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17 **UNITED STATES DISTRICT COURT**  
18 **SOUTHERN DISTRICT OF CALIFORNIA**

19 CALIFORNIANS FOR EQUAL  
20 RIGHTS FOUNDATION,

21 Plaintiff,

22 v.

23 CITY OF SAN DIEGO, HOUSING  
24 AUTHORITY OF THE CITY OF SAN  
25 DIEGO, and SAN DIEGO HOUSING  
26 COMMISSION,

27 Defendants.

No. '24CV0484 MMAMSB

**COMPLAINT**

## INTRODUCTION

1  
2 1. Housing prices in California are extremely high and San Diego  
3 is no exception. To combat the rising cost of housing, the City of San Diego  
4 (City) created a pilot program to provide grants and loans to first-time  
5 homebuyers looking to put down roots in San Diego. Eligibility for this  
6 program is based on an individual's race.

7 2. Plaintiff Californians for Equal Rights Foundation (CFER) has  
8 members who are ready, willing, and able to purchase a home in San  
9 Diego. But those members are ineligible for a grant or loan under the  
10 City's Black, Indigenous and other People of Color (BIPOC) First-Time  
11 Homebuyer (FTHB) Program. Because the FTHB Program bases  
12 eligibility on race, CFER's non-BIPOC members are categorically  
13 ineligible for the assistance.

14 3. CFER brings this action to vindicate its members' rights to  
15 equal protection and end the City's racial discrimination. The Fourteenth  
16 Amendment's Equal Protection Clause requires the government to treat  
17 its citizens as individuals, not as members of a racial group. The  
18 Program's race-based measures violate that constitutional command.

## JURISDICTION AND VENUE

19  
20 4. This action arises under the Fourteenth Amendment to the  
21 United States Constitution and 42 U.S.C. § 1983. The Court has  
22 jurisdiction over this federal claim under 28 U.S.C. §§ 1331 (federal  
23 question) and 1343(a) (redress for deprivation of civil rights). Declaratory  
24 relief is authorized by the Declaratory Judgment Act, 28 U.S.C. §§ 2201–  
25 2202.

26 5. Venue is proper in this district under 28 U.S.C. §§ 1391(b)(1)–  
27 (2). Defendants reside within this district and a substantial part of the  
28 events giving rise to this claim have occurred or will occur in the Southern

1 District of California.

2 **PARTIES**

3 6. Plaintiff Californians for Equal Rights Foundation is a  
4 nonprofit foundation established to defend the principle of equality under  
5 the law in the State of California. CFER engages in policy advocacy, voter  
6 education, and empirical research in furtherance of its mission to protect  
7 equal rights for all Californians. CFER’s membership includes one or  
8 more individuals who self-identify as white, who have not owned a home  
9 within the past three years. One or more of CFER’s members is ready,  
10 willing, and able to apply for the FTHB Program, and would be eligible  
11 for the program’s benefits were race not a factor.

12 7. Specifically, CFER Member “A” wishes to buy a home in San  
13 Diego. He self-identifies as white. Member A has not owned a home within  
14 the past three years. Member A is part of a household of one and has an  
15 income between \$77,200 and \$122,650. Member A is ready, willing, and  
16 able to apply for a grant or loan provided under the Program.

17 8. Defendant City of San Diego is a subdivision of the State of  
18 California, created and existing by charter promulgated under the  
19 California Constitution. The City has a duty to comply with the United  
20 States Constitution by not engaging in discrimination on the basis of race.

21 9. Defendant Housing Authority of the City of San Diego is an  
22 agency of the City of San Diego and governs the San Diego Housing  
23 Commission, including the development and implementation of the  
24 Program. The Housing Authority has a duty to comply with the United  
25 States Constitution by not engaging in discrimination on the basis of race.

26 10. Defendant San Diego Housing Commission is an agency of the  
27 City of San Diego and implements the Program. The Housing Commission  
28 has a duty to comply with the United States Constitution by not engaging

1 in discrimination on the basis of race.

## 2 **FACTUAL ALLEGATIONS**

### 3 **The San Diego Housing Commission**

4 11. The City of San Diego created the San Diego Housing  
5 Commission in 1979 to provide housing opportunities for individuals and  
6 families with low income or experiencing homelessness.

7 12. One of the Housing Commission’s functions is to create and  
8 preserve affordable housing through its roles as a lender, bond issuer,  
9 administrator of City of San Diego land use programs, and a property  
10 owner.

11 13. One of the ways in which the Commission provides affordable  
12 housing opportunities is by offering deferred loans and homeownership  
13 grants to help low- and moderate-income families buy their first home. In  
14 this role, the Commission assists with purchases of single-family homes,  
15 townhomes and condominiums in the City.

### 16 **The Challenged Program**

17 14. In June 2023, the Housing Commission launched the First-  
18 Time Homebuyer Program for BIPOC Households with middle income. It  
19 is a pilot program to help middle-income homebuyers buy a home in San  
20 Diego.

21 15. The program provides benefits in two ways:

- 22 a. \$40,000 in total assistance, consisting of a \$20,000 deferred  
23 loan toward the down payment on a home and a \$20,000 grant  
24 toward closing costs; or
- 25 b. a \$20,000 grant toward the down payment on a home and  
26 closing costs.

27 16. Eligibility for the program’s benefits is based on race. It  
28 provides assistance only to “eligible borrowers who self-identify as black,

1 indigenous or other person of color. This includes borrowers that self-  
2 identify as Hispanic/Latinx and any race other than white.” Real Estate  
3 Division, City of San Diego First-Time Homebuyer Program for Middle-  
4 Income, Black, Indigenous, People of Color (BIPOC) Households  
5 Guidelines, San Diego Housing Comm’n at 2 (June 2023) (attached as  
6 Exhibit A).

7 17. The Commission requires that applicants establish program  
8 eligibility through a signed self-certification form in which the applicant  
9 identifies his or her race.

10 18. “Strict penalties” may be imposed on an applicant for “making  
11 a material misstatement, misrepresentation or fraudulent act on  
12 documents submitted to the Housing Commission,” including the self-  
13 certification form. These include fines and penalties, as well as a ban from  
14 applying for or working with Housing Commission programs in the  
15 future. Exhibit A at 4.

16 19. If an individual or household who does not self-identify as  
17 “black, indigenous or other person of color” applies for the program’s  
18 benefits, his or her application will be rejected.

19 **CAUSE OF ACTION**

20 **(Violation of the Equal Protection Clause of the Fourteenth**  
21 **Amendment, through 42 U.S.C. § 1983)**

22 20. Plaintiff hereby realleges each and every allegation contained  
23 in Paragraphs 1 through 19 as though fully set forth herein.

24 21. The Fourteenth Amendment to the United States Constitution  
25 provides: “No State shall make or enforce any law which shall . . . deny to  
26 any person within its jurisdiction the equal protection of the laws.” U.S.  
27 Const. amend. XIV, § 1.

28 22. 42 U.S.C. § 1983 provides that:

1 Every person who, under color of any statute, ordinance,  
2 regulation, custom, or usage, of any State or Territory or the  
3 District of Columbia, subjects, or causes to be subjected, any  
4 citizen of the United States or other person within the  
5 jurisdiction thereof to the deprivation of any rights, privileges,  
6 or immunities secured by the Constitution and laws, shall be  
7 liable to the party injured in an action at law, suit in equity,  
8 or other proper proceeding for redress . . . .

9 23. Defendants City of San Diego, San Diego Housing Authority,  
10 and San Diego Housing Commission are “persons” within the meaning of  
11 U.S.C. § 1983. *Monell v. Dep’t of Soc. Servs. of City of New York*, 436 U.S.  
12 658, 663 (1978).

13 24. Defendants have acted and are acting “under color of state law”  
14 within the meaning of section 1983.

15 25. The FTHB Program discriminates on the basis of race in  
16 violation of the Equal Protection Clause.

17 26. The FTHB Program facially discriminates on the basis of race.

18 27. The FTHB Program is subject to strict scrutiny because it  
19 categorizes individuals on the basis of race.

20 28. The FTHB Program’s racial classifications do not serve a  
21 compelling government interest.

22 29. Defendants have not specifically identified any racial  
23 discrimination to be remedied by the FTHB Program.

24 30. Defendants cannot identify any statute or constitutional  
25 provision that would be violated in the absence of its race-based FTHB  
26 Program.

27 31. Defendants lack a strong basis in evidence to conclude that  
28 remedial action is necessary regarding any racial discrimination in the  
City of San Diego.



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DATED: March 12, 2024.

Respectfully submitted,

JOSHUA P. THOMPSON  
JACK BROWN\*  
PACIFIC LEGAL FOUNDATION

By /s/ Joshua P. Thompson  
JOSHUA P. THOMPSON

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