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Government Code § 6103*

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10 *California ex rel. Rob Bonta, and the California*
11 *Department of Housing and Community*
Development

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF ORANGE

14
15 **THE PEOPLE OF CALIFORNIA EX REL.**
16 **ROB BONTA, AND THE CALIFORNIA**
17 **DEPARTMENT OF HOUSING AND**
18 **COMMUNITY DEVELOPMENT,**

Petitioners and Plaintiffs,

19 v.

20 **THE CITY OF HUNTINGTON BEACH, A**
21 **MUNICIPAL CORPORATION; CITY**
22 **COUNCIL OF HUNTINGTON BEACH;**
23 **AL ZELINKA, in his official capacity as**
24 **CITY MANAGER OF HUNTINGTON**
BEACH; AND DOES 1-50, INCLUSIVE,

Respondents and Defendants.

Case No. 30-2023-01312235-CU-WM-CJC

**FIRST AMENDED PETITION FOR
WRIT OF MANDATE AND
COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

25 **INTRODUCTION**

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

1 (B.) This crisis is “hurting millions of Californians, robbing future generations of the chance to
2 call California home, stifling economic opportunities for workers and businesses, worsening
3 poverty and homelessness, and undermining the state’s environmental and climate objectives.”

4 (*Id.*, subd. (a)(2)(A).)

5 2. A key contributor to this crisis is the failure of local governments to plan for the
6 necessary housing supply at all income levels. To remedy this, the Legislature requires local
7 governments to include housing elements in their general plans. A housing element must include,
8 among other things, an assessment of housing needs, an inventory of resources and constraints
9 relevant to meeting those needs, and a program to implement the policies, goals, and objectives of
10 the housing element. (Gov. Code, § 65580 et seq.)

11 3. Local governments that do not prepare a housing element substantially in compliance
12 with state law, thereby failing to plan for an adequate supply of housing at all income levels,
13 become subject to various legal consequences. For example, a local agency that fails to adopt a
14 substantially compliant housing element becomes subject to the so-called “Builder’s Remedy”
15 provision of the Housing Accountability Act. (Gov. Code, § 65589.5) A local agency without a
16 substantially compliant housing element may not deny, or apply conditions that make infeasible, a
17 housing development project for very low-, low-, or moderate-income households on the basis of
18 inconsistency with a zoning ordinance and land use designation in any general plan element.
19 (Gov. Code, § 65589.5, subd. (d)(5).) In addition, a local government that fails to adopt a
20 compliant housing element by the statutory deadline is subject to legal challenge pursuant to
21 Article 14 of the Housing Element Law. (See Gov. Code. § 65750 et seq.) Article 14 provides for,
22 among other things, temporary relief in the form of a revocation of permitting authority until the
23 legal challenge is concluded. (Gov. Code, § 65757.)

24 4. In another effort to alleviate the housing crisis, the Legislature has repeatedly
25 amended the housing laws to encourage, and streamline the approval of, permits for accessory
26 dwelling units (“ADUs”) throughout the state. (See generally, Gov. Code, §§ 65852.150,
27 65852.2, 65852.22.) These units are typically small, easily-constructed residential structures
28 installed as secondary housing units on a single-family property. Current ADU law requires local

1 agencies to approve ADU projects ministerially, or if denied, provide comments to the applicant
2 regarding deficiencies and a description of how the application can be remedied.

3 5. And, in 2021, the Legislature passed the California Housing Opportunity and More
4 Efficiency Act (“HOME Act,” or “SB 9”) to streamline the permitting process and remove
5 regulatory barriers for subdividing residential lots into multifamily housing projects like
6 duplexes, triplexes, and four-plexes that are more affordable to middle-class households.

7 6. The City of Huntington Beach recently decided to ignore the laws the Legislature
8 specifically crafted to address California’s housing affordability crisis by barring its staff from
9 accepting and processing ADU- and SB 9-related building permits. The City did this despite the
10 fact that the availability of decent, suitable, and affordable housing is of vital statewide
11 importance to all Californians.

12 7. In addition, the City of Huntington Beach has not adopted a current housing element
13 that is substantially in compliance with state law. In failing to adopt *any* housing element, much
14 less a substantially compliant one, Huntington Beach is not only in violation of state law, it is also
15 now subject to the Builder’s Remedy.

16 8. The People of the State of California, by and through Attorney General Rob Bonta,
17 and the Department of Housing and Community Development (“HCD”), bring this action against
18 the City of Huntington Beach, its City Council, and its City Manager (collectively, the “City”) to
19 remedy its violations of state law. The People and HCD request that this Court issue a writ
20 ordering the City to adopt a legally-compliant housing element within 120 days, pursuant to
21 Government Code section 65754, subd. (a). Further, the People and HCD request this court issue
22 a judgment declaring that the City is noncompliant with the Housing Element Law and that it
23 must comply with the ADU laws and SB 9.

24 **PARTIES**

25 9. The Attorney General, as the chief law enforcement officer of the State of California,
26 brings this action under his broad independent powers to enforce state laws, and on behalf of
27 HCD. (Cal. Const., Art. V, section 13; Gov. Code, § 65585, subd. (j).)
28

1 **BACKGROUND AND FACTUAL ALLEGATIONS**

2 **The Housing Crisis**

3 18. The Legislature has declared that “[t]he availability of housing is of vital statewide
4 importance, and the early attainment of decent housing and a suitable living environment for
5 every Californian . . . is a priority of the highest order.” (Gov. Code, § 65580, subd. (a).)

6 19. California has a crisis-level housing shortage that stems from the failure of local
7 governments to approve affordable housing to meet the needs of all Californians. For decades, the
8 Legislature has found that California has been suffering from “a severe shortage of affordable
9 housing, especially for persons and families of low and moderate income” and that “there is an
10 immediate need to encourage the development of new housing.” (*Ruegg & Ellsworth v. City of*
11 *Berkeley* (2021) 63 Cal.App.5th 277, 295, quoting Gov. Code, § 65913.)

12 20. Recently, the Legislature stated plainly that “California has a housing supply and
13 affordability crisis of historic proportions.” (Gov. Code, § 65589.5, subd. (a)(2)(A).) “The
14 consequences of failing to effectively and aggressively confront this crisis are hurting millions of
15 Californians, robbing future generations of the chance to call California home, stifling economic
16 opportunities for workers and businesses, worsening poverty and homelessness, and undermining
17 the state’s environmental and climate objectives.” (*Ibid.*)

18 **Housing Elements and the Planning Process**

19 21. State law requires that all local governments adequately plan to meet the housing
20 needs of everyone in the community, at all economic levels. To meet this requirement, every city
21 and county must adopt and periodically update a housing element as part of its general plan. (See
22 Gov. Code, §§ 65302, subd. (c), 65580, et seq.) The law mandating this adoption and periodic
23 update is known as the “Housing Element Law.” (*Id.*, § 65580, et seq.)

24 22. California’s Housing Element Law requires local governments to adopt plans and
25 regulatory systems that provide opportunities for, and do not unduly constrain, housing
26 development, especially for a locality’s lower-income households and workforce. As a result,
27 housing policy in California rests largely on the effective implementation of the housing element
28 contained in the local general plan.

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

8 24. A local jurisdiction’s housing element must be frequently updated to ensure
9 compliance with California’s Housing Element Law. (Gov. Code, § 65588.) Jurisdictions must
10 update their housing elements every five or eight years. (See *id.*, subd. (e)(3).) Each five- or eight-
11 year cycle is known as a “planning period.” (See *id.*, subd. (f)(1).)

12 25. The process of updating a housing element begins with HCD’s determination of a
13 Regional Housing Need Allocation (“RHNA”) for the region for a given planning period. (Gov.
14 Code, § 65584, subd. (a)(1).) The RHNA sets goals for housing affordable to various income
15 levels. To arrive at the RHNA, HCD starts with demographic population information from the
16 California Department of Finance and uses a formula to calculate a figure for each region’s
17 planning body, known as a “council of governments” (“COG”). Each COG (in this case, the
18 Southern California Association of Governments) also uses its own demographic figures to
19 calculate the regional housing need. Each COG coordinates with HCD to arrive at a final figure,
20 taking into account factors not captured in the calculations. This final figure is the RHNA. (See
21 *id.*, § 65584.01.) Once the RHNA is set, the COG is responsible for allocating the housing need
22 among all of the cities and counties within that region. (Gov. Code, § 65584, subd. (b).) Each
23 local government must then prepare a housing element that identifies adequate sites to
24 accommodate that jurisdiction’s fair share of the RHNA at each income level. (*Id.*, §§ 65583,
25 65583.2.)

26 26. Each local government must submit its draft housing element to HCD before
27 adoption. (Gov. Code, § 65585, subd. (b)(1).) HCD must review the draft element and issue
28 findings as to whether the draft substantially complies with the Housing Element Law. (*Id.*,

1 subds. (b)(3), (d).) After adopting the final housing element, the local government must again
2 submit the element to HCD, and HCD must again review and report its findings to the local
3 government. (*Id.*, subds. (g), (h).)

4 27. A local government that fails to adopt a compliant housing element by the statutory
5 deadline is subject to legal challenge pursuant to Article 14 of the Housing Element Law. (Gov.
6 Code. § 65750 et seq.) Article 14 authorizes a court to issue various remedies, including ordering
7 a local government to adopt a compliant housing element within 120 days, ordering the
8 suspension of a local government’s permitting authority until it adopts a compliant housing
9 element, and even ordering a *temporary* suspension of a local government’s permitting authority
10 until a housing element challenge is concluded. (Gov. Code, §§ 65754, 65755, 65757.) In
11 addition, localities that do not have compliant housing elements are automatically subject to the
12 Builder’s Remedy under the Housing Accountability Act. (Gov. Code, § 65589.5.)

13 **The ADU Laws**

14 28. One effective means of increasing the housing supply is by removing regulatory
15 barriers to accessory dwelling units, or ADUs. ADUs are sometimes also known as “granny
16 flats,” “in-law units,” “backyard cottages,” or “secondary units,” among other names. These small
17 structures provide a cost-effective solution to increasing the housing supply on a rapid timescale.

18 29. ADUs have many benefits. They are affordable to construct, since they typically use
19 comparatively inexpensive wood frame construction, and no new land acquisition or major
20 infrastructure is required. ADUs can also provide a source of income for homeowners when
21 rented, increasing incentives for homeowners to build ADUs on their property. In addition, ADUs
22 enable extended families to reside close to one another, and for seniors to age in place with family
23 members while maintaining an independent living space. (See generally, Accessory Dwelling
24 Units, Department of Housing and Community Development, available at
25 [https://www.hcd.ca.gov/policy-and-research/accessory-dwelling-units.](https://www.hcd.ca.gov/policy-and-research/accessory-dwelling-units))

26 30. In recent years, the Legislature has repeatedly amended the housing laws to legalize
27 and promote the construction of accessory dwelling units. In 2018, as part of a package of updates
28 to the housing laws that, among other things, made the ADU laws applicable to charter cities for

1 the first time, the Legislature found and declared all of the following:

2 (1) Accessory dwelling units are a valuable form of housing in California.

3 (2) Accessory dwelling units provide housing for family members, students, the elderly,
4 in-home health care providers, the disabled, and others, at below market prices within
5 existing neighborhoods.

6 (3) Homeowners who create accessory dwelling units benefit from added income, and
7 an increased sense of security.

8 (4) Allowing accessory dwelling units in single-family or multifamily residential zones
9 provides additional rental housing stock in California.

10 (5) California faces a severe housing crisis.

11 (6) The state is falling far short of meeting current and future housing demand with
12 serious consequences for the state's economy, our ability to build green infill consistent
13 with state greenhouse gas reduction goals, and the well-being of our citizens,
14 particularly lower and middle-income earners.

15 (7) Accessory dwelling units offer lower cost housing to meet the needs of existing and
16 future residents within existing neighborhoods, while respecting architectural character.

17 (8) Accessory dwelling units are, therefore, an essential component of California's
18 housing supply.

19 (Gov. Code, § 65852.150, subd. (a).)

20 31. The bulk of the ADU laws are set forth at Government Code section 65850 et seq.
21 These laws broadly restrict the ability of local agencies, whether general law or charter cities, to
22 deny ADU projects within their jurisdiction, and set tight deadlines for processing applications.

23 32. Relevant to this litigation, Government Code section 65852.2, subdivisions (a)(3)(A)
24 and (b)(1), require permitting agencies to approve or deny ADU applications ministerially and
25 without discretionary review within 60 days of a complete application's submittal. Under both
26 provisions, "[i]f the local agency has not approved or denied the completed application within 60
27 days, [an] application shall be deemed approved." In addition, Government Code section 65852.2,
28 subdivision (e)(1), states "a local agency shall ministerially approve an application for a building

1 permit within a residential or mixed-use zone to create” ADUs that meet specific requirements.

2 33. In addition, a local agency that denies an ADU application must provide “in writing a
3 full set of comments to the applicant with a list of items that are defective or deficient and a
4 description of how the application can be remedied by the applicant.” (Gov. Code, § 65852.2,
5 subd. (b)(2).)

6 34. Government Code section 65852.2, subdivision (a)(7), further provides: “No other
7 local ordinance, policy, or regulation shall be the basis for the delay or denial of a building permit
8 or a use permit under this subdivision.”

9 **Senate Bill 9**

10 35. The Legislature introduced Senate Bill 9 in 2021 in an effort to streamline the process
11 for creating duplexes or for subdividing an existing lot. SB 9 restrained the discretion of local
12 agencies by creating a ministerial process for such project approvals.

13 36. SB 9 ultimately allows up to four homes on lots where only one existed previously,
14 by permitting existing single-family homes to be converted to duplexes or single-family lots to be
15 subdivided into two lots on which two duplexes could be built. (See SB 9 Senate Floor Analysis,
16 August 28, 2021, available at
17 https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202120220SB9.)

18 37. SB 9 added, among other provisions, sections 65852.21 and 66411.7 to the
19 Government Code. Section 65852.21 requires local agencies to approve a proposed housing
20 development consisting of two residential units within a single-family zone on a ministerial basis.
21 Section 66411.7 requires local agencies to approve a lot split in a single-family zone on a
22 ministerial basis. Both provisions became operative on January 1, 2022.

23 38. SB 9 placed limits on a local agency’s ability to deny proposed projects, but it did not
24 entirely eliminate local agencies from the approval process. Local agencies are still permitted to
25 “impose objective zoning standards, objective subdivision standards, and objective design review
26 standards,” so long as such standards do not have “the effect of physically precluding the
27 construction of up to two units or...would physically preclude either of the two units from being at
28 least 800 square feet in floor area” within a single-family zone. (Gov. Code, § 65852.21, subd.

1 (b.) Similarly, local agencies can impose “objective” standards with respect to lot splits, so long
2 as those standards do not “have the effect of physically precluding the construction of two units
3 on either of the resulting parcels or that would result in a unit size of less than 800 square feet”
4 within a single-family zone. (Gov. Code, § 66411.7, subd. (c).) Finally, the legislative body of a
5 local agency may reject an SB 9 project if it finds, based on a preponderance of the evidence, that
6 the proposed project would have a “specific, adverse impact” on “public health and safety or the
7 physical environment and for which there is no feasible method to satisfactorily mitigate or avoid
8 the specific, adverse impact.” (Gov. Code, §§ 65852.21, subd. (d); 66411.7, subd. (d); see also
9 65589.5, subd. (d)(2).)

10 **The Housing Crisis Act**

11 39. The Housing Crisis Act of 2019 (“HCA”) prohibits a local government from
12 “enact[ing] a development policy, standard, or condition” that would have the effect of
13 “[c]hanging the general plan land use designation, specific plan land use designation, or zoning of
14 a parcel or parcels of property to a less intensive use or reducing the intensity of land use within
15 an existing general plan land use designation, specific plan land use designation, or zoning district
16 in effect at the time of the proposed change, below what was allowed under the land use
17 designation or zoning ordinances ... in effect on January 1, 2018.” (Gov. Code, § 66300, subd.
18 (b)(1)(A).) The statute defines “reducing the intensity of land use” to include “any other action
19 that would individually or cumulatively reduce the site’s residential development capacity.”
20 (*Ibid.*)

21 40. The HCA also prohibits a local government from “[i]mposing a moratorium or
22 similar restriction or limitation on housing development ... within all or a portion of the
23 jurisdiction ... other than to specifically protect against an imminent threat to the health and
24 safety of persons residing in, or within the immediate vicinity of, the area subject to the
25 moratorium...” (Gov. Code, § 66300, subd. (b)(1)(B)(i).)

26 41. In addition, a local agency shall not enforce such “a moratorium or other similar
27 restriction on or limitation of housing development until it has submitted the ordinance to, and
28

1 received approval from, [HCD].” (Gov. Code, § 66300, subd. (b)(1)(B)(ii).) If HCD denies
2 approval, “that ordinance shall be deemed void.” (*Ibid.*)

3 **Huntington Beach’s Violations of State Housing Laws**

4 42. On or about December 20, 2022, HCD became aware that the Huntington Beach City
5 Council planned to resist its obligations under California’s housing laws. At its December 20th
6 meeting, the City Council directed the City Attorney, via Council Member Items Report 22-1096,
7 to explore a potential legal challenge to the City’s RHNA allocation and to draft an ordinance that
8 would conflict with the mandate of the Housing Accountability Act by banning Builder’s Remedy
9 projects.

10 43. On January 9, 2023, HCD issued a Notice of Potential Violation notifying the City
11 that, among other things, recent court decisions confirmed that the RHNA allocation process is
12 not subject to judicial review, and that any attempt to circumvent the Housing Accountability Act
13 could result in a referral to the Attorney General’s Office.

14 44. The City persisted in its efforts to flout the state’s housing laws. The City Council
15 introduced Zoning Text Amendment No. 2023-001, which would ban Builder’s Remedy projects,
16 for consideration at an upcoming meeting. On February 13, 2023, the Attorney General’s Office
17 issued a letter explaining that the proposed ordinance expressly conflicted with applicable state
18 law and warning that the Attorney General’s Office was prepared to begin an enforcement action
19 if necessary.¹

20 45. Separately, the City Council decided it would attempt to ban ADU and SB 9-eligible
21 project applications. On February 21, 2023, HCD issued a Notice of Potential Violation to the
22 City to advise it that, among other things, the ADU ban was unlawful and would bring the City’s
23 draft housing element out of compliance with the Housing Element Law. The Attorney General’s
24 Office issued a separate letter on February 21, 2023, informing the City that, among other things,
25 a prohibition on ADU and SB 9-eligible projects would violate state law, including the Housing
26 Crisis Act (Gov. Code, § 66300) and the Housing Accountability Act (Gov. Code, § 65589.5).

27 _____
28 ¹ The City Council has not as of the date of this filing adopted the Builder’s Remedy ban.
Petitioners will challenge any attempt to do so.

1 46. Nevertheless, at its February 21, 2023 meeting, the Huntington Beach City Council
2 adopted Action Item No. 23-172 (the “Action Item”), directing the City Manager to “cease the
3 processing of all applications/permits brought to the City by developers under SB 9, SB 10, or
4 ‘state law related’ ADU projects, until the courts have adjudicated the matter(s).”² The Action
5 Item also directed the City Attorney to “take any legal action necessary to challenge SB 9 and SB
6 10 and the laws that permit ADU’s [sic].”

7 47. In deliberating over the Action Item, the City did not cite any statutory exemption
8 under SB 9 as a basis for the Action Item, nor did it make any findings that the Action Item is
9 necessary to protect the public from an immediate, adverse impact to health or safety.

10 48. On February 22, 2023, the City, pursuant to its Action Item, began refusing to accept
11 any ADU and SB 9 permit applications. Its Planning Division website stated that, effective as of
12 that date, no SB 9 or ADU permit applications would be accepted until “any legal challenges are
13 resolved.”

14 49. On March 8, 2023, Petitioners filed the instant lawsuit challenging the unlawful ban
15 on SB 9 and ADU permit applications.

16 50. At its March 21, 2023 meeting, the City Council voted to direct the City Manager to
17 “accept applications and process permits for accessory dwelling units (ADUs) and SB 9
18 development projects” but did not formally rescind the Action Item.

19 51. The City’s voluntary cessation of its unlawful conduct under California’s housing
20 laws does not indicate that it will obey the housing laws in the future. It is settled that “voluntary
21 discontinuance of alleged illegal practices does not remove the pending charges of illegality from
22 the sphere of judicial power or relieve the court of the duty of determining the validity of such
23 charges where by the mere volition of a party the challenged practices may be resumed.”

24 (*Robinson v. U-Haul Co. of California* (2016) 4 Cal. App. 5th 304, 315–16 (quoting *Marin*
25 *County Bd. Of Realtors, Inc. v. Palsson* (1976) 16 Cal.3d 920, 929.))

26 52. The City’s continuing pattern of resistance to its obligations under California’s

27 ² SB 10 permits local agencies to adopt ordinances allowing for increased density near
28 transit-rich and/or urban infill sites. It is a voluntary, opt-in upzoning law. The City has not as of
the date of this filing brought a challenge to that law.

1 housing laws, as alleged in the foregoing paragraphs and *infra*, indicates that a judicial
2 determination of rights and obligations is necessary. The City has not unambiguously committed
3 itself to a “violation-free future,” and Petitioners reasonably “doubt the bona fides of [the] newly
4 established law-abiding policy.” (*Robinson, supra*, 4 Cal.App.5th at 316.)

5 53. The City’s temporary cessation of unlawful activities does not stop the City from
6 engaging in unlawful behavior again in the future. Absent a resolution to this litigation,
7 Petitioners have no reason to believe the City will permanently comply with state housing law,
8 including the ADU laws and SB 9.

9 **The City of Huntington Beach’s Failure to Adopt a Housing Element**

10 54. The statutory deadline for the City to adopt a sixth cycle housing element, for the
11 planning period covering October 2021 through October 2029, was October 15, 2021.

12 55. City staff previously worked with HCD to develop a compliant sixth cycle housing
13 element. On September 30, 2022, HCD advised the City that its September 23, 2022 draft housing
14 element met statutory requirements at the time of review.

15 56. That draft housing element projected the development of 487 new ADUs to meet the
16 City’s RHNA allocation.

17 57. On or about February 17, 2023, HCD discovered the City Council was considering a
18 ban on ADU applications, in contravention of state law and notwithstanding the draft housing
19 element’s reliance on ADU production to meet its RHNA target.

20 58. On February 21, 2023, HCD issued a Notice of Potential Violation to the City to
21 advise it that, among other things, the ADU ban would bring the City’s draft housing element out
22 of compliance with the Housing Element Law. In particular, HCD warned that the ADU ban
23 represented a new constraint on the production of housing that would have to be addressed in the
24 new housing element, and that the pending ADU ban called into question the draft element’s
25 assumption that new ADU production would help meet the City’s RHNA target.

26 59. Later that day, the City Council passed a ban on ADU and SB 9 permit applications.

27 60. On February 22, 2023, HCD issued a Notice of Violation advising the City that,
28 among other things, the just-passed ADU ban brought the City out of compliance with the

1 Housing Element Law and that its draft housing element would need to be revised. The Notice of
2 Violation also advised the City of the potential penalties for noncompliance and stated that HCD
3 would refer the matter to the Office of the Attorney General absent corrective action.

4 61. HCD met with City representatives on March 8, 2023, to discuss the City’s violation
5 of the Housing Element Law. HCD discussed with City staff the City’s reliance on ADU
6 production to meet RHNA targets, the changes to its site inventory, and changes necessary to
7 account for new requirements set by AB 2339 regarding the identification of sites suitable for
8 emergency shelters. At that meeting, City staff expressed confidence that the City would vote to
9 adopt the housing element soon.

10 62. At its March 21, 2023 meeting, the City Council considered but did not pass
11 Resolution 2023-14, which would have approved the City’s draft housing element.

12 63. HCD met again with City representatives on March 24, 2023. At that meeting,
13 discussion topics included minor changes to the sites inventory of the City’s plan, and an inquiry
14 to City staff as to whether the AB 2339-related edits were included in the housing element. At
15 this meeting, City staff expressed hope that the City would adopt the housing element at its April
16 4, 2023 meeting.

17 64. At its April 4, 2023 meeting, the City Council again considered and did not pass
18 Resolution 2023-14, thereby persisting in its failure to approve a compliant housing element for
19 the sixth cycle.

20 65. The City has made no further efforts to adopt any sixth cycle housing element.

21 **FIRST CAUSE OF ACTION**

22 **Writ of Mandate (Code Civ. Proc., § 1085; Gov. Code, §§ 65751, 65585, subd. (n)) –**
23 **Violation of Gov. Code, § 65585)**

24 **[Against All Defendants]**

25 66. Petitioners incorporate by reference each and every allegation of the preceding
26 paragraphs.

27 67. Under California’s Housing Element Law, the City must ensure that its general plan
28 contains a legally compliant housing element.

1 68. The City has abdicated this duty. The City has failed to adopt a legally compliant
2 sixth cycle housing element by the October 15, 2021 statutory deadline, and the City Council's
3 most recent actions and inactions on April 4, 2023 show that the City has no intention of
4 complying with the Housing Element Law.

5 69. The City's failure to act is arbitrary, capricious, entirely lacking in evidentiary
6 support, contrary to established public policy, unlawful, procedurally unfair, an abuse of
7 discretion, and a failure to act as required by law.

8 70. Accordingly, a writ of mandate should issue as provided under Government Code
9 section 65754 ordering the City to come into compliance with California's Housing Element Law
10 (Gov. Code, § 65580 et seq.) within 120 days by adopting a compliant sixth cycle housing
11 element that meets the City's regional housing needs goals, as determined by HCD.

12 71. Petitioners have a beneficial interest in the issuance of such a writ, given their
13 authority and mandate to enforce substantial compliance with California's Housing Element Law.
14 Likewise, the public at large, as well as the lower income residents and workforce in the City,
15 have a significant interest in ensuring that the City complies with the law.

16 72. Petitioners have exhausted all required administrative remedies, or are excused from
17 exhausting its remedies due to the futility of pursuing such remedies, among other things.

18 73. Petitioners have no plain, speedy, or adequate remedy in the ordinary course of law.
19 The only remedy provided by law for Petitioners to obtain relief is this Petition for Writ of
20 Mandate pursuant to Code of Civil Procedure section 1085.

21 **SECOND CAUSE OF ACTION**

22 **Declaratory and Injunctive Relief (Code Civ. Proc., § 1060, Gov. Code, §§ 65755, 65757) –**
23 **Violation of Gov. Code, §§ 65585 (Housing Element Law); 65850 et seq. (ADU Laws);**
24 **65852.21, 66411.7 (SB 9)**
25 **[Against All Defendants]**

26 74. Petitioners incorporate by reference each and every allegation of the preceding
27 paragraphs.

28 75. There is a controversy between Petitioners and the City as to whether the City has
29 complied with California's Housing Element Law (Gov. Code, § 65580, et seq.). Based on the

1 events alleged above, it cannot be disputed that the City is noncompliant with the Housing
2 Element Law and, as made clear by the City Council's April 4, 2023 deliberation and vote, is
3 making no progress on becoming compliant. Further, based on information and belief, Petitioners
4 allege that the City is aware that it is out of compliance with the Housing Element Law and has
5 failed to take any meaningful action to adopt a substantially compliant element, even though its
6 sixth cycle housing element is now almost eighteen months overdue.

7 76. It is necessary and appropriate for the Court to render a declaratory judgment that sets
8 forth the parties' legal rights and obligations with respect to whether the city is substantially
9 compliant with California's Housing Element Law. Among other things, such a judgment would
10 inform the parties' conduct in connection with future contemplated amendments to the City's
11 housing element, including those that occur routinely at the beginning of each housing cycle.

12 77. Further, there is a controversy between Petitioners and the City as to whether the City
13 complied with state ADU laws and SB 9. The City's ban on ADU and SB 9 projects, even if
14 transient, expressly conflicted with applicable state law. Based on information and belief,
15 Petitioners allege that the City deliberately defied applicable state law, voluntarily ceased doing
16 so once this litigation was filed, and may by its own volition resume violating state law in the
17 absence of a judicial remedy.

18 78. It is necessary and appropriate for the Court to render a declaratory judgment that sets
19 forth the parties' legal rights and obligations with respect to whether the City is subject to the
20 state's housing laws.

21 79. Petitioners therefore request a declaration that the City is not substantially compliant
22 with California's Housing Element Law (Gov. Code, § 65580, *et seq.*), that the City's ADU and
23 SB 9 project ban violated the Housing Crisis Act (Gov. Code, § 66300), the ADU laws (Gov.
24 Code, § 65850 *et seq.*), and SB 9 (Gov. Code, §§ 65852.21, 66411.7), and that the City must
25 comply with the ADU laws (Gov. Code, § 65850 *et seq.*) and SB 9 (Gov. Code, §§ 65852.21;
26 66411.7).

27 80. In addition to these remedies, Petitioners are immediately entitled to temporary relief
28 under Government Code section 65757, including but not limited to the suspension of the City's

1 authority to issue non-residential building permits, until the City has substantially complied with
2 Housing Element Law by properly adopting and implementing an adequate housing element.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Petitioners pray as follows:

- 5 1. For a writ of mandate ordering the City to adopt a housing element in compliance with
6 the Housing Element Law within 120 days. (Gov. Code, §§ 65580 *et seq.*)
7 2. For temporary relief, including but not limited to the suspension of the City's non-
8 residential permitting authority, and mandating the approval of certain residential
9 developments. (Gov. Code, §§ 65755, 65757.)
10 3. For a declaration that the City is in violation of the Housing Element Law. (Gov. Code,
11 §§ 65580 *et seq.*; 65585, subd. (n).)
12 4. For a declaration that the City's ban on ADU and SB 9 projects violated the Housing
13 Crisis Act (Gov. Code, § 66300), the ADU laws (Gov. Code, § 65850 *et seq.*), and SB 9
14 (Gov. Code, §§ 65852.21, 66411.7), and that the City must comply with the ADU laws
15 (Gov. Code, § 65850 *et seq.*) and SB 9 (Gov. Code, §§ 65852.21; 66411.7).
16 5. For statutory fines, levies, and penalties. (Gov. Code, § 65585, subd. (l).)
17 6. For costs and attorneys' fees.
18 7. For any other relief the Court may deem appropriate.

19 Dated: April 10, 2023

Respectfully submitted,

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