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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' AMENDED DEMURRER TO
PLAINTIFF'S COMPLAINT**

Hearing Date: May 29, 2024
Time: 9:30 a.m.
Place: Dept. 302

Date Action Filed: January 26, 2024
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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).) In addition, Director McSpadden has not been served with the Complaint and she should be dismissed.

Plaintiff did not comply with the Tort Claims Act, which is an essential prerequisite for jurisdiction. The City Defendants are immunized from liability from the claims, as a matter of law. In her prior opposition, Plaintiff conceded that the negligence and fraud claims are not cognizable and she is not seeking damages. The suggestion that she seeks declaratory relief is not properly pleaded, but it cannot be cured by amendment, because 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 law unambiguously defines a tenant as a person who pays rent in a “residential dwelling unit.” Plaintiff lives in her own RV and does not pay rent to anyone. 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 agreement, which is Exhibit C to her Complaint. 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.” Regardless, a declaratory relief claim is not a method to obtain the relief she is seeking, such as forcing taxpayers, *inter alia*, to buy Plaintiff gift cards to “Home Depot, Loews, O’Reillys, Autozone”; build a workshop structure or storage shed; or change the menu of the free, catered food services. The demurrer should be sustained without leave to amend.¹

¹ Defendants have named the motion an “Amended Demurrer” following the Court’s order taking the hearing of the original demurrer off calendar and ordering plaintiff to meet and confer by phone. As set forth in the accompanying declaration of Zuzana S. Ikels, the parties met and conferred

1 **I. FACTUAL BACKGROUND**

2 Before a lawsuit may be filed against a municipality, the plaintiff must file a government
3 claim. The two “Government Claims” submitted by Plaintiff were three years ago, on March 4, 2021,
4 and two years ago, on February 7, 2023. (Ikels Decl., Exh. A and Exh. B; *and see* Request for Judicial
5 Notice (“RJN”).) Ms. Mayon’s Government Claims alleged that “residents” in “their houses” were
6 discriminating against her, based on “hatred of nomadic people such as myself,” because she had
7 parked her RV on the Great Highway. (*Id.*, Exh. A.) She also complained about a third party that
8 towed her RV. (*Id.*, Exh. B.) Because there was no allegation of injury, causation, damages, or legal
9 theory advanced against the City, San Francisco denied the Government Claims on March 26, 2021
10 and February 28, 2023, respectively, and notified Plaintiff she had six months to file a lawsuit. (RJN,
11 Exh. A and B.) Notably, neither the Mayor nor Director McSpadden are mentioned.

12 The Government Claims have no connection to the allegations in the Complaint, which was
13 filed on January 26, 2024. The Complaint names the following defendants: Mayor London Breed,
14 Director “Shireen McSpadden of Dept of Homelessness and Supportive Housing City and County of
15 San Francisco.”² It also names as “Real Parties of Interest: Episcopal Community Services, Bayview
16 Hunter's Point, Foundation; and Urban Alchemy” (collectively, the “Third Parties”). The complaint
17 asserts two claims, “negligence per se” and “deceit,” based on the following allegation:

18 I am one of the 35 vehicle-dwelling households under the care and custody of the non-
19 profits' contracted with the Dept of Homelessness and Supportive Housing (HSH)'s
20 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.

21 (*Id.*, p. 1:13-17.) Plaintiff is unhoused, living in her own RV in a safe and free parking site. She says
22 that she has formed a “Tenants Union.” The significance of the “union” is unclear. Plaintiff is not

23
24 on March 27, 2024, by telephone for nearly two hours. The Amended Demurrer accounts for
Plaintiff’s Opposition filed to the City Defendants’ original demurrer and the meet and confer.

25 ² “Department of Homelessness and Supportive Housing City and County of San Francisco” is
26 not a properly joined defendant because it is not an actual entity, it does not have power to sue or be
27 sued, and is not an independent public corporation. (*See Bauer v. County of Ventura* (1955) 45 Cal.2d
28 276, 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 currently, nor does she wish, to live in a building structure, a residential dwelling unit, or pay rent. In
2 fact, she believes it is “culturally insensitive to be told constantly that we need to move out of our RVs
3 into SROs or other housing options.” (*Cf.*, p. 10, parag. “O”, to Compl., p. 3-4.) She also
4 acknowledges signing the Bayview Vehicle Triage Center Participant Agreement, which as she states
5 in her pleading, “clearly states we who enter the VTC do not have tenants' rights.” (*Id.*, p. 1, lines 22-
6 23.) The Agreement is attached as Exhibit C to the Complaint and states:

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

13 (Compl., Exh. C, p. 1 (emphasis in original.) The Agreement further states that it “is a temporary
14 program ...The City of San Francisco may terminate or extend the program at any time. **This**
15 **program creates no right or interest enforceable under California or San Francisco landlord**
16 **tenant laws.**” (*Id.*, (emphasis added).) Plaintiff promised to comply with the “community guidelines,
17 adhere to the fire safety rules of the State Fire Marshall, prohibits “hoarding”, and bar visitors, and
18 follow “quiet hours.” (*Id.*, p. 2-3.)

19 Under the section entitled “Points and Authorities,” Plaintiff cites to the California
20 Constitution, Gov. Code § 65662 (discussing navigation centers associated with homeless services),
21 and a hodgepodge of laws related to the City’s “Housing First” homeless policy goals. (*Id.*, pp. 3-13.)
22 Plaintiff includes Exhibit E, a Sept 29, 2023 an SF Homelessness and Behavioral Health Committee
23 report, because she believes it “show[s] the cost to the taxpayer for our sites runs \$400 per night, per
24 site (figured at 35 spaces used). That level of expenditure does not show up in the living conditions at
25 the VTC, which is why I have included HSH's subcontractors as Real Parties of Interest.” (*Id.*, p. 2:5-
26 9.) Exhibits C through E to the Complaint describe the significant budgetary and policy decisions
27 giving rise to the Safe Parking Program, and the myriad homeless and supportive services, about
28 which Ms. Mayon takes issue, such as free: (i) safe parking for her RV; (ii) the solar powered lights
are “dimmer” than city street lights (*id.* p. 3, bottom half); (iii) ADA and non-ADA shower(s) should
be open “24/7,” despite the obvious safety concerns of open showers at night and “quiet hours” for the

consideration of others (*id.*, p. 7(J)-(K) *compared to* Exh. C, p. 3); (iv) catered food deliveries have a limited menu and should not be hand-delivered, and she wants the City to build a kitchen facility (*id.*, p. 5(E)); (v) Fire Marshall’s inspections and rules that ban propane tanks, generators, hoarding and parking cars next to RVs for safety and fire evacuation (Ms. Mayon does not believe the Fire Marshall) (*cf.* Exh. C, p. 2 *to* Exh. B, p. 4); and (vi) wellness checks and offers of substance and mental health services (Plaintiff finds them to be both offensive and insufficient) (*id.*, p. 9 (last paragraph)).³

Plaintiff appears to be demanding the Court second guess the City’s policies and legislation, and order taxpayers to: (a) pay for gift cards to “Home Depot, Loews, O’Reillys, Autozone” (*id.*, p. 13(8)), (b) build storage units and workshops for laundry, a mechanic, and kitchens, despite receiving free laundry and catered food services and “hoarding” ban, and regardless of the cost or feasibility (*id.*, pp. 7(K), 13(7) –(10)), (c) hire “staff who is knowledgeable in the care and upkeep of RVs” and pay for replacing her RV (*id.*, p. 10 (P), p. 16 (26) and (27)); (d) allow the use of propane tanks (despite the Fire Marshall’s rules and that electricity is provided) (*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 is to compel the Court to rewrite state laws and local ordinances, ignore her signed contract that she is a guest, and “declare” her a “tenant.” (Ikels Decl., at ¶¶ 5-7.)

II. LEGAL ARGUMENT

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

³ 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.) There are internal inconsistencies in the 82-page pleading, such as acknowledging the free food, laundry, and electricity, but insisting on 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 harsh, it is not intended to penalize self-represented litigants, but to ensure the stability and smooth
2 operation of the courts.

3 A demurrer lies to pleadings that fail to state a cause of action or that are uncertain. (C.C.P. §
4 430.10(e) and (g).) Both grounds exist here. The complaint does not contain a “statement of the facts
5 constituting the cause of action, in ordinary and concise language,” separately numbered, identifying
6 the nature of the claim(C.C.P. § 425.10(a); Rules of Court, Rule 2.112(1). Failure to comply with the
7 rules and provide the requisite clarity subjects the complaint to a demurrer for uncertainty. (*Morris v.*
8 *JPMorgan Chase Bank, N.A.*, (2022) 78 Cal. App. 5th 279, 292; *Doheny Park Terrace Homeowners*
9 *Assn., Inc. v. Truck Ins. Exchange* (2005) 132 Cal.App.4th 1076, 1099.)

10 Here, because Plaintiff did not (and cannot) comply with the Tort Claims Act, and the claims
11 are not cognizable, the demurrer should be sustained without leave to amend. (*See, e.g., Arce v.*
12 *Childrens Hospital Los Angeles* (2012) 211 Cal.App.4th 1455, 1497, fn. 19 (‘[t]he plaintiff has the
13 burden of proving that an amendment would cure the defect,’ ” and where the plaintiff has “not
14 offered any proposed amendment, [the plaintiff has] not carried [its] burden”).

15 **A. Because the Government Claims are Untimely and the Do Not Resemble The**
16 **Allegations, the Complaint is Jurisdictionally Barred**

17 Before suing a public entity for damages or a tort, a plaintiff must comply with California’s
18 Tort Claims Act. (Gov. Code § 905, *et seq.*) The Tort Claims Act “established a standardized
19 procedure for bringing personal injury claims against local governmental entities.” (*Hernandez v. City*
20 *of Stockton* (2023) 90 Cal.App.5th 1222, 1230 (*citing Ardon v. City of Los Angeles* (2011) 52 Cal.4th
21 241, 246).) With certain enumerated exceptions that do not apply, “no suit for money or damages may
22 be brought against a public entity on a cause of action for which a claim is required to be presented . . .
23 **until** a written claim thereof has been presented to the public entity and **has been** acted upon by the
24 board, or has been deemed to have been rejected by the board. . . .” (Govt. Code § 945.4 (emphasis
25 added).) “The purpose of the claims presentation requirement is to facilitate early investigation of
26 disputes and settlement without trial if appropriate, as well as to enable the public entity to engage in
27 fiscal planning for potential liabilities and to avoid similar liabilities in the future.” (*Baines Pickwick*
28 *Ltd. v. City of Los Angeles* (1999) 72 Cal.App.4th 298, 303; *see also, Gong v City of Rosemead* (2014)

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

6 A demurrer for failure to state a cause of action is the proper vehicle to challenge
7 noncompliance with government claim presentation requirements. (*State of California v. Superior*
8 *Court (Bodde)* (2004) 32 Cal.4th 1234, 1243.) The rules are rigorous and strictly enforced. *First*, the
9 filing of a claim is a condition precedent and is, therefore, an element that a plaintiff is required to
10 alleged and proven by the Complaint. (*Del Real v. City of Riverside* (2002) 95 Cal. App. 4th 761, 770;
11 *State of Cal. v. Super. Ct* (2004) 32 Cal. 4th 1234, 1240, 1243; *Wood v. Riverside Gen. Hosp.* (1994)
12 25 Cal. App. 4th 1113, 1119 (an “essential element” to a complaint against a municipality requires
13 Plaintiff allege compliance with the government claim submission requirements).) The Court may take
14 judicial notice of the date and presentation of a claim, its contents, and the date of denial. (*Gong v.*
15 *City of Rosemead* (2014) 226 Cal.App.4th 363, 368 fn. 1, 376; *see also* RJN, Exh. A and B.) *Second*, a
16 claim must be presented to the public entity “not later than six months after the accrual of the cause of
17 action.” (Gov. Code § 911.2.) *Third*, an action against a governmental entity or employee covered by
18 the claim-presentation requirement must be filed in court within six months following written notice of
19 rejection of the claim by the public entity. (Gov. Code § 945.6(a)(1); *Silva v. Crain* (9th Cir. 1999) 169
20 F.3d 608, 611.)

21 *Fourth*, the requisite pre-lawsuit Government Claim must specify each legal and factual basis
22 for the government’s liability to the claimant. A party cannot file suit on any legal or factual basis
23 outside those that are listed in the Government Claim. (*Nelson v. State of California* (1982) 139
24 Cal.App.3d 72, 79 (“the factual circumstances set forth in the written claim must correspond with the
25 facts alleged in the complaint; even if the claim were timely, the complaint is vulnerable to a demurrer
26 if it alleges a factual basis for recovery which is not fairly reflected in the written claim”); *Williams v.*
27 *Braslow* (1986) 179 Cal.App.3d 762, 769–70 (“Courts have consistently interpreted the Tort Claims
28 Act to bar actions alleging matters not included in the claim filed with the public entity.”), *quoting*

1 *State of California ex rel. Dept. of Transportation v. Superior Court* (1984) 159 Cal.App.3d 331, 336.)
2 And *fifth*, the claim must specify the amount of damages. (Govt. C. § 910(f).)

3 Here, none of the requirements have been satisfied. The Complaint does not allege compliance
4 with the Tort Claims Act, and Plaintiff acknowledges she did not comply. (Ikels at ¶¶ 6-7; Exh., C.)
5 The Government Claims do not mention any of the City Defendants, set forth any factual
6 circumstances, date, location, or legal theories that are cognizable against them. The events in the
7 Government Claims also do not correlate to the Complaint, and no damages are specified. (RJN, Ikels
8 Decl., Exh. A.) The Government Claims allude to past disturbances with residents on the Great
9 Highway. The Complaint, by contrast, describes the generous homeless services provided at a safe
10 parking site. After a claim is rejected, the lawsuit filed may elaborate or add further details “but the
11 complaint may not completely shift the allegations and premise liability on facts that fundamentally
12 differ from those specified in the government claim.” (*Hernandez*, at 1231 (upholding dismissal
13 because the factual basis for recovery is not ‘fairly reflected’ in the plaintiff’s government claim”); *see*
14 *also Turner v. State of California* (1991) 232 Cal.App.3d 883, 887-888, 891 (complaint properly
15 dismissed because of variance between government claim and complaint); *Fall River Joint Unified*
16 *School Dist. v. Superior Court* (1988) 206 Cal.App.3d 431, 434-435 (same); *Donohue v. State of*
17 *California* (1986) 178 Cal.App.3d 795, 804 (same).)

18 It is proper to sustain a demurrer without leave to amend for noncompliance, where, as here,
19 the Government Claims demonstrate amendment would be futile. (*Gong, supra*, 226 Cal.App.4th at p.
20 378.) There is no means to cure the defects in the pleading, because it was filed years after the
21 deadline. (*Compare* RJN, Ikels Decl. Exh. A (Government Claim dated March 1, 2021, and denied on
22 March 26, 2021) and Exh. B (Claim Form dated February 7, 2023 claim regarding her RV being
23 towed in February 2022 to Complaint filed on January 26, 2024.) To be timely, a claim must be
24 presented within six months of the accrual of the cause of action. (Gov. Code § 911.2.) The
25 Government Claims do not comply with either requirement. Failure to file a timely claim and failure to
26 file a timely lawsuit are both jurisdictional bars. (*See Santee v. Santa Clara City Office of Education*
27 (1990) 220 Cal.App.3d 702, 713; *Cole v. Los Angeles Unified School Dist.* (1986) 177 Cal.App.3d 1, 5
28 (holding that the statutory period of limitations for actions against a public entity is “mandatory and

1 must be strictly complied with.”.)

2 In sum, the Government Claims bear no resemblance to a valid claim, and the Complaint bears
3 no resemblance to the Government Claims. The deficiencies cannot be cured and, accordingly, the
4 lawsuit should be dismissed.

5 **B. The City Defendants Are Immune Under the Government Code**

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

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

20 Subdivision (b) of section 815.2 states: “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 Likewise, the immunity for discretionary acts, such as making policy and budgetary decisions
28 and passing ordinances, was codified in Sections 820.2 and 855.4 of the Government Code, which

1 address both public employees and entities. The Code provides an absolute immunity “for an injury
2 resulting from his act or omission where the act or omission was the result of the exercise of the
3 discretion vested in him, whether or not such discretion be abused.” *Greenwood v. City of Los Angeles*
4 (2023) 89 Cal. App. 5th 851, 862, *reh'g denied* (Apr. 20, 2023), *review denied* (July 12, 2023). In
5 *Greenwood*, the court upheld the trial court’s sustaining a demurrer regarding a city-defendant’s
6 purported “failure to remedy a dangerous condition on public property adjacent” to plaintiff’s place of
7 work, which plaintiff alleged caused her to contract typhus. California Supreme Court has developed a
8 “workable definition’ of immune discretionary acts,” which “draws the line between ‘planning’ and
9 ‘operational’ functions of government... as to which judicial interference would thus be unseemly.”
10 (*Greenwood* at 862 (internal quotations omitted) *citing to Caldwell v. Montoya* (1995) 10 Cal.4th 972,
11 981 .) “Such ‘areas of quasi-legislative policy-making ... are sufficiently sensitive’ to call for judicial
12 abstention from interference that ‘might even in the first instance affect the coordinate body’s decision-
13 making process.’ The immunity applies to deliberate and considered policy decisions, in which a
14 ‘balancing [of] risks and advantages ... took place.” (*Id.*)

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

23 C. The Requisite Elements for Fraud and Negligence Are Missing

24 Plaintiff pleads two claims, one for negligence and for fraud. Neither is viable. A cause of
25 action for fraud must allege the following elements: (1) a knowingly false representation by the
26 defendant; (2) an intent to deceive or induce reliance; (3) justifiable reliance by the plaintiff; and (4)
27 resulting damages. Every element must be specifically pleaded, this means that general and conclusory
28 allegations will not suffice. Explaining the specificity requirements for fraud, the courts have

1 identified two purposes. “The first purpose is to give notice to the defendant with sufficiently definite
2 charges that the defendant can meet them. [Citation.] The second is to permit a court to weed out
3 meritless fraud claims on the basis of the pleadings; thus, “the pleading should be sufficient to enable
4 the court to determine whether, on the facts pleaded, there is any foundation, prima facie at least, for
5 the charge of fraud.” (*West v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 780, 793 (citations
6 omitted).) Although she alleges a claim of “deceit,” Plaintiff does not allege any facts that support the
7 “who, what, when or where” to support fraud. There is no mention of either the Mayor or Director
8 McSpadden. Government Code Section 818.8 also provides an absolute immunity from liability for
9 misrepresentation of any sort against a municipality.

10 For the same reasons, the negligence claim is defective. “[I]n order to prove facts sufficient to
11 support a finding of negligence, a plaintiff must show that defendant had a duty to use due care, that he
12 breached that duty, and that the breach was the proximate or legal cause of the resulting injury.
13 [Citation.]’ (*Nally v. Grace Community Church* (1988) 47 Cal.3d 278, 292–293.) The existence of a
14 duty of care is a question of law to be determined by the court. (*Ballard v. Uribe* (1986) 41 Cal.3d
15 564, 572, fn. 6; *Tarasoff v. Regents of University of California* (1976) 17 Cal.3d 425, 434.) The
16 Complaint does not allege a duty, causation or injury to support a negligence claim.

17 Finally, a governmental entity cannot be held liable for common law torts, when it is not, as
18 here, expressly authorized by statute. Cal. Gov.Code § 815(a). It is well established that the law does
19 not recognize direct entity liability for negligence against a municipality. (*See, e.g., Thorn v. City of*
20 *Glendale* (1995) 28 Cal. App. 4th 1379, 1385.) The Complaint does not allege that the Mayor or
21 Director had any interaction with Ms. Mayon, and therefore does not rise to a “special duty.”
22 (*Davidson v. City of Westminster*, 32 Cal. 3d 201 (1982) (requiring specific allegations that give rise to
23 a special duty to overcome immunities from liability).

24 **D. The Declaratory Relief Claim is Neither Pleaded Nor Cognizable**

25 Although not pled as a separate cause of action, Plaintiff alludes to declaratory relief.⁴ Ms.

26 ⁴ In order for a party to pursue an action for declaratory relief, “the grounds for such relief must
27 be specifically pleaded in the complaint.” (*Davis v. Farmers Ins. Exch.*, 245 Cal. App. 4th 1302,
28 1325–26 (2016), as modified on denial of reh'g (Apr. 21, 2016) (citations omitted).) Here, Plaintiff
does not plead a claim for declaratory relief and her stated objectives are not viable through a
declaratory relief claim.

1 Mayon’s stated purpose of her lawsuit is: “I want to change how the rules are made at safe parking
2 sites in California (well, the 9th circuit, actually). The Real Parties have exceeded their authority by
3 about a hundred miles and squandered the taxpayer’s money meant to make it safe, dignified, livable.”
4 (Ikels Decl., Exh. C.) Her prior Opposition stated that Plaintiff is seeking a “Declaratory Statement to
5 clarify that is built into the VTC which is called a ‘low barrier navigation centers’ to be allowed by
6 right,” referring to Welfare and Institutions Code (“WIC”) Section 8255. Plaintiff bolds the word
7 “tenant” each time it is mentioned in Section 8255, but Plaintiff overlooks the actual definition of
8 tenant, which she has acknowledged, in writing, that she cannot be.

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

17 *First*, Ms. Mayon is not seeking to enforce the Agreement or a property right. *Second*,
18 Plaintiff’s request – asking the Court to rewrite state laws and local ordinances so as to convert her
19 into a “tenant,” the City Defendants or the “Real Parties of Interest” into landlords, and create
20 “tenants’ rights” in the fashion she desires is improper. A declaratory relief claim does not empower
21 the judiciary to interfere with the legislative function, such as a city’s economic and homeless policies,
22 the Safe Parking Program, allocation of budget resources, or bypass propositions or local ordinances.
23 (*Carrier, supra*, at 36 (dismissing lawsuit against city of San Diego, where plaintiff challenged the
24 wage rate set by the Board of Supervisors); *see also Spencer v. City of Alhambra*, 44 Cal.App.2d 75,
25 77.)

26 Nor may Plaintiff ask the Court to rewrite the laws that define “tenant,” “landlord,” “rent,” and
27 “dwelling units,” or transform them into applying to her personally-owned RV. In construing a statute,
28 it is the duty of the court “simply to ascertain and declare what is in terms or in substance contained

1 therein, not to insert what has been omitted or to omit what has been inserted.” (Code Civ.Proc. §
2 1858.) “When the statutory language is clear there can be no room for construction of the statute.
3 Where there is no ambiguity in the statutory language, the power to construe it does not exist.” (*San*
4 *Joaquin Blocklite, Inc. v. Willden* (1986) 184 Cal. App. 3d 361, 367–68 (citations omitted); *see also*
5 *LGCY Power, LLC v. Superior Ct.* (2022) 75 Cal. App. 5th 844, 860–61 (“we are not empowered to
6 insert language into a statute, as ‘doing so would violate the cardinal rule of statutory construction that
7 courts must not add provisions to statutes.’”).)

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

21 A “dwelling unit” and “residential dwelling unit” are defined terms, which are building
22 structures affixed to real property. (San Francisco Building Inspection Commission (BIC) Codes,
23 Section 401.) California law similarly defines residential “dwelling unit” is “a *structure* or the part of a
24 *structure* that is used as a home, residence, or sleeping place by one person who maintains a household
25 or by two or more persons who maintain a common household.” (Civ. Code § 1940(c) (emphasis
26 added).) Likewise, a “rental unit(s)” are “residential dwelling units in the City together with the land
27 and appurtenant buildings thereto.” (122(r).) “Rent” is defined as “the *consideration*” for the exclusive
28 occupancy, i.e. money. (Admin. Code § 37.2(q).

1 These are clear and unambiguous terms. Plaintiff’s personal vehicle is not conceptually or
2 literally encompassed in the term “rental unit,” “residential dwelling unit,” “landlord,” or
3 “occupancy.” Ms. Mayon cannot be a “tenant” because she lives in her own vehicle, not a building,
4 and does not pay rent. She refers to herself as “culturally...nomadic,” and that it is “culturally
5 insensitive” to encourage her to move to a dwelling unit. (See, Section II, *supra*, Compl., p. 10, parag.
6 “O”, to p. 3-4; Ikels Decl., Exh. A.) In any event, the Administrative Code excludes “dwelling units
7 whose rents are controlled or regulated by any government unit, agency, or authority,” which applies
8 to the City Defendants, even assuming *arguendo* a landlord-tenant relationship existed. (*Id.*) Put
9 another way, Ms. Mayon’s “pretended construction would not be construction at all but would be
10 legislation.” (*People v. Pacific Guano Co.* (1942) 55 Cal.App.2d 845, 849.) It is a cardinal rule that
11 “[c]ourts have no power to legislate.” (*Id.*; *Anderson v. City of Long Beach* (1959) 171 Cal. App. 2d
12 699, 701.)

13 Finally, her argument is undermined by the clear and unambiguous terms of the Agreement,
14 which “clearly states” that to gain entry to the Safe Parking Program, she agreed that she is a guest, not
15 a tenant, and has no rights under landlord tenant laws. (Compl., p. 1, lines 22-24.) Despite agreeing
16 that she is a guest, not a tenant, and no landlord-tenant relationship exists, Plaintiff asks the Court to
17 ignore the Agreement, rewrite both State laws and local ordinances, and second guess the policy and
18 budgetary decisions of the City.

19 And, finally, Section 1060 does not allow for the remedies Plaintiff appears to seek, such as
20 reallocating the budget of the City for gift cards, changing the State Fire Marshall rules, or building
21 workstations. Even if Ms. Mayon could second-guess the City’s budgetary and policy decisions, her
22 contention that \$400 per site has been unused is disproven by the plethora of services she describes.
23 (*Cf.* Compl., p. 2:5-9; to Exh. B, C and E attached thereto.)

24 **E. Ms. Mayon Is A Guest, Which Is A Difference With A Legal Distinction**

25 It has been the law for over 100 years that a guest given permission to “use” a premise, under
26 the control of another, has no interest in the realty and does not have an estate or interest in the
27 property and is not a “tenant.” (*People v. Minervini* (1971) 20 Cal. App. 3d 832, 840, 112 (guest has
28 only the right to use the premises, subject to the landlord's retention of control and right of access);

1 *Bullock v. City & Cnty. of San Francisco* (1990) 221 Cal. App. 3d 1072, 1096–97 (detailed discussion
2 of the meaning of “guests” and lodgers, and distinctions in the terminology of “tenant”, holding city
3 could not bar conversion of rented hotel rooms into a hotel), *distinguished on other grounds* *Griset v.*
4 *Fair Pol. Pracs. Comm'n* (2001) 25 Cal. 4th 688, 698).)

5 Even if the Court could rewrite all the laws, and change the unambiguous terms of the
6 Agreement, WIC § 8255 does not encompass a self-owned RV with free access for parking as a guest.
7 WIC § 8255 repeatedly connects “tenant” to “permanent housing” and “housing.” Housing is defined
8 in WIC § 16523 as having the same meaning of “Chapter 2 (commencing with Section 1940) of this
9 Title 5 of Part 4 of Division 3 of the Civil Code”). Civil Code 1940 is defined as the “*Hiring of Real*
10 *Property*”. (Emphasis supplied.) It goes without saying that Plaintiff’s RV is not real property. Section
11 1946.2, subdivision (i)(3) defines “[t]enancy” to be “the *lawful* occupation of a *residential real*
12 *property*.” Lawful occupancy, in turn, is connected to paying rent for exclusive occupancy. The term
13 “rent” means “to hire real property and includes a lease or sublease.” (Civ. Code § 1954.26(e).) The
14 legislator, in creating the laws governing landlord-tenant laws, expressly excluded guests (or
15 “lodgers”). (Civ. Code § 1940(b).) It also instructs that “persons who hire” are not those, such as Ms.
16 Mayon, that have “not made valid *payment* for all room and other related charges owing.” (Civ. Code
17 ¶ 1940(b)(1).)

18 Here, to gain entrance to the safe parking site, Ms. Mayon agreed, in writing, she is a “guest”
19 with “no tenancy rights.”(Compl., Exh. C.) There is no lease. She does not live in a residential rental
20 unit or real property, and she does not pay rent or consideration of any kind. The long list of *free*
21 services show that Plaintiff is a guest. (*Roberts v. Casey* (1939) 36 Cal. App. 2d Supp. 767, 774 (a
22 guest has “use” of premises but is not a tenant, and the provision of services, such as laundry and
23 cleaning, are as a “proprietor”).)

24 **III. CONCLUSION**

25 This unmoored lawsuit, requesting judicial intervention to second-guess municipal
26 policymaking, is not legally proper. Defendants respectfully requests that the Court sustain the
27 demurrer without leave to amend, to avoid wasting precious judicial and municipality resources.
28 (*Thorn*, 28 Cal. App. 4th at 1385.)

1 Dated: April 24, 2024

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