

**FILED**  
Superior Court of California  
County of Placer

JUL 11 2025

JAKE CHATTERS  
EXECUTIVE OFFICER & CLERK  
By: N. O'Connell, Deputy

*NOC*

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF PLACER

CITY OF LINCOLN,  
Plaintiff and Petitioner,  
v.  
THE GATHERING INN, et al,  
Defendants and  
Respondents.

Case No.: S-CV-0053711

RULING ON SUBMITTED MATTERS

On June 17, 2025, two demurrers to the first amended complaint came on for hearing filed by (1) defendant The Gathering Inn and (2) defendant and respondent the California Department of Social Services. Appearances are as stated in the minutes. The court heard oral argument and took the motions under submission. The court has considered all briefing in this matter and oral argument and rules as follows:

Demurrer to the First Amended Complaint ("FAC")

Defendant The Gathering Inn demurs to the second, fourth, fifth, and sixth causes of action of plaintiff's FAC pursuant to Code of Civil Procedure section 430.10(e). Plaintiff opposes the demurrer.

1 Defendant is advised the notice of motion must include notice of the  
2 court's tentative ruling procedures. (Local Rule 20.2.3(C).)

3 Defendant's request for judicial notice, requested with plaintiff's  
4 stipulation, is granted.

5 Plaintiff's request for judicial notice is granted.

6 A party may demur where the pleading does not state facts sufficient  
7 to constitute a cause of action. (Code Civ. Proc., § 430.10, subd. (e).) A  
8 demurrer tests the legal sufficiency of the pleadings, not the truth of the  
9 allegations or the accuracy of the described conduct. (*Bader v. Anderson*  
10 (2009) 179 Cal.App.4th 775, 787.) The allegations in the pleadings are  
11 deemed true no matter how improbable they may seem. (*Del E. Webb Corp.*  
12 *v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) However, the  
13 court does not assume the truth of contentions, deductions, or conclusions  
14 of facts or law. (*Evans v. City of Berkeley* (2006) 38 Cal.4th 1, 6.) The court  
15 may only refer to matters outside the pleading that are subject to judicial  
16 notice. (*Rea v. Blue Shield of California* (2014) 226 Cal.App.4th 1209,  
17 1223.)

18 A brief summary of the Community Care Expansion Program, the  
19 request for applications promulgated in part by DSS, and the allegations of  
20 the FAC is necessary prior to assessing defendant's contentions raised by  
21 demurrer.

#### 22 *Community Care Expansion Program*

23 The California State Legislature enacted the Community Care  
24 Expansion Program ("CCE") to provide grant funding for projects as  
25 approved to preserve or expand residential adult and senior care facilities.  
26 (2021 Cal. Stat. (2021–2022 Reg. Sess.), A.B. 172, ch. 696, enacting Welf.  
27 & Inst. Code, §§ 18999.97, 18999.98.) The Legislature authorized the  
28 California Department of Social Services ("DSS") to, in its discretion, award

1 funds to qualified grantees and to develop criteria for the program and may  
2 implement “all-county letters or similar instruction that shall have the same  
3 force and effect as regulations.” (Welf. & Inst. Code, § 18999.97, subds. (b),  
4 (d), (k).) The Legislature authorized DSS to enter into an agreement with a  
5 third-party for administrative services to implement the legislation. (*Id.* at  
6 subd. (b)(1).) The Legislature exempted programs using CCE program funds  
7 from local and land use authority. (*Id.* at subd. (l).) The Legislature also  
8 provided, “The state shall be immune from any liability resulting from the  
9 implementation of this chapter.” (*Id.* at subd. (m).)

#### 10 *Requirements of the Joint RFA*

11 Plaintiff’s FAC alleges that DSS worked in tandem with the California  
12 Department of Health Care Services (“DHCS”), which had received legislative  
13 authorization to establish and operate a program called the Behavioral  
14 Health Continuum Infrastructure Program (“BHCIP”), and promulgated a  
15 Joint Request for Applications (“Joint RFA”), outlining the requirements for  
16 an applicant to apply for grant funding. (FAC, ¶¶ 10–11.) The Joint RFA,  
17 attached to the FAC as Exhibit A, requires active community engagement  
18 and support:

#### 19 **Approval and engagement**

- 20 • Organizational support is indicated by a letter from the CEO and/or  
21 board, county board of supervisors, or tribal council resolution, as  
22 applicable.
- 23 • Applicant provides documentation of active community engagement  
24 and support, particularly with people with lived experience. Insights  
25 from the community should be included in project planning, design,  
26 implementation, and evaluation. Examples may include survey  
27 results, notes taken during stakeholder engagement sessions, etc.

- **BHCIP Launch Ready only:** City, nonprofit, or private applicants must include a letter of support from their county behavioral health agency or, if a tribal facility, the tribal board at the time of application or within the grant decision period.

- The letter must indicate that BHCIP grantees that operate Medi-Cal behavioral health services will have in place a contract with their county to ensure the provision of Medi-Cal services once the financed facility's expansion or construction is complete.

(FAC, Exh. A, sec. 3.4.)

The Joint RFA included, as an attachment, "Form 6," entitled "Community Engagement Tracking Form," attached to the FAC as Exhibit B, requests information regarding community involvement:

*Instructions: Explain how stakeholders (e.g., community-based organizations [CBOs], members of the target population, residents, civil leaders, and frontline staff) have been meaningfully involved in the visioning and development of this project.*

(FAC, ¶ 14; Exh. B.)

*Plaintiff's Allegations in the FAC*

Plaintiff alleges The Gathering Inn applied to become a CCE Program participant in July 2022 to open a 20-bed medical respite center in Roseville, California. (FAC, ¶ 16.) The Gathering Inn obtained written or verbal support from several entities and engaged in multiple meetings with officials from the City of Roseville, but after two Roseville City Council meetings where community members voiced concerns about the project, the City of Roseville did not provide any letter of support. (FAC, ¶¶ 17–20; Exh. C.) Rather than updating DSS about the City of Roseville's lack of written support, in early 2023 The Gathering Inn located an alternative site for its project in Lincoln,

1 California that is larger and could house more than 100 people. (FAC, ¶¶ 20,  
2 24.) The Gathering Inn provided this information to DSS's then third-party  
3 administrator at a meeting on February 6, 2023. (FAC, ¶ 25.) The third-  
4 party administrator informed The Gathering Inn that, given the new  
5 proposed site, it may need to submit a new application or request re-review  
6 of its existing application with additional information. (FAC, ¶ 26.) The  
7 Gathering Inn requested a re-review of its application for the new Lincoln  
8 site, now described as a 60-bed medical respite facility, and DSS approved  
9 the application in May 2023, awarding The Gathering Inn \$6.44 million for its  
10 project. (FAC, ¶¶ 27, 29.) As part of the request for re-review, The  
11 Gathering Inn did not submit a new Community Engagement Tracking Form  
12 (Form 6) for the Lincoln site, so DSS approved the project without  
13 information about community involvement or support. (FAC, ¶¶ 27, 29.)

14 Plaintiff alleges The Gathering Inn purposefully concealed its plan to  
15 open a site in the City of Lincoln from the community and civic leaders of  
16 Lincoln, even though it was required to seek such local support. (FAC, ¶ 30.)  
17 The Gathering Inn also misrepresented that the Lincoln site was "ready for  
18 turnkey operations" and "[t]here is minimal renovation work required to  
19 begin operation," despite inspections revealing numerous serious violations  
20 of the California Building Code and California Fire Code. (FAC, ¶¶ 39–41.)  
21 Plaintiff alleges the project is too large for a city of 52,000 residents with  
22 very few individuals experiencing homelessness and there is not a hospital in  
23 close proximity to it, which would require individuals experiencing  
24 homelessness to be brought into the city from other regions. (FAC, ¶ 32.)  
25 The City of Lincoln does not have police, fire, and emergency medical  
26 resources that would be needed to absorb what would likely result in  
27 increased calls for such services. (FAC, ¶ 33.) The Lincoln site is also within  
28 close proximity to three schools. (FAC, ¶ 34.)

1           *Second Cause of Action – Unfair Business Practices*

2           Defendant contends the City of Lincoln cannot prosecute an Unfair  
3 Business Practices claim. Business and Professions Code section 17204  
4 provides three categories of city officials who can prosecute such a claim:  
5 (1) a city attorney of a city with a population of more than 750,000, (2) “a  
6 city attorney in a city and county,” or (3) “with the consent of the district  
7 attorney, by a city prosecutor in a city having a full-time city prosecutor in  
8 the name of the People of the State of California . . . .” The population of the  
9 City of Lincoln does not exceed 750,000 nor is it both a “city and county.”  
10 Accordingly, the only way the City of Lincoln could prosecute a claim for  
11 Unfair Business Practices is if it meets the third category of having a full-  
12 time city prosecutor with consent of the district attorney.

13           Business and Professions Code section 17204 uses both “city attorney”  
14 and “city prosecutor,” an apparent deliberate choice by the Legislature, and  
15 the latter is used in the third category of when a city official may prosecute  
16 such a claim. Government Code section 72193 provides the duties of a city  
17 prosecutor are within the context of a charter city. The duties of a “city  
18 attorney” are outlined in Government Code sections 41801 through 41805,  
19 and include several tasks other than prosecuting in the name of the People  
20 of the State of California, including providing legal advice to city officials on  
21 city business, performing legal services as required by the legislative body,  
22 and may act as counsel of record for a criminal defendant or in private  
23 practice provided certain conditions are met. (Gov. Code, §§ 41801, 41802,  
24 41803, 41805.) City attorneys may also prosecute misdemeanors with the  
25 consent of the district attorney as well as issue subpoenas as the district  
26 attorney could when acting in that capacity, but the authorization “shall not  
27 be deemed to affect any of the provisions of Section 72193.” (Gov. Code, §§  
28

1 41803.5, subd. (a), 41803.7, 72193 [providing the duties of a city  
2 prosecutor].)

3 Here, the FAC alleges the City of Lincoln has a full-time city  
4 prosecutor, in-house City Attorney Kristine Mollenkopf, whose duties,  
5 "[a]mong others, . . . include 'Prosecut[ing] on behalf of the people cases for  
6 violations of city ordinance'" and who has the Placer County District  
7 Attorney's consent to bring this action. (FAC, ¶ 58.) The FAC appears to use  
8 "city attorney" and "city prosecutor" interchangeably while the roles are  
9 distinct. (Compare Gov. Code, § 72193 [providing the duties of a city  
10 prosecutor in the context of a charter city], with Gov. Code, §§ 41801–  
11 41805 [providing the duties of a city attorney].) The FAC does not allege  
12 that the City of Lincoln is a charter city. The FAC's allegations that Counsel  
13 Mollenkopf works full time as a city attorney with duties other than  
14 prosecuting on behalf of the People of the State of California fails to allege  
15 she is a "city prosecutor" within the meaning of Government Code section  
16 72193.

17 Plaintiff asks the court to look to the legislative intent behind Business  
18 and Professions Code section 17204, which essentially asks the court to  
19 engage in a statutory interpretation analysis. However, Government Code  
20 section 72193 is unambiguous and there is no justification here to engage in  
21 a statutory interpretation analysis and the court declines to do so.

22 The demurrer is sustained as to the second cause of action.

23 *Fourth Cause of Action – Declaratory Relief*

24 Defendant contends plaintiff's allegations are as to defendant's past  
25 acts, which cannot constitute an "actual controversy" for a declaratory relief  
26 claim. "[C]omplaining of past acts' by the defendant does not constitute an  
27 actual controversy "relating to the legal rights and duties of the respective  
28 parties" within the meaning of Code of Civil Procedure section 1060.'

[Citation.]" (*City of Gilroy v. Super. Court* (2023) 96 Cal.App.5th 818, 834.)  
"The purpose of a judicial declaration of rights in advance of an actual  
tortious incident is to enable the parties to shape their conduct so as to  
avoid a breach. '[D]eclaratory procedure operates prospectively, and not  
merely for the redress of past wrongs. It serves to set controversies at rest  
before they lead to repudiation of obligations, invasion of rights or  
commission of wrongs; in short, the remedy is to be used in the interests of  
preventive justice, to declare rights rather than execute them.' [Citations.]"  
(*Babb v. Super. Court* (1971) 3 Cal.3d 841, 848.)

Here, the FAC alleges The Gathering Inn both withheld information and  
made misrepresentations to DSS during its application process, which are  
past wrongs. To borrow language from the *Babb* court, "No . . . preventive  
benefit is possible here." (*Babb, supra*, at p. 848.) For this reason, the  
demurrer is sustained as to the fourth cause of action.

Plaintiff also argues, relying on *Alameda County Land Use Association  
v. City of Hayward* (1995) 38 Cal.App.4th 1716, that an action for  
declaratory relief lies when the parties disagree over particular legislation or  
whether a public entity has established policies in violation of law. However,  
the FAC does not allege any fundamental disagreement between plaintiff and  
defendant The Gathering Inn over the Joint RFA promulgated by DSS.

The court need not and does not reach defendant's other arguments  
as to the declaratory relief cause of action.

#### *Fifth Cause of Action – Deceit / Concealment*

Defendant contends the fifth cause of action for fraud fails because  
defendant owes no duty to disclose to plaintiff. A duty to disclose a material  
fact may arise in several ways, including imposition by statute or other ways  
which assume a pre-existing relationship between the parties. (*Rattagan v.  
Uber Technologies, Inc.* (2024) 17 Cal.5th 1, 40.) The FAC alleges no pre-



1 existing relationship between the City and the Gathering Inn, but it does  
2 allege the duty is set forth in the Joint RFA instructions and the program  
3 funding agreement, which are alleged to have the "same force and effect as  
4 regulations." (Welf. & Inst. Code, § 18999.97; subd. (k).) It is unclear to the  
5 court whether these documents are in fact "all-county letters or similar  
6 instructions" so as to be given the full force and effect of regulations, but the  
7 court must accept allegations in the FAC as true and defendant fails to show  
8 that they are not through judicially noticeable information. Accordingly, the  
9 duty to disclose element is pleaded with minimal sufficiency at the early  
10 pleading stage.

11 However, a careful review of the FAC reveals it fails to allege how  
12 plaintiff would have acted differently but-for defendant's concealment and  
13 alleges plaintiff's harm in a speculative and conclusory manner unsupported  
14 by facts. The demurrer is sustained as to the fifth cause of action.

15 *Sixth Cause of Action – Fraud and Concealment (Tort of Another*  
16 *Doctrine)*

17 Defendant contends the sixth cause of action for recovery of attorneys'  
18 fees under the tort of another doctrine fails because plaintiff's claim is not  
19 based on the tort of The Gathering Inn against the City—rather, the City  
20 claims damages based on fraud by concealment against another party. As  
21 the FAC fails to adequately allege fraud by concealment, the claim for  
22 attorneys' fees based on the tort of another doctrine likewise fails.

23 Based on the foregoing, the demurrer is sustained in its entirety.  
24 Plaintiff is afforded leave to amend and a second amended complaint, if any,  
25 shall be filed and served within 10 days of notice of entry of order.

26 ////

27 ////

28 ////

1           Demurrer to the First Amended Petition and Complaint ("FAC")

2           Defendant and respondent California Department of Social Services  
3 ("DSS") demurs to the third and fourth causes of action of plaintiff's FAC  
4 pursuant to Code of Civil Procedure section 430.10(e). Plaintiff opposes the  
5 demurrer.

6           Defendant's request for judicial notice is granted.

7           A party may demur where the pleading does not state facts sufficient  
8 to constitute a cause of action. (Code Civ. Proc., § 430.10, subd. (e).) A  
9 demurrer tests the legal sufficiency of the pleadings, not the truth of the  
10 allegations or the accuracy of the described conduct. (*Bader v. Anderson*  
11 (2009) 179 Cal.App.4th 775, 787.) The allegations in the pleadings are  
12 deemed true no matter how improbable they may seem. (*Del E. Webb Corp.*  
13 *v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) However, the  
14 court does not assume the truth of contentions, deductions, or conclusions  
15 of facts or law. (*Evans v. City of Berkeley* (2006) 38 Cal.4th 1, 6.) The court  
16 may only refer to matters outside the pleading that are subject to judicial  
17 notice. (*Rea v. Blue Shield of California* (2014) 226 Cal.App.4th 1209,  
18 1223.)

19           A brief summary of the Community Care Expansion Program, the  
20 request for applications promulgated in part by DSS, and the allegations of  
21 the FAC is necessary prior to assessing defendant's contentions raised by  
22 demurrer.

23           *Community Care Expansion Program*

24           The California State Legislature enacted the Community Care  
25 Expansion Program ("CCE") to provide grant funding for projects as  
26 approved to preserve or expand residential adult and senior care facilities.  
27 (2021 Cal. Stat. (2021–2022 Reg. Sess.), A.B. 172, ch. 696, enacting Welf.  
28 & Inst. Code, §§ 18999.97, 18999.98.) The Legislature authorized the

1 California Department of Social Services ("DSS") to, in its discretion, award  
2 funds to qualified grantees and to develop criteria for the program and may  
3 implement "all-county letters or similar instruction that shall have the same  
4 force and effect as regulations." (Welf. & Inst. Code, § 18999.97, subds. (b),  
5 (d), (k).) The Legislature authorized DSS to enter into an agreement with a  
6 third-party for administrative services to implement the legislation. (*Id.* at  
7 subd. (b)(1).) The Legislature exempted programs using CCE program funds  
8 from local and land use authority. (*Id.* at subd. (l).) The Legislature also  
9 provided, "The state shall be immune from any liability resulting from the  
10 implementation of this chapter." (*Id.* at subd. (m).)

#### 11 *Requirements of the Joint RFA*

12 Plaintiff's FAC alleges that DSS worked in tandem with the California  
13 Department of Health Care Services ("DHCS"), which had received legislative  
14 authorization to establish and operate a program called the Behavioral  
15 Health Continuum Infrastructure Program ("BHCIP"), and promulgated a  
16 Joint Request for Applications ("Joint RFA"), outlining the requirements for  
17 an applicant to apply for grant funding. (FAC, ¶¶ 10–11.) The Joint RFA,  
18 attached to the FAC as Exhibit A, requires active community engagement  
19 and support:

#### 20 **Approval and engagement**

- 21 • Organizational support is indicated by a letter from the CEO and/or  
22 board, county board of supervisors, or tribal council resolution, as  
23 applicable.
- 24 • Applicant provides documentation of active community engagement  
25 and support, particularly with people with lived experience. Insights  
26 from the community should be included in project planning, design,  
27 implementation, and evaluation. Examples may include survey  
28 results, notes taken during stakeholder engagement sessions, etc.

- **BHCIP Launch Ready only:** City, nonprofit, or private applicants must include a letter of support from their county behavioral health agency or, if a tribal facility, the tribal board at the time of application or within the grant decision period.

- The letter must indicate that BHCIP grantees that operate Medi-Cal behavioral health services will have in place a contract with their county to ensure the provision of Medi-Cal services once the financed facility's expansion or construction is complete.

(FAC, Exh. A, sec. 3.4.)

The Joint RFA included, as an attachment, "Form 6," entitled "Community Engagement Tracking Form," attached to the FAC as Exhibit B, requests information regarding community involvement:

*Instructions: Explain how stakeholders (e.g., community-based organizations [CBOs], members of the target population, residents, civil leaders, and frontline staff) have been meaningfully involved in the visioning and development of this project.*

(FAC, ¶ 14; Exh. B.)

*Plaintiff's Allegations in the FAC*

Plaintiff alleges The Gathering Inn applied to become a CCE Program participant in July 2022 to open a 20-bed medical respite center in Roseville, California. (FAC, ¶ 16.) The Gathering Inn obtained written or verbal support from several entities and had engaged in multiple meetings with officials from the City of Roseville, but after two Roseville City Council meetings where community members voiced concerns about the project, the City of Roseville did not provide any letter of support. (FAC, ¶¶ 17–20; Exh. C.) Rather than updating DSS about the City of Roseville's lack of written support, in early 2023 The Gathering Inn located an alternative site for its

1 project in Lincoln, California that is larger and could house more than 100  
2 people. (FAC, ¶¶ 20, 24.) The Gathering Inn provided this information to  
3 DSS's then third-party administrator at a meeting on February 6, 2023.  
4 (FAC, ¶ 25.) The third-party administrator informed The Gathering Inn that,  
5 given the new proposed site, it may need to submit a new application or  
6 request re-review of its existing application with additional information.  
7 (FAC, ¶ 26.) The Gathering Inn requested a re-review of its application for  
8 the new Lincoln site, now described as a 60-bed medical respite facility, and  
9 DSS approved the application in May 2023, awarding The Gathering Inn  
10 \$6.44 million for its project. (FAC, ¶¶ 27, 29.) As part of the request for re-  
11 review, The Gathering Inn did not submit a new Community Engagement  
12 Tracking Form (Form 6) for the Lincoln site, so DSS approved the project  
13 without information about community involvement or support. (FAC, ¶¶ 27,  
14 29.)

15 Plaintiff alleges DSS should not have approved TGI's application and  
16 should not have awarded any CCE Program funds to The Gathering Inn for  
17 the Lincoln Site project because The Gathering Inn did not submit an  
18 application that met all of the regulatory requirements. (FAC, ¶ 69.) Plaintiff  
19 alleges the project is too large for a city of 52,000 residents with very few  
20 individuals experiencing homelessness and there is not a hospital in close  
21 proximity to it, which would require individuals experiencing homelessness  
22 to be brought into the city from other regions. (FAC, ¶ 32.) The City of  
23 Lincoln does not have police, fire, and emergency medical resources that  
24 would be needed to absorb what would likely result in increased calls for  
25 such services. (FAC, ¶ 33.) The Lincoln site is also within close proximity to  
26 three schools. (FAC, ¶ 34.)

1           *Third Cause of Action – Petition for Writ of Mandate*

2           The mandamus claim alleges that pursuant to the Joint RFA and the  
3 funding agreement, DSS has a ministerial duty to rescind the acceptance of  
4 The Gathering Inn's application, declare an event of default under the  
5 funding agreement, and terminate the agreement. The petition alleges the  
6 Joint RFA and funding agreement have the force of law pursuant to Welfare  
7 and Institutions Code section 18999.97(k) [providing DSS "may implement  
8 and administer this chapter through all-county letters or similar instruction  
9 that shall have the same force and effect as regulations"].) "A writ of  
10 mandate may be issued by any court . . . to compel the performance of an  
11 act which the law specially enjoins, as a duty resulting from an office, trust,  
12 or station . . ." (Code Civ. Proc., § 1085, subd. (a).) "Two basic  
13 requirements are essential to the issuance of the writ: (1) A clear, present  
14 and usually ministerial duty upon the part of the respondent [citations]; and  
15 (2) a clear, present and beneficial right in the petitioner to the performance  
16 of that duty. [Citation.]" (*In re Dohner* (2022) 79 Cal.App.5th 590, 597,  
17 citations and internal quotation marks omitted.)

18           Defendant contends it does not have any duty to rescind its  
19 acceptance of The Gathering Inn's application, much less a ministerial one.  
20 Despite plaintiff's arguments to the contrary, the Joint RFA and funding  
21 agreement are not provisions of law as they are not "all-county letters or  
22 similar instruction" within the meaning of Welfare and Institutions Code  
23 section 18999.97(k). Even if they did have the force and effect of  
24 regulations, the plain language of the Joint RFA and the funding agreement  
25 does not require DSS to rescind its acceptance of The Gathering Inn's  
26 application. Rather, section 9.3. of the funding agreement provides in the  
27 event of default, DSS "may take any and all actions or remedies that are  
28 available under this Agreement, at law, or in equity, including, but no limited

1 to" several enumerated options. (FAC, Exh. H, sec. 9.3.) As this provides  
2 DSS the discretion to do one of several things, it cannot be said that  
3 rescission is a ministerial duty. The petition does not rely on any other legal  
4 provision mandating such action and therefore does not allege any  
5 ministerial duty DSS has to rescind its acceptance of The Gathering Inn's  
6 application. The demurrer is sustained as to the third cause of action.

7 Defendant also contends plaintiff's mandamus claim fails because the  
8 petition does not adequately allege plaintiff's "beneficial interest" in the  
9 enforcement of DSS's purported duty to rescind the grant to The Gathering  
10 Inn. The "beneficial interest" requirement "'has been generally interpreted to  
11 mean that one may obtain the writ only if the person has some special  
12 interest to be served or some particular right to be preserved or protected  
13 over and above the interest held in common with the public at large.'  
14 [Citation.]" (*SJJC Aviation Servs., LLC v. City of San Jose* (2017) 12  
15 Cal.App.5th 1043, 1053, citation omitted.) The petitioner's interest "'must  
16 be direct and substantial.' [Citation.]" (*Ibid.*, citation omitted.) Here, the FAC  
17 alleges DSS's failure to rescind the grant has and will cause the City and all  
18 members of the general public to suffer irreparable injury and gives an  
19 example of having inadequate emergency services to support such a facility.  
20 (FAC, ¶¶ 70, 33.) As these allegations are not well supported and do not  
21 plead sufficient facts supporting a right or interest above the general public's  
22 interest, the demurrer is sustained on this basis as well.

23 *Fourth Cause of Action – Declaratory Relief*

24 Defendant contends plaintiff's allegations are as to DSS's past acts,  
25 which cannot constitute an "actual controversy" for a declaratory relief  
26 claim. "'[C]omplaining of past acts' by the defendant does not constitute an  
27 actual controversy "'relating to the legal rights and duties of the respective  
28 parties" within the meaning of Code of Civil Procedure section 1060.'

1 [Citation.]" (*City of Gilroy v. Super. Court* (2023) 96 Cal.App.5th 818, 834.)  
2 "The purpose of a judicial declaration of rights in advance of an actual  
3 tortious incident is to enable the parties to shape their conduct so as to  
4 avoid a breach. '[D]eclaratory procedure operates prospectively, and not  
5 merely for the redress of past wrongs. It serves to set controversies at rest  
6 before they lead to repudiation of obligations, invasion of rights or  
7 commission of wrongs; in short, the remedy is to be used in the interests of  
8 preventive justice, to declare rights rather than execute them.' [Citations.]"  
9 (*Babb v. Super. Court* (1971) 3 Cal.3d 841, 848.)

10 Here, the FAC alleges DSS should not have approved The Gathering  
11 Inn's application and should not have awarded any CCE Program funds to  
12 The Gathering Inn for the Lincoln project because The Gathering Inn did not  
13 submit an application that met all of the regulatory requirements. These  
14 allegations pertain to alleged past wrongs. To borrow language from the  
15 *Babb* court, "No . . . preventive benefit is possible here." (*Babb, supra*, at p.  
16 848.) For this reason, the demurrer is sustained as to the fourth cause of  
17 action.

18 The court need not and does not reach defendant's other arguments  
19 as to the declaratory relief cause of action.

20 Based on the foregoing, the demurrer is sustained in its entirety.  
21 Plaintiff is afforded leave to amend and a second amended complaint, if any,  
22 shall be filed and served within 10 days of notice of entry of order.

23 IT IS SO ORDERED.

24  
25 DATED: 7/11/25



26 The Honorable Trisha J. Hirashima  
27 Judge of the Superior Court  
28



**SUPERIOR COURT OF CALIFORNIA  
IN AND FOR THE COUNTY OF PLACER**

**CLERK'S CERTIFICATE OF MAILING (C.C.P. §1013a(4))**

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Case No.: S-CV-0053711

Case Name: City of Lincoln vs. The Gathering Inn, et al

I, the undersigned, certify that I am the clerk of the Superior Court of California, County of Placer, and I am not a party to this action.

I served copies of the documents(s) indicated below:

• **Ruling on Submitted Matter**

Electronically to:  
(eService)

True copies of the document(s) were sent following standard court practices, ☐ via Interoffice mail, or, ☒ in a sealed envelope with postage fully prepaid, addressed as follows:

Christopher Pisano  
300 South Grand Avenue, 25<sup>th</sup> Floor  
Los Angeles, CA 90071  
Thomas Mayhew  
One Bush Street, Suite 900  
San Francisco, CA 94104

Kristine Mollenkopf  
600 Sixth Street  
Lincoln, CA 95648  
Robert Sinclair  
2390 Professional Drive  
Roseville, CA 95661

Joshua Sondheimer  
455 Golden Gate Avenue, Suite 11000  
San Francisco, CA 94102

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on 7/11/2025 in Placer County, California.

JAKE CHATTERS  
Clerk of the Superior Court

Dated: 7/11/2025

by: \_\_\_\_\_

N. O'Connell, Deputy Clerk