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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF SAN DIEGO – HALL OF JUSTICE

13 37-2019-00027875-CU-WM-CTL

14 AFFORDABLE HOUSING COALITION OF SAN
15 DIEGO COUNTY,

16 Plaintiff and Petitioner,

17 vs.

18 CITY OF SAN DIEGO; SAN DIEGO HOUSING
19 COMMISSION; and DOES 1 through 100,

20 Defendants and Respondents.

21 1037 4TH AVENUE, LLC; and DOES 101 through
22 1,000,

23 Defendants and Real Parties in Interest.

CASE NO. _____

**VERIFIED COMPLAINT FOR
DECLARATORY RELIEF AND
PETITION FOR WRIT OF MANDATE
UNDER THE CALIFORNIA
ENVIRONMENTAL QUALITY ACT AND
OTHER LAWS**

24 Plaintiff and Petitioner AFFORDABLE HOUSING COALITION OF SAN DIEGO COUNTY

25 ("Petitioner") alleges as follows:

26 **Parties**

27 1. Petitioner is a non-profit organization formed and operating under the laws of the State
28 of California. At least one of Petitioner's members resides in, or near, the City of San Diego,
California, and has an interest in, among other things, ensuring compliance with housing laws and
protecting the City's supply of affordable housing.

2. Defendant and Respondent CITY OF SAN DIEGO ("CITY") is a "public agency" under
Public Resources Code Section 21063. Defendant and Respondent SAN DIEGO HOUSING

1 COMMISSION (“SDHC”) is a subsidiary agency of CITY and is also a “public agency” under Section
2 21063. Petitioner is informed and believes and on that basis alleges that Defendant and Real Party in
3 Interest 1037 4TH AVENUE, LLC (“OWNER”), is the owner of the real property commonly known
4 as the New Plaza Hotel located at 1037 Fourth Avenue in the City of San Diego, California (“HOTEL”).

5 3. The true names and capacities of the Defendants/Respondents/Real Parties in Interest
6 identified as DOES 1 through 1,000 are unknown to Petitioner, who will seek the Court’s permission
7 to amend this pleading in order to allege the true names and capacities as soon as they are ascertained.
8 Petitioner is informed and believes and on that basis alleges that each of the fictitiously named DOES
9 1 through 100 has jurisdiction by law over one or more aspects of the proposed project that is the
10 subject of this proceeding and DOES 101 through 1,000 has some other cognizable interest in the
11 subject matter of this lawsuit.

12 **Background Information**

13 4. At all times relevant to this lawsuit, San Diego Municipal Code (“SDMC”) Section
14 143.0540 has provided as follows (with italics in the original): “Before a permit to convert or demolish
15 all or part of an *SRO hotel* or *SRO hotel room* is issued, the *applicant* shall execute a Housing
16 Replacement Agreement with the San Diego Housing Commission in accordance with Section
17 143.0550. A Housing Replacement Agreement is not required unless the *SRO hotel* had an occupancy
18 permit issued prior to January 1, 1990, and the owner or operator did not deliver a notice of intent to
19 withdraw accommodations from rent to the City before January 1, 2004.”

20 5. Petitioner is informed and believes and on that basis alleges as follows:

21 A. For more than a decade preceding this lawsuit, the HOTEL has been renting
22 single-room-occupancy (“SRO”) rooms to tenants. Compared to other housing in the City of San
23 Diego, rent for an SRO room at the HOTEL is relatively affordable.

24 B. Within the last 90 days, Petitioner learned that OWNER applied to CITY and/or
25 SDHC for permission to demolish and/or convert the HOTEL to a traditional tourist-serving hotel. The
26 demolition/conversion would result in the elimination of roughly 185 SRO rooms for rent and allow
27 for the eviction of all tenants.

1 C. On or about March 8, 2019, after OWNER submitted the demolition/conversion
2 application to SDHC, SDHC's governing board unanimously voted for all of the following in order to
3 facilitate the HOTEL's demolition/conversion: "1) "Authorize an amendment to the Housing
4 Commission's Fiscal Year (FY) 2019 Budget to allocate an amount not to exceed \$500,000 to fund the
5 tenant relocation assistance program for current residents of the Plaza Hotel, a 185-unit Single-Room
6 Occupancy (SRO) building located at 1037 4th Avenue, San Diego, that is being redeveloped by the
7 new ownership; 2) Authorize the President & Chief Executive Officer (President & CEO) of the
8 Housing Commission, or designee, to execute all documents and instruments that are necessary and/or
9 appropriate to implement these approvals, in a form approved by General Counsel, and to take such
10 actions necessary and/or appropriate to implement this approval; and 3) Authorize the President & CEO,
11 or designee, to substitute funding sources for the proposed program, if necessary, without further action
12 by the Board of Commissioners (Board) of the Housing Commission, but only if and to the extent that
13 funds are determined to be available for such purposes." The items approved by the board were
14 discretionary.

15 D. CITY is experiencing a significant shortage of affordable housing units. For
16 example, since 2000, more than 10,000 SRO rooms have been taken of the market in the City of San
17 Diego. The loss of the SRO rooms is likely to cause and/or contribute public-health and other
18 significant environmental impacts.

19 E. CITY has issued a permit for the demolition/conversion, or such issuance is
20 imminent, without SDHC having first obtained a Housing Replacement Agreement from OWNER.

21 **Notice Requirements and Time Limitations**

22 6. This proceeding is being commenced not more than 35 days after the notice described
23 in Public Resources Code Section 21167(d) was filed with the county clerk if such a notice was filed;
24 and within 180 days of OWNER's submission of its demolition/conversion application if no such notice
25 was filed.

26 7. Petitioner has caused a Notice of Commencement of Action to be served on
27 Defendants/Respondents, as required by Public Resources Code Section 21167.5. A true and correct
28 copy of the Notice of Commencement of Action is attached to this pleading as Exhibit "A."

1 8. Petitioner will have caused a copy of this pleading to be served on the Attorney General
2 not more than 10 days after the commencement of this lawsuit, as required by Public Resources Code
3 Section 21167.7 and Code of Civil Procedure Section 388.

4 **Jurisdiction and Exhaustion of Administrative Remedies**

5 9. Petitioner seeks review by and relief from this Court under Public Resources Code
6 Sections 21168 and/or 21168.5, as applicable; Code of Civil Procedure Sections 526a, 1060 *et seq.*, and
7 1084 *et seq.*; and SDMC Section 143.0510 *et seq.*, among other provisions of law.

8 10. Petitioner exhausted administrative remedies to the extent required by law. Alternatively
9 and additionally, neither Public Resources Code Section 21177(a)-(b) nor any other exhaustion-of-
10 remedies requirement may be applied to Petitioner.

11 11. Defendants/Respondents' conduct in taking the actions challenged in this lawsuit without
12 complying with CEQA and other applicable laws constitutes a prejudicial abuse of discretion because,
13 as alleged in this pleading, they failed to proceed in a manner required by law.

14 12. Petitioner has no plain, speedy, and adequate remedy in the ordinary course of law, since
15 its members and other members of the public will suffer irreparable harm as a result of
16 Defendants/Respondents' violations of CEQA and other applicable laws. Defendants/Respondents'
17 approval of the challenged actions also rests on their failure to satisfy a clear, present, ministerial duty
18 to act in accordance with the applicable laws. Even when Defendants/Respondents are permitted or
19 required by law to exercise their discretion in taking the challenged actions under those laws, they
20 remain under a clear, present, ministerial duty to exercise their discretion within the limits of and in a
21 manner consistent with those laws. Defendants/Respondents have had and continue to have the capacity
22 and ability to take the challenged actions within the time limits of and in a manner consistent with those
23 laws, but Defendants/Respondents have failed and refused to do so and have exercised their discretion
24 beyond the limits of and in a manner that is not consistent with those laws.

25 13. Petitioner has a beneficial right and interest in Defendants/Respondents' fulfillment of
26 all their legal duties, as alleged in this pleading.

1 **FIRST CAUSE OF ACTION:**
2 **Illegal Approval of Demolition/Conversion**
3 **(Against All Defendants/Respondents and Real Parties in Interest)**

4 14. Paragraphs 1 through 13 are fully incorporated into this paragraph.

5 15. The aforementioned actions by Defendants/Respondents do not comply with all
6 applicable laws. By way of example and not limitation (including alternative theories of liability), and
7 based on Petitioner's information and belief:

8 A. The HOTEL is a "residential hotel" within the meaning of Government Code
9 Section 7060.1 located at 1037 4th Avenue in the City of San Diego, State of California.

10 B. CITY's population exceeds 1,000,000.

11 C. The HOTEL received "a permit of occupancy" within the meaning of
12 Government Code Section 7060.1(a)(2) prior to January 1, 1990.

13 D. The HOTEL did not send a "notice of intent to withdraw the accommodations
14 from rent or lease" within the meaning of Government Code Section 7060.1(a)(3) that was delivered
15 to CITY prior to January 1, 2004. The HOTEL's notice was not delivered to CITY until January 2,
16 2004, at the earliest. A true and correct copy of the HOTEL's notice is attached hereto as Exhibit "B."

17 E. The demolition/conversion of the HOTEL is not exempt from SDMC Section
18 143.0540's requirement that there be a Housing Replacement Agreement between SDHC and OWNER
19 before any demolition/conversion of the HOTEL may occur.

20 F. SDHC's decision to spend up to \$500,000 to relocate the HOTEL's residents
21 constitutes an unlawful gift of public funds because, under SDMC Section 143.0540, OWNER is solely
22 responsible for providing those benefits to the HOTEL's residents.

23 G. The actions challenged in this lawsuit constitute a "project" within the meaning
24 of CEQA, are not exempt from CEQA, and have not been subjected to environmental review under
25 CEQA.

26 16. There is currently a dispute between Petitioner and the opposing parties concerning the
27 actions and inactions of Defendants/Respondents with respect to the demolition/conversion of the
28 HOTEL and over the legal force and effect of such actions and inactions. Petitioner contends that the
actions and inactions have no legal force or effect because they violate CEQA and/or one or more other

1 applicable laws. Defendants/Respondents dispute Petitioner's contention. The parties therefore require
2 a judicial determination of the legal force and effect (if any) of the challenged actions and inactions of
3 Defendants/Respondents.

4 **Prayer**

5 FOR ALL THESE REASONS, Petitioner respectfully prays for the following relief against
6 Defendants/Respondents/Real Parties (and any and all other parties who may oppose Petitioner in this
7 proceeding):

8 A. A judgment or other appropriate order determining or declaring that the HOTEL's
9 demolition/conversion failed to fully comply with CEQA, the SDMC, and/or one or more other
10 applicable laws as they relate to the demolition/conversion and that there must be full compliance
11 therewith before final approval and implementation of the demolition/conversion may occur;

12 B. A judgment or other appropriate order determining or declaring that
13 Defendants/Respondents failed to comply with CEQA, the SDMC, and/or one or more other applicable
14 laws as they relate to the HOTEL's demolition/conversion and that its approval and implementation was
15 illegal in at least some respect (including but not limited to the lack of a Housing Replacement
16 Agreement), rendering the approval and implementation null and void;

17 C. Injunctive relief prohibiting Defendants/Respondents (and any and all persons acting at
18 the request of, in concert with, or for the benefit of one or more of them) from taking any action on any
19 aspect of, in furtherance of, or otherwise based on the HOTEL's demolition/conversion and until
20 Defendants/Respondents comply with CEQA, the SDMC, and all other applicable laws (including but
21 not limited to a Housing Replacement Agreement), as determined by the Court;

22 D. Any and all other relief that may be authorized by CEQA, the SDMC, or other applicable
23 laws, or any combination of them, but is not explicitly or specifically requested elsewhere in this Prayer;

24 E. Any and all legal fees and other expenses incurred by Petitioner in connection with this
25 proceeding, including but not limited to reasonable attorney fees as authorized by the Code of Civil
26 Procedure; and

27 F. Any and all further relief that this Court may deem appropriate.
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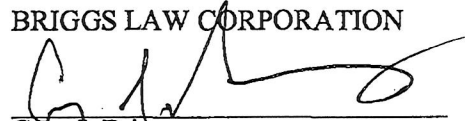
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Date: May 30, 2019.

Respectfully submitted,

BRIGGS LAW CORPORATION

By:


Cory J. Briggs

Attorneys for Plaintiff and Petitioner Affordable
Housing Coalition of San Diego County