

1 BARBARA J. PARKER, City Attorney, SBN 069722
2 MARIA BEE, Chief Assistant City Attorney, SBN 167716
3 SELIA M. WARREN, Deputy City Attorney, SBN 233877
4 One Frank H. Ogawa Plaza, 6th Floor
5 Oakland, California 94612
6 Telephone: (510) 238-6524; Fax: (510) 238-6500
7 Email: swarren@oaklandcityattorney.org
8 X05331/3140177

9 Attorneys for Defendants,
10 LIBBY SCHAAF, REBECCA KAPLAN,
11 BARBARA J. PARKER, DAVID SILVER, and
12 COURTNEY RUBY

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **COUNTY OF ALAMEDA**

15 GENE HAZZARD,
16
17 Plaintiffs

18 v.

19 MAYOR LIBBY SCHAAF; CITY OF
20 OAKLAND, a municipal corporation; MIALISA
21 BONTA, former CEO Oakland Promise; DAVID
22 SILVER, Educational Director; BARBARA J.
23 PARKER, City Attorney; ED REISKIN, City
24 Administrator; COURTNEY RUBY, City
25 Auditor; ANDY FREMENDER, co-founder East
26 Bay College Fund; ROB BONTA, former
27 California 18th Assemblymember Representative;
28 SABRINA LANDRETH, former City
29 Administrator,

30 Defendants.

Case No. RG21106953

ASSIGNED FOR ALL PURPOSES TO
HON. PATRICK MCKINNEY
DEPARTMENT 15

**REPLY OF DEFENDANTS LIBBY
SCHAAF, REBECCA KAPLAN,
BARBARA J. PARKER, DAVID SILVER,
and COURTNEY RUBY IN SUPPORT OF
DEMURRER TO FIRST AMENDED
COMPLAINT**

Reservation No.: R- 590199965597

Date: February 17, 2022
Time: 1:30 p.m.
Dept.: 15

Complaint Filed: July 29, 2021
Trial Date: Not assigned yet

31 Defendants Libby Schaaf, Rebecca Kaplan, Barbara J. Parker, David Silver and Courtney
32 Ruby (collectively, the City Defendants) respectfully submit this Reply in support of the
33 Demurrer to plaintiff Gene Hazzard's (Plaintiff) First Amended Complaint (FAC).

34 **MEMORANDUM OF POINTS AND AUTHORITIES**

35 Apparently conceding his inability to plead his six claims against the City Defendants,

1 Plaintiff wholly fails to substantively respond to any argument raised by the City Defendants’
2 second Demurrer. (See January 7, 2022 opposition.) The Demurrer should be sustained in its
3 entirety without leave to amend.

4 The third, fourth, fifth and seventh causes of action are largely restated from Plaintiff’s
5 original complaint and fail for the same reasons this Court already found in sustaining the City
6 Defendants’ first demurrer. No private rights of action exist for a violation of 18 U.S.C. § 1028
7 (third cause of action) or for failure to file an IRS Form 990 (fourth cause of action).
8 (*Guerneville Business Corporation v. Boasberg* (N.D. Cal., Mar. 16, 2012, No. C-11-4913
9 MMC) 2012 WL 13054255, at *1) Plaintiff still does not identify a personal financial interest in
10 any government contract on the part of any City Defendant to support a claim under
11 Government Code § 1090 (fifth cause of action). Plaintiff fails to alleged any legal violation in
12 support of the seventh cause of action and, as a practical matter, the passage of a resolution by
13 the City Council and filing of an appeal by the City Attorney are privileged acts under Civil
14 Code section 47 subdivisions (b)(1) and (b)(2), respectively. All of these claims fail as a matter
15 of law and, as this is Plaintiff’s second attempt at pleading them, the Demurrer should be
16 sustained without leave to amend.

17 The first and second causes of action are new to the FAC but fare no better. The
18 Demurrer to the writ of mandate (first cause of action) should be sustained because Plaintiff does
19 not allege any mandatory duty that Mayor Schaaf failed to perform. (Code Civ. Proc. § 1085.)
20 The Demurrer to the Business & Professions Code § 17200 claim (second cause of action)
21 should be sustained because public entities cannot be sued under 17200 (*People for Ethical*
22 *Treatment of Animals, Inc. v. California Milk Producers Advisory Bd.* (2005) 125 Cal.App.4th
23 871, 878–883) and Plaintiff does not allege any unlawful, fraudulent or unfair business practice
24 to support the claim. (FAC ¶¶50-60; *Graham v. Bank of America, N.A.* (2014) 226 Cal.App.4th
25 594, 610 [affirming demurrer where plaintiff failed to state a cause of action under any of the
26 three varieties of unfair competition—acts or practices that are unlawful, unfair or fraudulent].)
27 The Demurrer to these claims should be sustained without leave to amend as there are no set of
28 facts that would render these viable claims against Libby Schaaf, who is sued in her official

1 capacity as Mayor of Oakland.

2 Declining to cite any legal authority in support of his claims, Plaintiff instead reiterates
3 two points without support: 1) that the Oakland Promise has wrongly claimed it is a 501(c)(3)
4 organization since 2019, when its fiscal sponsor arrangement dissolved; and 2) that the City
5 Council wrongly certified Measure AA as passing. Plaintiff misses the mark on both points.
6 First, as Plaintiff is aware, the East Bay College Fund, a 501(c)(3) organization, changed its
7 name to Oakland Promise in June 2019. (RJN, Exh. 1 (Compl. ¶ 84 [acknowledging EBCF's
8 name change to Oakland Promise]); *see also* RJN, Exh. 3 (City Reso. 88208 C.M.S., passed June
9 30, 2020).) The Oakland Promise has been the 501(c)(3) organization formerly known as East
10 Bay College Fund since then. As Plaintiff also acknowledges, prior to 2019, the Oakland
11 Promise program was able to accept donations through a fiscal sponsor, although it has never
12 been a 501(c)(3) organization. This is not disputed, but it is largely irrelevant to Plaintiffs'
13 claims.

14 Second, when Plaintiff commenced this action, the certification of the passage of
15 Measure AA was the subject of appeal by the City. On December 30, 2021, the Court of Appeal
16 sided with the City and reversed the lower court's judgment by finding that Measure AA needed
17 only a simple majority to pass. (*Jobs & Housing Coalition v. City of Oakland* --- Cal.Rptr.3d ----,
18 2021 WL 6142680 at *12.) Thus, not only was the certification of the passage of Measure AA a
19 privileged act under Civil Code section 47 subdivision (b)(1), its passage has since been upheld
20 by the Court of Appeal. Plaintiff appears to argue that the inclusion of section 1607 of the City's
21 Charter—a Charter section that refers to the Oakland Promise and was included in the Charter as
22 part of the passage of Measure AA—is improper and should be removed. But any such order
23 would have been premature given the pending appeal, and especially now that the Court of
24 Appeal has upheld its passage. In all events, these arguments have little bearing on whether
25 Plaintiff has stated viable claims. He has not.

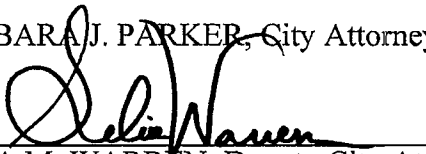
26 The Demurrer should be sustained without leave to amend. Plaintiff has not alleged any
27 reasonable possibility of amendment despite his burden to do so. (*Nealy v. County of Orange*
28 (2020) 54 Cal. App. 5th 594, 607; *see* Edmon & Karnow, Cal. Prac. Guide: Civ. Proc. Before

1 Trial (The Rutter Group 2021 Update., formerly Weil & Brown) § 7:130 [“It is not up to the
2 judge to figure out how the complaint can be amended to state a cause of action. Rather, the
3 burden is on the plaintiff to show in what manner he or she can amend the complaint, and how
4 that amendment will change the legal effect of the pleading”], citing *Goodman v. Kennedy*
5 (1976) 18 Cal.3d 335, 349; *Hendy v. Losse* (1991) 54 Cal.3d 723, 742; *Medina v. Safe-Guard*
6 *Products* (2008) 164 Cal.App.4th 105, 112.) Nor are the facts in dispute. “Leave to
7 amend should be denied where the facts are not in dispute and the nature of the claim is clear, but
8 no liability exists under substantive law.” (*Lawrence v. Bank of America* (1985) 163 Cal.App.3d
9 431, 436.)

10 As this is Plaintiff’s second attempt at pleading viable claims and he has failed to do so,
11 City Defendants respectfully ask this Court to sustain the Demurrer without leave to amend.

12
13 Dated: January 25, 2021

BARBARA J. PARKER, City Attorney

14
15 By: 
16 SELIA M. WARREN, Deputy City Attorney
17 Attorneys for Defendants,
18 LIBBY SCHAAF, REBECCA KAPLAN,
19 BARBARA J. PARKER, DAVID SILVER, and
20 COURTNEY RUBY

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PROOF OF SERVICE
United States of America, et al. vs. Schaaf, et al. .
Alameda County Superior Court Case No. RG21106953

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is City Hall, One Frank H. Ogawa Plaza, 6th Floor, Oakland, California 94612. On the date set forth below, I served the within documents:

REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF DEMURRER TO FIRST AMENDED COMPLAINT BY DEFENDANTS LIBBY SCHAAF, REBECCA KAPLAN, BARBARA J. PARKER, DAVID SILVER, and COURTNEY RUBY

- By United States mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the address(es) listed below and (*specify one*):
 - Deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
 - Placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the City of Oakland's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

Gene Hazzard, In Pro Per
282 Adams Street #6
Oakland, CA 94610-4147
Tel.: (510) 418-0501

Plaintiff, In Pro Per

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

Executed on January 26, 2022 at Oakland, California.



Elizabeth Ferrel