct* (2004) 32 Cal. 4th 1234, 1240, 1243 (holding that “a plaintiff
24 must allege facts demonstrating or excusing compliance with the claim presentation requirement,”
25 otherwise the “complaint is subject to a general demurrer for failure to state facts sufficient to
26 constitute a cause of action.”); *Wood v. Riverside Gen. Hosp.* (1994) 25 Cal. App. 4th 1113, 1119 (an
27 “essential element” to a complaint against a municipality requires Plaintiff allege compliance with the
28 government claim submission requirements).) *Fourth*, the requisite pre-lawsuit Government Claim

1 must specify each legal and factual basis for the government’s liability to the claimant. A party cannot
2 file suit on any legal or factual basis outside those that are listed in its Government Claim. (*Nelson v.*
3 *State of California* (1982) 139 Cal.App.3d 72, 79 (“the factual circumstances set forth in the written
4 claim must correspond with the facts alleged in the complaint; even if the claim were timely, the
5 complaint is vulnerable to a demurrer if it alleges a factual basis for recovery which is not fairly
6 reflected in the written claim”); *Williams v. Braslow* (1986) 179 Cal.App.3d 762, 769–70 (“Courts
7 have consistently interpreted the Tort Claims Act to bar actions alleging matters not included in the
8 claim filed with the public entity.”), quoting *State of California ex rel. Dept. of Transportation v.*
9 *Superior Court* (1984) 159 Cal.App.3d 331, 336.) And *fifth*, the claim must specify the amount of
10 damages. (Govt. C. § 910(f).)

11 Here, none of the five requirements have been satisfied. The Complaint does not allege
12 compliance with the Tort Claims Act, and Plaintiff acknowledges she did not comply. (Ikels Exh., B.)
13 The Government Claim does not mention any of the City Defendants, set forth any factual
14 circumstances, date, location, or legal theories that are cognizable against them, and no damages are
15 specified. (RJN, Ikels Decl., Exh. A.) The Government Claim alludes to past disturbances with
16 residents on the Great Highway. The Complaint, by contrast, describes the generous homeless services
17 provided at a safe parking site. After a claim is rejected, the lawsuit filed may elaborate or add further
18 details “but the complaint may not completely shift the allegations and premise liability on facts that
19 fundamentally differ from those specified in the government claim.” (*Hernandez*, at 1231 (upholding
20 dismissal because the factual basis for recovery is not ‘fairly reflected’ in the plaintiff’s government
21 claim”); see also *Turner v. State of California* (1991) 232 Cal.App.3d 883, 887-888, 891 (complaint
22 properly dismissed because of variance between government claim and complaint); *Fall River Joint*
23 *Unified School Dist. v. Superior Court* (1988) 206 Cal.App.3d 431, 434-435 (same); *Donohue v. State*
24 *of California* (1986) 178 Cal.App.3d 795, 804 (government claim alleged that the defendant was
25 negligent in allowing uninsured motorist to take driving test, whereas the complaint alleged that the
26 defendant was negligent in failing to instruct, direct, and control the motorist during the test).)

27 It is proper to sustain a demurrer without leave to amend for noncompliance with the claims
28 presentation requirement, where, as here, the Government Claim demonstrates amendment would be

futile. (*Gong, supra*, 226 Cal.App.4th at p. 378.) There is no means to cure the complaint, because it was filed three years before. (*Compare* RJN, Ikels Decl. Exh. A (Claim Form submitted on March 1, 2021, and denied on March 26, 2021) to Complaint filed on January 26, 2024.) To be timely, a claim must be presented within six months of the accrual of the cause of action. (Gov. Code § 911.2.) Failure to file a timely claim is a jurisdictional bar. (*See Santee v. Santa Clara City Office of Education* (1990) 220 Cal.App.3d 702, 713; *Cole v. Los Angeles Unified School Dist.* (1986) 177 Cal.App.3d 1, 5 (holding that the statutory period of limitations for actions against a public entity is “mandatory and must be strictly complied with.”).)

In sum, the Government Claim bears no resemblance to a valid claim, and the Complaint bears no resemblance to the Government Claim. Plaintiff, in fact, has acknowledged that she has not submitted a government claim. (Ikels Decl., Exh. B.) The deficiencies cannot be cured and, accordingly, the lawsuit should be dismissed.

C. The Causes of Action Fail for Uncertainty

A complaint must contain a “statement of the facts constituting the cause of action, in ordinary and concise language.” (C.C.P. § 425.10(a).) Each cause of action must be separately numbered. (Rules of Court, Rule 2.112(1).) In addition, “each separately stated cause of action . . . in a pleading shall specifically identify its number (e.g., “First Cause of Action”); its nature (e.g., “for Negligence”); . . . and the party or parties to whom it is directed (e.g., “against Defendant Smith”).” (*Id.* (2)-(4).) Each version of the facts and each legal theory should also be pleaded in a separate cause of action in the complaint. (*Campbell v. Rayburn* (1954) 129 Cal.App.2d 232, 235.) Failure to comply with the rules renders a complaint subject to special demurrer for uncertainty. (Code Civ. Proc., § 430.10(f); *Morris v. JPMorgan Chase Bank, N.A.*, (2022) 78 Cal. App. 5th 279, 292.)

The Complaint does not “set forth the essential facts of [her] case with reasonable precision and with particularity sufficient to acquaint a defendant with the nature, source and extent of [their] cause of action.” (*Doheny Park Terrace Homeowners Assn., Inc. v. Truck Ins. Exchange* (2005) 132 Cal.App.4th 1076, 1099.) If the failure to label the parties and claims renders a complaint so confusing that the defendants cannot tell what they are supposed to respond to, it is subject to demurrer for uncertainty. (*Williams v. Beechnut Nutrition Corp.* (1986) 185 Cal.App.3d 135, 139.)

1 This is not a situation where there are missing details. The Complaint is fatally vague— it
2 alleges “negligence per se” and “fraud,” alludes to declaratory relief, but does not identify any action
3 or inaction, duty, causation, or damages, or explain why the City Defendants have been sued.

4 **D. The Negligence And Fraud Claims Are Not Cognizable**

5 Plaintiff pleads two claims, one for negligence and for fraud, neither is viable.

6 **1. The City Defendants Are Immune Under the Government Code**

7 The basic rule of section 815 of the Government Code regarding public entity liability states:
8 “Except as otherwise provided by statute: ... [a] public entity is not liable for an injury, whether such
9 injury arises out of an act or omission of the public entity or a public employee or any other person.”
10 This means that “direct tort liability of public entities must be based on a specific statute declaring
11 them to be liable, or at least creating some specific duty of care, and not on the general tort provisions
12 of Civil Code section 1714. Otherwise, the general rule of immunity for public entities would be
13 largely eroded by the routine application of general tort principles.” (*Eastburn v. Regional Fire*
14 *Protection Authority* (2003) 31 Cal.4th 1175, 1183; *All Angels Preschool/Daycare v. Cnty. of Merced*
15 (2011) 197 Cal. App. 4th 394, 400.)

16 After acknowledging all of the homeless services that Plaintiff does receive, she appears to
17 believe that she should receive even more and/or different services, money and construction of
18 facilities. Assuming *arguendo* her grievances support a claim for either “negligence” or “deceit,” the
19 City Defendants have absolute immunity under Govt. Code sections 815.2, 818.8, 821.6 and 820.2.

20 Subdivision (b) of section 815.2 states: “(b) Except as otherwise provided by statute, a public
21 entity is not liable for an injury resulting from an act or omission of an employee of the public entity
22 where the employee is immune from liability.” Section 820.2 provides: “[e]xcept as otherwise
23 provided by statute, a public employee is not liable for an injury resulting from his act or omission
24 where the act or omission was the result of the exercise of the discretion vested in him, whether or not
25 such discretion be abused.” Neither the City nor the individual defendants, the Mayor and Director of
26 Homeless Services, may be sued for fraud or negligent misrepresentations. (Govt. Code § 818.8.)

27 The immunity for discretionary acts was codified by the legislature in Sections 820.2 and 855.4
28 of the Government Code, which address both public employees and entities. They provide an absolute

immunity “for an injury resulting from his act or omission where the act or omission was the result of the exercise of the discretion vested in him, whether or not such discretion be abused.” *Greenwood v. City of Los Angeles* (2023) 89 Cal. App. 5th 851, 862, *reh'g denied* (Apr. 20, 2023), *review denied* (July 12, 2023). In the very recent *Greenwood* decision, the court upheld the trial court’s sustaining a demurrer by a municipality against regarding the city’s purported “failure to remedy a dangerous condition on public property adjacent” to plaintiff’s place of work, as a result of which the plaintiff contracted typhus. The *Greenwood* explained the California Supreme Court had developed a “workable definition” of immune discretionary acts,” which “draws the line between ‘planning’ and ‘operational’ functions of government.” (*Caldwell v. Montoya* (1995) 10 Cal.4th 972, 981.) It explained that “[i]mmunity is reserved for those basic policy decisions which have ... been expressly committed to coordinate branches of government, and as to which judicial interference would thus be unseemly.” (*Greenwood* at 862 (internal quotations omitted) *citing to Caldwell*, p. 793.)

Such ‘areas of quasi-legislative policy-making ... are sufficiently sensitive’ to call for judicial abstention from interference that ‘might even in the first instance affect the coordinate body’s decision-making process.’ The immunity applies to deliberate and considered policy decisions, in which a ‘balancing [of] risks and advantages ... took place. The fact that an employee normally engages in discretionary activity is irrelevant if, in a given case, the employee did not render a considered decision.’

(*Id.*)

Here, the Complaint requests of the Court to second guess the local government’s allocation of taxpayer propositions, the budget and policies related to homeless services, the Safe Parking Program, and the homeless services provided by the Third Parties. It is also axiomatic that the judiciary “has neither the power nor the duty to determine the wisdom of any economic policy; that function rests solely with the Legislature,” and courts will not “override the legislative function,” or laws enacted in furtherance of economic policies for the general welfare. (*See, e.g., Max Factor & Co. v. Kunsman* (1936) 5 Cal.2d 446, 454.) The City Defendants are afforded absolute immunity under the law.

2. The Requisite Elements for Fraud and Negligence Are Missing

A cause of action for fraud must allege the following elements: (1) a knowingly false representation by the defendant; (2) an intent to deceive or induce reliance; (3) justifiable reliance by the plaintiff; and (4) resulting damages. Every element must be specifically pleaded, this means that

1 general and conclusory allegations will not suffice. The particularity requirement necessitates pleading
2 facts that show how, when, where, to whom, and by what means the representations were tendered.
3 “The first purpose is to give notice to the defendant with sufficiently definite charges that the
4 defendant can meet them. [Citation.] The second is to permit a court to weed out meritless fraud
5 claims on the basis of the pleadings; thus, “the pleading should be sufficient to enable the court to
6 determine whether, on the facts pleaded, there is any foundation, prima facie at least, for the charge of
7 fraud.” See *West v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 780, 793, (quoting
8 *Committee on Children’s Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 216-217,
9 *superseded by statute on another ground as stated in Californians for Disability Rights v. Mervyn’s,*
10 *LLC* (2006) 39 Cal.4th 223, 227.)

11 Although she alleges a claim of “deceit,” Plaintiff does not allege any facts that support the
12 “who, what, when or where” to support a fraud claim. There is no mention of either the Mayor or
13 Director McSpadden. In any event, Government Code Section 818.8 provides an absolute immunity
14 from liability for misrepresentation of any sort against a municipality.

15 For the same reasons, the negligence claim is defective. “[I]n order to prove facts sufficient to
16 support a finding of negligence, a plaintiff must show that defendant had a duty to use due care, that he
17 breached that duty, and that the breach was the proximate or legal cause of the resulting injury.
18 [Citation.]’ (*Nally v. Grace Community Church* (1988) 47 Cal.3d 278, 292–293.) The existence of a
19 duty of care is a question of law to be determined by the court alone. (*Ballard v. Uribe* (1986) 41
20 Cal.3d 564, 572, fn. 6.) This is because ‘legal duties are ... merely conclusory expressions that, in
21 cases of a particular type, liability should be imposed for damage done.’ (*Tarasoff v. Regents of*
22 *University of California* (1976) 17 Cal.3d 425, 434.)

23 The Complaint does not allege a duty, causation or injury. The California Tort Claims Act
24 provides that a governmental entity is not directly liable for torts except as provided by statute. Cal.
25 Gov.Code § 815(a). It is well established that there is no statute that provides for direct entity liability
26 for a claim for negligence. (See, e.g., *Thorn v. City of Glendale* (1995) 28 Cal. App. 4th 1379, 1385.)
27 San Francisco cannot be sued for negligence, and the Complaint does not allege that the Mayor or
28 Director owed a “special duty” or had any interactions with Ms. Mayon. Discretionary acts regarding

1 the Safe Parking Program and homeless services, in their capacity as Mayor and Director, are
2 absolutely immune from judicial review.

3 **E. The Declaratory Relief Claim is Neither Pleaded Nor Cognizable**

4 Although not pled as a separate cause of action, Plaintiff alludes to seeking “declaratory
5 relief.” Ms. Mayon’s stated purpose of her lawsuit is: “I want to change how the rules are made at safe
6 parking sites in California (well, the 9th circuit, actually). The Real Parties have exceeded their
7 authority by about a hundred miles and squandered the taxpayer's money meant to make it safe,
8 dignified, livable.” (Ikels Decl., Exh. B.) Putting aside that the allegations undermine that conclusory
9 statement, in order for a party to pursue an action for declaratory relief, “the grounds for such relief
10 must be specifically pleaded in the complaint.” (*Davis v. Farmers Ins. Exch.*, 245 Cal. App. 4th 1302,
11 1325–26 (2016), as modified on denial of reh'g (Apr. 21, 2016) (citations omitted).) Here, Plaintiff
12 does not plead a claim for declaratory relief and her stated objectives are not viable through litigation,
13 as a matter of law.

14 Pursuant to the Code of Civil Procedure Section 1060, a declaratory relief claim must be based
15 on a ripe, “actual controversy” as to “legal rights or duties” regarding a “written
16 instrument...including a determination of any question of construction or validity arising under the
17 instrument or contract,” or “property.” “[A]ctions for declaratory relief involve matters of practice and
18 procedure only and are not intended in any way to enlarge the jurisdiction of courts over parties and
19 subject-matter.” (*Carrier v. Robbins* (1952) 112 Cal. App. 2d 32, 36.) Whether a claim presents an
20 “actual controversy” and is “ripe,” within the meaning of Code of Civil Procedure section 1060, is a
21 jurisdictional question of law.

22 Here, Plaintiff is not seeking to enforce the Agreement or a “property” right; instead, she asks
23 the Court to rewrite state laws and local ordinances so as to convert her into a “tenant,” the City
24 Defendants or the “Real Parties of Interest” into landlords, and create “tenants’ rights” in the fashion
25 she desires. *First*, a declaratory relief claim does not empower the judiciary to interfere with the
26 legislative function, such as a city’s economic and homeless policies, the Safe Parking Program,
27 allocation of budget and taxpayer resources, or bypass voter-passed propositions or local ordinances.
28 (*Carrier, supra*, at 36 (dismissing lawsuit against city of San Diego, where plaintiff challenged the

wage rate set by the Board of Supervisors); *see also* *Spencer v. City of Alhambra*, 44 Cal.App.2d 75, 77.)

Second, as a matter of law, Plaintiff may not ask the Court to rewrite the laws that define “tenant,” “landlord,” “rent,” and “dwelling units,” or transform them into including her personally-owned RV. In construing a statute, it is the duty of the court “simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted.” (Code Civ.Proc. § 1858.) “When the statutory language is clear there can be no room for construction of the statute. Where there is no ambiguity in the statutory language, the power to construe it does not exist.” (*San Joaquin Blocklite, Inc. v. Willden* (1986) 184 Cal. App. 3d 361, 367–68 (citations omitted); *see also* *LGCY Power, LLC v. Superior Ct.* (2022) 75 Cal. App. 5th 844, 860–61 (“we are not empowered to insert language into a statute, as ‘doing so would violate the cardinal rule of statutory construction that courts must not add provisions to statutes.’”).)

The Complaint cites to portions of San Francisco’s Administrative Code that demonstrate landlord-tenant laws do not apply. Specifically, at page 6, line 16, the Complaint notes that “Tenant shall have the meaning set forth in Administrative Code Section 37.2.” Section 37.2, sub-section (t), defines: “Tenant. A person entitled by written or oral agreement, sub-tenancy approved by the landlord, or by sufferance, **to occupy a residential dwelling unit to the exclusion of others.**” (Emphasis supplied.) At sub-section (h), “Landlord” is defined as “An owner, lessor, sublessor, who receives or is entitled to receive **rent** for the use and occupancy of any residential rental unit or portion thereof in the City and County of San Francisco, and the agent, representative or successor of any of the foregoing.” (Emphasis supplied.) At sub-part (p) of Section 37.2, “Rent” is defined as “[t]he consideration, including any bonus, benefits or gratuity, demanded or received by a landlord for or in connection with the use or occupancy of a rental unit, or the assignment of a lease for such a unit, including but not limited to monies demanded or paid for parking, furnishing, food service, housing services of any kind, or subletting.”

A “dwelling unit”, “rental unit,” and “residential dwelling unit” are also defined terms in the law, which are building structures affixed to real property. San Francisco’s Building Code, defines: “Dwelling. Any building or portion thereof which contains not more than two dwelling

units... Dwelling Unit. A "dwelling unit" is any building or portion thereof which contains living facilities, including provisions for sleeping, eating, cooking and sanitation as required by the Code, for not more than one family. (San Francisco Building Inspection Commission (BIC) Codes, Section 401.) A residential "dwelling unit" is "a *structure* or the part of a *structure* that is used as a home, residence, or sleeping place by one person who maintains a household or by two or more persons who maintain a common household." (Civ. Code § 1940(c) (emphasis added).) Likewise, the Administrative Code defines a "rental unit" as "residential dwelling units in the City together with the land and appurtenant buildings thereto..." – and expressly excludes hotels, boarding houses, etc. (Admin. Code § 37.2(r).) In fact, the Administrative Code also excludes "dwelling units whose rents are controlled or regulated by any government unit, agency, or authority." (*Id.*) In other words, even if Plaintiff lived in a dwelling unit *and* paid rent, because the parking site is controlled or regulated by a government agency, it is exempt from landlord tenant laws. These are clear and unambiguous terms: a personal vehicle is not encompassed in the term "tenant," "rental unit," "residential dwelling unit," "landlord," or "rent." Plaintiff's "pretended construction would not be construction at all but would be legislation." (*People v. Pacific Guano Co.* (1942) 55 Cal.App.2d 845, 849.) It is a cardinal rule that "[c]ourts have no power to legislate." (*Id.*; *Anderson v. City of Long Beach* (1959) 171 Cal. App. 2d 699, 701.)

Third, as a matter of logic and based on the admissions in the pleading, Plaintiff cannot be a tenant. Ms. Mayon lives in her own vehicle, not a building, and does not pay rent. She refers to herself as "culturally...nomadic," and that it is "culturally insensitive" to encourage her to move to a dwelling unit. (See, Section II, *supra*, Compl., p. 10, parag. "O", to p. 3-4; Ikels Decl., Exh. A.) *Finally*, her position is belied by the terms of the Agreement, which she notes "clearly states" that to gain entry to the Safe Parking site, she agreed that she is a guest, not a tenant, and had no rights under landlord tenant laws. (Compl., p. 1, lines 22-24.)

Exhibits B, C and E to the Complaint, moreover, demonstrate that there is no means to cure the defects through amendment. Even if Ms. Mayon could second-guess the City's budgetary and policy decisions, her contention that \$400 per day per site has not occurred is disproven by the plethora of services and care described in the pleadings. (*Cf.* Compl., p. 2:5-9; to Exh. B, C and E attached

1 thereto.) The free services (provided through the voter-passed Proposition C) include security, fencing,
2 solar lighting, electricity, bathrooms and showers, catered food, laundry services, wellness services,
3 and RV maintenance. (*Id*, Exh. B, pp. 2-10.). Despite agreeing and alleging that she is a guest, not a
4 tenant, and that no landlord-tenant relationship exists, Plaintiff asks the Court to ignore virtually every
5 term of the VTC agreement signed by the Plaintiff, rewrite both State laws and local ordinances, and
6 second guess the policy and budgetary decisions of the City, which is legally untenable.

7 On a practical level, entertaining this lawsuit undermines the gatekeeper function of the courts
8 and wastes the limited resources of the City. As explained in the *City of Glendale* decision, “in view of
9 the exceedingly high cost of modern litigation, from the point of view of a defendant public entity,
10 merely being named in a tort suit places it in a lose/lose situation. Except in those most rare instances
11 permitting the recovery of attorney fees, the more procedural stages through which it must pass prior
12 to vindication, the greater will be its “victorious losses.” This problem is particularly acute for today's
13 financially stressed governmental bodies.” (28 Cal. App. 4th 1379, 1385.) Consequently, if
14 governmental immunities, the contractual terms, and the statutes and ordinances are ignored, and
15 improper legal relief is entertained whenever a plaintiff elects to file a document, the limited
16 protection the City Defendants are “afforded will be essentially eviscerated.”

17 Thousands of persons experiencing homelessness come to San Francisco. Many of these
18 individuals refuse, or complain about, offers of services and shelter. Homeless encampments often
19 block sidewalks, exist outside of homes, apartment buildings, schools, senior centers, and other
20 community buildings, forcing families with children, persons with disabilities, and older community
21 members to navigate around them, prevent employees from cleaning public thoroughfares, and create
22 health and safety risks for both the unhoused and the public. Local businesses, residents, and visitors
23 also need to use these same public spaces, but frequently cannot. The Safe Parking Program was
24 created as a “Pilot Program” as one of many solutions. A freewheeling and unmoored lawsuit,
25 requesting judicial intervention to second-guess municipal policymaking, is not legally proper and
26 undermines the ability of the City to function.

27 CONCLUSION

28 Defendant respectfully requests that the Court sustain the demurrer without leave to amend.

1 Dated: February 29, 2024

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