



**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN FRANCISCO**

**Document Scanning Lead Sheet**

Oct-17-2017 2:59 pm

Case Number: CPF-17-515902

Filing Date: Oct-17-2017 2:49

Filed by: BOWMAN LIU

Image: 06068178

PETITION FOR WRIT OF MANDATE/ PROHIBITION/  
CERTIFICATION

FRIENDS OF MONTGOMERY STREET ET AL VS. CITY AND COUNTY OF SAN  
FRANCISCO ET AL (CEQA Case)

001C06068178

**Instructions:**

Please place this sheet on top of the document to be scanned.

1 STEPHAN C. VOLKER (CBN 63093)  
STEPHANIE L. CLARKE (CBN 257961)  
2 JAMEY M.B. VOLKER (CBN 273544)  
LAW OFFICES OF STEPHAN C. VOLKER  
3 1633 University Avenue  
Berkeley, California 94703  
4 Tel: 510/496-0600  
Fax: 510/845-1255

5 Attorneys for Plaintiffs and Petitioners  
6 FRIENDS OF MONTGOMERY STREET, JOHN LEE,  
GORDON FRANCIS, and DAN LORIMER

10.618.02  
**FILED**  
Superior Court of California  
County of San Francisco

OCT 17 2017

CLERK OF THE COURT  
BY: *Gordon Li*  
Deputy Clerk

**LI**

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SAN FRANCISCO

10 FRIENDS OF MONTGOMERY STREET, JOHN  
LEE, GORDON FRANCIS, and DAN LORIMER,

11 Petitioners and Plaintiffs,

12 v.

13 CITY AND COUNTY OF SAN FRANCISCO, and  
14 DOES 1 through 100,

15 Respondents and Defendants,

16 PAUL D. SCOTT, JULIUS CASTLE REDUX LLC,  
17 and DOES 101 through 200,

18 Real Parties in Interest.

Civ. No. **CPF - 17 - 5 159 02**

**VERIFIED PETITION FOR WRIT OF  
MANDATE AND COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF AND FOR ATTORNEYS  
FEES**

**CEQA CASE**

Action Filed: October 17, 2017

19  
20 Petitioners and Plaintiffs FRIENDS OF MONTGOMERY STREET, JOHN LEE, GORDON  
21 FRANCIS, and DAN LORIMER (collectively, "petitioners" or "Friends") hereby petition the Court for a  
22 writ of mandate and declaratory and injunctive relief ordering defendant and respondent City and County  
23 of San Francisco ("City") to rescind its approval on September 12, 2017 of a Conditional Use  
24 Authorization ("CUA") and Exemption from Environmental Review ("CEQA Exemption") for a change  
25 of land use allowing a commercial use in a residential area. The CUA allows Paul D. Scott and Julius'  
26 Castle Redux LLC, a limited liability company that Mr. Scott owns and manages (collectively, "Scott")  
27 to operate a restaurant and bar in a residential zone in which such use is forbidden, without compliance  
28 with state and municipal laws protecting the environment and rights of the City's residents including

1 petitioners. By this Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive  
2 Relief and for attorney's Fees ("Verified Petition"), Friends alleges as follows:

3 **INTRODUCTION**

4 1. This is a public interest citizen suit to enforce the California Environmental Quality Act,  
5 Public Resources Code section 21000 et seq. ("CEQA") and the City and County of San Francisco's  
6 Planning Code. CEQA is California's preeminent environmental law. It requires all public agencies to  
7 examine the potential adverse impacts of their actions before taking them. It is designed to protect  
8 California's extraordinary environmental resources from uninformed and needlessly destructive agency  
9 actions. The City's Planning Code is intended to achieve consistency between local land use and  
10 resource development decisions and the City's general and specific plans and applicable zoning and  
11 environmental protection ordinances. Compliance with the Planning Code thus assures that the publicly  
12 reviewed and adopted land use goals, policies and programs for each land use zone within the City are  
13 honored and implemented rather than ignored and violated.

14 2. Contrary to these statutory and municipal code protections of petitioners' and the public's  
15 rights, on September 12, 2017 the City Board of Supervisors purported to deny petitioners' appeal and to  
16 approve the CUA and CEQA Exemption allowing Scott to operate a commercial restaurant and bar use  
17 in a residential zone. The City's denial of Friends' appeal and approval of the evaded the detailed  
18 environmental analysis required by CEQA and the comprehensive planning review mandated by the City  
19 Planning Code provisions governing planning and land use including sections 186.3, 303 and 710.33..

20 3. Friends brings this action in order to vindicate the public's statutory right to the City's  
21 compliance with CEQA's command that agencies carefully examine the environmental impacts of their  
22 projects before approving them and with the requirements of the City Planning Code including sections  
23 186.3, 303 and 710.33. Contrary to these mandates, the City approved the CUA and CEQA Exemption  
24 without conducting CEQA review and complying with its land use laws.

25 4. Friends asks this Court to order the City to rescind its unlawful decision to approve the  
26 CUA and CEQA Exemption, and to direct the City to comply with CEQA and the City's land use  
27 procedures and standards, that is required by law before taking any further action on Scott's proposed  
28 CUA.

1 **JURISDICTION**

2 5. This Verified Petition is authorized by Code of Civil Procedure sections 1085 et seq. And  
3 1094.5 and Public Resources Code sections 21168 and 21168.5.

4 6. Pursuant to Code of Civil Procedure section 388 and Public Resources Code section  
5 21167.7, petitioners served the California Attorney General with a copy of this Verified Petition  
6 concurrently with the filing of this action, and consistent with Public Resources Code section 21167.5,  
7 petitioners served the City and Scott with notice of this suit.

8 **PARTIES**

9 7. Petitioner Friends of Montgomery Street is a non-profit unincorporated association whose  
10 members reside on Montgomery Street in the vicinity of the Project and objected to the Project during  
11 the City's administrative proceedings and administrative appeal challenging the City's approval of the  
12 Project. Friends and its members would be harmed by the Project's traffic, noise and other  
13 environmental impacts. Friends and its members are beneficially interested in the City's compliance  
14 with CEQA and the City's Planning Code in connection with its approval of the Project, and accordingly  
15 seek this Court's writ of mandate, and injunctive and declaratory relief, enforcing these laws and  
16 overturning the City's unlawful approval of the Project.

17 8. Petitioner John Lee is a City resident and homeowner who objected to the Project before its  
18 approval. He resides at 1406 Montgomery Street in the vicinity of the Project. He uses and enjoys his  
19 residence on Montgomery Street including the peace and quiet in this residential neighborhood and the  
20 absence of traffic congestion and speeding cars on Montgomery Street. Mr. Lee has a vital and direct  
21 interest in the City's compliance with its Planning Code governing permissible land uses in his  
22 residential neighborhood, and with CEQA's requirements for careful and comprehensive environmental  
23 review where, as here, a project poses potentially significant environmental impacts and accordingly  
24 seek this Court's writ of mandate, and injunctive and declaratory relief, enforcing CEQA and the City's  
25 Planning Code, and overturning the City's unlawful approval of the Project.

26 9. Petitioner Gordon Francis is a City resident and homeowner who objected to the Project  
27 before its approval. He resides at 1451 Montgomery Street in the vicinity of the Project. He uses and  
28 enjoys his residence on Montgomery Street including the peace and quiet in this residential

1 neighborhood and the absence of traffic congestion and speeding cars on Montgomery Street. Mr.  
2 Francis has a vital and direct interest in the City's compliance with its Planning Code governing  
3 permissible land uses in his residential neighborhood, and with CEQA's requirements for careful and  
4 comprehensive environmental review where, as here, a project poses potentially significant  
5 environmental impacts and accordingly seek this Court's writ of mandate, and injunctive and declaratory  
6 relief, enforcing CEQA and the City's Planning Code, and overturning the City's unlawful approval of  
7 the Project.

8 10. Petitioner Dan Lorimer is a City resident and homeowner who objected to the Project before  
9 its approval. He resides at 1315 Montgomery Street in the vicinity of the Project. He uses and enjoys  
10 his residence on Montgomery Street including the peace and quiet in this residential neighborhood and  
11 the absence of traffic congestion and speeding cars on Montgomery Street. Mr. Lorimer has a vital and  
12 direct interest in the City's compliance with its Planning Code governing permissible land uses in his  
13 residential neighborhood, and with CEQA's requirements for careful and comprehensive environmental  
14 review where, as here, a project poses potentially significant environmental impacts and accordingly  
15 seek this Court's writ of mandate, and injunctive and declaratory relief, enforcing CEQA and the City's  
16 Planning Code, and overturning the City's unlawful approval of the Project

17 11. Respondent City and County of San Francisco ("City") is a county, a municipality and  
18 public agency subject to the requirements of the California Constitution, CEQA and the City's Planning  
19 Code in connection with its approval of the Project. Contrary to and without compliance with those  
20 laws, on September 12, 2017 the City purported to approve the Project.

21 12. Real Party in Interest Paul D. Scott is a proponent of the Project and president of Julius'  
22 Castle Redux LLC, the owner of the property at 302 Greenwich Street, San Francisco on which the  
23 Project is proposed to operate. Mr. Scott is an applicant for and a recipient of the City's approval of the  
24 Project.

25 13. Real Party in Interest Julius' Castle LLC is a limited liability company registered to do  
26 business in California in 2012. It is a proponent of the Project and the owner of the property at 302  
27 Greenwich Street, San Francisco on which the Project is proposed to operate. It is an applicant for and a  
28 recipient of the City's approval of the Project.

1 14. The true names and capacities of respondents DOES 1-100, inclusive, are unknown to  
2 petitioners who therefore sue such respondents by such fictitious names pursuant to Code of Civil  
3 Procedure section 474. Petitioners will, with leave of court if necessary, further amend this Verified  
4 Petition when the true names and capacities of said DOE respondents have been ascertained.

5 15. Petitioners are unaware of the true names and capacities of real parties in interest sued  
6 herein as DOES 101- 200, and sue such real parties in interest herein by fictitious names. Petitioners are  
7 informed and believe, and based on such information and belief allege, that the fictitiously named real  
8 parties in interest have a financial or other beneficial interest in the City's approval of the Project. When  
9 the true identities and capacities of these real parties in interest have been determined, petitioners will,  
10 with leave of the Court if necessary, amend this Verified Petition to insert such identities and capacities.

#### 11 LEGAL BACKGROUND

#### 12 CEQA

13 16. CEQA is California's primary statutory mandate for environmental protection. It applies to  
14 all state and local agencies, and requires them to "first identify the [significant] environmental effects of  
15 projects, and then to mitigate those adverse effects through the imposition of feasible mitigation  
16 measures or through the selection of feasible alternatives." (*Sierra Club v. State Board of Forestry*  
17 (1994) 7 Cal.4th 1215, 1233.) Its most important substantive imperative requires "public agencies to  
18 deny approval of a project with significant adverse effects when feasible alternatives or feasible  
19 mitigation measures can substantially lessen such effects." (*Sierra Club v. Gilroy City Council* (1990)  
20 222 Cal.App.3d 30, 41.)

21 17. CEQA's mandate for detailed environmental review "ensures that members of the  
22 [governmental decision-making body] will fully consider the information necessary to render decisions  
23 that intelligently take into account the environmental consequences" of their proposed action. (*Mountain*  
24 *Lion Foundation v. Fish and Game Commission* (1997) 16 Cal.4th 105, 133; Public Resources Code  
25 §§ 21080.5(d)(2)(D), 21091(d)(2); 14 C.C.R. [CEQA Guidelines] ("Guidelines") § 15088.) The CEQA  
26 process thus "protects not only the environment but also informed self-government." (*Citizens of Goleta*  
27 *Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.)

28 18. All California "public agencies" must comply with CEQA when they approve discretionary

1 projects. (Public Resources Code § 21080(a).) The City is both a “public agency” and a “local agency”  
2 as those terms are defined in CEQA. (Public Resources Code §§ 21062, 21063.) Therefore the City is  
3 subject to CEQA. (*Id.*)

4 19. A proposed governmental action requires environmental review under CEQA if (1) the  
5 agency is contemplating an “approval” of an action as defined by Guidelines section 15352, (2) the  
6 subject matter of the contemplated approval constitutes a “project” under Public Resources Code section  
7 21065 and Guidelines section 15378(a), and (3) the project to be approved does not fall within a  
8 statutory exemption created by the Legislature under Public Resources Code section 21080(b) and  
9 recognized under CEQA Guidelines sections 15260-15285, or a categorical exemption in the Guidelines  
10 as promulgated by the California Resources Agency pursuant to Public Resources Code section 21084(a)  
11 and Guidelines sections 15061(b)(2), 15300-15333 and 15354.

12 20. Even if a project is subject to a categorical exemption, it is subject to CEQA if it falls within  
13 an exception to the categorical exemptions as provided under Public Resources Code section 21084 and  
14 Guidelines section 15300.2. If a project is not exempted by statute or regulation, then it may nonetheless  
15 be exempt from CEQA only if “it can be seen with certainty that there is no possibility that the activity in  
16 question may have a significant effect on the environment.” (Guidelines § 15061(b)(3) (the “common  
17 sense” exemption).)

18 21. If a local agency such as the City is considering approval of a project that is subject to  
19 CEQA, then it must prepare an Environmental Impact Report (“EIR”) if the project “may have a  
20 significant effect on the environment.” (Public Resources Code § 21151(a).) In determining whether a  
21 project may have such an effect, the agency must engage in a “three-step” process for determining how  
22 to proceed. (Guidelines §§ 15002(k), 15061, 15063-15065, 15070, 15081.)

23 22. First, assuming that the agency has determined that a proposal it may approve does in fact  
24 constitute a “project,” then the agency must determine whether the project is subject to a statutory  
25 exemption, a categorical exemption, or the “common-sense” exemption. (Guidelines § 15062.)

26 23. Second, if the project is not exempt from environmental review, then the agency must  
27 prepare an “initial study” to determine the level of environmental review that is required for CEQA  
28 compliance. (Guidelines § 15063.) In doing so, the lead agency (such as the City here) must consult

1 “informally” with responsible and trustee agencies, who may offer recommendations as to whether an  
2 EIR or negative declarations should be prepared. (Guidelines § 15063(g); Public Resources Code  
3 § 21080.3(a).) If the agency concludes that a negative declaration or a mitigated negative declaration,  
4 rather than an EIR, is the appropriate environmental document, then the initial study must set forth the  
5 agency’s reasoning in reaching that conclusion. (Guidelines § 15063(c)(5).)

6 24. The third and final step for the agency in applying CEQA depends on the conclusions of the  
7 initial study. If the initial study and public comment thereon show that there is no substantial evidence  
8 (or reasonable inferences therefrom) that the project may cause significant adverse environmental  
9 impacts, then the agency must adopt a “negative declaration.” If the initial study reveals substantial  
10 evidence that significant impacts might occur, but that the project applicant is able and willing to modify  
11 the project to eliminate all such potential or significant impacts, then the lead agency should adopt a  
12 “mitigated negative declaration” confirming that, as mitigated, the project clearly has no potential for  
13 causing a significant effect on the environment. (Public Resources Code §§ 21064.5, 21080(c)(2);  
14 Guidelines §§ 15006(h), 15064(f)(2).) If the initial study and public comment thereon indicate that there  
15 is substantial evidence that one or more significant environmental impacts may occur, and the project  
16 proponent is either unwilling or unable to mitigate them to insignificance, then the lead agency must  
17 prepare an EIR analyzing those effects and suggesting feasible means, if any, of mitigating or avoiding  
18 them including alternatives that would achieve most of the basic objectives of the project without  
19 causing significant environmental effects. (Public Resources Code §§ 21002, 21002.1, 21061;  
20 Guidelines §§ 15080-15096, 15120-15132, 15160-15170.)

21 25. In applying these CEQA procedures, an agency may not segment a project to avoid  
22 preparing an EIR on the entirety, or whole, of the project. (Guidelines § 15378(a), (c), (d).) CEQA’s  
23 “requirements cannot be avoided by chopping up proposed projects into bite-size pieces which,  
24 individually considered, might be found to have no significant effect on the environment or to be only  
25 ministerial.” (*Plan for Arcadia, Inc. v. City Council of Arcadia* (1974) 42 Cal.App.3d 712, 726.)

26 26. The final step in the CEQA process is public notice of any CEQA approval. A public  
27 agency must provide adequate notice when it “approves or determines to carry out a project that is  
28 subject to [CEQA].” (Public Resources Code § 21108; Guidelines § 15062(c)(1); *County of Amador v.*



1 *El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 962-965.) When a local agency files a  
2 notice of exemption (“NOE”) confirming approval of a project that is allegedly exempt from CEQA, that  
3 notice “shall be filed with the county clerk of each county in which the project will be located.”  
4 (Guidelines § 15062(c)(2).)

#### 5 THE CITY PLANNING CODE

6 27. Under Article XI, section 11 of the California Constitution, the City has “home rule” powers  
7 to adopt land use plans and ordinances to provide for zoning to regulate land uses within the City. Under  
8 Article XI, section 7 of the California Constitution, the City “may make and enforce within its limits all  
9 local, police, sanitary, and other ordinances and regulations not in conflict with general laws.” Because  
10 the City is a charter city, under Government Code section 65803, Chapter 4 of the State Planning and  
11 Zoning Law (commencing with Government Code section 65800) “shall not apply . . . except to the  
12 extent that the same may be adopted by charter or ordinance of the city.” Under Government Code  
13 sections 65302 and 65700, the City must also have a general plan that contains certain required elements.  
14 Any inconsistency between the City’s zoning and its general plan may give rise to a presumption that the  
15 zoning ordinance does not reasonably relate to the general welfare and therefore constitutes an abuse of  
16 the police power. *City of Del Mar v. City of San Diego* (1982) 133 Cal.App.3d 401, 414-415.

17 28. Pursuant to its “home rule” power to plan and zone land uses within its jurisdiction, the City  
18 has adopted a general plan and a Planning Code that regulate land uses within the City. In particular, the  
19 City has provided in its Planning Code that land uses at the site of the Project and in its vicinity are  
20 subject to the RH-3 zone, which is restricted to residential uses. Restaurant and bar uses such as the  
21 Project are forbidden in the RH-3 zone. Although section 186.3 of the Planning Code provides that non-  
22 residential uses may be allowed pursuant to a conditional use authorization that complies with section  
23 303 of the Planning Code, the Project does not qualify for a conditional use authorization under section  
24 303, as summarized below.

25 29. Pursuant to section 303(c) of the Planning Code, the City may only authorize a conditional  
26 use if the facts establish that “it will not be detrimental to the health, safety, convenience, or general  
27 welfare of persons residing or working in the vicinity . . . including but not limited to . . . [t]he  
28 accessibility and traffic patterns of persons and vehicles, the type and volume of such traffic, and the

1 adequacy of proposed off-street parking and loading and of proposed alternatives to off-street parking  
2 . . . [and] [t]he safeguards . . . prevent noxious or offensive emissions such as noise . . . .” *Id.* The  
3 Project does not comply with these criteria, as discussed below.

4 30. In issuing conditional use authorizations such as the Project approval challenged herein, the  
5 City must make adequate findings that demonstrate compliance with the requirements of the City’s  
6 Planning Code. *City and County of San Francisco v. Board of Permit Appeals* (1989) 207 Cal.App.3d  
7 1099, 1106-1110.

8 **FACTUAL BACKGROUND**

9 31. Petitioners reside in a peaceful residential neighborhood where evenings are quiet and street  
10 access to their homes is safe, reliable and expeditious. It is currently safe to walk across Montgomery  
11 Street at all hours, as traffic is manageable, vehicle speeds are unhurried and street parking is not  
12 impossible to find. Petitioners reside in this neighborhood because traffic is safe and manageable and  
13 evenings are quiet.

14 32. The Project will foreseeably result in significant effects on the environment and on  
15 petitioners. The Project would be extremely disruptive to neighboring residential uses. For example, it  
16 would subject them to loud noises every evening, create traffic and parking congestion and resulting  
17 safety and pedestrian hazards for residents of the area, and substantially impair and impede their  
18 reasonable use and enjoyment of their homes.

19 33. The City is the lead agency for the Project, as no other state or local agency exercises  
20 authority over its approval. (Public Resources Code § 21067; Guidelines §15367.)

21 34. Prior to approving the Project, the City did not prepare an initial study, a negative  
22 declaration, a mitigated negative declaration, or an EIR, despite the fact that the Project is a discretionary  
23 project subject to CEQA that will have a demonstrably adverse impact on the environment.

24 35. Prior to the City’s approval of the Project, petitioners or their representatives objected to the  
25 Project and appealed its approval by the Planning Commission, and thereby exhausted their  
26 administrative remedies.

27 ///

28 ///

1 **FIRST CAUSE OF ACTION**

2 **(Writ of Mandate, Declaratory and Injunctive Relief**  
3 **to Set Aside Project Approval as Contrary to CEQA)**

4 **(Alleged by Petitioners Against All Defendants and Real Parties)**

5 36. The paragraphs set forth above are realleged and incorporated herein by reference.

6 37. Petitioners bring this First Cause of Action pursuant to Public Resources Code sections  
7 21168 and/or 21168.5, on the grounds that the City failed to act in accordance with law, and committed a  
8 prejudicial abuse of discretion, in that it considered and approved the Project without undertaking an  
9 analysis of its potential environmental impacts as required by CEQA.

10 38. The City is a “public agency” and a “local agency” within the meaning of CEQA. (Public  
11 Resources Code §§ 21062, 21063; Guidelines §§ 15368, 15379.) CEQA requires public agencies to  
12 conduct environmental review prior to approving any discretionary project that may have a significant  
13 impact on the environment. (Public Resources Code §§ 21080(a), 21151; Guidelines § 15004(a).) The  
14 City’s approval of the Project is a discretionary project. (Guidelines § 15357.)

15 39. Under CEQA, the term “project” means the “whole of an action, which has a potential for  
16 resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect  
17 physical change in the environment.” (Guidelines § 15378(a).) The term “project” refers to the “activity  
18 which is being approved and which may be subject to several discretionary approvals by government  
19 agencies” and not the governmental approvals themselves. (*Id.* § 15378(c).) The Project is subject to  
20 CEQA and the environmental analysis required under CEQA encompasses the “whole” of this project.

21 40. “Approval” of a project, for purposes of CEQA, means a decision by the agency “which  
22 commits the agency to a definite course of action in regard to a project intended to be carried out by any  
23 person.” (*Id.* § 15352(a).) The City’s consideration and approval of the Project constitutes the “approval  
24 of a project” under CEQA.

25 41. If there is any possibility that a discretionary project being approved by a public agency may  
26 cause a significant effect on the environment, directly or indirectly, the agency’s review of the project  
27 must comply with CEQA. (Public Resources Code §§ 21065, 21080(a), 21151.) The Project will result  
28 in a number of “reasonably foreseeable indirect physical change[s] in the environment” as well as direct

1 physical changes in the environment.

2 **THE PROJECT IS NOT EXEMPT FROM CEQA**

3 42. The City's approval asserts that the "project is exempt from [CEQA] as a Class 3  
4 categorical exemption." City Planning Department, Executive Summary dated June 26, 2017  
5 ("Summary"), p. 2; City Planning Commission Draft Motion for July 6, 2017 hearing ("Motion"), p. 2.  
6 This is mistaken for three reasons.

7 43. First, Class 3 categorical exemptions are restricted to projects in areas "zoned for such use."  
8 CEQA Guidelines § 15303(c). As explained above, (the City's Planning Code does not permit  
9 restaurants in the RH-3 zone, where the Julius' Castle property is located. Planning Code § 209.1. Nor  
10 does the Project satisfy the necessary criteria to be approved as a conditional use.

11 44. Second, Class 3 categorical exemptions are restricted to projects in areas "where all  
12 necessary public services and facilities are available." CEQA Guidelines § 15303(c). Here, as discussed  
13 above in Section II, the Project area lacks adequate vehicular access and parking facilities.

14 45. Third, even if the Project were exempt from CEQA, which it is not, the unusual  
15 circumstances exception applies, necessitating CEQA review. "A categorical exemption shall not be  
16 used for an activity where there is a reasonable possibility that the activity will have a significant effect  
17 on the environment due to unusual circumstances." Guidelines § 15300.2(c).

18 46. Here, the Project poses significant environmental impacts due to unusual circumstances  
19 because Julius' Castle is a commercial use located in quiet residential area. *Lewis v. Seventeenth District*  
20 *Agricultural Association* (1985) 165 Cal.App.3d 823, 829, 831 ("no question of the existence of unusual  
21 circumstances" because of "the adjacency of residential neighborhoods to the racetrack.") It will bring  
22 all of the noise and traffic associated with that use to an area that typically does not see such excessive  
23 amounts of traffic. Indeed, the portion of Montgomery Street that is affected by this restaurant is not a  
24 through street in either direction. The road terminates at the Project site on the north end and continues a  
25 mere 1.5 blocks south, before it terminates between Union Street and Green Street. The majority of that  
26 1.5 blocks is grade-divided by an impassable median, essentially leaving two one-way residential streets  
27 that will be detrimentally affected by the traffic and noise from the Project. The quiet residential nature  
28 of the area is an unusual circumstance for a Project of this type.

1 47. Furthermore, there is a fair argument that “there is a reasonable possibility that the activity  
2 will have a significant effect on the environment due to [that] unusual circumstance[.]” Guidelines §  
3 15300.2(c); *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1098.

4 48. Similarly, the constrained access for vehicles at the Project site is an unusual circumstance,  
5 precluding the application of any categorical exemption. As depicted in the Context Photo attached to  
6 the Summary, vehicles heading north on the lower-elevation side of Montgomery Street must, in order to  
7 return south toward the Financial District, make a 180-degree turn in limited space right in front of the  
8 Julius’ Castle property. The cul-de-sac in front of the property is an active parking area and is invariably  
9 filled with cars, necessitating a three-point turn for any car attempting to turn around to head south.  
10 Even without the Project in place, this unusual circumstance causes a backup on the north-bound side of  
11 Montgomery Street while vehicles have to wait for those three-point turns to safely be completed before  
12 proceeding. The constrained conditions at the Project site also prevent access by large fire trucks, a  
13 circumstance the Project’s valet parking would make even worse.

14 49. Likewise, the fact that the Project will rely almost exclusively on valet parking to an off-site  
15 location to accommodate the hundreds of restaurant and bar patrons that the Project is intended to attract  
16 each evening is an unusual circumstance that causes a significant environmental impact. For each valet-  
17 parked car that is parked at an off-site location, the following trips occur on Montgomery Street: (1) the  
18 trip in for the owner of the car; (2) the trip down to the remote parking lot by the valet; (3) one round trip  
19 (i.e., two trips on Montgomery Street) by another valet to pick up the valet at the off-site parking lot;  
20 (4) a second round-trip (i.e., two more trips on Montgomery Street) to drop the valet at the car; (5) a trip  
21 back to the restaurant with the car; and (6) one trip out for the owner of the car. Consequently, a total of  
22 eight car trips up or down Montgomery Street (and every other street on the route to the parking lot) will  
23 take place for every single car carrying patrons to the restaurant that utilizes valet parking. Because  
24 available street parking in the vicinity of the Project is virtually non-existent, most if not all patrons will  
25 utilize valet parking, resulting in an eight-fold increase in vehicular travel on Montgomery Street  
26 compared to the traffic that would have occurred were there adequate on-site parking for patrons. This is  
27 an unusual circumstance that results in additional traffic congestion and resulting impacts on noise, air  
28 quality and vehicular and pedestrian safety and accessibility for residents of the area.

1 50. With the addition of the Project to these unusual circumstances, there is a fair argument that  
2 “there is a reasonable possibility that the [Project] will have a significant effect on the environment.”  
3 Guidelines § 15300.2(c); *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086,  
4 1098. Because the unusual circumstances exception applies, no categorical exemption can apply.

5 **SUBSTANTIAL EVIDENCE SUPPORTS A FAIR**  
6 **ARGUMENT THAT THE PROJECT WOULD HAVE**  
7 **SIGNIFICANT IMPACTS**

8 51. Because the Project is not exempt from CEQA, as discussed above, the City must ensure  
9 full CEQA compliance through the preparation of an Initial Study and subsequently an Environmental  
10 Impact Report (“EIR”) to “identify the [significant] environmental effects of [the P]roject[], and then to  
11 mitigate those adverse effects through the imposition of feasible mitigation measures or through the  
12 selection of feasible alternatives.” *Sierra Club v. State Board of Forestry* (1994) 7 Cal.4th 1215, 1233;  
13 Guidelines §§ 15063, 15064, 15121, 15126, 15126.2, 15126.4, 15126.6. Where “a lead agency is  
14 presented with a fair argument that a project may have a significant effect on the environment, the lead  
15 agency shall prepare an EIR *even though* it may also be presented with other substantial evidence that the  
16 project will not have a significant effect.” Guidelines § 15064(f)(1) (*citing No Oil, Inc. v. City of Los*  
*Angeles* (1974) 13 Cal.3d 68) (emphasis added).

17 52. “The EIR is the heart of CEQA,” for it serves as the “environmental ‘alarm bell’ whose  
18 purpose is to alert the public and responsible officials to environmental changes before they have reached  
19 ecological points of no return.” *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810. “[T]he high  
20 objectives of [CEQA] require[] the preparation of an EIR whenever it can be *fairly argued* on the basis  
21 of substantial evidence that the project *may* have [a] significant environmental impact.” *No Oil*, 13  
22 Cal.3d at 75; *Communities for a Better Environment v. South Coast Air Quality Management Dist.*  
23 (2010) 48 Cal.4th 310, 319-320. If the initial study and public comment indicate substantial evidence  
24 supporting a fair argument that significant environmental impacts may occur, then the lead agency must  
25 prepare an EIR to analyze those effects. PRC §§ 21002, 21002.1, 21061; Guidelines §§ 15080-15096,  
26 15120-15132, 15160-15170. Through preparation of the required Initial Study for this Project, it will  
27 become clear that there is a “fair argument that [the P]roject may have a significant effect on the  
28 environment.” Guidelines § 15064(f)(1). Indeed, there is a fair argument that the Project’s traffic and

1 safety impacts, its noise impacts, and its inconsistency with the City Planning Code are significant  
2 impacts necessitating preparation of an EIR. Guidelines §§ 15063(d)(5), 15125(d) (requiring  
3 examination of the Project’s inconsistencies with applicable general and specific plans).

4 53. The increase in vehicular traffic in the surrounding quiet residential neighborhood raises  
5 numerous safety and health concerns for the residents who live nearby. For example, neighbors who  
6 regularly walk on their street or take part in activities outside their residences will be subject to new  
7 safety concerns from vehicular accidents caused by restaurant patrons and valet drivers. While the City  
8 Staff Report claims that the Project “site is accessible via public transportation,” in fact it is 1,030 feet  
9 distant from the closest E/F streetcar stop at Embarcadero and Greenwich Streets, and 1,200 feet away  
10 from the nearest 82X bus stop at Battery and Filbert Streets. Moreover, these streetcar and bus stops are  
11 located nearly 300 stair steps below the Project site, rendering them effectively unusable for patrons of  
12 the Project, particularly at night when the steps are poorly lit and plagued by crime. Only the #39 bus  
13 stops nearby, at Union and Montgomery Streets, but it ends service at 7:00 p.m. – precluding its use in  
14 the evening.

15 54. Similarly, while the City Staff Report claims that “patrons will be discouraged from parking  
16 in the neighborhood,” nothing prevents patrons from driving to the restaurant, causing increased traffic  
17 and safety concerns that must be evaluated in an initial study and subsequently, an EIR. Summary, p. 5;  
18 Conditional Use Authorization conditions, p. 1. And, as noted above, each vehicular trip by a patron  
19 will generate eight trips on Montgomery Street (and other streets used by the valet) if valet parking is  
20 used, as expected.

21 55. This dramatically increased traffic will also create new air quality concerns for residents  
22 from excessive vehicular traffic idling on Montgomery Street while patrons wait to find parking, wait to  
23 valet their vehicles, or wait to make the necessary three-point turn in front of Julius’ Castle. Further, the  
24 proposed Project would “feature a street level bar” which could drastically increase drunk driving  
25 incidents. Summary, p. 1. These traffic and safety concerns present substantial evidence of a fair  
26 argument of significant impacts caused by the Project necessitating eventual preparation of an EIR.  
27 Guidelines §§ 15063, 15064(f)(1), (g); *No Oil*, 13 Cal.3d at 75.

28 56. The Project’s potential noise impacts likewise present a fair argument of significant impacts

1 that must be analyzed in a thorough and complete CEQA process. Guidelines §§ 15063, 15064(f)(1),  
2 (g); *No Oil*, 13 Cal.3d at 75. The noise impacts of a nearly 5,000 square foot restaurant with a rooftop  
3 terrace, that will operate at least until 10pm daily (and potentially later), will be significant for the quiet  
4 residential neighborhood in which the Project is proposed. Additionally, there will be increased noise  
5 impacts from the vehicles driven by patrons and valets (which as noted will increase car trips eight fold)  
6 to and from the restaurant, patrons talking while walking to the restaurant, and patrons talking while  
7 waiting outside the restaurant. However, there is no discussion – other than a limitation on amplified,  
8 live entertainment – in the Summary, the Motion, the conditions for approval, or anywhere in the Staff  
9 Report of this potentially significant impact. Motion, p. 15; Conditional Use Authorization conditions,  
10 p. 1. This potentially significant impact must be analyzed in an Initial Study, and subsequently, an EIR.

11 57. Similarly, an Initial Study and subsequent EIR must be prepared to address the Project's  
12 inconsistency with the City Planning Code. Guidelines §§ 15063(d)(5), 15064(f)(1), 15064(g),  
13 15125(d); *No Oil*, 13 Cal.3d at 75. As shown above, the Project is not in compliance with the applicable  
14 zoning law and these inconsistencies must be addressed during the required CEQA process. An Initial  
15 Study and subsequent EIR are needed to evaluate these potentially significant impacts and how they may  
16 be mitigated. Because the City failed to conduct this required analysis, the City's approval of the Project  
17 violates CEQA.

18 58. On October 17, 2017, petitioners faxed, emailed and mailed notice, including a copy of  
19 petitioners' Verified Petition and Complaint, to the City in accordance with Public Resources Code  
20 section 21167.5, informing it of petitioners' intention to file this action immediately. Concurrently with  
21 the filing of their Verified Petition and Complaint, petitioners provided notice, including a copy of  
22 petitioners' Verified Petition and Complaint, of the pendency of this proceeding to the California  
23 Attorney General as required by Public Resources Code section 21167.7 and Code of Civil Procedure  
24 section 388. Petitioners have also served the California Attorney General and the City with their  
25 Verified Petition and Complaint.

26 ///  
27 ///  
28 ///



1 SECOND CAUSE OF ACTION

2 (Writ of Mandate, Declaratory and Injunctive Relief to Set Aside

3 Project Approval as Contrary to City Municipal Code)

4 59. The paragraphs set forth above are realleged and incorporated herein by reference.

5 60. Pursuant to Article XI, Sections 7 and 11 of the California Constitution, and its "home rule"  
6 powers as a charter city, the City adopted its Planning Code to provide for the regulation of land use.

7 61. Contrary to its Planning Code, the City approved the Project without complying with the  
8 substantive and procedural requirements of sections 186.3, 209.1 and 303(c)(2) of the Planning Code  
9 among others, and thereby proceeded in excess of its jurisdiction, as alleged below.

10 **THE PROJECT APPROVAL VIOLATES THE CITY PLANNING CODE**

11 62. Use permits, including the proposed conditional use authorization at issue here, must  
12 comply with the relevant zoning law. *City and County of San Francisco v. Board of Permit Appeals,*  
13 *supra*, 207 Cal.App.3d at 1106-1110; *Neighborhood Action Group v. County of Calaveras*  
14 (*"Neighborhood"*) (1984) 156 Cal.App.3d 1176, 1183-1184. Here, as discussed, the City's Planning  
15 Code does not permit restaurants in the RH-3 zone, where the Julius' Castle property is located.  
16 Planning Code § 209.1. However, the City asserts, as revealed in its Planning Department's Summary  
17 and Motion, that the proposed restaurant use may nonetheless be conditionally permitted as a "limited  
18 commercial use" in a historic building subject to Planning Code section 186.3. Summary, pp. 3-4;  
19 Motion, pp. 3-6. This is mistaken, as discussed below.

20 63. Planning Code section 186.3 provides as follows:

21 Any use listed as a principal or conditional use permitted on the ground floor in an NC-1  
22 District, when located in a structure on a landmark site designated pursuant to Article 10  
23 of this Code, is permitted with Conditional Use authorization pursuant to Section 303 of  
24 this Code, provided that no conditional use shall be authorized under this provision unless  
(1) such authorization conforms to the applicable provisions of Section 303 of this Code,  
and (2) the specific use so authorized is essential to the feasibility of retaining and  
preserving the landmark.

25 *Id.*. Here, while the Julius' Castle building is on a designated landmark site, the Project does not  
26 "conform[] to the applicable provisions of Section 303" for at least three independent reasons, as shown  
27 below. *Id.*

28 ///

1 **THE PROJECT APPROVAL VIOLATES PLANNING CODE SECTION 303(C)(2)**

2 64. Pursuant to section 303(c)(2), the City may only “authorize a conditional use if the facts  
3 presented are such to establish that:

4 Such use . . . as proposed will not be detrimental to the health, safety, convenience or  
5 general welfare of persons residing or working in the vicinity, or injurious to property,  
6 improvements or potential development in the vicinity, with respect to aspects including  
7 but not limited to the following:

8 . . .  
9 (B) The accessibility and traffic patterns of persons and vehicles, the type and volume of  
10 such traffic, and the adequacy of proposed off-street parking and loading and of proposed  
11 alternatives to off-street parking . . .

12 (C) The safeguards afforded to prevent noxious or offensive emissions such as noise,  
13 glare, dust and odor.

14 Planning Code § 303(c)(2).

15 65. As discussed above, numerous nearby residents, as well as a realtor very familiar with land  
16 uses in the area, attested in their public comments on the Project to the many negative impacts on their  
17 health, safety, convenience and general welfare (and that of area visitors) of operating a restaurant in the  
18 Julius’ Castle building. These include substantial daytime and late evenings noise (from restaurant  
19 patrons, restaurant maintenance and increased traffic), congestion, parking convenience and pedestrian  
20 safety impacts, as well as associated property damage and reduced property values. Some examples  
21 follow, all of which are taken from comment letters attached to the Summary.

22 **NOISE**

23 66. “The noise, mostly from placing liquor, wine, beer and water bottles out, usually after  
24 midnight and then collection of same, usually between 2:00 am and 4:00 am was very bothersome,  
25 interrupting sleep on a daily basis.” Louis Silcox, May 15, 2017, Email to Jonathan Vimr.

26 67. “Julius Castle is located in a quiet residential neighborhood. My living room looks directly  
27 down on [the Julius’ Castle] patio, which is approximately 100 feet away. It is so close that we would  
28 have conversations with diners on their upstairs patio. Having people drinking and conversing on the  
patio, as well as coming and going from the restaurant in the evening will be extremely disruptive.” Rob  
Hammond, May 16, 2017, Email to Jonathan Vimr

68. “[W]e had to contend with loud, drunk people spilling out of the restaurant past 2AM.”  
Dan Lorimer, June 3, 2014, Letter to Scott Sanchez.

1 69. "There are no fewer than four separate noise issues that, given the aggregating nature of  
2 sound, will produce an adverse impact: on-street/entry noise, noise incidental to restaurant operations,  
3 outdoor dining, and entertainment." Garret Shean, 2017, Comments on Application for Conditional Use  
4 Authorization (original emphasis).

5 70. "Noise is another serious concern. The proposed hours of operation are 5pm to after  
6 midnight (last seating at 10pm means diners, employees, valets until midnight and beyond)." Gordon  
7 Francis (on behalf of "Members of La Colline Homeowner's Association"), May 29, 2017, Letter to  
8 Jonathan Vimr.

### 9 TRAFFIC

10 71. "Montgomery Street between Union and Greenwich is not a normal residential street. It is  
11 an extremely narrow road, with many obstacles such as parked cars, a barrier around a tree at Alta Street,  
12 and a steep hill to navigate. The street dead-ends into Julius Castle and requires a three point turn in  
13 order to go back up the hill. Valet parkers or diners being dropped off will make u-turning at the end of  
14 the road much harder." Rob Hammond, May 16, 2017, Email to Jonathan Vimr.

15 72. "The key problems [with previous restaurant operation] were traffic, parking and noise.  
16 Since it has been closed, the difference is profound. Easily 90% of the traffic on Montgomery was  
17 generated by the restaurant." Dan Lorimer, June 3, 2014, Letter to Scott Sanchez.

### 18 PARKING

19 73. "There is very little parking available in the area. Montgomery Street is one of the few  
20 places where a resident can park. Adding diners (either parking or using valet) to the mix will make the  
21 situation much more unbearable. When Julius Castle was open before there was never parking spots  
22 available in the evening until after 11PM. After the restaurant closed spots would open up, which meant  
23 that the few available spots were used by diners." Rob Hammond, May 16, 2017, Email to Jonathan  
24 Vimr.

25 74. "The proof that significant, adverse restaurant parking impacts are un-mitigable is the fact  
26 that no *credible* and *effective* parking plan has been submitted in this process. It simply does not exist."  
27 Garret Shean, 2017, Comments on Application for Conditional Use Authorization (original emphasis).\

28 75. "As it stands now, it is exceedingly difficult to find parking for residents by late afternoon

1 when returning from work. Removing 7 parking spots at a minimum (assuming no diners, employees,  
2 valets take any spots) is an additional hardship to residents.” Gordon Francis (on behalf of “Members of  
3 La Colline Homeowner’s Association”), May 29, 2017, Letter to Jonathan Vimr.

#### 4 SAFETY AND PEDESTRIAN HAZARDS

5 76. “The increased fast moving traffic day and night was a nightmare for neighbors for many  
6 decades.” Louis Silcox, May 15, 2017, Email to Jonathan Vimr.

7 77. “During the years when the restaurant was open, there was considerable dangerously fast  
8 traffic, usually from taxis, headed north to the restaurant. The valet parkers . . . also drove dangerously  
9 fast.” John Lee, May 12, 2017, Email to Jonathan Vimr.

10 78. “Close to 100% of the speeding cars we had here were taxis or valets servicing the  
11 restaurant.” Dan Lorimer, June 3, 2014, Letter to Scott Sanchez.

12 79. As a result of these and other impacts, Louis Silcox, a realtor specializing in Telegraph Hill  
13 and a former resident of the neighborhood, concluded in his May 15, 2017 comments that “reopening the  
14 restaurant would interfere with nearby dwellers’ ‘[Quiet] Enjoyment of their Homes’ and also potentially  
15 have a negative impact upon property values.”

16 80. The aforementioned comments and others, as well as common sense, demonstrate that the  
17 Project would indeed be “detrimental to the health, safety, convenience [and] general welfare of persons  
18 residing or working in the vicinity” of the Julius’ Castle property, and also be “injurious to property.”  
19 Planning Code § 303(c)(2).

20 81. The City’s purported findings regarding Planning Code section 303(c)(2)(B) assert that the  
21 “proposed use should not generate significant amounts of vehicular trips from the immediate  
22 neighborhood and traffic calming measures will be incorporated as part of the Sponsor’s agreed-to  
23 operations plan, detailed more fully in Condition of Approval No. 11.” Motion, p. 5. But they provide  
24 *no evidence whatsoever* to support their assertion that the Project would not cause traffic, parking and  
25 pedestrian safety problems. Not only does it appear that no traffic impact analysis has been done, the  
26 “operations plan” referenced in Condition of Approval No. 11 is not a plan at all, but rather a  
27 requirement the “owner and owner’s lessee . . . submit an operations plan to the Planning Department”  
28 addressing parking and customer access. Without an operations plan, no complete traffic impact analysis

1 *could* be done.

2 82. The City’s purported findings regarding section 303(c)(2)(C) are similarly lacking. They  
3 state that the “proposed use is subject to the standard conditions of approval for Restaurants as outlined  
4 in Exhibit A. Conditions 10 and 18 specifically obligated the project sponsor [to] mitigate odor and  
5 noise generated by the Restaurant use.” But they provide *no evidence whatsoever* that the conditions  
6 included in Exhibit A would be sufficient to eliminate the significant noise pollution from restaurant  
7 operation in the Julius’ Castle building, as discussed above. Furthermore, Conditions 10 and 18 only  
8 apply to odor control, not noise.

9 **THE PROJECT APPROVAL VIOLATES PLANNING CODE SECTION 303(C)(4)**

10 83. The City’s approval of the Project is contrary to law because it would violate Planning Code  
11 section 303(c)(4). Pursuant to section 303(c)(4), the City may only “authorize a conditional use if the  
12 facts presented are such to establish that . . . (4) [s]uch use . . . as proposed will provide development that  
13 is in conformity with the stated purpose of the applicable Use District.” The stated purpose of the RH  
14 districts, including the RH-3 district encompassing the Project site, is to “recognize, protect, conserve  
15 and enhance areas characterized by dwellings in the form of houses.” Planning Code § 209.1. As  
16 evidenced by the public comments quoted above, and others, rather than protect the residential  
17 neighborhood surrounding the Julius’ Castle building, the Project would degrade and despoil it. Indeed,  
18 the City’s findings in its Motion *confirm* that the “Project is not consistent with the stated purpose[] of  
19 RH-3 Districts.” Motion, p. 6.

20 **THE PROJECT APPROVAL VIOLATES PLANNING CODE SECTION 303(O)**

21 84. The Project would also violate Planning Code section 303(o). That section provides:

22 With regard to a Conditional Use Authorization application for a Restaurant, Limited-  
23 Restaurant and Bar uses the Planning Commission shall consider, in addition to the  
24 criteria set forth in Subsection (c) . . . , the existing concentration of eating and drinking  
25 uses in the area. Such concentration *should not exceed 25 percent* of the total commercial  
26 frontage as measured in linear feet within the immediate area of the subject site, [defined  
27 as “within 300’ of the subject property and also located within the same zoning district.]

26 Planning Code § 303(o) (emphasis added).

27 85. As the Motion’s proposed findings acknowledge, “there are no other eating and drinking  
28 uses, and no other commercial properties” within a 300-foot radius. Motion, p. 6. Thus, the Project

1 would result in *100 percent* of the commercial frontage within the Project area being dedicated to eating  
2 and drinking uses, violating the 25-percent maximum set forth in section 303(o).

3 86. For these reasons, no “substantial evidence” supports the City’s “findings” under sections  
4 303(c)(2), 303(c)(4) and 303(o). *Topanga Association for a Scenic Community v. County of Los Angeles*  
5 (“*Topanga*”) (1974) 11 Cal.3d 506, 514-515. To the contrary, the available evidence demonstrates that  
6 the Project would violate sections 303(c)(2), 303(c)(4) and 303(o) and therefore its approval was  
7 contrary to law and invalid. *Neighborhood*, 156 Cal.App.3d at 1184; *City and County of San Francisco*  
8 *v. Board of Permit Appeals, supra*, 207 Cal.App.3d at 1106-1110.

9 87. In sum, the City’s approval of the Project is contrary to law because it would violate the  
10 City Planning Code. *Neighborhood*, 156 Cal.App.3d at 1184 (any “permit action taken without  
11 compliance with the hierarchy of land use laws is *ultra vires*”); *City and County of San Francisco v.*  
12 *Board of Permit Appeals, supra*, 207 Cal.App.3d at 1106-1110. Because the City’s approval of the  
13 Project violates the City Planning Code as alleged above, the City’s approval of the Project is invalid and  
14 must be set aside.

15 **THIRD CAUSE OF ACTION**

16 **(Writ of Mandate, Declaratory and Injunctive Relief to Set Aside**

17 **Project Approval as Contrary to C.C.P. §§ 1085 and 1094.5)**

18 **(Alleged by Petitioners Against the City and All Real Parties in Interest)**

19 88. The paragraphs set forth above are realleged and incorporated herein by reference.

20 89. The City proceeded in excess of its authority and abused its discretion in approving the  
21 Project without compliance with CEQA and the City’s Planning Code. Said approval therefore violates  
22 Code of Civil Procedure sections 1085 and 1094.5 in the following respects, among others:

23 a. said approval was not granted in accordance with the procedures required by law  
24 including the procedures set forth in CEQA and the City’s Planning Code;

25 b. said approval was not supported by, or was contrary to, the evidence available to the  
26 City; and

27 c. said approval was not based on the findings required by law.

28 90. The City’s actions in approving the Project without first complying with the procedures

1 required by Code of Civil Procedure sections 1085 and 1094.5, CEQA and the City Planning Code  
2 exceed the City's jurisdiction and constitute a prejudicial abuse of discretion. Accordingly, the City's  
3 approval of the Project is contrary to law and invalid and must be set aside.

4 **PETITIONERS ARE ENTITLED TO RELIEF**

5 91. The paragraphs set forth above are realleged and incorporated herein by reference.

6 92. Petitioners are beneficially interested in the City's approval of the Project because the City's  
7 approval of this Project poses environmental impacts that will harm petitioners and their quiet enjoyment  
8 and use of their real property.

9 93. Petitioners timely seek appropriate mandamus, declaratory and injunctive relief to prevent  
10 the City from attempting to implement any part of the Project before this action is resolved on its merits.

11 94. An actual controversy exists between petitioners and the City. Petitioners contend that the  
12 City has acted in violation of applicable law as alleged hereinabove, and must therefore vacate and set  
13 aside its approval of the Project. Petitioners are informed and believe, and thereon allege, that the City  
14 disputes these contentions. A judicial resolution of this controversy is therefore necessary and  
15 appropriate.

16 95. At all times mentioned herein, the City was able to conduct environmental review and  
17 analysis of the Project as required by CEQA and the City Planning Code. Nonetheless, the City has  
18 failed and continues to fail to perform its duty to conduct this required environmental review and  
19 analysis under CEQA and the City Planning Code.

20 96. If the City is not ordered to set aside its approval of the Project, petitioners and the public  
21 will be irreparably harmed. Petitioners have no plain, speedy, and adequate remedy in the ordinary  
22 course of law. Unless this Court issues its writ of mandate or injunctive or declaratory relief vacating the  
23 City's approval of the Project, and requiring the City to comply with CEQA and the City Planning Code,  
24 the City's approval of the Project challenged herein would violate applicable law. No monetary damages  
25 or other legal remedy could adequately compensate petitioners for the resulting harm to essential  
26 environmental reviews, protected property interests and environmental quality threatened by the City's  
27 approval of the Project.

28 ///

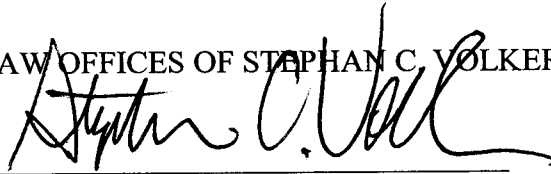
**RELIEF REQUESTED**

WHEREFORE, petitioners pray for judgment and further relief as follows:

1. For a peremptory writ of mandate directing the City to set aside and vacate its approval of the Project;
2. For declaratory relief declaring the Project to be unlawful;
3. For injunctive relief preventing the City from implementing the Project unless and until the City has complied with CEQA and the City Planning Code;
4. For attorneys' fees under Code of Civil Procedure section 1021.5;
5. For costs incurred in this action; and
6. For such other equitable or legal relief as the Court may deem just and proper.

Dated: October 17, 2017

LAW OFFICES OF STEPHAN C. VOLKER



STEPHAN C. VOLKER  
Attorney for Petitioners and Plaintiffs  
FRIENDS OF MONTGOMERY STREET, JOHN LEE,  
GORDON FRANCIS, and DAN LORIMER



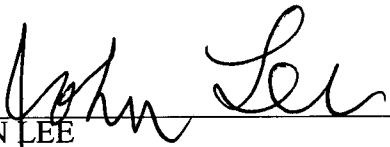
**VERIFICATION**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

I am one of the individual petitioners and plaintiffs and a member of petitioner and plaintiff FRIENDS OF MONTGOMERY STREET, in this action. I have read the foregoing Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief and Attorneys' Fees ("Verified Petition") and the documents therein referenced.

I declare under penalty of perjury and based on my personal knowledge that the Verified Petition is true and correct.

Executed this 17th day of October, 2017, in Berkeley, Alameda County, California.

  
\_\_\_\_\_  
JOHN LEE

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):  
Stephan C. Volker (CSB #63093)  
Law Offices of Stephan C. Volker  
1633 University Avenue  
Berkeley, California 94703  
TELEPHONE NO.: (510) 496-0600 FAX NO.: (510) 845-1255  
ATTORNEY FOR (Name): Friends of Montgomery Street, et al., Petitioners/Plaintiffs

FOR COURT USE ONLY  
**FILED**  
Superior Court of California  
County of San Francisco  
OCT 17 2017  
CLERK OF THE COURT  
BY: Shuman Liu  
Deputy Clerk  
**SHUMAN LIU**

SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco  
STREET ADDRESS: 400 McAllister Street  
MAILING ADDRESS:  
CITY AND ZIP CODE: San Francisco, CA 94102  
BRANCH NAME:

CASE NAME:  
Friends of Montgomery Street, et al. v. City and County of San Francisco

**CIVIL CASE COVER SHEET**  
 **Unlimited**  
(Amount demanded exceeds \$25,000)  
 **Limited**  
(Amount demanded is \$25,000 or less)

**Complex Case Designation**  
 **Counter**  **Joinder**  
Filed with first appearance by defendant  
(Cal. Rules of Court, rule 3.402)

CASE NUMBER:  
**CPF 17-515902**  
JUDGE:  
DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) <b>Non-PI/PD/WD (Other) Tort</b> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) <b>Employment</b> <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<b>Contract</b> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <b>Real Property</b> <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input checked="" type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<b>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</b> <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20) <b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
--	---	--

2. This case  is  is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. <input type="checkbox"/> Large number of separately represented parties	d. <input type="checkbox"/> Large number of witnesses
b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve	e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. <input type="checkbox"/> Substantial amount of documentary evidence	f. <input type="checkbox"/> Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a.  monetary b.  nonmonetary; declaratory or injunctive relief c.  punitive

4. Number of causes of action (specify): Three (3)

5. This case  is  is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: October 17, 2017  
Stephan C. Volker  
(TYPE OR PRINT NAME)

Stephan C. Volker  
(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.