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Attorneys for Third-Party Defendant
INSIGHT HOUSING

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO

YESICA PRADO, ERIN SPENCER, AMBER WHITSON, JERMAINE WHITE, MONIQUE WILLIAMS, and WHERE DO WE GO F/K/A WHERE DO WE GO BERKELEY, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

CITY OF BERKELEY,

Defendants.

CITY OF BERKELEY,

Third-Party Plaintiff,

v.

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

Third-Party Defendants.

Case No. 3:23-cv-04537-EMC

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF THIRD-PARTY DEFENDANT INSIGHT HOUSING'S MOTION TO DISMISS CITY OF BERKELEY'S THIRD-PARTY COMPLAINT

Hearing Date: May 14, 2026
Hearing Time: 1:30 p.m.
Location: San Francisco Courthouse
Courtroom 5 – 17th Floor
450 Golden Gate Avenue
San Francisco, CA 94102

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Third-party Defendant INSIGHT HOUSING ("Insight") provides the following Memorandum of Points and Authorities in support of Third-Party Defendant's Motion to Dismiss Third-Party Plaintiff CITY OF BERKELEY's ("City") Third-Party Complaint for indemnity and contribution against Third-Party Defendants.

I. BACKGROUND

This action commenced on September 4, 2023, when a complaint was filed against the City on behalf of four individuals. (ECF No. 1.) On November 10, 2023, Plaintiffs filed a First Amended Complaint on behalf of a class of Plaintiffs. (ECF No. 41.) The proposed class was defined as: "All unhoused persons who have a 'disability' as defined under the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12102, who reside in a vehicle or other shelter in public spaces in Berkeley, California, or who reside in temporary or transitional shelters in Berkeley, California". (*Id.* at ¶ 214.) Plaintiffs filed a Second Amended Complaint on September 5, 2024. (ECF No. 94.)

Plaintiffs are now proceeding on a corrected Third Amended Complaint filed on January 9, 2026. (ECF No. 150.) The proposed class defined in the Third Amended Complaint is identical to the proposed class defined in the First Amended Complaint. (*Id.* at ¶ 239.) The Third Amended Complaint asserts the following questions of law and fact are common to all class members:

> (a) Whether the City has failed or refused to provide reasonable modifications of its policies, practices or procedures in enforcing City ordinances in the abating or sweeping of encampments and vehicles used for housing as required under the ADA, 42 U.S.C. § 12132 and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 and state laws by failing to modify enforcement of those laws to not have a disproportionate burden on or otherwise accommodate Plaintiffs and class members disabilities or providing a process for individuals with disabilities to seek accommodations to enforcement and abatement actions;
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> (b) Whether the City has failed to provide outreach and other services to the houseless community in a manner that is accessible to Plaintiffs and the members of the class. i.e. whether the City has failed or refused to provide reasonable modifications to its programs for Plaintiffs and members of the Subclass in order for them to meaningfully access those programs and services;
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> (c) Whether the City has failed to provide reasonable accommodations and/or modifications to the policies, practices, rules, and regulations of its shelter programs as required by state and federal laws;

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> (d) Whether the City fails to make reasonable modifications to its encampment management policies, practices, and procedures that are necessary to accommodate Plaintiffs' and Class members' disabilities;
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> (e) Whether the City fails to make reasonable modifications to the policies, practices and procedures in place at its temporary shelters that are necessary to accommodate Plaintiffs' and Class members disabilities while they are residing in the shelters;
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> (f) Whether the City's policies, practices, and procedures in enforcing City ordinances in the cleaning or clearing of encampments and vehicles puts Plaintiffs and class members in greater danger than leaving them in place;
>
> (g) Whether the named Plaintiffs and other Class members are at risk that their shelter and other personal belongings will be seized and impounded or destroyed by the City;
>
> (h) Whether the City's notices to Class members are sufficiently specific to provide adequate constitutionally required notice prior to requiring them to vacate or seizing property;
>
> (i) Whether the City's policies, practices, and procedures in enforcing City ordinances in the abating or sweeping of encampments and vehicles, because of the lack of available shelter beds, violates the law.
>
> (j) Whether the City's policies, practices, and procedures in enforcing City ordinances in the abating or sweeping of encampments and vehicles violates one or more of the constitutional and statutory provisions enumerated herein;
>
> (k) Whether named Plaintiffs and the other Class members are entitled to equitable relief, including system-wide policy and practice changes to address the constitutional and statutory violations detailed in this Complaint.

(*Id.* at 66-67[1].)

The Third Amended Complaint asserts the following causes action against the City: (1) Discrimination Against Persons with Disabilities in violation of the Americans with Disabilities Act ("ADA"); (2) Discrimination Against Persons with Disabilities in violation of California Government Code § 11135; (3) Unreasonable Seizure in violation of the Fourth and Fourteenth Amendments; (4) Property Destruction: Unreasonable Search and Seizure in violation of Article I, § 13 of the California Constitution; (5) Violation of the Fair Housing Amendments Act ("FHAA"); and (6) Exposure to State Created Danger in violation of the Fourteenth Amendment. (Third Am. Compl. (ECF No. 150) at 68-78.)

[1] Page number citations such as this are to the Court's CM/ECF system.

On January 29, 2026, the City filed a Third-Party Complaint for indemnity and contribution against Third-Party Defendants who operate shelter programs. (ECF No. 152.) According to the City's Third-Party Complaint, "to the extent Plaintiffs suffered any actionable harm as alleged in the TAC, such harm was caused in whole or in part by Third-Party Defendants' acts, omissions, failures to comply with contractual obligations, and failures to comply with applicable disability and fair housing laws." (*Id.* at ¶ 56.)

The City's Third-Party Complaint asserts causes of action against the Third-Party Defendants for express contractual indemnity, equitable indemnity, contribution, breach of contract, and declaratory relief. (*Id.* at 11-14.) Because the City's Third-Party Complaint fails to state a claim upon which relief can be granted, Defendant Insight hereby moves for dismissal of the Third-Party Complaint pursuant to Rule 12(b)(6).

II. LEGAL STANDARD

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure ("Rules"), a defendant may move to dismiss a complaint for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). A Rule 12(b)(6) motion tests the legal sufficiency of the complaint. *N. Star Int'l v. Ariz. Corp. Comm'n*, 720 F.2d 578, 581 (9th Cir. 1983). "Dismissal can be based on the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory." *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). A complaint must allege "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). "Where a complaint pleads facts that are merely consistent with a defendant's liability, it stops short of the line between possibility and plausibility of entitlement to relief." (*Id.*) (citations and quotation marks omitted).

When presented with a motion to dismiss pursuant to Rule 12(b)(6), the court accepts as true the allegations in the complaint and construes them in the light most favorable to the plaintiff. *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984); *Love v. United States*, 915 F.2d 1242, 1245 (9th Cir. 1989). The court, however, need not assume the truth of legal conclusions cast in the form of factual

allegations. *United States ex rel. Chunie v. Ringrose*, 788 F.2d 638, 643 n.2 (9th Cir. 1986). Although Rule 8(a) does not require detailed factual allegations, "it demands more than an unadorned, the defendant-unlawfully-harmed-me accusation." *Iqbal*, 556 U.S. at 678.

Thus, a complaint is insufficient if it offers mere "labels and conclusions" or "a formulaic recitation of the elements of a cause of action." *Twombly*, 550 U.S. at 555; *see also Iqbal*, 556 U.S. at 676 ("Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice."). "Moreover, it is inappropriate to assume the plaintiff 'can prove facts that it has not alleged or that the defendants have violated the . . . laws in ways that have not been alleged." *Arroyo v. LL Folsom, L.P.*, 630 F. Supp. 3d 1346, 1349 (E.D. Cal. 2022) (quoting *Associated Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters*, 459 U.S. 519, 526 (1983)).

III. ANALYSIS

A. Failure to State a Claim

1. The City Cannot Obtain Contribution or Indemnification

The claims at issue in the Plaintiffs' Corrected Third Amended Complaint concern the protection of civil rights and prevention of discrimination. In this regard, pursuant to the ADA and FHAA, a plaintiff may show disability discrimination based on "disparate treatment, disparate impact, or failure to make a reasonable accommodation." *Insight Psychology & Addiction, Inc. v. City of Costa Mesa*, 801 F. Supp. 3d 942, 956 (C.D. Cal. 2025). California Government Code § 11135 prohibits denying persons with a disability "full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state." Cal. Gov. Code § 11135(a). And to state a § 1983 cause of action, a complaint must allege: "(1) that defendant was acting 'under color of state law' at the time of the acts complained of, and (2) that defendant deprived plaintiff of [a] right, privilege, or immunity secured by the Constitution or Laws of the United States." *Freier v. New York Life Insurance Co.*, 679 F.2d 780, 783 (9th Cir. 1982).

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In the Third-Party Complaint, the City alleges the existence of "express indemnification provisions" with respect to the above causes of action that require Insight "to defend, indemnify, and hold harmless the City from claims, damages, losses, and liabilities arising out of" Insight's actions. (Third Party Compl. (ECF No. 152) at ¶ 61.) "A defendant held liable under a federal statute has a right to indemnification or contribution from another only if such right arises: (1) through the affirmative creation of a right of action by Congress, either expressly or implicitly, or (2) under the federal common law." *Doherty v. Wireless Broad. Sys. of Sacramento, Inc.*, 151 F.3d 1129, 1130-31 (9th Cir. 1998). Even assuming, *arguendo*, the existence of an express indemnification provision, the City cannot obtain contribution or indemnification for its non-delegable duties to refrain from discrimination or to avoid violating a person's civil rights.

Federal regulations provide that "[a] public entity may not, directly or through contractual arrangements, utilize criteria or methods of administration . . . [t]hat have the purpose or effect of defeating or substantially impairing accomplishment of the public entity's program with respect to individuals with disabilities[.]" 28 C.F.R. § 35.130(b)(3)(i),(ii). In this regard, "[t]o give effect to an indemnity agreement . . . would undermine Congress's goal of ensuring public entities' administration of programs in a non-discriminatory fashion." *Indep. Living Ctr. of S. California v. City of Los Angeles*, Case No. CV 12-0551 FMO (PJWx), 2014 WL 12586243, at *5 (C.D. Cal. Sept. 23, 2014).

Accordingly, courts have held that a public entity cannot contract away its responsibility to comply with the ADA, the FHAA, civil rights statutes, or § 11135—the causes of action alleged in the Plaintiffs' Corrected Third Amended Complaint. *See Equal Rts. Ctr. v. Niles Bolton Assocs.*, 602 F.3d 597, 602 (4th Cir. 2010) ("the regulatory purposes of the FHA and ADA would be undermined by allowing a claim for indemnity"); *Bowers v. Nat'l Collegiate Athletic Ass'n*, 346 F.3d 402, 431 (3d Cir. 2003) ("we hold that there is no right to contribution under either of those provisions"); *United States v. Dawn Props., Inc.*, 64 F. Supp. 3d 955, 960 (S.D. Miss. 2014) ("the Court agrees with those federal courts to have addressed this issue that the FHA and the ADA preempt state law claims for both indemnity and contribution"); *Rocuba v. Mackrell*, Civil Action No. 3:10-1465, 2011 WL 5869787, at *3 (M.D. Pa. Nov. 22, 2011) ("a separate third-party action seeking indemnification or contribution is not permitted under § 1983"); *United States v. Murphy Dev., LLC*, No. 3:08-0960,

2009 WL 3614829, at *1 (M.D. Tenn. Oct. 27, 2009) ("The federal courts that have considered the question, however, are in universal agreement that there is no express or implied right to indemnity or contribution under the FHA or ADA."); *Living Ctr.*, 2014 WL 12586243, at *4 ("The court's conclusion that the civil rights statutes do not afford the City a right to indemnification or contribution is consistent with the decisions of several other courts."). Among those courts to have opined on this issue is this Court, which has held that there is "no right of contribution or right of indemnification" under § 1983.[2] *Hoa v. Riley*, 78 F. Supp. 3d 1138, 1146-47 (N.D. Cal. 2015); *see also Stoddard-Nunez v. City of Hayward*, Case No. 13-cv-04490-KAW, 2016 WL 1588271, at *4 (N.D. Cal. Apr. 20, 2016) ("the City's right to indemnity and contribution under state law is impliedly preempted under the doctrine of obstacle preemption"); *Frary v. Cnty. of Marin*, No. 12-CV-03928-MEJ, 2015 WL 3776394, at *3 (N.D. Cal. June 16, 2015) ("the Court has already found that there is no federal right to contribution under Section 1983"); *Banks v. City of Emeryville*, 109 F.R.D. 535, 539 (N.D. Cal. 1985) ("any claims for indemnification against the third party defendants based directly upon § 1983 are impermissible"). These holdings are founded on a recognition that reducing a defendant's costs for violating a person's civil rights while potentially forcing a plaintiff to seek compensation from an insolvent party would frustrate the "twin goals of compensation and deterrence" at the heart of § 1983. *Hepburn ex rel. Hepburn v. Athelas Inst., Inc.*, 324 F. Supp. 2d 752, 759 (D. Md. 2004).

For the reasons stated above, the City's claims for indemnification and contribution are defective. Accordingly, Insight's motion to dismiss these claims should be granted.

2. The City's Breach of Contract Claim is Barred

The City's breach of contract cause of action alleges the Third-party Defendants "breached their agreements with the City by failing to operate their shelter programs in compliance with the ADA, FHA, and Government Code section 11135." (Third-Party Compl. (ECF No. 152) at ¶ 83.) According to the City, the Third-Party Defendants "agreed . . . to assume **entire responsibility** and

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[2] "[I]ndemnity is only an extreme form of contribution." *Slattery v. Marra Bros.*, 186 F.2d 134, 138 (2d Cir. 1951).

liability for, and indemnify, save harmless, protect and defendant the City . . . by reason of allegations such as those set forth in the underlying action." (*Id.* at ¶ 81) (emphasis added).

The allegations found in Plaintiffs' Third Amended Complaint concern the City's "policies and practices for addressing homelessness" that "consistently and systematically deprive Berkeley's unhoused residents of rights under state and federal laws, and subject unhoused residents to a devastating cycle of property loss, trauma, community separation, and criminalization." (Third Am. Compl. (ECF No. 150) at ¶ 2.) These include the "City's unlawful seizure and notice policies and practices[.]" (*Id.* at ¶ 153.) Policies related to "abating or sweeping encampments and vehicles used for housing as required under the ADA[.]" (*Id.* at ¶ 244(a).) And the City's "policies and practices in administering their ordinances and parking programs" that allegedly discriminate against the disabled. (*Id.* at ¶ 263.)

The City cannot contract away its independent duty to comply with federal civil rights and disability laws. "Were courts to permit a city to contract away its liability to implement policies and procedures that comply with federal disability regulations, they would indeed be permitting delegation of an entity's duties under the ADA." *City of Los Angeles v. AECOM Servs., Inc.*, 854 F.3d 1149, 1157 (9th Cir.), amended sub nom. *City of Los Angeles by & through Dep't of Airports v. AECOM Servs., Inc.*, 864 F.3d 1010 (9th Cir. 2017).

Moreover, the City's breach of contract cause of action seeks to shift the City's "entire responsibility" to the Third-Party Defendants. (Third-Party Compl. (ECF No. 152) at ¶ 81.) As such, the City's claim for breach of contract is a "de facto indemnification claim[] and, thus, preempted." *Equal Rts. Ctr.*, 602 F.3d at 602; *see also George v. Overall Creek Apartments, LLC*, No. 3:23-CV-00297, 2024 WL 1539848, at *14 (M.D. Tenn. Apr. 9, 2024) ("To the extent that Overall Creek and Chandler Properties are asking for the entire loss to be allocated to NBA, as a result of NBA's alleged breach of contract, the court construes their breach-of-contract claim as a de facto claim for indemnification, which is preempted under the FHA."); *United States v. Quality Built Const., Inc.*, 309 F. Supp. 2d 767, 779-80 (E.D. N.C. 2003) ("to allow a wrongdoer to shift the entire liability to another party would run counter to the basic policy of the statute designed to regulate or restrict specific behavior").

3. Declaratory Relief

The City's Third-Party Complaint asserts a cause of action for declaratory relief. (Third-Party Compl. (ECF No. 152) at 14.) "Declaratory and injunctive relief are not independent claims, rather they are forms of relief." *Lane v. Vitek Real Est. Indus. Grp.*, 713 F. Supp. 2d 1092, 1104 (E.D. Cal. 2010). Because the City's claims for indemnification, contribution, and breach of contract must be dismissed for the reasons stated above, "the Court does not have jurisdiction to provide declaratory relief." *Gonzalez v. Harris Farms, Inc.*, No. 1:14-CV-00038-LJO, 2014 WL 6981429, at *5 (E.D. Cal. Dec. 10, 2014). Accordingly, Insight's motion to dismiss the Third-Party Complaint's claim for declaratory relief should be granted.

B. Failure to Comply with Rule 14

1. Insight Cannot be Liable to the City for the Claims Against the City

Rule 14 provides that a "defending party may, as third-party plaintiff, serve a summons and complaint on a nonparty who is or may be liable to it for all or part of the claim against it." Fed. R. Civ. P. 14(a).

> The question whether a defendant's demand presents an appropriate occasion for the use of impleader or else constitutes a separate claim has been resolved consistently by permitting impleader only in cases where the third party's liability was in some way derivative of the outcome of the main claim. In most such cases it has been held that for impleader to be available the third party defendant must be liable secondarily to the original defendant in the event that the latter is held liable to the plaintiff. Stating the same principle in different words, other authorities declare that the third party must necessarily be liable over to the defendant for all or part of the plaintiff's recovery, or that the defendant must attempt to pass on to the third party all or part of the liability asserted against the defendant. Whichever expression is preferred, it is clear that impleader under Rule 14 requires that the liability of the third party be dependent upon the outcome of the main claim.

United States v. Joe Grasso & Son, Inc., 380 F.2d 749, 751-52 (5th Cir. 1967) (citations and quotations omitted). "The mere fact that the alleged third-party claim arises from the same transaction or set of facts as the original claim is not enough." 6 WRIGHT & MILLER § 1446, at 432-34 (3d ed. 2010).

Here, The City's Third-Party Complaint misconstrues the allegations of the Third-Amended Complaint. In this regard, the City alleges that the Third-Amended Complaint 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." (Third-Party Complaint (ECF No. 152) at ¶ 13.) And that the City is facing liability "based on its funding, oversight, ownership interests, or regulatory role with respect to the shelter programs and facilities." (*Id.* at ¶ 15.) That is untrue.

While the Plaintiffs' Third Amended Complaint does reference shelter operators such as Insight, the conduct at issue is "the City of Berkeley's refusal to reasonably modify" the rules and policies of the shelter programs. (Third Am. Compl. (ECF No. 150) at ¶ 148.) Moreover, the overwhelming focus of Plaintiffs' Third Amended Complaint concerns solely the conduct of the City.

In this regard, the Third Amended Complaint alleges:

> This complaint challenges **the City's failure** to accommodate the needs of unhoused residents with disabilities with respect to three aspects of **the City's service provision**. **First, when the City conducts outreach to its unhoused residents,** it fails to do so in a way which acknowledges and accommodates their mental health and other disability-related needs. This is best illustrated by the fact that the City's homeless outreach team does not include any mental health professionals or other people with sufficient mental health training, and is also apparent in the City's practice of coupling the majority of its outreach and shelter offers with traumatizing encampment abatements and closures, rendering it difficult or impossible for many individuals with mental health disabilities to access this outreach.
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> **Second, when the City enforces the municipal code provisions** that most impact unhoused individuals, it does so in a way that (1) makes it impossible for many unhoused residents to comply, especially given their disabilities; (2) deprives them of property including tents and vehicles, which are essential to their survival on the streets; and (3) places them in increased danger by depriving them of their shelter without providing them with anywhere to go.
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> **Third, temporary shelters operated by the City do not accommodate individuals' physical and mental health disabilities**. Many of the shelters have physical access barriers; there are extremely limited spaces accessible to individuals who have mobility disabilities. Additionally, a number of rules in place at the shelters pose difficulties for residents with disabilities, especially mental health disabilities. For example, all of the shelters prohibit visitors, even prohibiting shelter residents to visit each other in their rooms; yet many individuals with disabilities who live on the streets rely on their community for emotional and other support, and being isolated in a motel room without being able to have visitors exacerbates their mental health issues. Additionally, the shelters limit residents' privacy, which is triggering for residents who have experienced violence and violation

> of their personal spaces during their years living on the streets. **The City has been informed that residents need accommodations to these policies and has refused to engage in the interactive process or modify these rules**.

(Third Am. Compl. (ECF No. 150) at ¶¶ 5,6, 9) (emphasis added). It cannot be disputed that the City's outreach to unhoused residents and enforcement of municipal codes solely concerns the conduct of the City. While the third item does reference the temporary shelter programs, the City is explicitly being sued not for the actions of the temporary shelters, but for the City's refusal to engage in the interactive process.

The Third Amended Complaint goes on to articulate the specific questions of law and fact at issue in the class action, identifying those as:

a) The City's "policies, practices or procedures in enforcing City ordinances in the abating or sweeping of encampments and vehicles used for housing as required under the ADA[.]" (Third Am. Compl. (ECF No. 150) at 65.) This does not implicate City's shelter programs and facilities. And Defendant Insight cannot be liable to the City for the City's enforcement of its ordinances in abating or sweeping encampments and vehicles.

b) Whether "the City has failed to refused to provide reasonable modifications to its programs for Plaintiffs[.]" (*Id.* at 66.) This does not implicate the City's shelter programs and facilities. And Defendant Insight cannot be liable to the City for the City's refusal to provide reasonable modifications to its programs.

c) "Whether the City has failed to provide reasonable accommodations and/or modifications to the policies, practices, rules, and regulations of its shelter programs[.]" (*Id.*) While this does concern the City's shelter programs and facilities, the City is not facing liability for the conduct of Insight. Instead, the City is facing liability for the City's refusal to provide reasonable accommodations to its one policies.

d) "Whether the City fails to make reasonable modifications to its encampment management policies, practices, and procedures that are necessary to accommodate

Plaintiffs' and Class members' disabilities[.]" (*Id.*) This does not implicate the City's shelter programs and facilities. And Defendant Insight has no involvement in the City's management policies, practices, and procedures related to encampment management.

e) "Whether the City fails to make reasonable modifications to the policies, practices and procedures in place at its temporary shelters that are necessary to accommodate Plaintiffs' and Class members disabilities while they are residing in the shelters[.]" (*Id.*) While this does concern the City's shelter programs and facilities, the City is not facing liability for the conduct of Insight. Instead, the City is facing liability for the City's refusal to provide a reasonable modification to its policies and procedures.

f) "Whether the City's policies, practices, and procedures in enforcing City ordinances in the cleaning or clearing of encampments and vehicles" puts class members in danger. (*Id.*) This does not implicate the City's shelter programs and facilities. And Defendant Insight has no involvement in the City's policies or practices in cleaning or clearing encampments and vehicles.

g) "Whether the named Plaintiffs and other Class members are at risk that their shelter and other personal belongings will be seized and impounded or destroyed by the City[.]" (*Id.*) This does not implicate the City's shelter programs and facilities. And Defendant Insight cannot be liable to the City for the City's seizure and destruction of property.

h) "Whether the City's notices to Class members are sufficiently specific to provide adequate constitutionally required notice prior to requiring them to vacate or seizing property" (*Id.*) This does not implicate the City's shelter programs and facilities. And Defendant Insight has no involvement in the City's notices to Class members regarding vacated or seized property.

i) "Whether the City's policies, practices, and procedures in enforcing City ordinances in the abating or sweeping of encampments and vehicles despite the lack of available shelter beds, violates the law by placing them in state created danger[.]" (*Id.*) This

does not implicate the City's shelter programs and facilities. And Defendant Insight cannot be liable to the City for the City's policies and practices in abating or sweeping encampments and vehicles.

j) "Whether the City's policies, practices, and procedures in enforcing City ordinances in the abating or sweeping of encampments and vehicles violates one or more of the constitutional and statutory provisions enumerated herein[.]" (*Id.*) This does not implicate the City's shelter programs and facilities. And The City's policies and practices related to enforcing the City's ordinances in abating or sweeping encampments and vehicles does not involve Defendant Insight.

k) "Whether named Plaintiffs and the other Class members are entitled to equitable relief, including system-wide policy and practice changes to address the constitutional and statutory violations detailed in this Complaint." (*Id.*) If Plaintiffs are entitled to "system-wide policy and practice changes," it will be the policies and practices of the City that are subject to the change. Insight will not be liable to the City for the City's conduct.

Pursuant to Rule 14, "a third-party claim must be for some form of derivative or secondary liability of the third-party defendant to the third-party plaintiff." *Neal v. 21st Mortg. Corp.*, 601 F.Supp.2d 828, 830 (S.D. Miss. 2009). Here, the City is not facing liability in the class action due to the derivative or secondary liability of Insight. Instead, the City is facing liability for the City's enforcement of City Ordinances, for the City's policies and practices in sweeping encampments, for the City's policies and practices concerning the destruction of property, and for the City's failure to make reasonable accommodations.

For the reasons stated above, the City's Third-Party Complaint fails to comply with Rule 14.

2. The City's Third-Party Complaint Fails to Comply with Rule 8

According to the Third-Party Complaint, the City has written agreements with the Third-Party Defendants for the operation of shelters. (Third Party Compl. (ECF No. 152) at ¶ 18.) Those agreements allegedly provided that the Third-Party Defendants assumed responsibility for operating the shelters. (*Id.* at ¶ 19.) The agreements also required the Third-Party Defendants to indemnify

and hold harmless the City "for claims arising out of Third-Party Defendants' operations, acts, or omissions." (*Id.* at ¶ 21.)

The City's Third-Party Complaint, however, does not articulate which "operations, acts, or omissions" Insight engaged in that are allegedly at issue in the Plaintiffs' Third Amended Complaint. While the City's Third-Party Complaint does allege the services offered by Insight, there is no articulation as to what conduct of Insight the Plaintiffs are seeking to hold the City responsible for. (*Id.* at ¶¶ 45-52.) Instead, the City simply asserts that the "TAC repeatedly alleges that day-to-day-operations, intake procedures, participant rules, accommodation determinations, and enforcement of behavioral policies at City-funded shelters were implemented at the program level." (*Id.* at ¶ 53.) And that "[t]o the extent Plaintiffs suffered any actionable harm as alleged in the TAC, such harm was caused in whole or in part by Third-Party Defendants' acts, omissions, failures to comply with contractual obligations, and failures to comply with applicable disability and fair housing laws." (*Id.* at ¶ 56.)

First, those vague and conclusory allegations are insufficient. While the Federal Rules of Civil Procedure allow for a flexible pleading policy, a complaint must give the defendant fair notice of the claims and must allege facts that state the elements of a claim plainly and succinctly. Fed. R. Civ. P. 8(a)(2); *Jones v. Community Redev. Agency*, 733 F.2d 646, 649 (9th Cir. 1984). "A pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of cause of action will not do.' Nor does a complaint suffice if it tenders 'naked assertions' devoid of 'further factual enhancements.'" *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555, 557). In this regard, a complaint must allege with a certain amount of specificity the overt acts which the defendant is alleged to have engaged in that support the complaint's claims. *Jones*, 733 F.2d at 649.

Second, the allegation that the City is being sued by Plaintiffs for harm caused by the Third-Party Defendants is untrue, as articulated above. The City's Third-Party Complaint alleges that "[t]he TAC alleges injuries arising from the very operational decisions and practices that Third-Party Defendants were contractually responsible for implementing in a lawful and nondiscriminatory manner." (Third-Party Compl. (ECF No. 152) at ¶ 23.) The City's Third-Party Complaint, however,

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fails to allege the details of this alleged contractual language. Rule 8 "demands more than an unadorned, the defendant-unlawfully-harmed-me accusation." *Iqbal*, 556 U.S. at 678.

Because the City's Third-Party Complaint fails to comply with Rule 8, Insight's motion to dismiss should also be granted for this reason.

C. The ROE Defendants Should be Dismissed

"There is no provision in the Federal Statutes or Federal Rules of Civil Procedure for use of fictitious parties." *Fifty Assocs. v. Prudential Ins. Co. of Am.*, 446 F.2d 1187, 1191 (9th Cir. 1970). Accordingly, the use of "Doe" defendants in federal court "is not favored." *Gillespie v. Civiletti*, 629 F.2d 637, 642 (9th Cir. 1980).

It is true that "situations may arise where the identity of alleged defendants cannot be known prior to the filing of a complaint" and that in such situation a plaintiff may "be given an opportunity through discovery to identify the unknown defendants[.]" *Muhammad v. Mendez*, Case No. 23-cv-00789 AMO (PR), 2023 WL 6307301, at *2 (N.D. Cal. Sept. 27, 2023).

Here, the Third-Party Complaint identifies "ROES 1 through 10" as individuals whose "true names or capacities . . . are unknown to the City[.] (Third-Party Compl. (ECF No. 152) at ¶ 6.) The factual allegations of the Third-Party Complaint make no reference to any unknown individuals. As such, the ROE Defendants should be dismissed from this action.

D. Leave to Amend Should be Denied

Pursuant to Rule 15(a) of the Federal Rules of Civil Procedure, leave to amend "shall be freely given when justice so requires . . . and this policy is to be applied with extreme liberality." *Morongo Band of Mission Indians v. Rose*, 893 F.2d 1074, 1079 (9th Cir. 1990) (citation and internal quotation marks omitted). However, "[f]utility of amendment can, by itself, justify the denial of . . . leave to amend." *Gonzalez v. Planned Parenthood of Los Angeles*, 759 F.3d 1112, 1116 (9th Cir. 2014) (citation omitted).

Here, for the reasons articulated above, the City cannot cure the defects of the Third-Party Complaint. Granting the City leave to amend would, therefore, be futile. Accordingly, Insight respectfully requests that the Third-Party Complaint be dismissed without leave to amend.

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IV. CONCLUSION

For the reasons stated above, Third-Party Defendant Insight respectfully requests that:

1. Third-Party Defendant's motion to dismiss be granted;

2. The Third-Party Complaint be dismissed without leave to amend; and

3. Third-Party Defendant Insight be dismissed from this action.

Dated: March 19, 2026

SIMS, LAWRENCE & BROGHAMMER

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