UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	**CV 12-0551 FMO (PJWx)**	Date	**September 23, 2014**
Title	**Independent Living Center of Southern California, et al. v. City of Los Angeles, et al.**		

Present: The Honorable	Fernando M. Olguin, United States District Judge

Vanessa Figueroa	None Present
Deputy Clerk	Court Reporter / Recorder
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
None Present	None Present

Proceedings: (In Chambers) Order Re: Pending Motion

The court has reviewed and considered all the briefing filed with respect to Cross-Defendant CRA/LA, a Designated Local Authority, Successor to the Community Redevelopment Agency of the City of Los Angeles's Motion for Judgment on the Pleadings Pursuant to Federal Rules of Civil Procedure Rule 12(c) as to the Amended Cross-Claim for Indemnity and Contribution of the City of Los Angeles ("Motion"), and concludes that oral argument is not necessary to resolve the Motion. See Fed. R. Civ. P. 78; Local Rule 7-15; Willis v. Pac. Mar. Ass'n, 244 F.3d 675, 684 n. 2 (9th Cir. 2001).

INTRODUCTION

The Independent Living Center of Southern California, Fair Housing Council of San Fernando Valley, and Communities Actively Living Independent and Free (collectively, "plaintiffs") filed this action pursuant to Section 504 of the Rehabilitation Act ("§ 504"), Title II of the Americans with Disabilities Act ("Title II" or the "ADA"), the Fair Housing Act ("FHA") and California Government Code § 11135 ("§ 11135"). (See Plaintiffs' Complaint for Injunctive, Declaratory, and Monetary Relief). Plaintiffs filed a Second Amended Complaint for Injunctive, Declaratory, and Monetary Relief ("SAC") on August 20, 2012, alleging that defendants CRA/LA Designated Local Authority, a public entity and successor agency to the Community Redevelopment Agency of the City of Los Angeles ("CRA/LA"), and the City of Los Angeles ("City") (collectively, the "government defendants") have engaged in a "pattern or practice" of discrimination against people with disabilities in violation of federal and state anti-discrimination laws. (See SAC at ¶ 2). On December 20, 2012, the City filed an Amended Crossclaim For Contribution, Indemnity, and Declaratory Relief ("City's Am. Crossclaim") against, among other parties, the CRA/LA. (See City's Am. Crossclaim at ¶ 4).

BACKGROUND

I. PLAINTIFFS' CLAIMS.

Plaintiffs are non-profit, community-based organizations that provide services to people with disabilities in the City of Los Angeles and adjoining areas. (See SAC at ¶¶ 9-30). Plaintiffs claim

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that the government defendants "discriminated and continue[] to discriminate on the basis of disability in violation of the ADA, Section 504 of the Rehabilitation Act, and Cal. Gov. Code § 11135 by acting or failing to act in a manner that" results in unlawful discrimination against or "unlawfully limits people with disabilities from enjoying housing or the opportunity to obtain . . . housing." (Id. at ¶¶ 233-44, 250-51). Plaintiffs allege that the government defendants have "knowingly allocated millions of dollars in federal, state and other funds to finance housing throughout Los Angeles without ensuring" meaningful accessibility for people with disabilities. (Id. at ¶ 2). According to plaintiffs, "the Government Defendants failed to monitor compliance with the Rehabilitation Act accessibility requirements[,]" (id. at ¶ 174), and "failed to exercise oversight over developers and owners of housing in the [Program] in regards to their obligations to comply and their ongoing compliance with disability access provisions of federal law." (Id. at ¶ 181).

Plaintiffs allege that the government defendants failed to ensure compliance with these requirements with regard to "at least 61 multifamily projects, comprising approximately 4,140 units, for which the [government defendants] provided [federal] funds to support new construction or substantial alteration." (SAC at ¶ 184). "None of the 61 federally-funded multifamily projects contains units accessible to people with mobility and/or auditory or visual impairments in sufficient numbers, sizes and locations to provide people with disabilities meaningful access to this program, service, or activity in violation of Section 504 of the Rehabilitation Act, Title II of the ADA, . . . and [California] Government Code § 11135." (Id. at ¶ 185).

Plaintiffs brought into this action the above-described 61 owners (collectively, the "owner defendants") pursuant to Federal Rule of Civil Procedure 19(b) as necessary parties to enforce any injunctive or other relief that may be granted by the court if plaintiffs prevail against the government defendants. (See SAC at ¶ 3 & 57-116). Plaintiffs do not allege affirmative claims against any of the owner defendants. (See, generally, id.).

II. GOVERNMENT DEFENDANTS' CROSSCLAIM AGAINST OWNER DEFENDANTS.

The City filed a Crossclaim For Contribution, Indemnity, and Declaratory Relief against the owner defendants and the CRA/LA. (See City's Am. Crossclaim). The CRA/LA subsequently filed a nearly identical crossclaim against the owner defendants. (Compare Defendant/Cross-Defendant CRA/LA, A Designated Local Authority, Successor to Community Redeployment Agency of the City of Los Angeles' Cross-claim for Contribution Indemnity and Declaratory Relief, with City's Am. Crossclaim).

On September 19, 2013, the court granted the owner defendants' motion to dismiss the crossclaims of the City and the CRA/LA. (See Court's Order of September 19, 2013, at 29). The court found that: (1) the owner defendants could not be liable to the government defendants based on plaintiffs' claims; (2) no express or implied right of contribution or indemnity exists under the ADA or the Rehabilitation Act; (3) the comprehensive remedial scheme of the ADA and Rehabilitation Act preempts state law rights to contribution and indemnity; and (4) the government

defendants could not rely upon contractual indemnity provisions as an "end run around the unavailability of indemnification or contribution under these civil rights statutes." (See id. at 10-28).

III. THE CITY'S CROSSCLAIM AGAINST CRA/LA.

The City asserts a crossclaim, alleging that the CRA/LA is "wholly responsible or responsible in part for the injuries and damages alleged by Plaintiff[s] . . . and/or that [the CRA/LA] . . . executed contracts or other written agreements with the City, . . . [which] provide that [the CRA/LA is] to indemnify and hold harmless the City from the injuries and damages sought by the Plaintiffs herein." (City's Am. Crossclaim at ¶ 67). The City argues that plaintiffs are suing it "for alleged violations of its obligations as a recipient of federal funding for affordable housing," while "the CRA/LA is being sued for alleged violations of its obligations as a true subrecipient of such funding[,]" and "[a]s such, the basis for indemnity and/or contribution is direct and appropriate." (See City's Opposition to the Motion for Judgment on the Pleadings of CRA/LA ("City's Opp.") at 7).

LEGAL STANDARD

"After the pleadings are closed – but early enough not to delay trial – a party may move for judgment on the pleadings." Fed. R. Civ. P. 12(c). A motion brought under Federal Rule of Civil Procedure ("Rule") 12(c) will be denied unless it appears that the plaintiff is entitled to no relief under any statement of facts which could be proven in support of the plaintiff's claim. See Provenzano v. United States, 123 F.Supp.2d 554, 556 (S.D. Cal. 2000). "[T]he same standard of review applicable to a Rule 12(b) motion applies to its Rule 12(c) analog," because the motions are "functionally identical." Dworkin v. Hustler Magazine, Inc., 867 F.2d 1188, 1192 (9th Cir.), cert. denied, 493 U.S. 812 (1989). The court therefore employs the standard for a motion to dismiss for failure to state a claim.

A motion to dismiss for failure to state a claim should be granted if the claimant fails to proffer "enough facts to state a claim to relief that is plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570, 127 S.Ct. 1955, 1974 (2007); Ashcroft v. Iqbal, 129 S.Ct. 1937, 1949 (2009); Cook v. Brewer, 637 F.3d 1002, 1004 (9th Cir. 2011). "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." Iqbal, 129 S.Ct. at 1949; Cook, 637 F.3d at 1004; Caviness v. Horizon Cmty. Learning Ctr., Inc., 590 F.3d 806, 812 (9th Cir. 2010). The City must provide "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do," Twombly, 550 U.S. at 555, 127 S.Ct. at 1965; Iqbal, 129 S.Ct. at 1949; see also Cholla Ready Mix, Inc. v. Civish, 382 F.3d 969, 973 (9th Cir. 2004), cert. denied, 544 U.S. 974 (2005) ("[T]he court is not required to accept legal conclusions cast in the form of factual allegations if those conclusions cannot reasonably be drawn from the facts alleged. Nor is the court required to accept as true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences.") (citations and internal quotation marks omitted). "Specific

facts are not necessary; the [complaint] need only give the defendant[s] fair notice of what the . . . claim is and the grounds upon which it rests." Erickson v. Pardus, 551 U.S. 89, 93, 127 S.Ct. 2197, 2200 (2007) (per curiam) (citations and internal quotation marks omitted).

In considering whether to dismiss a cross-complaint, the court must accept the allegations of the cross-complaint as true, Erickson, 551 U.S. at 93-94, 127 S.Ct. at 2200; Albright v. Oliver, 510 U.S. 266, 267, 114 S.Ct. 807, 810 (1994), construe the pleading in the light most favorable to the pleading party, and resolve all doubts in the pleader's favor. Jenkins v. McKeithen, 395 U.S. 411, 421, 89 S.Ct. 1843, 1849 (1969); Berg v. Popham, 412 F.3d 1122, 1125 (9th Cir. 2005). See Brown v. Koch Maschinenbau GMBH, 2010 WL 4365668, *1 (D. Conn. 2010) (internal quotation marks omitted) (on motions to dismiss a cross-claim pursuant to Rule 12(b)(6), "a court takes the allegations of the cross-claim as true and construes them in a manner favorable to the claimant."). Dismissal for failure to state a claim can be warranted based on either a lack of a cognizable legal theory or the absence of factual support for a cognizable legal theory. See Mendiondo v. Centinela Hosp. Med. Ctr., 521 F.3d 1097, 1104 (9th Cir. 2008). A [cross-complaint] may also be dismissed for failure to state a claim if it discloses some fact or complete defense that will necessarily defeat the claim. See Franklin v. Murphy, 745 F.2d 1221, 1228-29 (9th Cir. 1984).

DISCUSSION

I. STATUTORY FRAMEWORK.

Section 504 of the Rehabilitation Act protects "qualified individual[s] with a disability" from being "subjected to discrimination under any program or activity receiving Federal financial assistance" "solely by reason of her or his disability[.]" 29 U.S.C. § 794. Under Title II of the ADA, 42 U.S.C. §§ 12131, et seq., "qualified individuals with a disability" cannot be "be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity[,]" "by reason of such disability." 42 U.S.C. § 12132.

"There is no significant difference in analysis of the rights and obligations created by the ADA and the Rehabilitation Act." Zukle v. Regents of Univ. of California, 166 F.3d 1041, 1045 n.11 (9th Cir. 1999) (listing cases). "Title II of the ADA and § 504 of the [Rehabilitation Act] both prohibit discrimination on the basis of disability. The ADA applies only to public entities, whereas the [Rehabilitation Act] proscribes discrimination in all federally-funded programs." Lovell v. Chandler, 303 F.3d 1039, 1052 (9th Cir. 2002), cert. denied, 537 U.S. 1105 (2003); see also Weinreich v. Los Angeles County Metro. Transp. Auth., 114 F.3d 976, 978 (9th Cir.), cert. denied, 522 U.S. 971 (1997) ("Title II of the ADA was expressly modeled after Section 504 of the Rehabilitation Act[.]"). The remedies, procedures, and rights under the ADA mirror those under the Rehabilitation Act. See 42 U.S.C. § 12133. In addition, California Government Code § 11135 "is identical to the Rehabilitation Act except that the entity must receive State financial assistance rather than Federal financial assistance." Communities Actively Living Indep. & Free v. City of

L.A., 2011 WL 4595993, *17 (C.D. Cal. 2011). Since plaintiffs' claims under each statute rely on the same set of facts, the court's analysis of the City's crossclaim will apply to each statute.

II. THE CITY CANNOT AVOID LIABILITY BY WAY OF INDEMNIFICATION OR CONTRIBUTION FROM CRA/LA.

The City argues that, notwithstanding the Court's Order of September 19, 2013, ("September 19, 2013, Order"), it has a valid claim for indemnity and/or contribution against the CRA/LA based on: (1) an implied right of indemnity or contribution in § 504, the ADA, or § 11135; and (2) a state law right to contractual indemnity or contribution. (See City's Opp. at 6-11). In distinguishing the instant action from the dismissed crossclaim against the owner defendants, the City overlooks much of the September 19, 2013, Order's reasoning, contending that the fact that "the Owner Defendants were never alleged to have violated the civil rights of the intended beneficiaries of Section 504 and the ADA" was central to the court's dismissal. (See id. at 6). For the same reasons that the government defendants were barred from shifting liability to the owner defendants, (see Court's Order of September 19, 2013, at 10-28), the City may not shift liability to the CRA/LA.

A. The City's Independent Liability Under the Civil Rights Statutes.

The City correctly points out, (see City's Opp. at 6), that the court found no cognizable right of indemnity or contribution against the owner defendants in part because the government defendants' "crossclaims are not based on allegations of wrongdoing by the . . . [owner defendants] independent of the actions or liability of the City or CRA/LA." (See Court's Order of September 19, 2013, at 10). The City argues – without citation to case law – that the court's findings are therefore limited to defendants whose conduct is not alleged to violate the ADA, Rehabilitation Act, and Section 11135, while a right of indemnity or contribution is available between public entities whose conduct is at issue. (See City's Opp. at 6-7). The court is not persuaded by the City's arguments.

Unlike the owner defendants, plaintiffs allege that the City is directly involved in the violations due to its significant planning and reporting responsibilities with regard to housing development. (See SAC at ¶¶ 137-41, 146-57). In order to obtain federal funding for housing development, the City must submit a Consolidated Plan to the Department of Housing and Urban Development ("HUD") describing the Los Angeles housing market and its needs – including those specific to people with disabilities – every five years. (See id. at ¶¶ 137-40). State law requires the City to maintain a "blueprint" of its plan to meet the housing needs of Los Angeles residents. (See id. at ¶ 141). Plaintiffs allege that the City has received "millions of dollars" in federal, state and local funds "for the purposes of developing affordable housing." (See id. at ¶ 146-57). By virtue of its role in oversight, planning and directing public dollars in housing development, plaintiffs contend that the City is liable under the ADA, Rehabilitation Act and § 11135 for its failure to "maintain policies, practices, or procedures to ensure that accessible units" are available to

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people with disabilities. (See id. at ¶¶ 165-183).

B. No Implied Right to Indemnification or Contribution Exists Under the Statutes.

In the September 19, 2013, Order, the court found that "nothing in [the Rehabilitation Act or the ADA] can be read as providing for an implied right to indemnity or contribution in favor of the City." (Court's Order of September 19, 2013, at 15). The City nonetheless argues that "Congress intended a right of action for indemnity to exist" under the statutes. (See City's Opp. at 8). The court finds the City's argument to be contrary to the weight of authority because: (1) the civil rights statutes regulate public entities, like the City, in favor of people with disabilities, and therefore do not support an implied right of action in the City's favor; and (2) the statutes' comprehensive remedial scheme bars an implied right of action therein or under federal common law. (See Court's Order of September 19, 2013, at 12-22). The fact that the City seeks indemnification or contribution from its codefendant, the CRA/LA, rather than the owner defendants does not change the analysis. 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. (See id. at 17-18) (collecting cases).

The City's argument that federal regulations and HUD compliance manuals[1] reveal that the civil rights statutes do, in fact, create an implied right of indemnification or contribution "among recipients and subrecipients of . . . federal funding," (see City's Opp. at 8-9), is unpersuasive. The City points to the same regulatory provisions and manuals, and recites the same arguments, (compare id., with City's Opposition to Joint Motion of Rule 19 Owner Defendants to Dismiss Crossclaims of City and CRA/LA and Request to Strike Plaintiffs' Non-Opposition at 10), that the court addressed in its September 19, 2013, Order. (See Court's Order of September 19, 2013, at 18-22). The regulations can no more provide the City a vehicle for indemnity or contribution than the civil rights statutes they promulgate. See Alexander v. Sandoval, 532 U.S. 275, 291, 121 S.Ct. 1511, 1522 (2001) ("[I]t is most certainly incorrect to say that language in a regulation can conjure up a private cause of action that has not been authorized by Congress."). The HUD manuals, meanwhile, merely recommend inclusion of indemnification agreements in contracts between recipients and subrecipients. (See Derwin Decl., Exh. 2 at 226, 230 & Exh. 3 at 232, 236 (explaining that only items "denoted with an asterisk" are required, and listing the term "indemnification" without an asterisk), & Exh. 4 at 238 (indicating the agreement is only a sample)). The City does not contend that they have the force of law as binding interpretations of statutory

[1] The three manuals are entitled: (1) Compliance in HOME Rental Projects: A Guide for Property Owners ("HOME Property Owner Guide"); (2) Compliance in HOME Rental Projects: A Guide for [Participating Jurisdictions ("PJ")] ("HOME PJ Guide"); and (3) Managing CDBG, A Guidebook for Grantees on Subrecipient Oversight ("CDBG Oversight Guide"). (See Declaration of Jennifer Derwin in Support of City's Opp. to Joint Motion of Rule 19 Owner Defendants to Dismiss Crossclaims of City and CRA/LA ("Derwin Decl."), Exhs. 2-4).

provisions or federal regulations. (See, generally, City's Opp.); see also N. Cal. River Watch v. Wilcox, 633 F.3d 766, 779 (9th Cir. 2011) ("[I]nterpretations contained in policy statements, agency manuals, and enforcement guidelines, all of which lack the force of law – do not warrant Chevron-style deference.") (internal quotation marks omitted).

C. The City's Contractual Indemnity and Contribution Claims Are Unavailing.

The court's previous determination that there was no contractual indemnity or contribution remedy available to the government defendants under state law, (see Court's Order of September 19, 2013, at 22-28), applies with equal force to the City's Amended Crossclaim. The City's claim for state law contractual indemnity or contribution conflicts with Congress's comprehensive federal scheme, and it is therefore barred.

Through enactment of § 504 and Title II of the ADA, Congress created a comprehensive remedial scheme allowing victims of disability discrimination to bring private causes of actions against public and private entities that use public funds in a discriminatory manner. See Bd. of Trustees of Univ. of Alabama v. Garrett, 531 U.S. 356, 374, 121 S.Ct. 955, 967 (2001) ("Congressional enactment of the ADA represents its judgment that there should be a comprehensive national mandate for the elimination of discrimination against individuals with disabilities.") (internal quotation marks omitted). Allowing public entities regulated by Section 504 and Title II to seek indemnification or contribution through state law to offset their liability would "interfere[] with the methods by which the federal statute[s] w[ere] designed to reach [their] goal." Gade v. Nat'l Solid Wastes Mgmt. Ass'n, 505 U.S. 88, 103, 112 S.Ct. 2374, 2385 (1992). Federal regulations reinforce the court's finding: "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) (emphasis added).

To give effect to an indemnity agreement between the codefendants would undermine Congress's goal of ensuring public entities' administration of programs in a non-discriminatory fashion. See Equal Rights Ctr. v. Niles Bolton Associates, 602 F.3d 597, 601 (4th Cir. 2010) (disallowing a housing developer from shifting its responsibility to another party through state indemnity counterclaims because such claims "are antithetical to Congress' purpose in enacting the [Fair Housing Act] and ADA," which do not allow wrongdoers to offset their liability); Walker v. Crigler, 976 F.2d 900, 904 (4th Cir.1992) ("[T]he duty of a property owner not to discriminate in the leasing or sale of that property is non-delegable."); U.S. v. Bryan Co., 2012 WL 2051861, *5 (S.D. Miss. 2012) (explaining that the availability of indemnification would disincentivize parties from proactive compliance with the statute and finding the state claim was conflict preempted because it "would frustrate, disturb, interfere with, or seriously compromise the purposes of the FHA and ADA."); Access 4 All v. Trump Int'l Hotel & Tower Condo., 2007 WL 633951, *6 (S.D.N.Y. 2007) (rejecting cross-complainant's action seeking indemnification for any judgment against it in an underlying ADA suit pursuant to either the common law of New York, or federal common law);

U.S. v. Murphy Dev., LLC, 2009 WL 3614829, *2 (M.D. Tenn. 2009) ("[S]tate-law claims for express or implied indemnity and/or contribution will also be dismissed with prejudice . . . because allowing recovery under state law for indemnity and/or contribution would frustrate the achievement of Congress' purposes in adopting the FHA and the ADA.").[2]

III. THE CITY'S CROSSCLAIM IS DISMISSED WITHOUT LEAVE TO AMEND.

Having liberally construed and assumed the truth of the allegations, the court is persuaded that there is no basis for concluding that the City's crossclaim against CRA/LA can be saved through amendment of the Amended Crossclaim. See Lopez v. Smith, 203 F.3d 1122, 1129 (9th Cir. 2000) ("Courts are not required to grant leave to amend if a complaint lacks merit entirely."). In the September 19, 2013, Order, the court denied the government defendants leave to amend to assert state law breach of contract claims against the owner defendants because such claims would merely constitute derivative claims for indemnity or contribution. (See Court's Order of September 19, 2013, at 29). Additionally, the court declined to exercise supplemental jurisdiction over the "61 state law mini-actions" the defendants' proposed amendment would generate. (See id. at 29-30) (internal quotations omitted).

Here, other than stating in a conclusory manner that it wants leave to amend, the City does not explain how it would amend its pleading to make out a colorable indemnity or contribution claim against the CRA/LA. (See, generally, City's Opp. at 14). In light of the foregoing, the court is persuaded that there are no facts that the City could provide that would state a valid contribution or indemnity claim against the CRA/LA. Under the circumstances, it would be futile to afford the City another opportunity to state these claims against the CRA/LA. See Cafasso, United States ex rel. v. General Dynamics C4 Sys., Inc., 637 F.3d 1047, 1058 (9th Cir. 2011) ("[T]he district court's discretion to deny leave to amend is particularly broad where the plaintiff has previously filed an amended complaint.") (internal quotation marks omitted); Wagh v. Metris Direct, Inc., 363 F.3d 821, 830 (9th Cir. 2003), cert. denied, 541 U.S. 1043, 124 S. Ct. 2176 (2004), overruled on other grounds by Odom v. Microsoft Corp., 486 F.3d 541, 551 (9th Cir. 2007) (en banc) ("Leave to amend is generally within the discretion of the district court.").

This Order is not intended for publication. Nor is it intended to be included in or submitted to any online service such as Westlaw or Lexis.

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[2] "Due to the similarity of the ADA and the FHA's protections of individuals with disabilities in housing matters, courts often analyze the two statutes as one." Caron Found. of Florida, Inc. v. City of Delray Beach, 879 F.Supp.2d 1353, 1364 (S.D. Fla. 2012); see Tsombanidis v. W. Haven Fire Dep't, 352 F.3d 565, 573 (2d Cir. 2003); Montana Fair Hous., Inc. v. City of Bozeman, 854 F.Supp.2d 832, 836 (D. Mont. 2012). Thus, the City's contention that "the Rehabilitation Act is the thrust of Plaintiffs' allegations" and is distinct from the ADA and FHA in this analysis, (see City's Opp. at 14), is unpersuasive.

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CONCLUSION

Based on the foregoing, IT IS ORDERED THAT the CRA/LA's Motion for Judgment on the Pleadings Pursuant to Federal Rules of Civil Procedure 12(c) as to the Amended Cross-claim of City for Indemnity and Contribution of the City of Los Angeles **(Document No. 318)** is **granted**. The City's Amended Crossclaim **(Document No. 220)** is dismissed with prejudice.

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