

1 JOSHUA P. THOMPSON, Cal. Bar No. 250955
2 Email: jthompson@pacificlegal.org
3 Pacific Legal Foundation
4 555 Capitol Mall, Suite 1290
5 Sacramento, California 95814
6 Telephone: (916) 419-7111
7 Facsimile: (916) 419-7747

8 JACK E. BROWN, Va. Bar No. 94680*
9 Email: jbrown@pacificlegal.org
10 Pacific Legal Foundation
11 3100 Clarendon Boulevard, Suite 1000
12 Arlington, Virginia 22201
13 Telephone: (202) 888-6881
14 Facsimile: (916) 419-7747

15 *Attorneys for Plaintiff*

16 *pro hac vice application forthcoming

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.

28 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.

1 32. Even if they can demonstrate that the FTHB Program’s racial
2 classifications serve a compelling government interest, Defendants
3 cannot prove that the racial exclusivity mandated by the Program is
4 narrowly tailored towards achieving that interest.

5 33. Defendants have not attempted to implement any race-neutral
6 alternatives and the Program does not provide any end date for its race-
7 based measures.

8 34. Plaintiff’s members have been and will continue to be harmed
9 by Defendants’ racial discrimination.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff respectfully requests the following relief:

- 12 1. An entry of judgment declaring that Defendants’ provision of
13 housing benefits on the basis of race violates the Equal
14 Protection Clause.
- 15 2. An entry of a permanent injunction against Defendants
16 prohibiting them from continuing to enforce the challenged
17 discriminatory aspects of the Black, Indigenous and other
18 People of Color First-Time Homebuyer Program.
- 19 3. Entry of an order requiring Defendants to provide housing
20 benefits without regard to the race of applicants.
- 21 4. An award of attorney’s fees and costs in this action pursuant to
22 42 U.S.C. § 1988.
- 23 5. An award of nominal damages in the amount of \$1.00.
- 24 6. An award of any further legal or equitable relief this Court may
25 deem just and proper
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DATED: March 12, 2024.

Respectfully submitted,

JOSHUA P. THOMPSON
JACK BROWN*
PACIFIC LEGAL FOUNDATION

By /s Joshua P. Thompson
JOSHUA P. THOMPSON

Attorneys for Plaintiff

*pro hac vice application forthcoming

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Californians for Equal Rights Foundation

(b) County of Residence of First Listed Plaintiff San Diego (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Joshua P. Thompson, Pacific Legal Foundation, 555 Capitol Mall, Suite 1290, Sacramento, CA 95814, (916) 419-7111

DEFENDANTS

City of San Diego, Housing Authority of the City of San Diego, San Diego Housing Commission

County of Residence of First Listed Defendant San Diego (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

24CV0484 MMMSB

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, 1 1, 2 2, 3 3, 4 4, 5 5, 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Personal Injury, Real Property, Labor, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 42 U.S.C. § 1983

Brief description of cause: San Diego's Black, Indegenous and Other People of Color First-Time Homebuyer Program violates the Fourteenth Amendment.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE Mar 12, 2024 SIGNATURE OF ATTORNEY OF RECORD /s Joshua P. Thompson

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE



SAN DIEGO
HOUSING
COMMISSION

We're About People



City of San Diego First-Time Homebuyer Program for Middle-Income, Black, Indigenous, People of Color (BIPOC) Households

Guidelines

San Diego Housing Commission
1122 Broadway, Suite 300
San Diego, CA 92101
www.sdhc.org





SAN DIEGO
HOUSING
COMMISSION

Real Estate Division

**CITY OF SAN DIEGO FIRST-TIME HOMEBUYER PROGRAM FOR MIDDLE-INCOME,
BLACK, INDIGENOUS, PEOPLE OF COLOR (BIPOC) HOUSEHOLDS**

GUIDELINES

Table of Contents

PURPOSE 2

DESCRIPTION 2

PROGRAM ASSISTANCE 2

LOAN TERMS 2

GRANT TERMS 2

ELIGIBILITY REQUIREMENTS 3

SELF-CERTIFICATION 3

ELIGIBLE PROPERTIES 3

MAXIMUM SALES PRICE 4

HOMEBUYER EDUCATION 4

HOW TO APPLY 4

APPENDIX 6

PURPOSE

This procedure describes the San Diego Housing Commission (Housing Commission) Black, Indigenous and other People of Color (BIPOC) First-Time Homebuyer (FTHB) Program, eligibility requirements, and procedure for submitting applications.

DESCRIPTION

The San Diego Housing Commission, in partnership with the Reinvestment Task Force and supported by Wells Fargo's multi-year Wealth Opportunities Realized through Homeownership ("WORTH") grant, offers a down payment and closing cost assistance program to help BIPOC households earning between 80% and 150% of the area median income ("AMI") with the purchase of a home in the City of San Diego.

This procedure contains the requirements pertaining to the program funding sources as well as the Housing Commission Lending Policy 600.101. The Housing Commission may revise the procedures from time to time, terminate and/or place the program on hold at its sole discretion. The Housing Commission at its sole discretion may make exceptions to any procedure which is not driven by funding source regulations or the Housing Commission Lending Policy 600.101. Additionally, the Housing Commission may require borrowers to provide additional information and/or supporting documentation necessary to determine eligibility for the program.

Funding will be issued on a first-come first-approved basis. Borrower must be under contract for a home purchase.

This program cannot be used in conjunction with other SDHC First-Time Homebuyer programs or the Affordable For-Sale Housing Program. New construction developments are not permitted.

PROGRAM ASSISTANCE

\$40,000 down payment and closing cost assistance [Loan of \$20,000 to be used toward Down Payment, plus a Grant of \$20,000 to be used toward Closing Costs]

OR

\$20,000 Grant to be used toward down payment and closing cost assistance.

LOAN TERMS

Interest Rate: 1.5% simple interest

Term: 15 years

The Loan is deferred with no monthly payments required for years 1 through 7. Beginning in year 8, the outstanding principal and interest will be converted to an amortized loan with fixed monthly payments for a period of 96 months. There is no prepayment penalty, and payments can be made at any time.

The Loan also becomes due if property is sold, leased, conveyed, refinanced, transferred or further encumbered within the 15 years.

Borrowers will execute a Promissory Note, Deed of Trust, and CC&Rs.

GRANT TERMS

The Grant will be forgiven at the end of 3 years if the property remains owner occupied.

ELIGIBILITY REQUIREMENTS

Assistance under this program is for eligible borrowers who self-identify as black, indigenous or other person of color. This includes borrowers that self-identify as Hispanic/Latinx and any race other than white.

Income Limit	80% - 150% AMI (<i>see income limits below</i>)
Maximum Debt-to-Income Ratio	50% (not applicable when applying for the grant only)
Middle Credit Score	640 (not applicable when applying for the grant only)
Down Payment - Minimum	1.5% of purchase price (not applicable when applying for the grant only)
Down Payment – Maximum	25% of the purchase price
Maximum Liquid Assets Reserves	\$50,000
Maximum Liquid Assets within 2 months of opening escrow.	\$90,000

The subject property must be occupied as the primary residence of the borrower. Not occupying the property while the loan is outstanding will result in the principal and interest becoming immediately due along with default interest of 10%. Program participants must notify the SDHC to arrange payoff of their loan prior to moving out of the property or refinancing their first mortgage.

Qualified applicants and all household members over the age of 18 must be a first-time homebuyer. A First-Time Homebuyer is defined as a person who has not owned a home within the last three years. This includes ownership of property in another country. Applicant still meets definition of FTHB if they own a mobile home that is not fixed to permanent foundation.

Subordinate financing at time of purchase is allowed provided the loan is forgiven after a period of time or deferred with no payments required for 30 years. Subordinate financing documents must record after all SDHC loans/grants. Cannot be combined with other SDHC programs.

See the City of San Diego Program Guidelines for Income Calculation and Credit requirements. The Credit, DTI, and down payment requirements are not applicable when applying for the grant only.

SELF-CERTIFICATION

A signed Self-certification Race and Ethnicity Form will be the required method of BIPOC identification for purposes of establishing program eligibility. This form is available for download on the SDHC website. <https://sdhc.org/housing-opportunities/first-time-homebuyers/participating-lenders/>

ELIGIBLE PROPERTIES

Eligible properties include existing single family detached homes, condominiums, townhomes, and manufactured homes located in the City of San Diego. New construction developments are not permitted.

MAXIMUM SALES PRICE

The Current maximum sales price for attached and detached properties is: \$1,250,000.

MINIMUM / MAXIMUM INCOME LIMITS *Effective April 2023*

Household Size	Minimum Income 80% AMI	Maximum Income 150% AMI
1	\$77,200	\$122,650
2	\$88,200	\$140,150
3	\$99,250	\$157,700
4	\$110,250	\$175,200
5	\$119,100	\$189,200
6	\$127,900	\$203,250
7	\$136,750	\$217,250
8	\$145,550	\$231,250

HOMEBUYER EDUCATION

All borrowers, and any non-borrowing spouse must **complete Pre-Purchase Counseling AND Homebuyer Education**. These are two different classes, both are required.

Borrower(s) must use a provider on the SDHC approved Homebuyer Education Provider list which can be downloaded from the [SDHC website](#).

HOW TO APPLY

Interested buyers must work with a loan officer from SDHC's Participating Lender List which can be downloaded from the [SDHC website](#). The loan officer will be the primary point of contact from pre-approval to loan closing. The loan officer collects all required documentation and submits the application on the borrower's behalf to SDHC.

Participating Lenders - The BIPOC First-Time Homebuyer program will operate utilizing the same processes as the current low-income (up to 80% AMI) First-Time Homebuyer Program. See the Submission, Processing and Funding section of the City of San Diego Guidelines published on the SDHC website at: <https://sdhc.org/housing-opportunities/first-time-homebuyers/participating-lenders/>

Penalties for Misrepresentation by Applicant or Lender / Loan Officer

Strict penalties may be imposed on any applicant or Participating Lender making a material misstatement, misrepresentation or fraudulent act on documents submitted to the Housing Commission. Any person making a negligent material misstatement or misrepresentation in any application, affidavit or certification made in connection with the application for the SDHC's programs, shall be subject to all applicable fines and penalties. Any applicant or participating loan officer found to have made a material misstatement, misrepresentation or fraudulent act on documents submitted to the Housing Commission will be banned from applying for or working with SDHC programs.



The San Diego Housing Commission (SDHC) is committed to affirmatively furthering fair housing by promoting fair and equal housing opportunities for individuals living in the City of San Diego. This commitment extends to all housing programs managed or owned by SDHC and to all grant-funded programs provided by SDHC. It is the policy of SDHC to provide services without regard to race, color, religion, national origin, ancestry, age, gender, familiar status or physical/mental disability. For more on our commitment to affirmatively furthering fair housing visit our website at www.sdhc.org

APPENDIX

This form is available for download on SDHC website



SELF-IDENTIFICATION FORM
Race and Ethnicity

First-Time Homebuyer Program

Primary Borrower's Name (First, Middle Initial, Last)	Birthdate (Month/Day/Year)

Invitation to Self-Identify Race and Ethnicity

The San Diego Housing Commission (SDHC) is a recipient of grant funding on behalf of the San Diego Homeownership Equity Project, comprised of community partners, SDHC, and the San Diego City-County Reinvestment Task Force, to expand homeownership opportunities for the region's people of color. SDHC is subject to agreements set forth in grant funding contracts for data collection pertaining to homebuyer demographics, including but not limited to race and ethnicity. In order to comply with these agreements, and to increase the capacity to monitor progress toward the project's mission, SDHC requests participants in the First-Time Homebuyer Program to voluntarily self-identify their race and ethnicity. The information provided will be kept confidential and used in the form of aggregated data for reporting in accordance with federal and state laws, executive orders, regulations, and grant funding requirements. This information may be used to identify supplementary funding resources that might be applicable to you, as determined by SDHC.

Instructions: The two questions below are designed to identify your ethnicity and race. Regardless of your answer to question 1, please also answer question 2.	
Question 1. Are You Hispanic or Latino? (A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race.) <input type="checkbox"/> Yes <input type="checkbox"/> No	
Question 2. Please select the racial category or categories with which you most closely identify by checking the appropriate box or boxes. Check as many as apply.	
RACIAL CATEGORY (Check as many as apply)	DEFINITION OF CATEGORY
<input type="checkbox"/> American Indian or Alaska Native	A person having origins in any of the original peoples of North and South America (including Central America), and who maintains tribal affiliation or community attachment.
<input type="checkbox"/> Asian	A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.
<input type="checkbox"/> Black or African American	A person having origins in any of the black racial groups of Africa.
<input type="checkbox"/> Native Hawaiian or Other Pacific Islander	A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.
<input type="checkbox"/> White	A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.