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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN BERNARDINO

13 **PROMISE GRACIA, NADINE FIERRO, AND**
14 **SIBYLLE BARTZ,**
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Petitioners and Plaintiffs,
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v.
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18 **CITY OF SAN BERNARDINO, AND SAN**
BERNARDINO CITY COUNCIL
19
Respondents and
20 Defendants.

Case No. CIVSB2301828

Assigned for All Purposes to: Judge
Khymberli S. Apaloo

**[PROPOSED] PETITION AND
COMPLAINT IN INTERVENTION OF
INTERVENORS PEOPLE OF
CALIFORNIA EX REL. ROB BONTA
AND THE CALIFORNIA
DEPARTMENT OF HOUSING AND
COMMUNITY DEVELOPMENT**

21
22 **INTRODUCTION**

23 1. Californians continue to suffer under a housing affordability crisis. The Legislature
24 has found that “[t]he lack of housing . . . is a critical problem that threatens the economic,
25 environmental, and social quality of life in California.” (Gov. Code, § 65589.5, subd. (a)(1)(A),
26 (B).) This crisis is “hurting millions of Californians, robbing future generations of the chance to
27 call California home, stifling economic opportunities for workers and businesses, worsening
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1 poverty and homelessness, and undermining the state’s environmental and climate objectives.”

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

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

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

16 **PARTIES**

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

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

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

26 7. The City Council of San Bernardino is the elected governing body of the City of San
27 Bernardino. It is the legislative body charged under Government Code section 65300 with
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1 responsibility for adopting a general plan, including a housing element, for the physical
2 development of the City of San Bernardino.

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 San Bernardino County
14 and the violations of law alleged herein occurred in San Bernardino 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 frequently updated to ensure
11 compliance with California’s Housing Element Law. (Gov. Code, § 65588.) Each eight-year
12 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 San Bernardino 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.

9 24. On April 22, 2022, HCD issued a letter to the City to alert it to its noncompliance
10 with the Housing Element Law.

11 25. The City communicated to HCD on May 18, 2022 that it anticipated submitting a
12 draft housing element by October 2022.

13 26. City representatives met with HCD on June 29, July 21, and September 15, 2022 to
14 discuss its progress towards housing element compliance.

15 27. During one discussion at the above-listed meetings, City representatives stated that
16 the City would not meet its anticipated October 2022 submission date.

17 28. On September 29, 2022, HCD issued a Notice of Violation informing the City that it
18 was out of compliance with the Housing Element Law, advised the City of the potential penalties
19 for noncompliance, and stated that HCD would refer the matter to the Office of the Attorney
20 General absent any efforts at compliance.

21 29. On February 10, 2023, a coalition of nonprofit organizations sued the City on behalf
22 of several City residents bringing, *inter alia*, a housing element claim. See *Gracia et al. v. City of*
23 *San Bernardino et al.*, San Bernardino Superior Court Case No. CIVSB2301828.

24 **FIRST CAUSE OF ACTION**

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

26 **[Against All Defendants]**

27 30. HCD incorporates by reference each and every allegation of the preceding
28 paragraphs.

1 noncompliant with the Housing Element Law and is making little progress on becoming
2 compliant. Further, based on information and belief, HCD alleges that the City either disagrees
3 with HCD or, alternatively, is aware that it is not substantially compliant and has failed to take
4 any meaningful action to substantially comply, even though its draft sixth cycle housing element
5 is now more than one year overdue.

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

11 41. HCD therefore requests a declaration that the City is not substantially compliant with
12 California's Housing Element Law (Gov. Code, § 65580, *et seq.*).

13 **PRAYER FOR RELIEF**

14 WHEREFORE, HCD prays as follows:

- 15 1. For a writ of mandate ordering the City to submit a draft housing element in compliance
16 with California's Housing Element Law (Gov. Code, § 65580, *et seq.*) and to ensure
17 that the draft housing element meets the City's regional housing needs goals for the
18 planning period, as determined by HCD.
 - 19 2. For a declaration that the City has not substantially complied with California's Housing
20 Element Law (Gov. Code, § 65580, *et seq.*).
 - 21 3. For any other relief the Court may deem appropriate.
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Dated: August 24, 2023

Respectfully submitted,

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