COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT, DIVISION THREE

RAMONA MAYON, Plaintiff/Appellant vs. LONDON BREED et al., Defendants/Respondents.	Case No. A171913 San Francisco Superior Court No. CGC-24-611907

RESPONDENTS' BRIEF

The Honorable Judge Richard B. Ulmer

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

☒ There are no interested entities or persons to list in this Certificate per California Rules of Court, Rule 8.208.

☐ Interested entities or persons are listed below:

Name of Interested Entity or Person	Nature of Interest
1.	
2.	
3.	
4.	

Please attach additional sheets with person or entity information if necessary.

Dated: May 14, 2025

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INTRODUCTION

This action was dismissed because Appellant-Plaintiff Ramona Mayon ("Appellant" or "Mayon") did not: file a pre-suit government claim, oppose the demurrer, file an amended complaint (after the court sustained the demurrer with leave to amend), or contest the motion to dismiss for failure to file an amended complaint. Mayon does not argue the trial court abused its discretion in dismissing the action. Accordingly, summary affirmance is warranted.

Appellant states she "went to court to clarify a legal definition: tenant or guest. It was for purpose of understanding her status under law, *not for the act of suing the Respondent*." (AOB 7.) By acknowledging she has no dispute with Respondents, Mayon provides an independent basis for upholding the dismissal. Appellant is effectively seeking an advisory opinion, which courts do not issue.

The law is not ambiguous and Mayon's "status under the law" does not need clarification. The landlord-tenant laws define a tenant as a person who pays *rent* to a *landlord* for exclusive possession of a *residential dwelling unit*. Appellant does not meet any of these requirements. Mayon describes herself as "ethnically nomadic," who lives in her RV for free and believes it is "culturally insensitive" to urge her to live in housing. Appellant admits she "clearly" understood that to obtain temporary and safe parking through a San Francisco pilot project, she was a "guest" and not a tenant. She asks the Court to transform her into a tenant, by ignoring the statutes that define "tenant,"

"landlord," "rent," and "dwelling units," and second-guess the economic policies of the City. Her legal theory breaks two "cardinal rules:" courts do not have the power to legislate or rewrite statutes. The Court should affirm dismissal.

ISSUES PRESENTED ON APPEAL

1. Did the trial court abuse its discretion in its August 20, 2024 Order dismissing the action after Appellant abandoned the case, by not opposing the City's demurrer, amending amend the Complaint following the trial court sustaining the demurrer, or contesting the motion to dismiss?

2. Should dismissal be affirmed because the case seeks an improper advisory opinion?

3. Did the trial court properly decline to rewrite multiple statutes in order to convert Mayon into a "tenant," when she was a guest with temporary parking, and Civil Code § 1946.2 excludes owner-occupied RVs from landlord-tenant laws?

FACTUAL BACKGROUND

Appellant-Plaintiff Ramona Mayon is representing herself pro per. On January 30, 2024, she filed a complaint against Respondents-Defendants: (former) Mayor of San Francisco London Breed, Director Shireen McSpadden in their "official capacity," as well as, potentially, the Department of Homelessness and Supportive Housing of the City and County of San Francisco. (CT 10-12.) The Complaint also names as "Real Parties of Interest: Episcopal Community Services, Bayview Hunter's Point, Foundation; and Urban Alchemy" (collectively, the "Real Parties").

Other than the caption page, the Mayor and Director McSpadden are not mentioned in the 82-page Complaint. And, although the focal point is the Real Parties, they were not served and did not appear. The Complaint complains about the free services provided by the Real Parties at the "Vehicle Triage Center (VTC) @ 500 Hunter's Point Expressway, San Francisco." (CT 12:13-14.) Mayon lives in her own RV and does not pay rent. She is "ethnically" Scottish "nomadic," and describes efforts to find permanent housing for the homeless as "culturally insensitive." (CT 196, 38 ¶ O.)[1] Nevertheless, Mayon asks the Court to declare her a "tenant." The Complaint asserts two causes of action: "deceit" and "negligence per se," although it also references "declaratory relief." (CT 12:15, 13:10-18.)

The "Bayview Vehicle Triage Center Participant Agreement" (the "VTC Agreement") that Plaintiff signed is attached as an exhibit. (CT 75-79.) It describes a San Francisco pilot project for homeless individuals who live in their vehicles.

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

(CT 75 [bold in original, underlining added].) The VTC

[1] "I am a person who's ethnic background and life history gives me the RIGHT to live on wheels." (CT 197.) "It is culturally insensitive to be told constantly that we need to move out of our RVs into SROs or 'other housing options.'" (CT 38, parag. O.)

Agreement repeats that it "is a temporary program . . . . The City of San Francisco may terminate or extend the program at any time. This program creates no right or interest enforceable under California or San Francisco landlord tenant laws." (*Ibid*.)

Mayon unequivocally understood she was a guest: the VTC Agreement "***clearly*** *states we who enter the VTC do not have tenants' rights*." (CT 12:22-23 [emphasis added].) As a guest, she further promised to comply with: "community guidelines," "quiet hours," and the Fire Marshall's rules and safety regulations, as well as not to hoard or invite visitors. (CT 76-77.)

The Complaint recites Government Code section 65662, which relates to "navigation centers" for the homeless and the "Housing First" policy. (CT 14-21.) Appellant attaches a September 29, 2023 "SF Homelessness and Behavioral Health Committee" report because it "show[s] the cost to the taxpayer for our sites runs $400 per night, per site (figured at 35 spaces used). That level of expenditure does not show up in the living conditions at the VTC, which is why I have included HSH's subcontractors as Real Parties of Interest." (CT 13:5-9, 84-89.)

Exhibit B contains complaints about the *free* services provided by Real Parties, such as: (i) security fences for safety (CT 31); (ii) solar powered lights that are "dimmer" than city lights (*ibid*.); (iii) showers that Mayon believes should be open "24/7" (CT 35); (iv) the catered food deliveries brought on wagons (CT 33); (v) wellness checks (CT 37); and (vi) laundry service (CT

35.).[2] She is also highly critical of the Fire Marshall's ban on propane tanks, generators, hoarding and limitations on vehicles parked in the area. (CT 34, 40.) The Complaint appears to believe if Mayon is deemed a tenant she is entitled to , *inter alia*: (a) gift cards to "Home Depot, Loews, O'Reillys, Autozone", (b) storage units, workshops, laundry and a kitchen, (c) a new RV and "staff who is knowledgeable in the care and upkeep of RVs"; (d) propane tanks; and (e) free WiFi. (CT 41-43.)

In sum, although Mayon recognizes she was a temporary guest for parking, who did not pay rent and lives in her own RV, she asks the Court to rewrite the VTC Agreement and fundamentally alter landlord-tenant laws.

PROCEDURAL BACKGROUND

The Complaint's caption page references the "Department of Homelessness and Supportive Housing City and County of San Francisco." It is a government agency, however, which cannot sue or be sued. (See *Bauer v. County of Ventura* (1955) 45 Cal.2d 276, 288-289; compare Gov. Code, §§ 23000, 23004(a).) Given Mayon is pro per, Respondents assumed she meant to sue the City and County of San Francisco (the "City" or "San Francisco"). Accordingly, Respondents filed the demurrer on behalf of the "City Defendants" (CT 94-139), namely the City, the (now-former) Mayor, and Director McSpadden. Because Director McSpadden was not served with a summons, the City Defendants also moved

[2] Exhibit B also includes "Tenants Union of Bayview VTC" forms with handwritten complaints about "everything," "better food," and "stop this communist regime that violates my basic human rights." (CT 55, 69, 73.)

to quash the summons, under Code of Civil Procedure, section 418.10. (CT 104.)

On March 13, 2024, Appellant filed an opposition (CT 140-148) and Respondents filed a reply brief (CT 149-162.). The trial court took the hearing off calendar, ordering the parties confer by telephone (not by email and mail (CT 7)), which they did. (CT 164: 1-10, CT 190.) Respondents then filed an amended demurer. (CT 163-215.) Appellant did not file an opposition. (CT 216-220.) On May 29, 2024, the court sustained the demurrer with leave to amend. (CT 221.) Respondents filed and served a Notice of Entry of Order to ensure Appellant received notice. (CT 255-260.)[3]

Appellant had ten days, under the Rules of Court, to file an amended complaint. No amended complaint was filed. After a month and a half elapsed, Respondents notified Mayon they would file an *ex parte* application to dismiss, under Rule 3.1320(h) of the Rules of Court and Code of Civil Procedure, section 581(f)(2). Appellant replied "go right ahead," and did not contest the motion or appear at the hearing. (CT 262.) In an abundance of caution, the trial court ordered Respondents file a formal, noticed motion to give Mayon additional time. (CT 294 (Items 4b. #26), 224-242.) Respondents filed a noticed motion to dismiss, under Code of Civil Procedure section 581. After the deadline to file an opposition expired, Respondents filed a statement of non-opposition (CT 263-64), Appellant filed an

[3] The Clerk's Transcript does not include the Notice of Entry of Order. Because it is attached to a declaration (CT 255-260), Respondents did not supplement the record.

untimely and non-responsive "Answer" a few days before the hearing, which did not oppose the motion or address the arguments supporting dismissal. (CT 266.) Appellant did not attend the hearing on the motion, and the case was dismissed. (CT 271-79.) Appellant did not seek to set aside the dismissal; instead, she filed this appeal.

STANDARD OF REVIEW

"A judgment or order of a lower court is presumed to be correct on appeal, and all intendments and presumptions are indulged in favor of its correctness." (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133.) A trial court's determination to dismiss an action, under Code of Civil Procedure, section 581 is reviewed for abuse of discretion. (*Leader v. Health Indus. of Am., Inc.* (2001) 89 Cal.App.4th 603, 612 [citing *Harding v. Collazo* (1986) 177 Cal.App.3d 1044, 1054.] "The burden is on plaintiffs to establish such abuse." (*Id.*)

"An abuse of discretion occurs if, in light of the applicable law and considering all of the relevant circumstances, the court's decision exceeds the bounds of reason and results in a miscarriage of justice. [Citations.]" (*Safeco Insurance Co. of America v. Super. Ct.* (2009) 173 Cal.App.4th 814, 832 [citation omitted].) "To demonstrate error, appellant must present meaningful legal analysis supported by citations to authority and citations to facts in the record that support the claim of error. [Citations.] When a point is asserted without argument and authority for the proposition, 'it is deemed to be without foundation and requires no discussion by the reviewing court.'"

(*In re S.C.* (2006) 138 Cal.App.4th 396, 408.) This requirement applies to legal authority and factual matters in the record. "It is not the duty of a reviewing court to search the record for evidence on a point raised by a party whose brief makes no reference to the pages where the evidence can be found." (*ComputerXpress, Inc. v. Jackson* (2001) 93 Cal.App.4th 993, 1011.) Issues do not have a life of their own: If they are not raised or supported by argument or citation to authority, they are waived. (*Id.)*

It is worth observing that Appellant is not entitled to special treatment 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.)

ARGUMENT

I. The Trial Court Did Not Abuse Its Discretion In Dismissing This Action.

The procedural history is uncontroverted. Appellant does not argue that she complied with the Rules of Court and the Code of Civil Procedure. Nor does she present authority that the trial court erred in sustaining the demurrer or dismissing the action. Accordingly, any such argument is deemed forfeited and abandoned. (*Rossiter v. Benoit* (1979) 88 Cal.App.3d 706, 710-711.)

Appellant does not contend that she filed an opposition to the demurrer or an amended complaint after the trial court sustained the demurrer. (Cal. Rules of Court, rule 3.1320(g); CT

252-257.) Appellant's procedural failures "had a number of immediate statutory ramifications." (*Leader*, *supra,* 89 Cal.App.4th at p. 612.) *First*, Appellant "no longer had an unfettered right to file an amended complaint . . . . [T]he pleading can only be amended by obtaining the permission of the court." (*Leader, supra,* 89 Cal.App.4th at pp. 612-613 [citing *Gautier v. General Tel. Co.* (1965) 234 Cal.App.2d 302, 310].) *Second,* to obtain the court's permission, Appellant was required to file a noticed motion for leave. (*Id.* [*citing Loser v. E.R. Bacon Co.* (1962) 201 Cal.App.2d 387, 389-390].) Mayon never filed such a motion. *Third*, Appellant's abandonment of the litigation, subjected the entire action to dismissal in the court's discretion under section 581, subdivision (f)(2) of the Code of Civil Procedure.

After a month and a half elapsed with no amended complaint filed, Respondents notified Mayon they would file an *ex parte* application to dismiss the case with prejudice for failure to timely file an amended complaint, under Sub-part (h), of Rule 3.1320 of California Rules of Court. (CT 242.) Mayon told Respondents to "go right ahead." (CT 262.) Respondents were ordered to file a formal, noticed motion. (CT 294 (Items 4b. #26); 243-45.) Mayon did not file an opposition, contest the tentative ruling, or attend the hearing. The trial court dismissed the case with prejudice. (CT 274-78.) Appellant also did not move to set aside the dismissal.

Appellant does not (and cannot) argue that the trial court abused its discretion. Appellant had ample notice and ability to

oppose the demurrer, amend her complaint, and oppose or set aside the dismissal of the action. Appellant does not contend she was entitled to discretionary relief to set aside the dismissal, such as under Civil Code of Procedure, section 473(b) for "mistake, inadvertence, surprise, or excusable neglect." She did not bring such a motion before the trial court and it is, therefore, too late now. (*Bardis v. Oates* (2004) 119 Cal.App.4th 1, 13-14, fn. 6.) Accordingly, the Court should summarily affirm the dismissal.

II. Appellant Concedes There Is No Actual Controversy, But Courts Do Not Issue Advisory Opinions

A tenet of common law jurisprudence is that courts "will decide only justiciable controversies. . . . not entertain an action which is not founded on an actual controversy." (*Wilson & Wilson v. City Council of Redwood City* (2011) 191 Cal.App.4th 1559, 1573.) Mayon has revealed she has no basis to sue Respondents and does not seek relief from them. (AOB 7.) It is not the responsibility of either this Court or Respondents to imagine and construct theories or arguments to undermine the judgment and defeat the presumption of correctness. "When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived." (*Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852.)

Construing the legal definition of whether Mayon is a guest or tenant is academic, given there is no ripe controversy with Respondents. Courts do not issue advisory opinions and, therefore, the Court should affirm based on this new admission.

(*Young v. Young* (1950) 100 Cal.App.2d 85, 86 [affirming dismissal of suit because there was no "genuine and existing controversy, calling for present adjudication" where plaintiff sought to establish the existence of a divorce decree from another state but did not argue defendant failed to comply with its terms]; *Branick v. Downey Savings & Loan Assn*. (2006) 39 Cal.4th 235, 243 ["we will not attempt to render an advisory opinion on a motion plaintiffs have not yet filed"]; *Catlin Ins. Co., Inc. v. Danko Meredith Law Firm, Inc*. (2022) 73 Cal.App.5th 764, 774 [finding trial court justified in not ruling on a moot anti-SLAPP motion only "for the purposes of establishing entitlement to a request for fees, as no such request had yet been made. To conclude otherwise would require the court to have issued an advisory opinion"].)

Mayon's stated concern is with the Real Parties. "I want to change how the rules are made at safe parking sites in California (well, the 9th circuit, actually). The Real Parties have exceeded their authority by about a hundred miles and squandered the taxpayer's money meant to make it safe, dignified, livable." (CT 134.) The "Real Parties" were never served and did not appear.

The lack of a genuine dispute as to Respondents also demonstrates that the declaratory relief claim is not cognizable. Code of Civil Procedure, section 1060 requires allegations demonstrating an "actual controversy" as to "legal rights and duties" regarding a "written instrument . . . including a determination of any question of construction or validity arising under the instrument or contract," or "property." "[A]ctions for

declaratory relief involve matters of practice and procedure only and are not intended in any way to enlarge the jurisdiction of courts over parties and subject-matter." (*Carrier v. Robbins* (1952) 112 Cal. App. 2d 32, 36.) In addition, "the grounds for [declaratory] relief must be specifically pleaded in the complaint." (*Davis v. Farmers Ins. Exch.* (2016) 245 Cal.App.4th 1302, 1325-26 [as modified on denial of reh'g (Apr. 21, 2016)] [citations omitted].)

The Complaint does not comply with the requirements to assert declaratory relief. Mayon does not allege there is a dispute as between the parties regarding the VTC Agreement, or that she seeks to *enforce* the VTC Agreement against Respondents. Instead, Mayon asks the Court to ignore the signed VTC Agreement and the law that states she "clearly" was a "guest" – not a tenant. (CT 12:22-24.) Section 1060 simply does not entertain her legal theory, nor does it allow for remedies, such as other free services. Declaratory relief is not a vehicle to second-guess economic or budgetary policies of a city. (*Carrier, supra*, 112 Cal.App.2d at p. 36 [dismissing lawsuit against city of San Diego, where plaintiff challenged the economic and social policy considerations in setting the wage rate by the Board of Supervisors]; *Spencer v. City of Alhambra* (1941) 44 Cal.App.2d 75, 77.)

Mayon, however, asks the Court to do just that, evidently to complain about the Real Parties' services and the City's budgetary and policy decisions regarding the Safe Parking Program. (CT 134.) Declaratory relief cannot be used to rewrite

statutes or second-guess legislative decisions regarding homeless services. If Mayon wishes to change landlord-tenant law, her recourse is through petitioning her government and the democratic process, not through the courts.

III. Jurisdiction is Lacking Because Appellant Did Not Comply with the Government Tort Claims Act

Assuming for purposes of argument that the Court reaches the merits (it should not), the action is subject to dismissal because it is jurisdictionally barred. Before suing a public entity, a plaintiff must comply with California's Government Tort Claims Act. (Gov. Code, § 905, *et seq*. (the "Act").) The Act establishes "'a standardized procedure' for bringing personal injury claims against local governmental entities." (*Hernandez v. City of Stockton* (2023) 90 Cal.App.5th 1222, 1230 [citing *Ardon v. City of Los Angeles* (2011) 52 Cal.4th 241, 246].) Before a lawsuit for money or damages may be filed against a government entity or official, a plaintiff must file a pre-suit government claim. (Gov. Code, §§ 905, 945.4.) With certain enumerated exceptions "no suit for money or damages may be brought against a public entity on a cause of action for which a claim is required to be presented . . . ***until*** a written claim thereof has been presented to the public entity and ***has been*** acted upon by the board, or has been deemed to have been rejected by the board. . . ." (Gov. Code, § 945.4 [emphasis added].)

"The purpose of the claims presentation requirement is to facilitate early investigation of disputes and settlement without trial if appropriate, as well as to enable the public entity to

engage in fiscal planning for potential liabilities and to avoid similar liabilities in the future." (*Baines Pickwick Ltd. v. City of Los Angeles* (1999) 72 Cal.App.4th 298, 303; *see also, Gong v City of Rosemead* (2014) 226 Cal.App.4th 363, 371, 374 [citing Gov. Code, § 911.2, presentation of claim for money or damages prior to filing suit is a condition precedent to lawsuit]; see also *Crow v. State of Cal.* (1990) 222 Cal.App.3d 192, 202, disapproved on another ground in *Regents of Univ. of Cal. v. Super. Ct.* (2018) 4 Cal.5th 607, 634, fn. 7.)

The two "Government Claims" submitted by Mayon are dated March 4, 2021 and February 7, 2023. (CT 120-127, 138-139.) They relate to events that occurred two to three years before the January 26, 2024 complaint was filed. The March 2021 claim pertains to "residents" in "their houses" that were "discriminating" against Mayon, for parking her RV on the Great Highway in San Francisco, due to "hatred of nomadic people such as myself." (CT 195-98.)[4] In the February 2023 claim, Mayon complains about Atlas Towing Company moving her RV a year before, on February 9, 2022. (CT 200.) No facts or injuries are alleged to pertain to San Francisco, the Mayor or Director McSpadden.

[4] The Great Highway abuts the Pacific Ocean on the western part of San Francisco. The VTC is located in the Bayview neighborhood near Candlestick Park, 500 Hunter's Point Expressway, San Francisco, located on the southeastern corner of San Francisco. (CT 12, 85.) At some point, Ms. Mayon moved her RV to the safe parking area in Candlestick.

A. The Government Claims Are Untimely.

To be timely, a claim must be presented within six months of the accrual of the cause of action. (Gov. Code, § 911.2.) The lawsuit must then be filed six months after the government claim is rejected. (Gov. Code, § 945.6.) Failure to file a timely claim or timely lawsuit are "mandatory" requirements and "must be strictly complied with." (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.)

Appellant did not file a timely government claim or a timely lawsuit. The two Government Claims are dated years before the lawsuit was filed in January 26, 2024. The Government Claim dated March 1, 2021, was denied on March 26, 2021, which gave Mayon six months, or until September 27, 2021, to file a lawsuit. The February 7, 2023 Government Claim concerns actions of a third-party towing her RV a year before, in February 2022. Appellant did not file a complaint within six months of either government claim, and the February 2023 government claim was untimely. The Complaint, here, was filed on January 26, 2024 and there is no government claim raising issues about the free services.

B. The Government Claims Differ Materially From the Complaint.

A party cannot file suit regarding a legal theory or occurrences not mentioned in the Government Claim. (*Nelson v. State of California* (1982) 139 Cal.App.3d 72, 79 ["the factual circumstances set forth in the written claim must correspond

with the facts alleged in the complaint; even if the claim were timely, the complaint is vulnerable to a demurrer if it alleges a factual basis for recovery which is not fairly reflected in the written claim"]; *Williams v. Braslow* (1986) 179 Cal.App.3d 762, 769-70 ["Courts have consistently interpreted the Tort Claims Act to bar actions alleging matters not included in the claim filed with the public entity."]; *State of California ex rel. Dept. of Transportation v. Superior Court* (1984) 159 Cal.App.3d 331, 336.) And, the claim must specify the amount of damages. (Gov. Code, § 910(f).)

After a public entity rejects a claim, the lawsuit may elaborate or add further details "but the complaint may not completely shift the allegations and premise liability on facts that fundamentally differ from those specified in the government claim." (*Hernandez*, *supra,* 90 Cal.App.5th at p. 1226 [upholding dismissal "because the factual basis for recovery is not 'fairly reflected' in the plaintiff's government claim"]; see also *Turner v. State of California* (1991) 232 Cal.App.3d 883, 887-888, 891 [complaint properly dismissed because of variance between government claim and complaint]; *Fall River Joint Unified School Dist. v. Superior Court* (1988) 206 Cal.App.3d 431, 434-435 [same]; *Donohue v. State of California* (1986) 178 Cal.App.3d 795, 804 [same].)

Here, the two Government Claims do not specify the same legal and factual basis for the government's liability, as the claims in the Complaint. Her Government Claims do not mention the Mayor or Director McSpadden at all. The Government Claims

allude to disputes with residents and a tow truck on the Great Highway. The VTC is located outside of San Francisco, in Candlestick park. The Complaint, moreover, complains of the generous homeless services provided by Real Parties (not Respondents) at a safe parking site in Candlestick Park, which is in a completely different area of the City.

Appellant asks the Court to overlook these defects because she seeks only "declaratory relief" and does not need to comply with the Act. A party cannot end run the Act, by asking a court to ignore the tort claims pleaded, i.e. fraud and negligence per se, or relabel them as declaratory relief. Where, as here, the primary relief is "money or damages," the Act applies. (*Loehr v. Ventura County Community College Dist.* (1983) 147 Cal.App.3d 1071, 1081-82.) The charging allegations ask for free gift cards, laundry and kitchen infrastructure, and even a new RV. (CT 13:10-18.) Importantly, after the trial court sustained the demurrer with leave to amend, Appellant had the opportunity to amend the complaint to dismiss the tort claims and damages. She did not.

In sum, the Government Claims bear no resemblance to a valid claim, the Complaint bears no resemblance to the Government Claims, and the action is untimely. The deficiencies cannot be cured and, accordingly, jurisdiction is lacking. (*Gong, supra,* 226 Cal.App.4th at p. 378.) The trial court's order dismissing the action with prejudice should be affirmed for lack of jurisdiction.

IV. The City Defendants Are Immune Under the Government Code

In addition, Government Code sections 815.2, 818.8, 821.6 and 820.2 immunize municipalities and officers from official acts and discretionary actions carrying out legislation. Section 815 of the Government Code states: "Except as otherwise provided by statute: . . .[a] public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person." This means that "direct tort liability of public entities must be based on a specific statute declaring them to be liable, or at least creating some specific duty of care, and not on the general tort provisions of Civil Code section 1714. Otherwise, the general rule of immunity for public entities would be largely eroded by the routine application of general tort principles." (*Eastburn v. Regional Fire Protection Authority* (2003) 31 Cal.4th 1175, 1183; *All Angels Preschool/Daycare v. Cnty. of Merced* (2011) 197 Cal.App.4th 394, 400.)

First, neither a city official nor a city may be sued for fraud or negligent misrepresentations and, therefore, the "deceit" claim fails. (Gov. Code, § 818.8.) As for the negligence and unpled declaratory relief claims regarding the Safe Parking Program, Respondents are immunized under Sections 820.2 and 855.4 of the Government Code. *Greenwood v. City of Los Angeles* illustrates the immunity. (*Greenwood v. City of Los Angeles* (2023) 89 Cal.App.5th 851, reh'g denied (Apr. 20, 2023), review denied (July 12, 2023).) *Greenwood* upheld the trial court's

sustaining a demurrer regarding a city's purported failure to "remedy a dangerous condition on public property adjacent" to plaintiff's place of work, which plaintiff alleged caused her to contract typhus. The plaintiff alleged that her injury was caused by a dilapidated property that the city did not have the budget to fix. The public officer's "act or omission…was the result of the exercise of the discretion vested in him, whether or not such discretion be abused" and therefore immune from liability. (*Greenwood, supra,* 89 Cal.App.5th at p. 855, 860.) The California Supreme Court reaffirmed the "'workable definition' of immune discretionary acts," which holds judicial interference is not allowed as to "planning and operational functions of government." (*Caldwell v. Montoya* (1995) 10 Cal.4th 972, 981.) The immunity extends to "'quasi-legislative policy-making . . . sufficiently sensitive' to call for judicial abstention from interference that 'might even in the first instance affect the coordinate body's decision-making process.' . . . [and] deliberate and considered policy decisions, in which a [ ] 'balancing [of] risks and advantages . . . took place." (*Id.*)

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; *Thorn v. City of Glendale* (1994) 28 Cal.App.4th 1379, 1385 [holding the courts cannot encroach into the legislative branch of government].) By

attaching, and criticizing, the City's budgetary analysis of the Safe Parking Program, Mayon pleads herself out of a lawsuit. (CT 13:5-9, 84-89.) Appellant cannot use a lawsuit to second guess the City's decision-making or implementation of legislation. Nor can Mayon ask the Court to order the Board of Supervisors to provide other free services, such as gift cards, kitchens and laundromats. Respondents are immunized for their official act and discretionary acts complained of in this action.

V. Mayon Cannot Be A Tenant Of Her Own RV

A. Mayon Is A Guest, Not A Tenant, Which Is A Difference With A Legal Distinction.

It has been the law for over 100 years that a guest given permission to "use" a premise, under the control of another, has no interest in the realty and does not have an estate or right to the property. (*People v. Minervini* (1971) 20 Cal.App.3d 832, 840 [guest has only the right to use the premises, subject to the landlord's retention of control and right of access]; *Bullock v. City & Cnty. of San Francisco* (1990) 221 Cal.App.3d 1072, 1096-97, distinguished on other grounds in *Griset v. Fair Pol. Pracs. Comm'n* (2001) 25 Cal.4th 688, 698 [detailed discussion of the meaning of "guests" and lodgers, and distinctions in the terminology of "tenant", holding city could not bar conversion of rented hotel rooms into a hotel].) In signing the VTC Agreement, Mayon agreed she was a "guest" with "no tenant rights" to gain "temporary" and free parking. (CT 78.) A guest is one who does not have exclusive possession of property, but restricted used, which is hemmed in by the services provided by the proprietor.

The Complaint focuses on the long list of restrictions, control and services, which demonstrates Mayon is a guest. (*Roberts v. Casey* (1939) 36 Cal.App.2d Supp. 767, 774 [a guest has "use" of premises but is not a tenant, and the provision of services by a "proprietor" shows that use is not exclusive].)

Appellant argues she was a "tenant at will" under *Covina Manor, Inc. v. Hatch* (1955) 133 Cal.App.2d Supp. 790. *Covina* was a landlord seeking to evict defendant through an unlawful detainer action. Defendant proved he had an oral agreement to provide work to the landlord, in consideration of "possession" and "exclusive occupancy" of a home on the property. (*Id.* at p. 793.) No similar facts exist here. She signed a written agreement acknowledging she was a guest, and her access is "temporary" parking, with no possessory interest. Mayon did not pay rent. Mayon did not provide work in consideration of exclusive occupancy. Appellant was never given "possession by right with consent of the landlord." Respondents are not alleged to be a landlord or landowner. This is not a debatable point.

B. Owner-Occupied RVs are Expressly Excluded From Landlord-Tenant Laws

Appellant appears to believe that she can challenge the Safe Parking Program because she found a memo that references Government Code Section 65662 that governs "navigation centers" to find homeless "permanent housing" pursuant to "Chapter 6.5 of the Welfare and Institutions Code ("WIC")." She noticed that WIC Section 8255 repeats the word "tenant" and, therefore, she believes she must be a tenant. Putting aside that

the argument is academic as to Respondents, it overlooks the defined terms in WIC and the Civil Code exclude Mayon.

As an initial matter, a court construes a statute "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.'"].) Because there is no ambiguity in the law, the court has no power to construe a statute.

A "tenant" is defined as a person with "a lease and all the rights and responsibilities of tenancy, as outlined in California's Civil, Health and Safety, and Government codes." (WIC § 8255(b)(6).) The statute also refers to a "tenant" in the context of "permanent housing." Permanent housing is defined in WIC § 16523(f), which "means a place to live without a limit on the length of stay in the housing that exceeds the duration of funding for the program, subject to landlord-tenant laws pursuant to Chapter 2 (commencing with Section 1940) of this Title 5 of Part 4 of Division 3 of the Civil Code)."

Civil Code 1940, entitled "Hiring of Real Property," is the

backbone of the landlord-tenant laws. Section 1946.2, subdivision (i)(3) defines "'[t]enancy'" to be "the *lawful* occupation of *residential real property and includes a lease or sublease*." (Emphasis added.) Lawful occupancy, in turn, requires a lease and payment of rent or other consideration in exchange for exclusive occupancy. The term "rent" means "to hire real property and includes a lease or sublease." (Civ. Code, § 1954.26(e).)

Mayon cannot meet any of these defined terms to avail herself of the landlord-tenant laws, even if they were germane to an actual controversy. Appellant did not "hire" real property; she does not have a lease, pay rent, or have exclusive occupancy of real property.

More importantly, the statute expressly carves out Appellant for three reasons. First, the statute does not govern "single-family owner-occupied residences, including…a mobilehome." (Civil Code § 1946.2(e)(5)(B).) Second, sub-part (b)(1) excludes "transient occupancy" as well as individuals that have "not made valid *payment* for all room and other related charges owing." (Civ. Code § 1940(b)(1) [emphasis added].) As a result of Mayon living in her own RV, the law does not apply to her living situation. Indeed, she insists she is "nomadic," i.e. "transient occupancy," and does not pay rent. (CT 196, 38 ¶ O.)

The Complaint cites to the tenancy laws "set forth in Administrative Code Section 37.2." (CT 17.) San Francisco's local ordinances, however, mirror the Civil Code, and lend further support for dismissing the action. The local landlord-tenant rules apply only to "residential dwelling units" that are affixed to "real

property" for which a tenant pays "rent" to a "landlord." (S.F. Admin. Code, § 37.2(t) (tenant has a "written or oral agreement, sub-tenancy approved by the landlord, or by sufferance, to occupy a residential dwelling unit to the exclusion of others."); (*Id.,* § 37.2(h) (landlord must "receive rent"); *Id.,* § 37.2(p) ("Rent" is monetary "consideration" for occupancy); San Francisco Building Inspection Commission ("BIC") Code, Section 401 (dwelling unit" and "residential dwelling unit" are "structures" *affixed* to real property); S.F. Admin. Code, § 37.2(r); Civil Code, §1675(a) ("'residential property' means *real property* . . . consisting of a dwelling"). A *mobile* RV, owned and occupied by Mayon, rent-free, is by design not affixed to real property and has no landlord.

Finally, even if Respondents could be a landlord, San Francisco excludes "dwelling units whose rents are controlled or regulated by any government unit, agency or authority." (S.F. Admin. Code, § 37.2(r)(4).) Mayon is not entitled to ask the courts to rewrite statutes, local homeless legislation, and the terms of the VTC Agreement. (*Anderson v. City of Long Beach* (1959) 171 Cal.App.2d 699, 701.)

Dragging out this sort of lawsuit, moreover, has a deleterious impact on municipalities and the ability for them to function within their limited resources. "[I]n view of the exceedingly high cost of modern litigation, from the point of view of a defendant public entity, merely being named in a tort suit places it in a lose/lose situation. Except in those most rare instances permitting the recovery of attorney fees, the more procedural stages through which it must pass prior to

vindication, the greater will be its 'victorious losses.' This problem is particularly acute for today's financially stressed governmental bodies." (*Thorn, supra*, 28 Cal.App.4th at p. 1385.)

CONCLUSION

Respondents respectfully request that the Court affirm the trial court's order dismissing this action.

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief has been prepared using proportionately double-spaced 13 point Century Schoolbook typeface. According to the "Word Count" feature in my Microsoft Word for Windows software, this brief contains 6,222 words.

I declare under penalty of perjury that this Certificate of Compliance is true and correct and that this declaration was executed on May 14, 2025.

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PROOF OF SERVICE

I, KASSY ADAMS, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the above-entitled action. I am employed at the City Attorney's Office of San Francisco, Fox Plaza Building, 1390 Market Street, Sixth Floor, San Francisco, CA 94102.

On May 14, 2025 I served the following document(s):

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in the manner indicated below:

☒ **BY UNITED STATES MAIL**: Following ordinary business practices, I sealed true and correct copies of the above documents in addressed envelope(s) and placed them at my workplace for collection and mailing with the United States Postal Service. I am readily familiar with the practices of the San Francisco City Attorney's Office for collecting and processing mail. In the ordinary course of business, the sealed envelope(s) that I placed for collection would be deposited, postage prepaid, with the United States Postal Service that same day.

☒ **BY PERSONAL SERVICE**: I sealed true and correct copies of the above documents in addressed envelope(s) and caused such envelope(s) to be delivered by hand at the above locations by a professional messenger service.

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I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct.

Executed on May 14, 2025, at San Francisco, California.

/s/ Kassy Adams
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