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8 of California rel. Rob Bonta, and the California
Department of Housing and Community
9 Development*

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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF LOS ANGELES

13
14 **PEOPLE OF THE STATE OF**
15 **CALIFORNIA; CALIFORNIA**
16 **DEPARTMENT OF HOUSING AND**
COMMUNITY DEVELOPMENT,
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Petitioners and Plaintiffs,
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v.
19
CITY OF MALIBU; AND DOES 1-50,
20
Respondents and
21 Defendants.

Case No.

**PETITION FOR WRIT OF MANDATE
AND COMPLAINT FOR
DECLARATORY RELIEF**

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23
24 **INTRODUCTION**

25 1. Californians continue to suffer under a housing affordability crisis. The Legislature
26 has found that “[t]he lack of housing . . . is a critical problem that threatens the economic,
27 environmental, and social quality of life in California.” (Gov. Code, § 65589.5, subd. (a)(1)(A),
28 (B).) This crisis is “hurting millions of Californians, robbing future generations of the chance to

1 call California home, stifling economic opportunities for workers and businesses, worsening
2 poverty and homelessness, and undermining the state’s environmental and climate objectives.”
3 (*Id.*, subd. (a)(2)(A).)

4 2. A key contributor to this crisis is the failure of local governments to plan for the
5 necessary housing supply. To counteract this, the Legislature requires local governments to
6 include housing elements in their general plans. A housing element must include, among other
7 things, an assessment of housing needs, an inventory of resources and constraints relevant to
8 meeting those needs, and a program to implement the policies, goals, and objectives of the
9 housing element. Respondent/Defendant the City of Malibu has not complied with this
10 requirement.

11 3. Petitioners/Plaintiffs the California Department of Housing and Community
12 Development (“HCD”) and the People of California ex rel. Rob Bonta (collectively,
13 “Petitioners”) bring this action against the City of Malibu and the City Council of Malibu
14 (collectively, the “City”) to remedy this violation. Petitioners request that the Court issue a
15 writ ordering the City to bring its housing element into compliance with State law, and issue a
16 declaration that the City has failed to fulfill its planning obligations.

17 **PARTIES**

18 4. The Attorney General, as the chief law enforcement officer of the State of California,
19 brings this action under his broad independent powers to enforce state laws.

20 5. HCD is a public agency of the State of California. (Gov. Code, § 12804.) Among
21 other duties, HCD is responsible for developing housing policy and building codes, for regulating
22 manufactured homes and mobile home parks, and for enforcing state housing laws in a manner
23 that meaningfully and positively impacts the provision of housing in all communities across the
24 State.

25 6. The City of Malibu is a municipal corporation formed and existing under the laws of
26 the State of California, of which it is a political subdivision.

27 7. The City Council of Malibu is the elected governing body of the City of Malibu. It is
28 the legislative body charged under Government Code section 65300 with responsibility for

1 adopting a general plan, including a housing element, for the physical development of the City of
2 Malibu.

3 8. Petitioners are unaware of the true names and capacities of respondents and
4 defendants DOES 1 through 50 (the “Doe Respondents”), who are therefore sued by fictitious
5 names pursuant to Code of Civil Procedure section 474. Petitioners allege on information and
6 belief that each such fictitiously-named Doe Respondent is responsible or liable in some manner
7 for the events and happenings referred to herein, and Petitioners will seek leave to amend this
8 Petition and Complaint to allege their true names and capacities after the same have been
9 ascertained.

10 **VENUE AND JURISDICTION**

11 9. This Court has jurisdiction over this action pursuant to Code of Civil Procedure
12 sections 187, 1060, and 1085.

13 10. Venue is proper in this Court because the City is located in Los Angeles County and
14 the violations of law alleged herein occurred in Los Angeles County.

15 **BACKGROUND AND FACTUAL ALLEGATIONS**

16 **Housing Elements and the Planning Process**

17 11. The Legislature has declared that “[t]he availability of housing is of vital statewide
18 importance, and the early attainment of decent housing and a suitable living environment for
19 every Californian . . . is a priority of the highest order.” (Gov. Code, § 65580, subd. (a).)
20 California law requires that all local governments adequately plan to meet the housing needs of
21 everyone in the community, at all economic levels.

22 12. To meet this requirement, every city and county must adopt and periodically update a
23 housing element as part of its general plan. (See Gov. Code, §§ 65302, subd. (c), 65580, *et seq.*)
24 The law mandating this adoption and periodic update is known as the “Housing Element Law.”
25 (Gov. Code, § 65580, *et seq.*) California’s Housing Element Law requires local governments to
26 adopt plans and regulatory systems that provide opportunities for, and do not unduly constrain,
27 housing development, especially for a locality’s lower-income households and workforce. As a
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1 result, housing policy in California rests largely on the effective implementation of the housing
2 element contained in the local general plan.

3 13. The housing element is a roadmap for housing development in a given community.
4 The housing element must identify and analyze existing and projected housing needs, and must
5 include “a statement of goals, policies, quantified objectives, financial resources, and scheduled
6 programs for the preservation, improvement, and development of housing.” (Gov. Code,
7 § 65583.) The housing element must also “identify adequate sites for housing” and “make
8 adequate provision for the existing and projected needs of all economic segments of the
9 community.” (*Ibid.*) Each housing element is also subject to review by HCD, as discussed below.

10 14. A local jurisdiction’s housing element must be periodically updated to ensure
11 compliance with California’s Housing Element Law. (Gov. Code, § 65588, subd. (b).) Each eight-
12 year update cycle is known as a “planning period.” (See *id.*, subd. (f)(1).)

13 15. The process of updating a housing element begins with HCD’s determination of a
14 Regional Housing Need Allocation (“RHNA”) for the region for a given planning period. (Gov.
15 Code, § 65584, subd. (a)(1).) The RHNA sets goals for housing affordable to various income
16 levels. To arrive at the RHNA, HCD starts with demographic population information from the
17 California Department of Finance and uses a formula to calculate a figure for each region’s
18 planning body, known as a “council of governments” (COG). Each COG (in this case, the
19 Southern California Association of Governments) also uses its own demographic figures to
20 calculate the regional housing need. Each COG coordinates with HCD to arrive at a final figure,
21 taking into account factors not captured in the calculations. This final figure is the RHNA. (See
22 Gov. Code, § 65584.01.)

23 16. Once the RHNA is set, the COG is responsible for allocating the housing need among
24 all of the cities and counties within that region. (Gov. Code, § 65584, subd. (b).) Each local
25 government must then prepare a housing element that identifies adequate sites to accommodate
26 that jurisdiction’s fair share of the RHNA at each income level. (Gov. Code, §§ 65583, 65583.2.)
27 Sites must be suitable for residential development and must be made available during the
28 planning period. (Gov. Code, § 65583.2, subd. (a).) If a sufficient quantity of adequate sites is not

1 currently available, the housing element must commit to identifying and rezoning additional sites
2 within three years from the date of adoption. (Gov. Code, §§ 65583, subd. (c)(1), 65583.2, subd.
3 (h).) The housing element must also accommodate any unmet portion of the RHNA from the
4 prior planning period. (Gov. Code, § 65584.09, subd. (a).)

5 17. Each housing element must also evaluate governmental constraints on the
6 development of housing for all income levels, and must show local efforts to remove
7 governmental constraints that impede the local government’s ability to meet its share of the
8 RHNA. (Gov. Code, § 65583, subd. (a)(5).)

9 18. Each local government must submit a draft housing element to HCD before adoption.
10 (Gov. Code, § 65585, subd. (b)(1).) HCD must review the draft element and issue findings as to
11 whether the draft substantially complies with Housing Element Law. (*Id.*, subds. (b)(3), (d).)
12 After adopting the final housing element, the local government must again submit the element to
13 HCD, and HCD must again review and report its findings to the local government. (*Id.*,
14 subds. (g), (h).)

15 19. Under Chapter 370, Statutes of 2017 (“AB 72”), codified at Government Code
16 section 65585, subdivisions (i) and (j), HCD has authority to review any action or failure to act by
17 a local government that it determines is inconsistent with an adopted housing element or
18 section 65583 of California’s Housing Element Law. This includes failure to implement program
19 actions included in the housing element. HCD may revoke housing element compliance if the
20 local government’s actions do not comply with state law.

21 20. AB 72 also authorizes HCD to notify the Office of the Attorney General of California
22 that the local jurisdiction is in violation of state law for noncompliance with, among other
23 statutes, California’s Housing Element Law.

24 21. Pursuant to Government Code section 65585, subdivision (i)(1)(A), HCD may take
25 any of the actions authorized by AB 72 after issuing written findings to the local government “as
26 to whether the action or failure to act substantially complies with [California’s Housing Element
27 Law],” and providing a reasonable time, no longer than 30 days, for the local government to
28 respond. (Gov. Code, § 65585, subd. (i)(1)(A).) Prior to an enforcement action brought by the

1 Attorney General’s Office, HCD must also offer the City the opportunity for two in-person or
2 telephone meetings to discuss the violation, and provide the City with written findings regarding
3 the violation. (Gov. Code, § 65585, subd. (k).) As stated below, HCD has satisfied this
4 requirement here.

5 **The City of Malibu Housing Element**

6 22. The statutory deadline for the City to adopt a sixth cycle housing element was
7 October 15, 2021.

8 23. To date, the City has not adopted a sixth cycle updated housing element that
9 substantially complies with the Housing Element Law.

10 24. On August 25, 2021, the City submitted a draft sixth cycle housing element to HCD.

11 25. On October 22, 2021, HCD notified the City that the City would need to revise the
12 draft in order to comply with the Housing Element Law.

13 26. On January 10, 2022, the City Council adopted a revised sixth cycle housing element,
14 which included revisions to the previous draft. The City then submitted the adopted sixth cycle
15 housing element to HCD for HCD’s review.

16 27. On March 22, 2022, HCD issued a findings letter in which it informed the City that
17 the adopted housing element did not substantially comply with the Housing Element Law. HCD
18 found that the City’s adopted sixth cycle housing element does not include several mandatory
19 components to a housing element, including, but not limited to, an adequate sites inventory of
20 land suitable and available for residential development, an adequate analysis of those sites’
21 realistic capacity to provide new housing opportunities, and an adequate program to facilitate
22 housing development.

23 28. On May 19, 2023, HCD sent the City a letter of inquiry to ask about the status of the
24 City’s housing element. On June 7, 2023, the City responded that the City would not submit a
25 compliant housing element until August 2024.

26 29. On July 20, 2023, HCD issued a notice of violation informing the City that it was out
27 of compliance with the Housing Element Law, advised the City of the potential penalties for
28

1 noncompliance, and stated that HCD would refer the matter to the Office of the Attorney General
2 absent any efforts at compliance.

3 30. With the notice of violation, HCD offered the City the opportunity to participate in
4 two meetings to discuss the violation. (See Gov. Code, § 65585, subd. (k).) HCD met with City
5 representatives and planning staff on August 30, 2023, and October 4, 2023.

6 31. On October 20, 2023, the City sent HCD an updated timeline that includes a
7 September or October 2024 submittal of the readopted housing element for HCD's review.

8 **FIRST CAUSE OF ACTION**

9 **Writ of Mandate (Code Civ. Proc., § 1085)**

10 **[Against All Defendants]**

11 32. HCD incorporates by reference each and every allegation of the preceding
12 paragraphs.

13 33. Under California's Housing Element Law, the City must ensure that its general plan
14 contains a legally compliant housing element.

15 34. The City has failed to carry out its duty. Based on the events alleged in paragraphs 22
16 through 31 above, the City has not adopted a legally compliant sixth cycle housing element, nor
17 has HCD found the City's adopted sixth cycle housing element to be in substantial compliance
18 with California's Housing Element Law. (Gov. Code, § 65580, *et seq.*)

19 35. Accordingly, a writ of mandate should issue ordering the City to come into
20 compliance with California's Housing Element Law and to ensure that the City's sixth cycle
21 housing element meets the City's regional housing needs goals, as determined by HCD.

22 36. HCD has a beneficial interest in the issuance of such a writ, given its authority and
23 mandate to enforce substantial compliance with California's Housing Element Law.

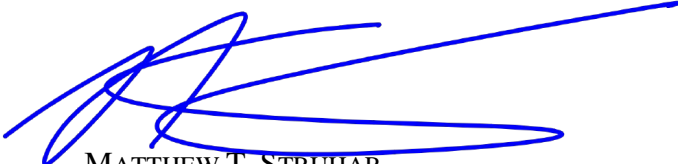
24 37. HCD has exhausted all required administrative remedies, or is excused from
25 exhausting its remedies due to the futility of pursuing such remedies, among other things.

26 38. HCD has no plain, speedy, or adequate remedy in the ordinary course of law. The
27 only remedy provided by law for HCD to obtain relief is this Petition for Writ of Mandate
28 pursuant to Code of Civil Procedure section 1085.

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Respectfully submitted,
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