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10 San Francisco Bay Area Renters Federation,
11 California Renters Legal Advocacy and
12 Education Fund, Sonja Trauss, and
13 Diego Aguilar-Canabal

ENDORSED
FILED
ALAMEDA COUNTY
MAR 25 2011

CLERK OF THE SUPERIOR COURT
By Larissa Sullivan, Deputy

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF ALAMEDA - UNLIMITED CIVIL JURISDICTION

12 SAN FRANCISCO BAY AREA RENTERS
13 FEDERATION, CALIFORNIA RENTERS
14 LEGAL ADVOCACY AND EDUCATION
15 FUND, SONJA TRAUSS, and DIEGO
16 AGUILAR-CANABAL,

Case No. *17861793*

PETITION FOR WRIT OF
ADMINISTRATIVE MANDAMUS

(C.C.P. §1094.5; C.C.P. §§1085 & 1060;
C.C.P. §1021.5; Gov't Code § 65589.5)

16 Petitioners,

17 vs.

18 BERKELEY CITY COUNCIL, CITY OF
19 BERKELEY, a municipal corporation, and
20 DOES 1-25,

21 Respondents.

22 BARAN STUDIO ARCHITECTURE, a
23 California corporation, and CS
24 DEVELOPMENT & CONSTRUCTION INC,
25 a California corporation,

Real Parties in Interest.

26 Petitioners San Francisco Bay Area Renters Federation, California Renters Legal
27 Advocacy and Education Fund, Sonja Trauss, and Diego Aguilar-Canabal ("Petitioners")
28 allege as follows:

1 1. Petitioner San Francisco Bay Area Renters Federation is an unincorporated
2 association of renters whose mission includes advocating for the production of housing to
3 meet the needs of California residents, including in Berkeley, through California's
4 Housing Accountability Act, Government Code § 65589.5 et seq. ("HAA" or "the Act").
5 Its members are residents of the State of California. Its membership cuts across
6 socioeconomic lines, including members with very low, low, moderate, and middle
7 incomes, as well as members who can afford market-rate housing. San Francisco Bay
8 Area Renters Federation has a direct and substantial interest in ensuring that the City
9 comply with the requirements of law, including state laws requiring that the City do its
10 fair share to address the housing needs of California citizens and workers. San Francisco
11 Bay Area Renters Federation actively supports housing development projects and
12 opposes efforts to disapprove or reduce the density of housing development projects. San
13 Francisco Bay Area Renters Federation acts on behalf of its members, though its actions
14 benefit all similarly situated renters and intended renters. Members of the San Francisco
15 Bay Area Renters Federation were, are, will be, and would be eligible to apply for
16 residency in the Project. As potential residents of the Project, members of the San
17 Francisco Bay Area Renters Federation are affected by the City's actions challenged
18 herein. Its members, as well as the general public, will be adversely affected by impacts
19 resulting from the acts described herein and are aggrieved by the acts, decisions, and
20 omissions of the City as alleged in this Petition. San Francisco Bay Area Renters
21 Federation is a nonprofit organization whose mission includes advocating for increased
22 access to housing for low-income households. The San Francisco Bay Area Renters
23 Federation is suing on its behalf, on behalf of its members, and on behalf of others who
24 will be affected by the City's acts, as well as all citizens and potential applicants and
25 residents of the Project.

26 2. Petitioner California Renters Legal Advocacy and Education Fund
27 ("CaRLA") is a California nonprofit corporation founded, in part, to advocate for and to
28 ensure compliance with the HAA and to educate interested persons, including local

1 governments and developers, about the Act. Participating in, and supporting, litigation of
2 wrongful denials of housing projects is an important aspect of CaRLA's mission and is
3 necessary to increase compliance with the Act. CaRLA has a substantial interest in
4 ensuring that the City's decisions are in conformity with the requirements of law, and in
5 having those requirements properly executed and the public duties of the City enforced.

6 3. Petitioner Sonja Trauss is a natural person and a resident of the State of
7 California. She was, is, will be, and would be eligible to apply for residency in the
8 Project. As a potential resident of the Project, Sonja Trauss is affected by the City of
9 Berkeley's actions challenged herein. She has a substantial interest in ensuring that the
10 City of Berkeley's decisions are in conformity with the requirements of law, and in
11 having those requirements properly executed and the public duties of the City enforced.

12 4. Petitioner Diego Aguilar-Canabal is a natural person and a resident of the
13 City of Berkeley and the State of California. He was, is, will be, and would be eligible to
14 apply for residency in the Project. As a potential resident of the Project, Diego Aguilar-
15 Canabal is affected by the City of Berkeley's actions challenged herein. He has a
16 substantial interest in ensuring that the City of Berkeley's decisions are in conformity
17 with the requirements of law, and in having those requirements properly executed and the
18 public duties of the City enforced.

19 5. Respondent City of Berkeley ("Berkeley") is a California municipal
20 corporation located within the County of Alameda.

21 6. Respondent Berkeley City Council ("City Council") is the legislative
22 governing body of the City of Berkeley. It is also the administrative agency whose
23 decision is being reviewed in this action.

24 7. Real Party in Interest Baran Studio Architecture is the project applicant for
25 Use Permit No. ZP2015-0087.

26 8. Real Party in Interest CS Development & Construction Inc. is the owner of
27 the real property commonly known as 1310 Haskell Street, Berkeley, California ("1310
28 Haskell Street").

1 9. This litigation concerns 1310 Haskell Street. At all relevant times, 1310
2 Haskell Street has comprised a single residential unit.

3 10. The owner of 1310 Haskell Street desired to demolish it and construct three
4 new two-story dwellings (the "Project").

5 11. The Project constitutes a "housing development project" under California's
6 Housing Accountability Act (Gov't Code § 65589.5 *et seq.*).

7 12. The Project and Use Permit No. ZP2015-0087 requires the approval of
8 permits to: (a) demolish a dwelling unit under Berkeley Municipal Code ("BMC") §
9 23C.08.010.b, (b) demolish a building containing a residential unit under BMC §
10 23C.08.020.A, (c) construct residential units under BMC § 23D.28.030, and (d) construct
11 six or more bedrooms on a single parcel under BMC § 23D.32.050.A.

12 13. The Project was initially submitted to Berkeley for review and processing
13 on April 8, 2015.

14 14. The Project was approved by the Zoning Adjustment Board ("ZAB") on
15 March 10, 2016.

16 15. The ZAB determined that the Project complies with the R-2A development
17 standards applicable to 1310 Haskell Street.

18 16. The ZAB determined that the Project would not be detrimental to
19 neighboring properties.

20 17. The Project complied with all applicable, objective general plan and zoning
21 standards and criteria, including design review standards, in effect at the time that the
22 Project's application was determined to be complete prior to ZAB approval.

23 18. The ZAB issued Use Permit No. ZP2015-0087, authorizing the Project.

24 19. Several neighbors, hostile to the Project, appealed the approval and the Use
25 Permit to the City Council. On July 12, 2016, the City Council voted 5 ayes to 0 noes to 4
26 abstentions to adopt Resolution No. 67,612-N.S. denying Use Permit No. ZP2015-0087.

27 20. This quashed the Project.
28

1 21. Under the HAA, if a proposed housing project complies with a city's
2 general plan and zoning standards, the city may not disapprove or condition the project at
3 a lower density unless it provides written findings supported by substantial evidence that
4 the project would have a specific, adverse impact upon the "public health or safety" that
5 cannot be mitigated.

6 22. On February 28, 2017, the City Council held a second public hearing on the
7 recommended adoption of the ZAB's decision to approve Use Permit No. ZP2015-0087.

8 23. At the February 28, 2017 hearing, the City Council took two votes. The
9 first vote was to approve the Project, and that failed 3 ayes to 4 noes with 1 recusal. The
10 second vote was to adopt Resolution No. 67,852-N.S. denying Use Permit No. ZP 2015-
11 0087, which passed 5 ayes to 2 noes with 1 recusal. Council member Worthington voted
12 both yes and no.

13 24. In the City Council's findings in support of its February 28, 2017 decision,
14 it stated that the ZAB may "approve a Use Permit for the elimination or demolition of
15 dwelling units only if . . . it finds that the elimination of the dwelling units would not be
16 material[ly] [sic] detrimental to the housing needs and public interest of the affected
17 neighborhood and city."

18 25. The City Council then stated that the non-detriment requirement for the
19 proposed elimination of a dwelling unit is "beyond the 'applicable, objective general plan
20 and zoning standards'" in the applicable zoning district.

21 26. As a result, the City Council found "that the Housing Accountability Act,
22 Government Code Section 65589.5(j) does not apply to these discretionary portions of
23 the project and the Council is not compelled to approve the project under Section
24 65589.5(j)."

25 27. At the hearing, Councilmember Wengraf asked the City Attorney: "Since
26 this project requires a demolition permit for the construction of the new project, does the
27 granting of the demolition permit exempt it from the Housing Accountability Act?" City
28 Attorney Zack Cowan answered: "The Housing Accountability Act speaks broadly to

1 approval of housing development projects. And, it, in our view, encompasses whatever
2 permits are required for that, assuming that the project at issue complies with the
3 applicable lot development standards.” (*Video, Regular City Council Meeting* (Feb. 28,
4 2017) City of Berkeley
5 <[http://berkeley.granicus.com/MediaPlayer.php?publish_id=8fe6ecbc-fee0-11e6-ad57-](http://berkeley.granicus.com/MediaPlayer.php?publish_id=8fe6ecbc-fee0-11e6-ad57-f04da2064c47)
6 [f04da2064c47](http://berkeley.granicus.com/MediaPlayer.php?publish_id=8fe6ecbc-fee0-11e6-ad57-f04da2064c47)>, at 2:17:54-2:18:33)

7 28. Despite the City Attorney’s confirmation that the Project is not exempt
8 from the HAA, the City Council denied Use Permit No. ZP2015-0087.

9 29. The City Council did not find “a specific, adverse impact upon the public
10 health or safety.” The findings do not comply with the HAA and do not lawfully enable
11 the City Council to deny the ZAB’s approval of Use Permit No. ZP2015-0087.

12 30. Additionally, the City Council did not find that there is no “feasible method
13 to satisfactorily mitigate or avoid the adverse impact[s]” of the Project.

14 31. The City Council merely asserted that its requirement for a discretionary
15 permit for the demolition of the single-family dwelling unit is beyond the city’s
16 “applicable, objective general plan and zoning standards.” The City Council used that
17 rationale to avoid compliance with the HAA altogether.

18 32. The City Council did not base its decision regarding the proposed housing
19 development project (i.e., quashing the Project by adopting Resolution No. 67,852-N.S.)
20 upon written findings supported by substantial evidence on the record that both of the
21 following conditions exist:

22 (1) The housing development project would have a specific, adverse impact upon
23 the public health or safety unless the project is disapproved or approved upon the
24 condition that the project be developed at a lower density.

25 (2) There is no feasible method to satisfactorily mitigate or avoid the adverse
26 impact identified pursuant to paragraph (1), other than the disapproval of the
27 housing development project or the approval of the project upon the condition that
28 it be developed at a lower density. (Gov’t Code § 65589.5(j))

1 33. The City Council reached its decision primarily, if not solely, because of
2 the pressure “not in my backyard” (or “NIMBY”) protesters put on it. In other words, the
3 City Council did exactly what the HAA was designed to prevent.

4 34. The City Council did not satisfy both of the conditions identified above
5 because it did not demonstrate that the Project would have a specific, adverse impact on
6 public health or safety, and it did not show that there are no feasible methods to mitigate
7 or avoid said adverse impact. It merely asserted that approval of one aspect of the Project
8 is “beyond” the City’s general plan and zoning standards, thus it need not comply with
9 the HAA as to its analysis of the overall Project.

10 35. The HAA preempts local discretionary standards that would result in denial
11 or reduction in the density of a housing project. The City Council could not lawfully
12 disapprove the Project because the City Council did not comply with Gov’t Code §
13 65589.5(j). Therefore, the City Council violated the HAA.

14 36. Petitioners filed written and oral comments with Berkeley prior to its action
15 denying the Project.

16 37. Petitioners are entitled to relief by administrative mandamus to quash the
17 City Council’s adoption of Resolution No. 67,852-N.S.

18 WHEREFORE: Petitioners pray for relief as follows:

19 1. For an order overturning the City Council’s vote adopting Resolution No.
20 67,852-N.S.;

21 2. For an order denying the appeal of the ZAB’s approval of the Project;

22 3. For costs as allowed by law, including attorney’s fees under CCP § 1021.5;

23 and


24 4. For such other and further relief as the Court deems warranted based on the
25 facts established at trial.

26
27 Date: May 25, 2017

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By: 

Ryan J. Patterson
Attorneys for Petitioners San Francisco Bay Area
Renters Federation, California Renters Legal
Advocacy and Education Fund, Sonja Trauss, and
Diego Aguilar-Canabal

VERIFICATION

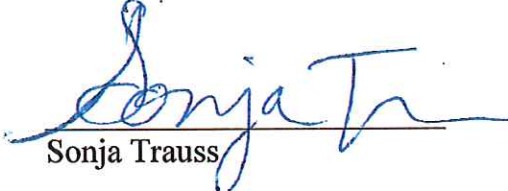
I, Sonja Trauss, declare as follows:

a. I am a natural person and a resident of the State of California. I am a petitioner, the Founder of the San Francisco Bay Area Renters Federation, and an Executive Director of the California Renters Legal Advocacy and Education Fund, and I am authorized to verify this Petition for Writ of Administrative Mandamus on behalf of these entities.

b. I have read the foregoing Petition for Writ of Administrative Mandamus and know its contents. The matters stated in the Petition for Writ of Administrative Mandamus are true based on my own knowledge, except as to those matters stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 25, 2017


Sonja Trauss