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12 CITY OF BERKELEY

13 **UNITED STATES DISTRICT COURT**  
14 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

15 YESICA PRADO, et al.,

16 Plaintiffs,

17 v.

18 CITY OF BERKELEY,

19 Defendant.

Case No. 23-cv-04537-EMC

**DEFENDANT CITY OF BERKELEY'S  
THIRD-PARTY COMPLAINT FOR  
INDEMNITY AND CONTRIBUTION  
AGAINST THIRD-PARTY DEFENDANTS**

Judge: Hon. Edward M. Chen

Complaint Filed: January 29, 2026

20 CITY OF BERKELEY,

21 Third-Party Plaintiff.

22 v.

23 BAY AREA COMMUNITY SERVICES, a  
24 California nonprofit corporation; BUILDING  
25 OPPORTUNITIES FOR SELF-  
26 SUFFICIENCY, a California nonprofit  
27 corporation; DOROTHY DAY HOUSE, a  
28 California nonprofit corporation; INSIGHT  
HOUSING, a California nonprofit corporation;  
and ROES 1-10,

Third-Party Defendants.

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**THIRD-PARTY COMPLAINT**

Defendant and Third-Party Plaintiff CITY OF BERKELEY (the “City”) alleges against BAY AREA COMMUNITY SERVICES (“BACS”), BUILDING OPPORTUNITIES FOR SELF-SUFFICIENCY (“BOSS”), DOROTHY DAY HOUSE (“DDH”), INSIGHT HOUSING (“Insight”), and ROES 1 through 10 (collectively “Third-Party Defendants”) as follows:

**PARTIES**

1. The City is, and at all times relevant was, a municipal corporation organized and existing under the laws of the State of California.
2. BACS is, on information and belief, a California nonprofit corporation that, at all relevant times, contracted with the City to operate, manage, or provide services at congregate shelter facilities and programs alleged in the TAC.
3. BOSS is, on information and belief, a California nonprofit corporation that, at all relevant times, contracted with the City to operate, manage, or provide services at congregate shelter facilities and programs alleged in the TAC.
4. Dorothy Day House is, on information and belief, a California nonprofit corporation that, at all relevant times, contracted with the City to operate, manage, or provide services at both congregate and non-congregate shelter facilities and programs alleged in the TAC.
5. Insight is, on information and belief, a California nonprofit corporation that, at all relevant times, contracted with the City to operate, manage, or provide services at both congregate and non-congregate shelter facilities and programs alleged in the TAC.
6. The true names or capacities, whether individual, corporate, associate or otherwise of ROES 1 through 10 inclusive, are unknown to the City who, therefore, sues such third-party defendants by fictitious names. When the true names and capacities of these persons or entities are ascertained, the City will amend this complaint by inserting their true names herein.
7. The City is informed and believes, and thereon alleges, that each of the Third-Party Defendants named herein, including ROES 1 through 10, acted at all times within the course and scope of said agency and that each is equally liable for the acts alleged below.

**JURISDICTION AND VENUE**

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8. This Court has supplemental jurisdiction over this matter pursuant to 28 U.S.C. §1367(a) because they are so related to the Plaintiff’s claims that they form part of the same case or controversy under Article III of the United States Constitution.

9. Venue in this Court is proper pursuant to 28 U.S.C. §1391(b)(2) in that this Court is a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred.

10. This Third-Party Complaint is proper under FRCP 14(a).

**GENERAL ALLEGATIONS**

11. This is a Third-Party Complaint for express contractual defense and indemnity, equitable indemnity, contribution, breach of contract, and declaratory relief.

12. The Third Amended Complaint filed in the above-captioned action, entitled *Prado et al v. City of Berkeley*, Case No. 23-cv-04537-EMC was filed in the United States District Court, Northern District of California on December 15, 2025 (“TAC”). The TAC alleged causes of action for: (1) Violation of 42 U.S.C. § 12131 et seq. (“Americans with Disabilities Act” or “ADA”); (2) Violation of Cal. Gov. Code § 11135; (3) Violation of 42 U.S.C. § 1983; (4) Violation of Article I, § 13 of the California Constitution; and (5) Violation of 42 U.S.C. 3601 et. Seq (“Fair Housing Act” or “FHA”). Said TAC, for purposes of its allegations only, is incorporated by reference as though fully set forth herein.

13. The TAC alleges that Plaintiffs were excluded from, denied the benefits of, or subjected to discrimination in connection with access to and participation in congregate and non-congregate shelter programs and facilities operated within the City of Berkeley.

14. The TAC further alleges violations of Title II of the ADA, the Fair Housing Act (“FHA”), and California Government Code section 11135 based on alleged policies, practices, and conditions at shelter facilities.

15. The TAC alleges that the City is liable for these alleged violations based on its funding, oversight, ownership interests, or regulatory role with respect to the shelter programs and facilities.

1 16. At all relevant times, including presently, the shelters operated by BACS, BOSS, and  
2 Insight were not owned or operated by the City, and the City did not control daily operations,  
3 intake decisions, enforcement of participant rules, or individualized accommodation  
4 determinations at those shelters.

5 17. At all relevant times, including presently, the DDH main shelter and the Inclement  
6 Weather Shelter, operated by DDH, have been located in a building owned by the City and leased  
7 to DDH. At all relevant times, including presently, the City did not operate the shelters and did  
8 not control daily operations, intake decisions, enforcement of participant rules, or individualized  
9 accommodation determinations, which are the responsibility of DDH.

10 18. Under written agreements with the City, operational functions at the shelters were the  
11 exclusive responsibility of Third-Party Defendants, including BACS, BOSS, DDH, and Insight.  
12 The City did not operate the shelters and did not exercise control over daily operations, intake  
13 decisions, enforcement of participant rules, or individualized accommodation determinations.

14 19. Under those agreements, Third-Party Defendants expressly assumed responsibility for  
15 operating the shelter programs in compliance with all applicable federal and state civil rights  
16 laws, including the ADA, FHA, and California Government Code section 11135.

17 20. Those agreements required Third-Party Defendants to adopt and implement  
18 nondiscriminatory policies, provide reasonable accommodations, ensure accessibility, and train  
19 staff accordingly.

20 21. The agreements also required Third-Party Defendants to indemnify and hold harmless  
21 the City for claims arising out of Third-Party Defendants' operations, acts, or omissions.

22 22. The agreements additionally required Third-Party Defendants to release and discharge  
23 the City from all liabilities, obligations, and claims arising from the contract.

24 23. The TAC alleges injuries arising from the very operational decisions and practices that  
25 Third-Party Defendants were contractually responsible for implementing in a lawful and  
26 nondiscriminatory manner.

27 24. At all relevant times, the Third-Party Defendants operate the shelters at issue as private  
28 entities providing housing and related social services to the public and are therefore

1 independently obligated to comply with Title III of the ADA, including providing  
2 nondiscriminatory access and reasonable accommodations to individuals with disabilities. BOSS,  
3 DDH, and Insight have acknowledged these obligations in writing by executing an agreement  
4 with the City promising compliance with both ADA Title II and Title III. BACS similarly agreed  
5 in its contract with the City to observe and comply with all applicable laws, ordinances, codes,  
6 and regulations of governmental agencies, including federal, state, municipal, and local laws  
7 governing the scope of services provided. Accordingly, to the extent certain allegations in the  
8 TAC relate to the shelters operated by the Third-Party Defendants, such allegations concern the  
9 acts or omissions of those Third-Party Defendants and their own Title II and/or Title III  
10 responsibilities, and, to the extent the City may have separate obligations, the City retains any  
11 independent responsibilities under Title II of the ADA.

12 25. At all relevant times, to the extent the shelters operated by the Third-Party Defendants  
13 constitute “dwellings” within the meaning of the FHA, 42 U.S.C. § 3602(b), the Third-Party  
14 Defendants are independently obligated to comply with the FHA, including providing  
15 nondiscriminatory access and reasonable accommodations for individuals with disabilities. The  
16 Third-Party Defendants explicitly acknowledged these obligations in writing by executing  
17 agreements with the City promising compliance with the FHA. Accordingly, to the extent certain  
18 allegations in the TAC implicate the FHA and relate to shelters operated by the Third-Party  
19 Defendants, such allegations concern the acts or omissions of those Third-Party Defendants and  
20 their own obligations under the FHA, without prejudice to any separate obligations the City may  
21 have with respect to shelters it owns or operates.

22 26. On information and belief, at all relevant times, BACS operated, and continues to  
23 operate, the Berkeley Pathways Center for Stability and Respite (the “STAIR Center”), a low-  
24 barrier shelter and respite program serving literally homeless adults residing in Berkeley, and a  
25 program and facility specifically referenced in the TAC. The STAIR Center welcomes adults  
26 with high levels of need and functions as part of the City’s shelter system and broader continuum  
27 of care.

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1 27. On information and belief, the STAIR Center provides emergency respite services,  
2 outreach, housing navigation, and flexible funding support, and is operated seven days per week  
3 during program hours established by BACS.

4 28. As part of its contractual duties, BACS provides, and continues to provide, interim  
5 housing, respite, meals, hygiene and laundry services, and access to supportive resources at no  
6 cost to residents. BACS further provides, and continues to provide, housing navigation and case  
7 management services intended to serve as pathways to permanent housing and ongoing stability.

8 29. On information and belief, BACS's services include, and continue to include, assisting  
9 residents with housing problem-solving activities, connecting individuals to permanent housing  
10 opportunities, administering flexible funding to support housing navigation and problem-solving,  
11 and conducting outreach to people living in homeless encampments in Berkeley to facilitate rapid  
12 rehousing.

13 30. At all relevant times, BACS exercises control over the day-to-day operations of the  
14 STAIR Center, including staffing, resident intake and discharge, service delivery, and compliance  
15 with applicable contractual, regulatory, and programmatic requirements.

16 31. On information and belief, the real property on which the STAIR Center operates is, and  
17 continues to be, either privately owned or leased by BACS, and not owned by the City. BACS is,  
18 and continues to be, responsible for the condition, operation, and management of the premises in  
19 accordance with its agreements with the City and applicable law.

20 32. On information and belief, at all relevant times, BOSS operated, and continues to  
21 operate, multiple programs serving literally and chronically homeless adults in Berkeley,  
22 including the Housing Navigation Team, the Ursula Sherman Village Shelter Program (the  
23 "Shelter Program"), and the Other Services Representative Payee Program. These programs and  
24 facilities are encompassed by the TAC's allegations concerning all City-funded shelters. They  
25 provide low-barrier emergency shelter, housing navigation, case management, and social services  
26 for single adults and families, with an emphasis on individuals with high needs, including those  
27 experiencing chronic homelessness, disabilities, and other complex barriers. BOSS programs  
28 function as part of the City's shelter system and broader continuum of care.

1 33. On information and belief, the Shelter Program provides approximately fifty (50)  
2 emergency shelter beds for single adults, including both City of Berkeley and Alameda County-  
3 funded beds. The program operates seven days per week, generally from 5:00 p.m. to 9:00 a.m.,  
4 and offers safe interim housing, meals, clean linens, toiletries, and access to laundry and shower  
5 facilities at no cost to residents. The Shelter Program is designed to facilitate safety, crisis  
6 stabilization, and movement toward permanent housing and ongoing stability.

7 34. On information and belief, as part of its contractual duties, BOSS provides, and  
8 continues to provide, trauma-informed case management, housing navigation, and supportive  
9 services tailored to residents' assessed needs, including income, health, mental health, legal, and  
10 other individualized needs. BOSS staff assist participants in connecting to permanent housing and  
11 accessing community resources.

12 35. On information and belief, BOSS's services include, and continue to include, assisting  
13 residents with housing problem-solving activities, submitting applications for affordable housing,  
14 accessing rapid rehousing assistance through the North County Housing Resource Center,  
15 coordinating shared housing placements, managing flexible funding in support of housing  
16 navigation, and providing regular social contact and check-ins through the Representative Payee  
17 Program to support housing stability for clients with disabilities.

18 36. At all relevant times, BOSS exercises control over the day-to-day operations of its  
19 programs, including staffing, intake and discharge, service delivery, and compliance with  
20 applicable contractual, regulatory, and programmatic requirements.

21 37. On information and belief, the real property on which BOSS operates its Shelter Program  
22 and other programs is, and continues to be, either privately owned or leased by BOSS, and not  
23 owned by the City. BOSS is, and continues to be, responsible for the condition, operation, and  
24 management of the premises in accordance with its agreements with the City and applicable law.

25 38. On information and belief, at all relevant times, DDH operated, and continues to operate,  
26 multiple programs serving literally homeless adults in Berkeley, including the Berkeley Inn,  
27 Berkeley Emergency Storm Shelter ("BESS"), the Dorothy Day House Shelter, Beyond the  
28 Horizon/Berkeley Inn, and the Inclement Weather Shelter. Said programs are encompassed by the

1 TAC’s allegations concerning all City-funded shelters. These programs provide low-barrier  
2 emergency shelter, housing case management, meals, hygiene services, and supportive services  
3 for single adults and families, with an emphasis on individuals with high needs, including those  
4 who are elderly, disabled, or experiencing chronic homelessness. DDH programs function as part  
5 of the City’s shelter system and broader continuum of care.

6 39. On information and belief, the BESS operates during periods of inclement weather,  
7 excessive heat, or poor air quality, providing overnight shelter for up to thirty (30) guests per  
8 night and offering three meals per day, clean clothing, laundry, hygiene, and personal protective  
9 equipment. The program supports participants in preparing for permanent housing opportunities,  
10 including document readiness and coordination with medical, legal, housing, workforce  
11 development, and mental health resources.

12 40. On information and belief, the Dorothy Day House Shelter and Beyond the  
13 Horizon/Berkeley Inn programs operate 24 hours per day, seven days per week, providing  
14 emergency shelter, meals, clean clothing, laundry, hygiene supplies, and housing case  
15 management for up to 52 and 27 guests respectively. These programs assist residents with  
16 document readiness, family reunification, housing searches, and referrals to healthcare, income  
17 support, addiction services, mental health services, and workforce development.

18 41. The Inclement Weather Shelter provides temporary emergency shelter and supportive  
19 services to protect individuals from extreme weather conditions, offering meals, clean linens,  
20 hygiene supplies, and connections to local resources.

21 42. At all relevant times, DDH exercises control over the day-to-day operations of its  
22 programs, including staffing, intake and discharge, service delivery, and compliance with  
23 applicable contractual, regulatory, and programmatic requirements. On information and belief,  
24 DDH staff conduct outreach, provide case management, and implement evidence-based practices  
25 to assist residents in obtaining and maintaining permanent housing.

26 43. On information and belief, the BESS and Beyond the Horizon/Berkeley Inn programs  
27 operate on property that is either privately owned or leased by DDH. DDH is, and continues to  
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1 be, responsible for the condition, operation, and management of these premises in accordance  
2 with its agreements and applicable law.

3 44. The Dorothy Day House Shelter and the Inclement Weather Shelter operate in a building  
4 owned by the City and leased to DDH. DDH is, and continues to be, responsible for the  
5 condition, operation, and management of these premises in accordance with its lease with the  
6 City and applicable law.

7 45. At all relevant times, Insight contracted with the City to operate shelter and housing-  
8 related services connected to the programs and facilities alleged in the TAC, for individuals  
9 experiencing homelessness within Berkeley and Alameda County.

10 46. On information and belief, at all relevant times, Insight operated, and continues to  
11 operate, low-barrier women's and men's emergency shelter programs (the "Shelter Programs")  
12 serving literally homeless adult women, with an emphasis on prioritizing chronically homeless  
13 individuals with multiple disabilities. In addition, Insight operates the Campus Motel  
14 non-congregate shelter program, which provides low-barrier private rooms to homeless  
15 individuals referred by the City's Homeless Response Team under a master lease at the Campus  
16 Motel, and Insight's respite program. These programs function as part of the City's shelter system  
17 and broader continuum of care.

18 47. The Shelter Programs provide emergency shelter beds, funded in part by the City and  
19 Alameda County, and operated seven days per week, funded in part by the City and Alameda  
20 County, and operated seven days per week, generally from approximately 4:30 p.m. to 7:30 a.m.

21 48. The Campus Motel non-congregate shelter provides approximately 23 private rooms to  
22 individuals experiencing homelessness, funded in part by the City and Alameda County, and  
23 operates seven days per week. The program includes meals, case management, hygiene services,  
24 and support for preparing for permanent housing, and serves as part of the City's broader shelter  
25 system and continuum of care.

26 49. As part of its contractual duties, Insight provided, and continues to provide, residents  
27 interim housing, meals, linens, toiletries, and access to laundry and shower facilities at no cost to  
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1 residents. Insight further provided, and continues to provide, case management and housing  
2 navigation services intended to serve as a pathway to permanent housing and ongoing stability.

3 50. Insight's social services included, and continue to include, assisting shelter residents with  
4 connecting to housing and supportive resources, including but not limited to submitting  
5 applications for affordable housing, accessing rapid rehousing financial assistance through the  
6 North County Housing Resource Center, completing documentation when matched to permanent  
7 supportive housing units, and coordinating shared housing opportunities.

8 51. At all relevant times, Insight exercised control over the day-to-day operations of the  
9 Shelter Programs, Campus Motel, and respite program, including staffing, resident intake and  
10 discharge, service delivery, and compliance with applicable contractual, regulatory, and  
11 programmatic requirements.

12 52. On information and belief, the real property on which Insight's Shelter Programs,  
13 Campus Motel, and respite program operated was, and continues to be, either privately owned or  
14 leased by Insight, and not owned by the City. Insight was, and continues to be, responsible for the  
15 condition, operation, and management of the premises in accordance with its agreements with the  
16 City and applicable law.

17 53. The TAC repeatedly alleges that day-to-day- operations, intake procedures, participant  
18 rules, accommodation determinations, and enforcement of behavioral policies at City-funded  
19 shelters were implemented at the program level.

20 54. The TAC further alleges that program rules, eligibility determinations, grievance  
21 procedures, and accommodation decisions were applied by shelter staff interacting directly with  
22 participants.

23 55. At all relevant times, the shelters operated by the named Third-Party Defendants were  
24 not owned or operated by the City, and the City did not control daily operations, intake decisions,  
25 enforcement of participant rules, or individualized accommodation determinations at those  
26 shelters.

27 56. To the extent Plaintiffs suffered any actionable harm as alleged in the TAC, such harm  
28 was caused in whole or in part by Third-Party Defendants' acts, omissions, failures to comply

1 with contractual obligations, and failures to comply with applicable disability and fair housing  
2 laws.

3 57. Any liability imposed on the City in the underlying action would therefore be derivative,  
4 secondary, or vicarious in nature, and would trigger Third-Party Defendants' indemnity and  
5 contribution obligations.

6 **FIRST CLAIM FOR RELIEF**

7 **(Express Contractual Indemnity – Against All Third-Party Defendants)**

8 58. The City realleges and incorporates by reference paragraphs 1 through 57 as though fully  
9 set forth herein.

10 59. At all relevant times, the City and Third-Party Defendants entered into written  
11 agreements governing the operation of shelter programs and facilities.

12 60. At all relevant times herein, the City has performed all conditions, covenants and  
13 promises required on its part to be performed.

14 61. Those agreements include express indemnification provisions requiring Third-Party  
15 Defendants to defend, indemnify, and hold harmless the City from claims, damages, losses, and  
16 liabilities arising out of Third-Party Defendants' performance, nonperformance, or failure to  
17 comply with applicable laws.

18 62. The claims alleged in the TAC arise directly from the operation of the shelter programs  
19 and facilities covered by those agreements.

20 63. The TAC alleges discriminatory acts and omissions that fall squarely within the scope of  
21 Third-Party Defendants' contractual duties.

22 64. The City is informed and believes, and based upon such information and belief alleges,  
23 that in the event Plaintiffs are entitled to any recovery against the City, Third-Party Defendants  
24 are contractually obligated to fully indemnify and hold harmless the City from any such judgment  
25 and/or settlement.

26 65. By reasons of the foregoing, and as a proximate result of Third-Party Defendants' breach  
27 of said written agreements, Third-Party Defendants are obligated to reimburse the City for its  
28 attorneys' fees and all related legal costs incurred in or paid out in the City's defense of itself in

1 this action and the underlying action, and to indemnify the City for any sum which the City may  
2 pay or be compelled to pay Plaintiffs as a result of any settlement, damages, judgments or other  
3 awards herein.

4 66. The City has properly notified Third-Party Defendants of the City’s demand that Third-  
5 Party Defendants defend and indemnify the City in connection with Plaintiffs’ complaint herein.

6 67. Third-Party Defendants have failed and refused to acknowledge or accept their indemnity  
7 obligations.

8 **SECOND CLAIM FOR RELIEF**

9 **(EQUITABLE INDEMNITY – Against All Third-Party Defendants)**

10 68. The City realleges and incorporates by reference paragraphs 1 through 67, inclusive.

11 69. Certain allegations in the TAC seek to impose liability on the City for alleged acts and  
12 omissions relating to shelters that were owned or operated by Third-Party Defendants, which  
13 were primarily committed by those Third-Party Defendants.

14 70. If the City is held liable for claims arising from shelters owned or operated by Third-  
15 Party Defendants, such liability would be secondary, passive, or derivative, while any liability of  
16 the Third-Party Defendants would be primary and active.

17 71. Equity requires that Third-Party Defendants indemnify the City for any damages or relief  
18 awarded against the City that arise from shelters they own or operate.

19 72. The City is entitled to full equitable indemnity, or at minimum partial indemnity based  
20 on comparative fault, with respect to claims relating to shelters owned or operated by Third-Party  
21 Defendants.

22 **THIRD CLAIM FOR RELIEF**

23 **(CONTRIBUTION – Against all Third-Party Defendants)**

24 73. The City realleges and incorporates by reference paragraphs 1 through 72, inclusive.

25 74. If the City is found liable to Plaintiffs for any portion of the damages, equitable relief, or  
26 other remedies sought in this action, such liability will be based in whole or in part on the acts,  
27 omissions, policies, practices, or contractual breaches of Third-Party Defendants.

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1 75. Third-Party Defendants owed duties to the City and to program participants under their  
2 agreements with the City and applicable law, including duties relating to the operation,  
3 management, and delivery of shelter and related social services. To the extent Plaintiffs' alleged  
4 injuries or requested relief were caused or contributed to by Third-Party Defendants' conduct,  
5 Third-Party Defendants share in any common liability to Plaintiffs.

6 76. To the extent the City is required to pay more than its proportionate share of any  
7 common liability, the City is entitled to contribution from Third-Party Defendants in an amount  
8 to be determined at trial.

9 77. In order to avoid a multiplicity of actions and inconsistent adjudications, a determination  
10 of the comparative fault, if any, of the City and Third-Party Defendants should be made in the  
11 trial of the principal action.

12 78. If Plaintiffs recover a judgment against the City, the amount of damages, if any, should  
13 be apportioned among the City and Third-Party Defendants based on their respective comparative  
14 fault for the acts or omissions alleged in the TAC.

15 79. The City is entitled to a declaration of the parties' respective rights and responsibilities,  
16 including the City's right to contribution from Third-Party Defendants based on an apportionment  
17 of fault among Plaintiffs, the City, and Third-Party Defendants.

18 **FOURTH CLAIM FOR RELIEF**

19 **(Breach of Contract – Against all Third-Party Defendants)**

20 80. The City incorporates by reference, as though fully set forth herein, paragraphs 1 through  
21 79, inclusive.

22 81. At all times relevant in the underlying action, the City, its agents, assigns, divisions, or  
23 other related entities, entered into a written contract with Third-Party Defendants, whereby Third-  
24 Party Defendants agreed, for due consideration, to assume entire responsibility and liability for,  
25 and indemnify, save harmless, protect and defend the City, its officers, agents, and employees  
26 from and against any and all claims, actions, proceedings, liabilities, judgments, losses, injuries,  
27 damages, costs and expenses, including legal fees and disbursements, which the City may incur  
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1 or indirectly sustain or incur by reason of allegations such as those set forth in the underlying  
2 action.

3 82. The City has performed all of the conditions and obligations to be performed on its part  
4 under the aforementioned agreements.

5 83. The TAC alleges that the City's shelter system is not operated in compliance with the  
6 ADA, the FHA, and Cal. Gov. Code § 11135, Third-Party Defendants materially breached their  
7 agreements with the City by failing to operate their shelter programs in compliance with the  
8 ADA, FHA, and Government Code section 11135.

9 84. Thus, the TAC alleges that Third-Party Defendants further breached their obligations by  
10 failing to implement adequate policies, training, and procedures to ensure nondiscriminatory  
11 access and reasonable accommodations.

12 85. The City has properly notified Third-Party Defendants of the City's demand that Third-  
13 Party Defendants defend and indemnify the City in connection with Plaintiffs' underlying action.

14 86. As a direct and proximate result of these breaches, the City has incurred and will  
15 continue to incur damages, including defense costs, attorneys' fees, and potential liability.

16 **FIFTH CAUSE OF ACTION FOR DECLARATORY RELIEF**

17 **(Against all Third-Party Defendants)**

18 87. The City realleges and incorporates by reference paragraphs 1 through 86, inclusive.

19 88. An actual controversy exists between the City and Third-Party Defendants regarding  
20 their respective rights and obligations under the contracts at issue.

21 89. The City seeks a judicial declaration that:

- 22 a. Third-Party Defendants are responsible for compliance with disability and fair  
23 housing laws in shelter operations;
- 24 b. Third-Party Defendants are obligated to indemnify and defend the City against  
25 the TAC claims;
- 26 c. Any liability imposed on the City must be allocated to Third-Party Defendants  
27 consistent with their contractual and equitable obligations.

28 **PRAYER FOR RELIEF**

1           WHEREFORE, the City prays for judgment against Third-Party Defendants as  
2 hereinafter set forth.

3           1. That the Court adjudge, determine, and decree that Third-Party Defendants are  
4 contractually obligated to defend, hold harmless, and indemnify the City from any and all losses,  
5 costs, attorneys’ fees, judgments, or other liabilities incurred by the City in connection with the  
6 underlying action;

7           2. That the Court adjudge, determine, and decree that, under principles of equity and/or  
8 contribution, Third-Party Defendants are obligated to defend and indemnify the City and to pay  
9 its costs of suit, including attorneys’ fees;

10           3. For damages against Third-Party Defendants for any breach of the contractual  
11 obligations to defend and indemnify the City, including costs and attorneys’ fees incurred in  
12 connection with the underlying action;

13           4. For a declaration of the rights and obligations of the parties with respect to Third-Party  
14 Defendants’ duty to defend and indemnify the City in connection with the underlying action;

15           5. That, in the event any adverse judgment is rendered against the City, Third-Party  
16 Defendants be required to indemnify the City in accordance with the applicable contracts,  
17 comparative fault principles, and equitable considerations, including any and all expenses and  
18 costs, including attorneys’ fees, incurred in defending the underlying action;

19           6. For costs of this action; and

20           7. For such other and further relief as the court may deem just and proper.

21 Dated: January 29, 2026

Respectfully submitted,

BERKELEY CITY ATTORNEY’S OFFICE

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23  
24           By: /s/ Nubyaan Scott  
25                       Nubyaan Scott  
26                       Deputy City Attorney  
27                       Attorney for City of Berkeley  
28