

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. 21-cv-01429-RM-STV

**YOUTH SEEN**, a Colorado non-profit corporation, and  
**TARA J. SMELT**, an individual,

Plaintiffs,

v.

**TYES INC.**, a Colorado non-profit corporation, and  
**ALISHA D. BLACKBURN**, an individual,

Defendants.

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**FIRST AMENDED COMPLAINT AND JURY DEMAND**

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Plaintiffs Youth Seen and Tara J. Smelt, PhD (“**Dr. Smelt**” and together, “**Plaintiffs**”), through their undersigned counsel, submit this First Amended Complaint and Jury Demand against TYES Inc. (“**TYES**”), and Alisha D. Blackburn (“**Ms. Blackburn**”), an individual.

**PARTIES**

1. Dr. Smelt is an individual who resides in Broomfield County, Colorado.
2. Youth Seen is a Colorado non-profit corporation with its principal place of business located at 4495 Hale Parkway, Suite 101, Denver, Colorado 80220.
3. Dr. Smelt is Youth Seen’s founder and Executive Director.
4. Dr. Smelt is a Black/African-American non-binary individual.
5. Youth Seen is a Colorado non-profit corporation whose mission is to foster and support the social and emotional well-being of LGBTQIA (Lesbian, Gay, Bisexual, Transgender,

Queer, Intersex, and Asexual) youth and their families in all Colorado communities, including rural communities.

6. TYES (Trans Youth Education & Support) is Colorado non-profit corporation. Its principal place of business is unknown. Its mailing address is P.O. Box 812, Lafayette, Colorado 80026.

7. At all times relevant to this matter, TYES was not a 501(c)(3) organization.

8. TYES holds itself out on its website as a “network dedicated to helping parents and primary caregivers support their gender expansive youth, and to help families find the information, resources, and understanding they need.”

9. Ms. Blackburn is a Caucasian individual who, upon information and belief, resides at [REDACTED].

10. Ms. Blackburn was, at various times, part of TYES’s executive team and its Board of Directors. Upon information and belief, Ms. Blackburn is no longer part of TYES’s executive team or Board of Directors. Plaintiffs are uncertain when Ms. Blackburn stopped being a member of TYES’s leadership.

11. In October 2018, Ms. Blackburn filed Articles of Incorporation for a Nonprofit Corporation for TYES with the Colorado Secretary of State.

12. On the October 2018 filing with the Secretary of State, [REDACTED], K [REDACTED] B [REDACTED] is listed as TYES’s Registered Agent.

### **JURISDICTION AND VENUE**

13. This Court has original jurisdiction over Plaintiffs' claims pursuant to 28 U.S.C. § 1331 and 42 U.S.C. § 1981. This is an action authorized by, and instituted under, Section 1981 of the Civil Rights Act of 1866, as amended by the Civil Rights Act of 1991 ("**Section 1981**").

14. This Court has jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. § 1367, as Plaintiffs' state law claims arise from the same case and controversy as the claims over which this Court has original jurisdiction.

15. The unlawful conduct alleged herein was committed within the judicial district of the United States District Court for the District of Colorado. Accordingly, venue is proper in this District pursuant to 28 U.S.C. § 1391.

### **GENERAL ALLEGATIONS**

#### ***Contractual Relationship between TYES and Youth Seen***

16. Not-for-profit groups that are not 501(c)(3) tax-exempt organizations require fiscal sponsors to open and maintain bank accounts on their behalf.

17. In mid- to late-2017, TYES was looking for a new fiscal sponsor.

18. R [REDACTED] P [REDACTED] ("Mx. P [REDACTED]"), upon information and belief a member of TYES's executive team at the time, contacted Youth Seen in 2017 to inquire about Youth Seen acting as TYES's fiscal sponsor.

19. After introductions and a number of discussions, together, TYES and Youth Seen decided a partnership had the potential to benefit both organizations.

20. On December 21, 2017, TYES and Youth Seen (together, the “**Partners**”) formalized their relationship by executing a letter Agreement (the “**Agreement**”), attached hereto as **Exhibit 1**.

21. The Agreement indicated that Youth Seen would stand as a fiscal sponsor for TYES.

22. Initially, the Partners believed Youth Seen could open and maintain a bank account for TYES, in TYES’s name. The Partners later discovered their desired bank would not allow Youth Seen to open a bank account in TYES’s name, so a new account was created, which held both Youth Seen and TYES’s funds (the “**Bellco Account**”).

23. Youth Seen kept records of payments made from, and deposits made to, the Bellco Account.

24. Youth Seen paid bills for TYES and Youth Seen out of the Bellco Account.

25. Youth Seen kept track of deposits and withdrawals for each separate organization, keeping a record of each entity’s funds available at any given time.

26. In addition to creating the fiscal sponsorship, the Agreement included other terms governing the relationship between TYES and Youth Seen.

27. The Agreement provided that the “TYES programming for Youth Seen will be approved by Youth Seen Executive Director prior to implementation to ensure that it matches the mission of the organization and there is money available in the budget to complete the programs.” See Exhibit 1 at ¶ 5.

28. The Agreement provided that TYES and Youth Seen would work with Youth Seen’s grant writer to find and apply for appropriate grants to assist in creation of TYES

programming. See Exhibit 1 at ¶ 1. The grant writer would receive a percentage of successful grants as compensation for securing the grants. See id. TYES members were to work with the grant writer to find appropriate grants and implement grant funds. See id.

29. The Agreement provided that Youth Seen could seek and develop grant funding beyond the needs of TYES for other parts of Youth Seen's mission. See Exhibit 1 at ¶ 2.

30. Although the Agreement provided that the Partners intended to have an attorney draw up an additional formal agreement between the Partners, no other contract was ever drafted and the Partners operated under the Agreement at all times relevant to this matter.

31. The Partners also agreed that Youth Seen would provide administrative support for TYES and build TYES's website and online platforms.

32. The Partners agreed that TYES would share the administrative costs borne by Youth Seen for work completed for the benefit of and on TYES's behalf. The administrative costs to be shared between the Partners included overhead costs, such as phone and internet service, as well as compensation for individuals performing administrative tasks, including all of Dr. Smelt's substantive work for the benefit of both entities.

33. As part of TYES and Youth Seen's partnership, Ms. Blackburn was named to the Youth Seen Board of Directors.

34. In addition to Youth Seen serving as TYES's fiscal sponsor, Dr. Smelt provided significant operations and administrative support to TYES, including managing logistics for programs, marketing and website services, and other services of value to TYES.

35. Ms. Blackburn and Mx. P [REDACTED] suggested that Dr. Smelt should be compensated for their time spent on TYES business and TYES programming. They suggested that Dr. Smelt's salary should be paid in part by grant funds obtained by TYES.

36. On March 22, 2018, Ms. Blackburn, in her official capacity as a member of Youth Seen's Board of Directors, signed a letter notifying Dr. Smelt that the Board had agreed to an annual salary of \$70,000 for Dr. Smelt's work for both Youth Seen and TYES.

37. TYES and Ms. Blackburn tokenized Dr. Smelt, in an attempt to use them as proof to outsiders of TYES's support of diversity and inclusiveness, all while refusing to provide equal and inclusive support to members and potential members of TYES who were racially diverse. The practice of presenting an individual from an underrepresented demographic in an effort to use that person's involvement in an organization as the endorsement of an entire community, was both noted and highly offensive to many involved in TYES and Youth Seen, not just to Dr. Smelt, but also to Caucasian members of TYES, not including Ms. Blackburn.

38. In one of the initial meetings between TYES and Youth Seen, Dr. Smelt was openly questioned and disrespected by E [REDACTED] K [REDACTED] ("Mr. K [REDACTED]"), upon information and belief, a TYES's Board Member at the time. Mr. K [REDACTED], who is Caucasian, told Dr. Smelt that they should not lead the meeting because, in his opinion, Dr. Smelt did not have an understanding of a lot of the things to be discussed, and that he would prefer another attendee (a Caucasian individual who does not hold a PhD), lead the meeting instead. During that meeting and many others, Mr. K [REDACTED] ignored Dr. Smelt completely and interrupted Dr. Smelt when they spoke. Mr. K [REDACTED]'s discriminatory behavior was noted not only by Dr. Smelt, but also by Mx.

P [REDACTED] and C [REDACTED] F [REDACTED] (“Ms. F [REDACTED]”), upon information and belief, a member of TYES’s Board of Directors at the time.

39. Ms. Blackburn openly disrespected and questioned people of color. Ms. Blackburn commented to Dr. Smelt that she did not understand why Black people think they are oppressed. She also openly stated her false belief that everyone has an equal chance at opportunities in life, completely denying the existence of systemic racism.

40. In one case, an African-American family elected not to join TYES after being subjected to targeted scrutiny by Ms. Blackburn, after she demanded information from the family that was unrelated to TYES’s mission and not requested from Caucasian families, including information about the neighborhood in which they lived and the parents’ professions.

41. At the time, Ms. Blackburn said that the reason she needed additional information from that particular family was because she was not familiar with their background and wondered whether they would follow TYES’s guidelines with regard to confidentiality. Dr. Smelt and others interpreted Ms. Blackburn’s scrutiny as racial bias because Ms. Blackburn had never demanded to know the backgrounds of Caucasian families or wondered whether new Caucasian families could maintain confidentiality.

42. In another case, a parent of a bi-racial, trans child inquired about TYES’s ability to assist the child because of the child’s unique experiences and challenges related to both the child’s race and gender identity. Ms. Blackburn summarily dismissed the parent’s concerns about the child’s race as a reason the child might seek or need support. Dr. Smelt and others, including the child’s family, received Ms. Blackburn’s dismissal of the parent’s concerns related to their child’s race, as disrespectful, offensive, and discriminatory because it marginalized the

child's needs and failed to acknowledge that the child, as a bi-racial individual, might have different needs or abilities from that of a Caucasian trans child.

***TYES Family Camp – Summer 2018***

43. TYES holds an annual summer camp for TYES families at YMCA Camp Santa Maria (“**Family Camp**”), located west of Bailey, Colorado.

44. In preparation for 2018 Family Camp, TYES and Ms. Blackburn negotiated and signed the contract with the YMCA, without Youth Seen's knowledge. Youth Seen was not provided with any information, notice, or opportunity to approve the terms of TYES's agreement with the YMCA or the cost of the program.

45. During a staff meeting about Family Camp, Ms. Blackburn said she did not want any of the camp counselors to be trans or non-binary individuals, because, according to her, trans and non-binary individuals over 18 were always damaged and had emotional baggage because of their identity. The hypocrisy of Ms. Blackburn's statement was shocking to those in the meeting, including Dr. Smelt.

46. Some TYES member-families provided funds to attend 2018 Family Camp.

47. All funds provided by TYES families were deposited in the Bellco Account.

48. During TYES Family Camp in 2018, Taylor Jordan, YMCA Santa Maria's Director, notified TYES's leadership (including Ms. F [REDACTED]) that he no longer wanted to work with Dr. Smelt because they were, among other things, “aggressive,” a common dog-whistle used by those harboring racist tendencies.

49. TYES Family Camp concluded in August 2018.



50. After the invoice for Family Camp was presented to Youth Seen for payment, Youth Seen became aware for the first time that TYES had entered into a contract with the YMCA for 2018 Family Camp, without first consulting or even informing Youth Seen.

51. There were not enough TYES funds in the Bellco Account to pay the invoice. TYES had already spent its available funds on operating costs and other administrative and allocated items.

52. At a Board Meeting attended by Youth Seen and TYES's representatives including Ms. Blackburn, Youth Seen advised TYES that TYES did not have enough funds to cover the invoice for Family Camp.

53. Upon learning this information, Ms. Blackburn immediately and publicly accused Dr. Smelt of criminal conduct, and said to others, and anyone who would listen, that Dr. Smelt and Youth Seen stole TYES's money.

54. When Ms. Blackburn accused Dr. Smelt of stealing the money, she did not consider any other possible reason the funds were not available. Ms. Blackburn targeted Dr. Smelt, the only Black/African American individual in the room.

55. Upon information and belief, Ms. Blackburn attacked Dr. Smelt and blindly accused Dr. Smelt of criminal conduct because of Ms. Blackburn's racial animus toward people of color and Black/African American people, specifically.

56. Prior to and after her accusations against Dr. Smelt, Ms. Blackburn repeatedly showed discriminatory bias against Black families seeking to join TYES and made negative comments about Black and trans youth and families.

57. A parent-member of TYES, Mr. M [REDACTED] (“Mr. M [REDACTED]”), who is Black/African American, offered to mediate between the parties so an amicable resolution could be reached before attorneys or other third-parties needed to get involved. Plaintiffs agreed to attempt mediation as proposed, but Mr. M [REDACTED] was told Defendants refused mediation because Ms. Blackburn did not want Mr. M [REDACTED] to act as mediator between the parties.

58. When pressed as to why Ms. Blackburn refused Mr. M [REDACTED]’s help, no explanation was provided by TYES. Based on his own interactions and experience with Ms. Blackburn, Mr. M [REDACTED] believed his race, Black/African-American, was the reason for Ms. Blackburn’s unwillingness to allow him to act as mediator.

59. As the false accusations against Dr. Smelt continued on, Mr. M [REDACTED] offered to mediate between the parties a second time and cautioned TYES’s leadership about the negative statements they were making about Plaintiffs in the community, including publicly accusing Dr. Smelt of criminal activity. His concerns were not heeded by Ms. Blackburn or TYES’s leadership, who continue to implicate Plaintiffs in criminal activity at every possible opportunity.

60. Mr. M [REDACTED] saw objective evidence that neither Dr. Smelt nor Youth Seen had “stolen” TYES funds. He encouraged Ms. Blackburn and TYES leadership to reconsider their positions, but could not convince Ms. Blackburn or TYES to consider objective evidence counter to their belief that Plaintiffs had stolen TYES’s funds.

61. This began a years-long targeted campaign of defamation and false reports by Ms. Blackburn with the primary purpose of having Dr. Smelt arrested and criminally charged, including for theft and embezzlement.

62. Ms. Blackburn and TYES refused to accept or understand the reality of the situation, which was that TYES funds were deposited into the Belco Account and the funds in the Belco Account were used to cover TYES's business expenses.

63. Ms. Blackburn and TYES severed the Agreement between the Partners before Dr. Smelt and Youth Seen could benefit, as intended by the Agreement.

64. Ms. Blackburn and TYES refused to pay Dr. Smelt their agreed-upon salary.

65. Ms. Blackburn inquired about Dr. Smelt's home address so that Ms. Blackburn could call the police and have Dr. Smelt arrested.

#### *Efforts to Arrest Dr. Smelt*

66. TYES hired Colorado attorney Constantine (Gus) Spheeris ("**Mr. Spheeris**"), upon information and belief, to assist with its smear campaign against Dr. Smelt and to shield individuals, including Ms. Blackburn, from scrutiny for their discriminatory practices.

67. Dr. Smelt and Mr. Spheeris, who is Caucasian, knew each other prior to the partnership between Youth Seen and TYES, and upon information and belief, before Mr. Spheeris represented TYES.

68. Dr. Smelt and Mr. Spheeris exchanged angry words while participating in a healing circle, when Mr. Spheeris accused Dr. Smelt of playing the "race card," an all-too-common retort used by those who have been called out for discrimination and which is often used to deny that racism is an ongoing issue in society. On more than one occasion, Mr. Spheeris made negative comments about Dr. Smelt's race and work with the LGBTQIA community and once told Dr. Smelt that he could not be racist because he is a trans man and has

experienced oppression himself, failing to consider that Dr. Smelt's experiences and challenges as a Black/African American, non-binary individual might be different from his own.

69. Upon information and belief, Mr. Spheeris, acting as TYES's attorney and at the direction of TYES's executive team member Ms. Blackburn, contacted the Boulder District Attorney's office in the Fall of 2018 and demanded criminal charges be filed against Dr. Smelt.

70. Upon information and belief, the Boulder County District Attorney's office referred the matter to the Jefferson County District Attorney's office ("**Jeffco DA**").

71. The Jeffco DA's office assigned investigator John Incampo ("**Mr. Incampo**") to investigate the allegations of criminal conduct made against Dr. Smelt.

72. As a result of the investigation initiated against Dr. Smelt and Youth Seen, Youth Seen was forced to defend itself and Dr. Smelt, and hired attorney Brent Behler ("**Mr. Behler**") during the investigation process, costing Youth Seen and Dr. Smelt significant time, money, and resources.

73. During the Jeffco DA's investigation, Dr. Smelt was required to provide copies of their personal financial account statements, in addition to Youth Seen's financial account statements and ledgers.

74. At all times, Dr. Smelt and Youth Seen fully complied with requests from the Jeffco DA, all the while being disparaged and accused of criminal conduct by Mr. Spheeris, TYES, and Ms. Blackburn in and among the LGBTQIA communities.

75. Members of Youth Seen's Board of Directors were interviewed extensively.

76. Youth Seen hired a bookkeeper to verify that Youth Seen's bookkeeping was accurate; it was.

77. Out Boulder County’s Executive Director, Mardell (Mardi) Moore (“**Ms. Moore**”), was also integral in TYES’s and Ms. Blackburn’s smear campaign against Dr. Smelt.

78. Upon information and belief, Ms. Moore also contacted the Boulder County District Attorney’s office about bringing criminal charges against Dr. Smelt.

***The Complaint Filed with State of Colorado Alleging Embezzlement***

79. Upon information and belief, TYES and Alisha Blackburn also filed an anonymous, formal complaint against Dr. Smelt and Youth Seen with the Colorado Secretary of State Charities Program (the “**State**”), alleging that Dr. Smelt and Youth Seen violated Colorado’s Charitable Solicitations Act (the “**CSA**”).

80. Among the false allegations TYES and Ms. Blackburn made to the State were facts known to TYES and Ms. Blackburn to be false, including that Dr. Smelt both solicited TYES for a partnership and solicited funds from TYES.

81. In this anonymous complaint, TYES and Ms. Blackburn also falsely alleged that Dr. Smelt spent TYES’s funds on their unrelated entity, Tayo, Inc. This false allegation was motivated by malicious intent and racial bias, as neither TYES nor Ms. Blackburn had any evidence to support their spurious allegations.

82. These false allegations led the State to request and review Dr. Smelt’s personal finances and taxes, and the finances and taxes of Dr. Smelt’s unrelated business interests.

83. Upon information and belief, these false allegations were made for the purpose of harassing and intimidating Dr. Smelt, and to humiliate Dr. Smelt by sending the State to dig through Dr. Smelt’s personal records and the records of Dr. Smelt’s unrelated business entities.

*Unanimous Conclusions of Innocence*

84. On November 22, 2019, the State closed its investigation, concluding that “there was insufficient evidence to show that [Youth Seen] is currently in violation of the Colorado Charitable Solicitations Act.”

85. On December 11, 2020, after a two-year investigation into TYES’s and Ms. Blackburn’s false allegations against Youth Seen and Dr. Smelt, Thomas Jackson (“**Mr. Jackson**”), Chief Deputy District Attorney of the Economic Crime Unit of the Jeffco DA’s office, notified Mr. Spheeris and Mr. Behler that his office had concluded its investigation into allegations of criminal conduct by Dr. Smelt and/or Youth Seen.

86. Mr. Jackson wrote: “The investigation in this case has been extensive and comprehensive.”

87. Mr. Jackson concluded: “The investigation does not support the allegation that a theft occurred in this situation. Therefore, there will be no criminal charges filed as a result of this investigation.”

*Continuing Smear Efforts*

88. After receiving the letter from Mr. Jackson, Mr. Spheeris requested a meeting with the Jeffco DA, which was granted. The meeting took place on January 20, 2021, via conference call.

89. Upon information and belief, Mr. Spheeris demanded the follow-up meeting with the Jeffco DA on behalf of TYES and at Ms. Blackburn’s insistence.

90. Mr. Spheeris, acting on behalf of TYES and Ms. Blackburn, requested this meeting in an attempt persuade the Jeffco DA to pursue criminal charges against Dr. Smelt, despite its conclusion that no criminal conduct had occurred.

91. Mr. Spheeris and Colorado State House of Representative Brianna Titone (“**State Representative Titone**”) attended the meeting with the Jeffco DA on behalf of TYES.

92. Upon information and belief, State Representative Titone attended the meeting for the sole purpose of asserting political pressure upon the Jeffco DA to file criminal charges against Dr. Smelt.

93. Prior to the January meeting, State Representative Titone had never been involved in the TYES/Youth Seen partnership.

94. During this meeting and even after being told yet again by the Deputy District Attorney that there was insufficient evidence to show that a theft had occurred, Mr. Spheeris continued his attempts to persuade the District Attorney’s Office to bring criminal charges against Dr. Smelt.

95. Upon information and belief, Ms. Blackburn had in the past accused PFLAG Boulder, TYES’s former fiscal sponsor, of misappropriating TYES’s funds. Upon information and belief, however, Ms. Blackburn never called police, any district attorney’s office, nor reported her suspicions to the State of Colorado, as she did in this case. Upon information and belief, PFLAG Boulder’s leadership is not Black/African-American.

***Damages Suffered by Dr. Smelt and Youth Seen***

96. Because of TYES, Ms. Blackburn, and Mr. Spheeris’s actions, Dr. Smelt has lived under an unjustified cloud of police and State suspicion for years.

97. As a result of Ms. Blackburn's false accusations and disparaging statements to those in the LGBTQIA community about Dr. Smelt, Dr. Smelt and Youth Seen's reputations have been irretrievably damaged.

98. Members of the TYES community and greater LGBTQIA community were told the lie by TYES and Ms. Blackburn that Dr. Smelt and Youth Seen stole money from TYES.

99. Dr. Smelt was threatened with arrest multiple times by Ms. Blackburn and others in the TYES community, and Dr. Smelt was in fear of their safety because of Ms. Blackburn's lies.

100. Ms. Blackburn used the threat of arrest against Dr. Smelt because she, unlike Dr. Smelt, is not scarred from the long history of law enforcement's abuse and murder of African Americans.

101. Instead, Ms. Blackburn used and exploited those scars by making threats of police involvement to impose emotional distress on Dr. Smelt because of their race.

102. Ms. Blackburn was aware of an incident in Dr. Smelt's recent past where police failed to intervene and verbally harassed Dr. Smelt while a Caucasian man stood nearby pointing a gun directly at Dr. Smelt.

103. Ms. Blackburn and TYES community members disparaged, and continue to disparage, Dr. Smelt and Youth Seen, including upon information and belief, to community organizations that provide grants to organizations like TYES and Youth Seen.

104. Because of TYES's and Ms. Blackburn's targeted campaign to discredit and allege criminal conduct by Dr. Smelt, Youth Seen lost financial support from the Chinook



Fund and the Colorado Trust, two important community organizations with a track record of support for Youth Seen.

105. TYES representatives met with T■■ W■■ (“Ms. W■■”) of the Colorado Trust in person, upon information and belief, to tell the Colorado Trust that Dr. Smelt and Youth Seen had “stolen” TYES’s funds and not to do business with Dr. Smelt or Youth Seen in the future. The Colorado Trust notified Dr. Smelt about that conversation.

106. As a result of TYES’s and Ms. Blackburn’s interference, since the meeting between The Colorado Trust and TYES’s representatives, The Colorado Trust has withdrawn its financial support of Youth Seen and advised Youth Seen that it cannot be a financial supporter in the future.

107. Prior to TYES’s and Ms. Blackburn’s interference, the Colorado Trust made a grant of \$18,000 to Youth Seen.

108. Since TYES’s and Ms. Blackburn’s interference, the Colorado Trust has withdrawn its support and not provided any funding to Youth Seen.

109. Prior to TYES’s and Ms. Blackburn’s interference, the Chinook Fund made a grant of \$2,500 to Youth Seen.

110. Since TYES’s and Ms. Blackburn’s interference, the Chinook Fund has withdrawn its support and not provided any funding to Youth Seen.

111. Because of TYES’s and Ms. Blackburn’s targeted campaign to discredit and allege criminal conduct by Dr. Smelt, Youth Seen has lost thousands of dollars in support for the non-profit organization.

***TYES Pursued Dr. Smelt and Youth Seen Even After  
Dr. Smelt's Innocence was Conclusively Established***

112. Even after two independent investigations established that neither TYES nor Dr. Smelt had engaged in wrongdoing with regard to TYES's funds, Ms. Blackburn and TYES continued to disparage and seek criminal action against Dr. Smelt.

113. As recently as January 2021, TYES and, upon information and belief, Ms. Blackburn, sought to meet with members of the Jeffco DA's office to convince the DA to bring criminal charges against Dr. Smelt, despite the two-year investigation that concluded no criminal conduct had occurred.

114. Further, TYES and its members sought to use political pressure and a show of force by including State Representative Titone and TYES's attorney in their demands to bring false charges against Dr. Smelt.

115. Following the January 2021 meeting, Mr. Incampo contacted Mr. Behler by telephone to advise him that TYES was unrelenting its attempts to pursue criminal charges against Dr. Smelt.

116. In May 2021, Dr. Smelt received confirmation that Out Boulder County's (TYES's fiscal sponsor after Youth Seen) Executive Director Ms. Moore, has continued to disparage Youth Seen and Dr. Smelt in the LGBTQIA community, again falsely accusing them of mishandling TYES's funds.

**FIRST CLAIM FOR RELIEF  
Race Discrimination in Violation of 42 U.S.C. § 1981  
Dr. Smelt and Youth Seen Against Defendant TYES**

117. Dr. Smelt and Youth Seen incorporate each of the allegations set forth above, as if fully set forth herein.

118. At all times relevant hereto, TYES was and is subject to Section 1981.

119. Dr. Smelt is Black/African-American and is, therefore, a member of a protected class under Section 1981.

120. TYES knew that Dr. Smelt is Black/African-American.

121. Section 1981 protects against any impairment of the enjoyment of the benefits of a contract when impairment arises from intentional discrimination based on race.

122. As the Executive Director of Youth Seen and a third-party beneficiary of the Agreement, Dr. Smelt was denied the enjoyment of all benefits, privileges, terms and conditions of Youth Seen's Agreement with TYES.

123. TYES refused to abide by the Agreement and terminated the Agreement prematurely because of Dr. Smelt's race. The racial bias of TYES's leadership led it to jump to the conclusion that Plaintiffs had engaged in criminal conduct, rather than to listen, investigate, or mediate the facts of the situation surrounding Youth Seen's handling of funds collected for Family Camp.

124. TYES refused to pay its portion of Dr. Smelt's salary, which was agreed upon by the Partners.

125. TYES also breached the Agreement by refusing to pay its portion of expenses.

126. TYES additionally breached the Agreement by terminating the Agreement without the required notice.

127. The reason TYES denied Youth Seen and Dr. Smelt their bargained-for benefits under the Agreement is because of Dr. Smelt's race.

128. Dr. Smelt's race led TYES and Ms. Blackburn to accuse Dr. Smelt of criminal conduct and to sever the Partners' relationship prematurely.

129. TYES intentionally discriminated against Dr. Smelt and Youth Seen because of Dr. Smelt's race.

130. TYES's racially-motivated conduct denied Dr. Smelt and Youth Seen equal terms, conditions, and benefits under the Agreement, in the Partners' relationship, and in the employment relationship with Dr. Smelt, thereby violating Youth Seen and Dr. Smelt's rights as guaranteed by Section 1981 and the US Constitution.

131. As a result of TYES's conduct, Dr. Smelt and Youth Seen have been damaged in an amount to be determined at trial, including but not limited to compensatory damages, punitive damages, reasonable attorneys' fees and costs, and pre- and post-judgment interest.

**SECOND CLAIM FOR RELIEF**  
**Intentional Infliction of Emotional Distress by Extreme and Outrageous Conduct**  
**Dr. Smelt Against TYES and Alisha Blackburn**

132. Dr. Smelt incorporates each of the allegations set forth above, as if fully set forth herein.

133. TYES and Ms. Blackburn engaged in conduct they knew, or should have known, would lead Dr. Smelt to suffer emotional distress.

134. TYES and Ms. Blackburn engaged in a series of acts that a reasonable member of the community would regard as atrocious and beyond all bounds of decency, including by continuously accusing Dr. Smelt of criminal conduct in the tight-knit LGBTQIA community in the Denver Metro area and by relentlessly pursuing criminal charges against Dr. Smelt, even

after both the State of Colorado and the Jeffco DA's office concluded that Dr. Smelt engaged in no criminal wrongdoing, and by submitting false information in pursuit of those charges.

135. TYES and Ms. Blackburn knew that Dr. Smelt had suffered trauma from being the target of racial slurs and racial stereotypes. TYES and Ms. Blackburn also knew that Dr. Smelt, as an African American individual, bears the scars of the collective trauma suffered by Black/African American individuals at the hands of law enforcement.

136. TYES and Ms. Blackburn knew, or should have known, that Dr. Smelt was particularly susceptible to emotional distress because of trauma previously inflicted upon Dr. Smelt because of Dr. Smelt's race.

137. Between 2018 and the present, TYES and Ms. Blackburn intentionally engaged in conduct that did, in fact, cause Dr. Smelt emotional distress.

138. Upon information and belief, Ms. Blackburn engaged in this conduct in her individual capacity, as she was no longer a member of TYES's executive team or Board of Directors at the time.

139. TYES's and Ms. Blackburn's conduct was extreme and outrageous. TYES and Ms. Blackburn acted with reckless disregard for Dr. Smelt's rights and feelings, and with deliberate indifference to the certainty that Dr. Smelt would suffer emotional distress.

140. As a result of TYES's and Ms. Blackburn's conduct, Dr. Smelt suffered emotional distress, fear for their personal safety, anguish, humiliation, loss of enjoyment of life, loss of reputation, and physical distress.

141. Dr. Smelt seeks damages to be determined at trial, including but not limited to compensatory damages, punitive damages, costs, and pre- and post-judgment interest.

**THIRD CLAIM FOR RELIEF**  
**Invasion of Privacy based upon Intrusion Upon Seclusion**  
**Dr. Smelt Against TYES and Alisha Blackburn**

142. Dr. Smelt incorporates each of the allegations set forth above, as if fully set forth herein.

143. TYES and Ms. Blackburn intentionally invaded Dr. Smelt's privacy by repeatedly hounding and harassing her, including by repeatedly attempting to get Dr. Smelt arrested and filing false claims and reports with two different District Attorneys' offices, leading to vast, unnecessary, and expensive state and criminal investigations, which all ultimately ended with total exoneration for Dr. Smelt.

144. TYES's and Ms. Blackburn's actions led the State to request and review Dr. Smelt's personal finances and taxes, and the finances and taxes of Dr. Smelt's unrelated business interests.

145. Because of TYES's and Ms. Blackburn's actions including efforts to continue criminal and other investigations after being informed there was no factual basis for the accusations, Dr. Smelt has lived under an unjustified cloud of police and state suspicion for years, a situation that would be very offensive to any reasonable person and was, in fact, offensive and damaging to Dr. Smelt.

146. Between 2018 and the present, TYES and Ms. Blackburn repeatedly engaged in conduct that goes far beyond that of an individual or organization reporting suspected criminal behavior in good faith.

147. Upon information and belief, Ms. Blackburn engaged in this conduct in her individual capacity, as she was no longer a member of TYES's executive team or Board of Directors at the time.

148. As a result of TYES's and Ms. Blackburn's conduct, not limited to their repeated attempts to have Dr. Smelt arrested, Dr. Smelt suffered emotional distress, anguish, humiliation, loss of enjoyment of life, loss of reputation, and physical distress.

149. Dr. Smelt seeks damages to be determined at trial, including but not limited to compensatory damages, punitive damages, and costs, and pre- and post-judgment interest.

**FOURTH CLAIM FOR RELIEF**  
**Breach of Contract**  
**Youth Seen and Dr. Smelt Against TYES**

150. Dr. Smelt and Youth Seen incorporate each of the allegations set forth above, as if fully set forth herein.

151. The Agreement between the Partners governed their relationship.

152. As the Executive Director of Youth Seen and a third-party beneficiary of the Agreement, Dr. Smelt was entitled to the benefit of the privileges, terms and conditions of the Agreement.

153. At all times Youth Seen and Dr. Smelt performed under the Agreement.

154. TYES, through the actions of Ms. Blackburn, breached the Agreement when Ms. Blackburn negotiated and signed a contract with YMCA Camp Santa Maria for TYES 2018 Family Camp, without seeking prior approval from (or notifying) Youth Seen, its fiscal sponsor.

155. In the Agreement, TYES agreed that "TYES programming for Youth Seen will be approved by Youth Seen Executive Director prior to implementation to ensure that it matches the

mission of the organization and there is money available in the budget to complete the programs.” See Exhibit 1 at ¶ 5.

156. Youth Seen first became aware of this breach when the YMCA presented it with the invoice for 2018 Family Camp in or about September 2018.

157. Because TYES did not gain its fiscal sponsor’s approval for 2018 Family Camp to ensure “there [was] money available,” TYES overreached its budget and funds and, when the invoice was to be paid, did not have funds to cover the amount due.

158. As a result of TYES’s breach of the Agreement, Youth Seen and Dr. Smelt suffered damages to be determined at trial, including damages related to TYES’s premature termination of the Agreement.

**FIFTH CLAIM FOR RELIEF**  
**Breach of the Duty of Good Faith Fair Dealing**  
**Youth Seen and Dr. Smelt Against TYES**

159. Dr. Smelt and Youth Seen incorporate each of the allegations set forth above, as if fully set forth herein.

160. Attendant to the Agreement is an implied duty of good faith and fair dealing.

161. TYES had a duty to act in good faith and deal fairly with Youth Seen and Dr. Smelt, as Executive Director and third-party beneficiary, under the Agreement, and not to unreasonably or unfairly avoid the benefits conferred by the Agreement and obligations thereunder.

162. TYES had a duty to refrain from arbitrary or unreasonable conduct which had the effect of preventing Youth Seen and Dr. Smelt from receiving the fruits of the bargain.



163. TYES breached the duty of good faith and fair dealing by failing to secure approval for 2018 Family Camp budget and funds, denying responsibility for administrative expenses, and prematurely terminating the Agreement prior to Youth Seen and Dr. Smelt receiving their bargained-for benefits.

164. As a result of TYES's breach of the duty of good faith and fair dealing, Youth Seen and Dr. Smelt suffered damages to be determined at trial.

**SIXTH CLAIM FOR RELIEF**

**Intentional Interference with Prospective Economic or Business Advantage  
Youth Seen and Dr. Smelt Against TYES and Alisha Blackburn**

165. Dr. Smelt and Youth Seen incorporate each of the allegations set forth above, as if fully set forth herein.

166. Youth Seen and Dr. Smelt had solid, ongoing relationships with many Colorado philanthropic organizations.

167. Youth Seen and Dr. Smelt had a reasonable business expectancy of ongoing relationships with the philanthropic organizations that provided grant funding to Youth Seen (the “Grantors”).

168. Because of the partnership between Youth Seen and TYES, TYES and Ms. Blackburn were aware of Youth Seen and Dr. Smelt's relationships with their Grantors, which gave Defendants knowledge of which grantors to target with their false accusations of criminal conduct against Plaintiffs.

169. TYES and Ms. Blackburn intentionally interfered with Youth Seen and Dr. Smelt's relationships with their Grantors by distributing knowingly false information to

Grantors in an effort to improperly interfere with Youth Seen and Dr. Smelt's existing and future business expectancy.

170. Following TYES's and Ms. Blackburn's allegations against Youth Seen and Dr. Smelt, TYES representatives and Ms. Blackburn met with representatives of the Colorado Trust and the Chinook Fund. Upon information and belief, it was during these meetings that TYES representatives and Ms. Blackburn told the Colorado Trust and the Chinook Fund that Dr. Smelt had stolen TYES's funds and requested those grantors never again grant funding to Youth Seen or any organization associated with Dr. Smelt.

171. Upon information and belief, Ms. Blackburn engaged in this conduct in her individual capacity, as she was no longer a member of TYES's executive team or Board of Directors at the time.

172. Upon information and belief, TYES and Ms. Blackburn engaged in this conduct to ensure that grant funds were provided to TYES instead of Youth Seen.

173. TYES and Ms. Blackburn improperly and intentionally induced, by their publication of false statements and otherwise, two Grantors – Colorado Trust and Chinook Fund – to refrain from entering into or continuing aspects of their grantor-grantee relationships with Youth Seen and Dr. Smelt, therefore preventing Youth Seen from acquiring or continuing the full benefits of its relationships with Colorado Trust and Chinook Fund.

174. As a result of TYES's and Ms. Blackburn's interference and lies, the Colorado Trust and the Chinook Fund have stopped their support of Youth Seen. In the past, Youth Seen had received more than \$20,000 in combined financial support from these organizations.

175. Upon information and belief, TYES and Ms. Blackburn improperly and intentionally induced and otherwise caused unknown prospective Grantors to refrain from entering into grantor-grantee relationships with Youth Seen and Dr. Smelt.

176. Between 2018 and the present, TYES and Ms. Blackburn repeatedly engaged in improper conduct including defamation and disparagement, designed to interrupt Youth Seen's ability to secure funding from grantors with whom they had past and existing relationships, including, but not limited to, the Colorado Trust and the Chinook Fund.

177. TYES's and Ms. Blackburn's wrongful acts were willful, oppressive, malicious and/or fraudulent, thereby justifying an award of punitive damages.

178. As a direct and proximate result of TYES's and Ms. Blackburn's intentional interference, Youth Seen and Dr. Smelt have suffered damages in an amount to be determined at trial, including economic damages, emotional distress, and harm to reputation.

#### **PRAYER FOR RELIEF**

WHEREFORE, Youth Seen and Dr. Smelt pray for entry of judgment in their favor and against TYES and Ms. Blackburn as follows:

- a. Economic damages, including without limitation, reimbursement of legal fees and lost grants and sponsorship funds as a result of TYES's and Ms. Blackburn's unfounded and bad faith complaints to the State of Colorado, the Boulder County District Attorney's office and the Jefferson County District Attorney's office, and false statements made in the LGBTQIA communities;

- b. Non-economic damages for emotional distress, pain and suffering, inconvenience, mental anguish, loss of reputation, loss of enjoyment of life, and other non-pecuniary losses;
- c. Punitive damages as allowed by law and to be determined at trial;
- d. Reasonable attorneys' fees and costs;
- e. Pre- and post-judgment interest; and
- f. Such other and further relief as the Court deems just and proper.

**PLAINTIFFS DEMAND A TRIAL BY JURY ON ALL CLAIMS SO TRIABLE**

Dated: October 20, 2021

By: /s/ Leah P. VanLandschoot  
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**YOUTH SEEN and TARA J. SMELT**