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7 **SUPERIOR COURT OF CALIFORNIA**
8 **IN AND FOR THE COUNTY OF ALAMEDA**
9

10 SECURE JUSTICE,

11 Petitioner,

12 v.

13 CITY OF BERKELEY, and DEE WILLIAMS-
14 RIDLEY

15 Respondents.
16
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Case No.:

**VERIFIED COMPLAINT AND
PETITION FOR WRIT OF MANDATE
(CCP §1085) AND DECLARATORY
RELIEF (CCP §1060)**

INTRODUCTION

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2 1. On April 23, 2019, the City of Berkeley (“Berkeley”) enacted Ordinance 7,650-N.S.,
3 which became effective July 1, 2019. This Sanctuary Contracting Ordinance was chaptered in the
4 Berkeley Municipal Code (“B.M.C.”) at 13.105 et seq. (“the Ordinance”)¹. A true and correct copy
5 of the Ordinance is attached to this complaint as **Exhibit A** and incorporated fully herein by
6 reference. The Ordinance is in full force and effect.

7 2. Petitioner seeks a declaratory judgment that Respondents violated the Ordinance by
8 failing to bring forth a required annual report and certifying compliance with the Ordinance. In
9 addition, Petitioner seeks a writ of mandate requiring the City to provide the required annual report
10 for 2020 and to take corrective measures to rescind any contracts awarded in violation of the
11 Ordinance. Petitioner has no plain, speedy, or adequate legal remedy at law.

12 3. Respondent Berkeley claims to be the oldest “city of refuge” in the country, a
13 precursor to today’s “sanctuary city” movement, wherein municipalities pledge not to cooperate
14 with federal immigration enforcement.

15 4. The Ordinance prohibits the award of contracts to vendors that provide data or
16 extreme vetting analytics to Immigration Customs Enforcement (“ICE”) and is intended to use
17 Berkeley’s “power of the purse” to incentivize vendors to disengage from federal immigration
18 enforcement.

19 5. Partly in response to the sanctuary city movement and decreasing cooperation from
20 local municipalities and law enforcement agencies, ICE has accelerated its use of surveillance
21 technology and data from private sources, to target and deport immigrants. Large data behemoths
22 like Thomas Reuters and Lexis-Nexis frequently bid on numerous contracts to provide ICE with
23 data and targeting analytics. Both these vendors make popular legal research tools used by most
24 municipalities, including Berkeley.

25 6. The Ordinance requires that by November 1 of each year, Respondent Berkeley City
26 Manager Dee Williams-Ridley shall schedule and submit to the City Council a written annual report
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¹ The Ordinance was initially chaptered at 13.104, and subsequently renumbered to 13.105.

1 identifying steps taken to ensure compliance and any issues therewith. See B.M.C. 13.105.040. The
2 City Manager has failed to provide such a report. Without this report, the public is hindered from
3 knowing whether contracts are being awarded in violation of the Ordinance, and whether Berkeley,
4 as a city of refuge, is subsidizing federal immigration enforcement by enriching the private vendors
5 doing business with ICE. Without the internal controls and oversight imposed by the Ordinance,
6 contracts may have been awarded in violation of the Ordinance. The public has been thwarted of its
7 ability to hold Respondents accountable, and to ensure that public taxpayer dollars are spent in
8 alignment with Berkeley’s stated values as a city of refuge.

9 7. Prior to exercising the private right of action, the Ordinance provides for a “right to
10 cure” which allows Respondents up to ninety (90) days to cure an alleged violation. Petitioner
11 submitted the required notice on December 23, 2020, and no corrective action has been taken to
12 cure the violation.

13 8. An actual controversy has arisen and now exists between the parties, and Petitioner
14 has exhausted all administrative remedies. Petitioner contends that Respondents have a duty to
15 ensure compliance and to schedule and submit the required annual report as alleged herein.
16 Petitioner infers from Respondents’ lack of response to the right to cure notice that Respondents’
17 contend they have no such duty to perform.

18 **JURISDICTION AND VENUE**

19 9. This Court has jurisdiction under article VI, section 10 of the California Constitution
20 and California Code of Civil Procedure §§ 410.10, 525–26, 1085, and 1060.

21 10. Venue in this court is proper because Petitioner’s claims arose in and around the City
22 of Berkeley, and because this is an action against Respondents. Code Civ. Proc. § 394.

23 **PARTIES**

24 11. Petitioner Secure Justice is and was at all relevant times an IRS registered non-profit
25 organization located in Oakland, Alameda County, and organized under the laws of the State of
26 California, that advocates against state abuse of power, and for reduction in government and
27 corporate over-reach. Petitioner targets change in government contracting and corporate complicity
28 with government policies, including practices that harm immigrants. Petitioner is affected by

1 Berkeley's violation of the Ordinance, as Petitioner's ability to hold Berkeley accountable, like the
2 general public's ability, is impaired. Like the general public, Petitioner is unable to ensure that no
3 contracts have been awarded in violation of the Ordinance.

4 12. Respondent City of Berkeley is and was at all relevant times a political subdivision
5 of the State of California and Alameda County that can be sued in its own name.

6 13. Respondent Dee Williams-Ridley is and was at all relevant times the City Manager
7 for Respondent City of Berkeley, and is responsible for administering the Ordinance, ensuring
8 departmental compliance with the Ordinance, and scheduling and submitting to the Berkeley City
9 Council the required annual report.

10 CAUSE OF ACTION

11 **City of Berkeley's Failure to Submit Required Annual Report**
12 **in Violation of Berkeley Municipal Code §§13.105.040 B**

13 14. Petitioner incorporates by reference the allegations of the above paragraphs as
14 though fully set forth herein.

15 15. The Ordinance requires that by November 1 of each year, the Berkeley City Manager
16 schedule and submit to the Berkeley City Council a written annual report identifying steps taken to
17 ensure compliance and any issues therewith. See B.M.C. 13.105.040.

18 16. Respondents and specifically Respondent Dee Williams-Ridley have failed to
19 provide such a report and to certify compliance with the Ordinance.

20 PRAYER FOR RELIEF

21 WHEREFORE, Petitioner requests that this Court:

22 A. Enter a declaratory judgment stating that the City of Berkeley and Dee Williams-
23 Ridley violated the Ordinance because the City Manager failed to schedule and submit to the City
24 Council a written annual report identifying steps taken to ensure compliance and any issues
25 therewith.

26 B. Issue a writ of mandate directing the City of Berkeley's City Manager to schedule
27 and submit the required annual report to the City Council at the next earliest opportunity, and to
28 take all legal steps necessary to rescind any contracts awarded in violation of the Ordinance.

1 C. Enter an order requiring the City of Berkeley to pay Petitioner's attorneys' fees and
2 costs under Berkeley Municipal Code § 13.105.050 D, Code of Civil Procedure § 1021.5, and any
3 other applicable statutes.

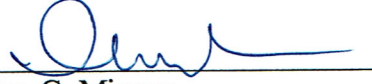
4 D. Enter an order requiring the City of Berkeley to pay Petitioner a penalty of \$5,000,
5 under Berkeley Municipal Code § 13.105.050 C.

6 E. Grant Petitioner any further relief the Court deems just and proper.

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Dated: June 11, 2021

Respectfully Submitted,

By: 
Justina G. Mignea
Attorney for Petitioner, Secure Justice

1 VERIFICATION

2 I, Brian Hofer, declare:

3 I am Chair of the Board for and Executive Director of, Secure Justice, an Oakland,
4 California non-profit corporation organized and existing under the laws of California. Secure Justice
5 is Petitioner and Plaintiff in the above-entitled action, and I have been authorized to make this
6 verification on its behalf. I have read the foregoing Verified Complaint and Petition for Writ of
7 Mandate and Declaratory Relief and know the contents thereof, except as to those matters which are
8 alleged on information and belief, and as to those matters, I believe them to be true. All facts
9 alleged in the petition are true of my own personal knowledge.
10

11 I declare under penalty of perjury, under the laws of the State of California, that the
12 foregoing is true and correct, and that this verification was signed on the 11th day of June 2021 in
13 Oakland, California.
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18 Brian Hofer, Chair and Executive Director
19 of Petitioner Secure Justice
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EXHIBIT A

ORDINANCE NO. 7,650-N.S.

ADDING CHAPTER 13.104 TO THE BERKELEY MUNICIPAL CODE TO ADOPT A SANCTUARY CONTRACTING ORDINANCE

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That a new Chapter 13.104 is hereby added to the Berkeley Municipal Code to read as follows:

Chapter 13.104

SANCTUARY CITY CONTRACTING

Sections:

- 13.104.010 Title.
- 13.104.020 Definitions.
- 13.104.030 Prohibition on Use of City Resources.
- 13.104.040 Investigation and Reporting.
- 13.104.050 Enforcement.
- 13.104.060 Severability.
- 13.104.070 Construction.
- 13.104.080 Chapter Supersedes Existing Law and Regulations.
- 13.104.090 Effective Date.

13.104.010 Title.

This ordinance shall be known as the Sanctuary City Contracting Ordinance.

13.104.020 Definitions.

- A. "City" means the City of Berkeley, California.
- B. "Data Broker" (also commonly called information broker, information reseller, data aggregator, and information solution provider) means either of the following:
 - 1. The collection of information, including personal information about consumers, from a wide variety of sources for the purposes of reselling such information to their customers, which include both private-sector businesses and government agencies;
 - 2. The aggregation of data that was collected for another purpose from that for which it is ultimately used.
- C. "Extreme Vetting" means data-mining, threat modeling, predictive risk analysis, or other similar services.

Extreme Vetting Does not include the following:

 - 1. The City's computer-network health and performance tools;
 - 2. Cybersecurity capabilities, technologies and systems used by the City of Berkeley Department of Information Technology to predict, monitor for, prevent, and protect technology infrastructure and systems owned and operated by the City of Berkeley from potential cybersecurity events and

cyber-forensic based investigations and prosecutions of illegal computer based activity.

D. "ICE" means the United States Immigration and Customs Enforcement, and any subdivision thereof.

E. "Person or Entity" means any private natural person, corporation, institution, subsidiary, affiliate, or division under operating control of such person; the parent entities that have operating control over such person, and the subsidiaries, affiliates and divisions under operating control of such parent entity. Government entities and employees are expressly excluded from this definition.

13.104.030 Prohibition on Use of City Resources.

A. No officer, employee, department, board, commission, City Council, City Manager, or other entity of the City shall enter into a new, amended, or extended contract or agreement with any Person or Entity that provides ICE with any "Data Broker" or "Extreme Vetting" services as defined herein, unless a waiver is granted based on a specific determination that no reasonable alternative exists, taking into consideration the following:

1. The intent and purpose of this ordinance;
2. The availability of alternative services, goods and equipment; and
3. Quantifiable additional costs resulting from use of available alternatives.

The following processes shall be followed in considering a waiver: The City Manager or designee shall file a waiver request. The Council shall make the final decision on granting the waiver.

B. All public works, construction bids, requests for information, requests for proposals or any other solicitation issued by the City shall include notice of the prohibition listed above.

C. For the purpose of determining which Person or Entity provides ICE with Data Broker or Extreme Vetting services, the City Manager shall rely on:

1. Information available on federal contracting websites, or in the absence of those, another common source of federal data;
2. A declaration under the penalty of perjury executed by the Person or Entity, affirming that they do not provide Data Broker or Extreme Vetting services to ICE.

D. Any Person or Entity identified as a supplier of Data Broker or Extreme Vetting services to ICE and potentially affected by this Section shall be notified by the City Manager of the determination. Any such Person or Entity shall be entitled to a review of the determination by appeal to the City Manager. Request for such review shall be made within thirty (30) business days of notification, or seven (7) business days of the date of a City solicitation or notice of a pending contract or purchase, of interest to the Person or Entity seeking review. Any Person or Entity vendor so identified may appeal the City Manager's determination to the City Council, within fifteen (15) business days of the determination.

13.104.040 Investigation and Reporting.

A. The City Manager, or their designee, shall review compliance with Section 13.104.030. The City Manager may initiate and shall receive complains regarding violations of Section 13.104.030. All officers, employees, departments, boards,

commissions, and other entities of the City shall cooperate with the City Manager in any investigation of a violation of Section 13.104.030.

B. By November 1 of each year, the City Manager shall schedule and submit to the City Council a written, public report regarding compliance with Section 13.104.030 over the previous year. At minimum, this report must (1) detail with specificity the steps taken to ensure compliance with Section 13.104.030, (2) disclose any issues with compliance, including any violations or potential violations of this Ordinance, and (3) detail actions taken to cure any deficiencies with compliance.

13.104.050 Enforcement.

A. Right to Cure. This Chapter does not provide a private right of action upon any person or entity to seek injunctive relief against the City or any employee unless that person or entity has first provided written notice to the City Manager by serving the City Clerk, regarding the specific alleged violations of this Chapter. If the alleged violation is substantiated and subsequently cured, a notice shall be posted in a conspicuous manner on the City's website that describes, to the extent permissible by law, the corrective measures taken to address the violation.

B. Cause of Action. If a specific alleged violation is not remedied within 90 days of that written notice, a person or entity may institute proceedings for injunctive relief, declaratory relief, or writ of mandate in any court competent jurisdiction to enforce this Ordinance.

C. Civil Penalties. If the City is found liable in a cause of action brought by an individual under subsection B. above for a violation that is the result of arbitrary or capricious action by the City or an employee or agent thereof in their official capacity, the City shall be liable for a civil penalty no greater than \$5,000 per violation, as determined by the court. In determining the amount of civil penalty, the court shall consider prior violations of this ordinance by the City department that committed the violation.

D. Attorney's Fees and Costs. A court shall award a plaintiff who prevails on a cause of action under subsection B. reasonable attorney's fees and costs in an amount not to exceed \$15,000.

E. Limitations on Actions. Any person bringing an action pursuant to this ordinance must first file a claim with the City pursuant to Government Code 905 or any successor statute within four years of the alleged violation.

F. Any contracting Person or Entity knowingly or willingly supplying false information in violation of Section 13.104.030C.2., shall be guilty of a misdemeanor and up to a \$1,000 fine.

13.104.060 Severability.

The provisions in this Ordinance are severable. If any part of provision of this Ordinance, or the application of this Ordinance to any person or circumstance, is held invalid, the remainder of this Ordinance, including the application of such part or provisions to other persons or circumstances, shall not be affected by such holding and shall continue to have force and effect.

13.104.070 Construction.

The provisions of this Ordinance are to be construed broadly to effectuate the purposes of this Ordinance.

13.104.080 Chapter Supersedes Existing Law and Regulations.

The provisions of this chapter shall supersede any conflicting law or regulations.

13.104.090 Effective Date.

This Ordinance shall take effect on July 1, 2019.

At a regular meeting of the Council of the City of Berkeley held on April 23, 2019, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Bartlett, Davila, Droste, Hahn, Harrison, Kesarwani, Robinson, Wengraf, and Arreguin.

Noes: None.

Absent: None.