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ENDORSED
FILED
San Francisco County Superior Court

AUG 20 2018

CLERK OF THE COURT
BY: NEYL WEBB
Deputy Clerk

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

10
11 RRTI, INC., a California corporation,
12 Petitioner and Plaintiff,

13 vs.

14 CITY AND COUNTY OF SAN FRANCISCO;
BOARD OF SUPERVISORS OF THE CITY
15 AND COUNTY OF SAN FRANCISCO, and
DOES 1-10,
16 Respondents and Defendants.

Case No. **CPF-18-516301**
**VERIFIED PETITION FOR WRIT OF
MANDATE; COMPLAINT FOR
DAMAGES, INJUNCTIVE AND
DECLARATORY RELIEF**

[CCP § 1085, 1094.5; Pub. Res. Code §§ 21167,
21168, 21168.5]

CEQA ACTION

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19 Petitioner and Plaintiff RRTI, INC. ("Petitioner" or "RRTI") brings this Verified Petition for
20 Writ of Mandate, requesting this Court to direct the CITY AND COUNTY OF SAN FRANCISCO
21 ("City") and the BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN
22 FRANCISCO ("Board") (collectively, "Respondents" or "Defendants"), to set aside the Board's
23 decision to reverse on appeal the City Planning Department's determination that a community plan
24 evaluation ("CPE") applied to RRTI's multifamily project. In making its decision to reverse the
25 Planning Department, the Board abused its discretion.

26 In addition, Petitioner brings this complaint pursuant to 42 U.S.C. section 1983 to recover
27 damages against Defendants for violation of Petitioner's constitutional rights, including those
28 protected by the due process, equal protection, and takings clauses.

1 Finally, Petitioner seeks injunctive and declaratory relief to protect its grandfathered and
2 approved rights to a particular affordable housing obligation that would otherwise be vitiated by the
3 Board's actions.

4 **INTRODUCTION**

5 1. The City is experiencing an acute housing shortage. In September 2017, the late
6 Mayor Ed Lee issued Executive Order 17-02, which began by declaring:

7 The lack of housing affects everyone in our City. Years of failing to
8 build homes has resulted in families and long-term residents leaving
San Francisco in search of more affordable places to live.

9 We have thrown up obstacle after obstacle to the creation of new
10 housing in our City and failed to meet the demands of our growing
11 workforce. As we recovered from the Great Recession, we added
more than 140,000 jobs to San Francisco, but only approved 15,000
housing units.

12 2. In a June 2018 speech delivered immediately after her election, Mayor-elect London
13 Breed declared, "We have to build more housing. We have to build more housing. We have to build
14 more housing, and I will be relentless in my pursuit to get the job done."

15 3. Despite this critical problem and mayoral commitment to build more housing, certain
16 members of the Board prioritize arrangements with neighborhood housing activists over responsible
17 planning and deny multifamily residential projects for reasons unrelated to the law that the Board
18 purports to apply. In this case, a single Board member allied with special interest groups in the
19 Mission District seeking to acquire the property at a below-market price, or otherwise to block it
20 entirely, single-handedly killed the project after Petitioner refused to sell the property to the activists
21 at the discounted price demanded by those groups. The Board member's stated reason for the denial
22 was that shadows cast on a neighboring school by the project could theoretically affect a public
23 recreational space at some unspecified future time if that school ever became accessible to the
24 general public. The City's planning staff, however, repeatedly found in reports that any such
25 shadows do not constitute a significant environmental impact under the City's existing policies.

26 4. Following its policy and practice of a "supervisory prerogative," the Board
27 effectively delegated the approval authority of RRTI's project to Supervisor Hillary Ronen, the
28 Board member in whose district the project is located. Throughout the administrative process,

1 Supervisor Ronen maintained a close alliance with the project's opponents, supporting those
2 opponents' efforts to buy the property at a discount and attacking the RRTI's refusal to sell the
3 property at less than its fair market value.

4 5. A laundromat currently occupies the property that Petitioner seeks to develop. Three
5 other laundromats are located within 300 feet of the property. The proposed housing project would
6 provide 75 affordable by design residential units (with 8 of the units set aside for households earning
7 less than 50/55% of the average median income), all within a city block of a BART subway station
8 and multiple bus lines.

9 6. The project complies with the City's land use regulations. As a project subject to the
10 State Density Bonus Law ("DBL") Gov. Code § 65915), RRTI is permitted by law to build
11 additional units in return for providing certain levels of affordability. RRTI was granted waivers to
12 the City's development standards relating to rear yards, dwelling unit exposure, and height and bulk
13 requirements because of the project's compliance with the DBL.

14 7. Nevertheless, deferring to the wishes of Supervisor Ronen, the Board in this case
15 reversed the Planning Department's determination that Petitioner's proposed development project
16 was exempt from further environmental review under the California Environmental Quality Act
17 ("CEQA") pursuant to the CPE. The sole basis and pretext for the reversal was Supervisor's Ronen
18 manufactured shadow impact concern that was refuted thoroughly by City Staff and expert analyses.

19 8. As a result of the Board's action, the Planning Commission's approval of the project
20 was vacated.

21 9. This lawsuit challenges two actions taken by the Board in 2018: (1) its June 19 CPE
22 reversal; and (2) its July 10 adoption of findings supporting the CPE reversal (collectively, the
23 "Board Actions"). Petitioner hereby seeks a writ of mandate directing Respondents to set aside the
24 Board Actions and to reinstate the project's approvals, thereby allowing the project to secure its site
25 permit and to commence construction.

26 10. Petitioner also seeks a preliminary injunction to prevent Defendants from imposing
27 a higher affordable housing requirement on the project in the event that the Board Actions are set
28 aside by this Court. The project approved by the Planning Commission is subject to an 8-unit

1 affordability requirement, but this obligation increases to 14 units if a site permit is not obtained by
2 December 7, 2018. The San Francisco Planning Department's position is that the December 7
3 deadline is absolute and that no waivers or exceptions are available.

4 11. On June 15, 2018, Petitioner received written notice from the Planning Department
5 that the project's site permit was ready for issuance pending denial of the CEQA appeal at the Board
6 of Supervisors, thus the Board Actions are the sole reason that Petitioner may be unable to meet the
7 December 7, 2018 deadline. Adjudication of this matter is not expected to occur before the
8 December 7 deadline, and Petitioner will be irreparably harmed if the project's affordable obligation
9 increases. This increase in required affordability would threaten the financial feasibility of the
10 project.

11 12. On August 9, 2018, Petitioner's counsel submitted a request to the City Attorney that
12 the parties enter into an agreement to toll the December 7 deadline during the pendency of this
13 action. As of the date of filing this action, the City Attorney had not responded.

14 **THE PARTIES**

15 13. RRTI is a corporation organized and existing under the laws of the State of
16 California, and is and was at all times mentioned herein qualified to do business in the State of
17 California. RRTI is the fee owner of the subject property located at 2918-2924 Mission Street in
18 San Francisco ("Property"). The claims asserted and relief requested by RRTI will benefit the larger
19 community through the equal enforcement of state and local regulations that promote the production
20 of actual housing stock and the prohibition of political abuses in the face of a critical housing
21 shortage.

22 14. The City is a municipal corporation in whose jurisdiction the proposed project will
23 be located. The City has principal responsibility for determining whether projects within its
24 jurisdiction are consistent with the City's planning and zoning laws, as well as other applicable laws.

25 15. The Board serves as the legislative body of the City for the planning and provision
26 of services related to public needs and the requirements of state laws. As the elected representatives
27 of the people of the City, the Board establishes overall City priorities and sets policy. The Board is
28

1 the governing body of the City and is ultimately responsible for reviewing the project in the event
2 of an appeal.

3 16. Petitioner does not know the true names and capacities of Respondent fictitiously
4 named herein as DOES 1 through 10, inclusive, whether individual, corporate, governmental, or
5 otherwise, and therefore sue these Respondents by these fictitious names. Petitioner is informed
6 and believe, and thereon allege, that such fictitiously named Respondents are responsible in some
7 manner for the acts or omissions complained of or pending herein. Petitioner will amend this
8 petition to allege the fictitiously named Respondents' true names and capacities when ascertained
9 by Petitioner.

10 **JURISDICTION AND VENUE**

11 17. Petitioner brings this action as a Petition for Writ of Mandate pursuant to
12 Sections 1085 and/or 1094.5 of the Code of Civil Procedure, and Sections 21167, 21168 and/or
13 21168.5 of the Public Resources Code.

14 18. This Court has general subject matter jurisdiction over state law claims, including
15 the mandamus claims, and has concurrent jurisdiction over the federal law claims under 42 U.S.C.
16 section 1983.

17 19. The subject Property is located in the City, and the Board Actions occurred in the
18 City, thus venue for this action properly lies with this Court pursuant to Code of Civil Procedure
19 sections 392, 393(b), 394, and 395.

20 20. Petitioner exhausted its administrative remedies by providing objections to the Board
21 Actions. Petitioner raised factual and legal arguments, both verbally and in writing, challenging the
22 Board Actions prior to the Board's adoption of same.

23 21. The claims raised in this Petition were presented by Petitioner and/or other members
24 of the public prior to the Board Actions.

25 22. On July 19, 2018, Petitioner presented to Respondents a claim pursuant to the
26 Government Claims Act in compliance with the City's local form.

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28

1 23. Petitioner has a direct and beneficial interest in Respondents' full and complete
2 compliance with the legal requirements of CEQA, the DBL, the State Housing Accountability Act
3 ("HAA"), and any and all other applicable laws.

4 24. Petitioner is also a member of the public who has the right to enforce the City's duties
5 under CEQA, the DBL, the HAA, and any and all other applicable laws imposed on Respondents
6 in the exercise of their police powers.

7 25. The enforcement of the DBL and HAA is of statewide concern. On or around August
8 9, 2018, the California Department of Housing and Community Development (HCD) announced
9 that it would exercise its enforcement powers granted under Assembly Bill 72 to hold cities
10 accountable to provide more housing. These enforcement powers include the authority to review a
11 city's compliance with state housing laws and revoke its finding of housing element compliance.
12 HCD can also refer issues of noncompliance with the housing element law, the HAA, and the DBL,
13 to the State Office of the Attorney General.

14 26. Petitioner has no other plain, speedy, and adequate remedy at law, to set aside or
15 reverse the Board's abuse of discretion, and will suffer irreparable injury unless this Court issues the
16 writ and injunctive relief requested in this Petition.

17 **PRIVATE ATTORNEY GENERAL**

18 27. Petitioner brings this action pursuant to Code of Civil Procedure section 1021.5 to
19 enforce important rights affecting the public interest.

20 28. Issuance of the relief requested in this Petition will confer a significant benefit on the
21 general public by ensuring a local agency's compliance with CEQA and with statutes enacted to
22 protect the development of housing units in California.

23 29. The necessity and financial burden of enforcement are such as to make an award of
24 attorney's fees to Petitioner and against Respondents appropriate in this case.

25 **LEGAL BACKGROUND**

26 **CEQA**

27 30. Environmental review of the Project is governed by the CEQA statute (Pub. Res. Code
28 §§ 21000 et seq.) and the CEQA Guidelines (14 California Code of Regulations, §§ 15000 et seq.).

1 31. CEQA provides exemptions from and limits on environmental review under certain
2 circumstances.

3 32. For instance, Public Resources Code section 21083.3 and CEQA Guidelines section
4 15183 mandate that projects that are consistent with the development density established by existing
5 zoning, community plan or general plan policies for which an environmental impact report
6 ("EIR") was certified, shall not be subject to additional environmental review except as might be
7 necessary to examine whether there are project specific significant effects which are peculiar to the
8 project or its site.

9 33. Section 21083.3 essentially acts as a statutory exemption to further CEQA review,
10 albeit with the identified limits noted. Statutory exemptions generally apply to projects that the
11 Legislature determines promote an interest important enough to justify foregoing the benefits of
12 additional review.

13 34. Section 21083.3 specifically provides that if a parcel has been designated in a
14 community plan to accommodate a particular density of development, and an EIR was certified for
15 that planning action, CEQA review for a project on that parcel "shall be limited to effects upon the
16 environment which are peculiar to the parcel or to the project and which were not addressed as
17 significant effects in the prior [EIR], or which substantial new information shows will be more
18 significant than described in the prior [EIR]." (Pub. Res. Code § 21083.3(a).) "An effect of a project
19 upon the environment shall not be considered peculiar to the parcel or project, for purposes of this
20 section, if uniformly applied development policies or standards have been previously adopted by
21 the city or county, with a finding... that those development policies or standards will substantially
22 mitigate that environmental effect when applied to future projects." (Pub. Res. Code § 21083.3(d).)

23 35. CEQA Guidelines section 15183 specifies that examination of environmental effects
24 shall be limited to those effects that: a) are peculiar to the project or parcel on which the project
25 would be located; b) were not analyzed as significant effects in a prior EIR on the zoning action,
26 general plan or community plan with which the project is consistent; c) are potentially significant
27 off-site and cumulative impacts that were not discussed in the underlying EIR; or d) were previously
28 identified in the EIR, but which, as a result of substantial new information that was not known at

1 the time that the EIR was certified, are determined to have a more severe adverse impact than that
2 discussed in the underlying EIR.

3 36. CEQA Guidelines section 15183(c) also provides that if an impact is not peculiar to
4 the parcel or to the proposed project, then an EIR need not be prepared for the project solely on the
5 basis of that impact.

6 37. Neither the CEQA statute nor its Guidelines identifies a project's shadows as creating
7 a potential environmental impact.

8 38. CEQA Guidelines section 15064.7 encourages lead agencies to adopt and publish
9 "thresholds of significance" for use in determining whether environmental impacts are significant.
10 A threshold of significance is defined as "an identifiable quantitative, qualitative or performance
11 level of a particular environmental effect." Once such thresholds are established, an impact that
12 complies with the applicable threshold will "normally" be found insignificant, and an impact that
13 does not comply with the applicable threshold will "normally" be found significant. The thresholds
14 must be adopted by ordinance, resolution, rule, or regulation, be developed through a public review
15 process, and be supported by substantial evidence in the record of the proceeding leading to their
16 adoption.

17 **Eastern Neighborhoods EIR**

18 39. The City's Eastern Neighborhoods consist of the Mission District, Central
19 Waterfront, East South of Market and Showplace Square/Potrero Hill.

20 40. In or around January 2009, the City adopted the Eastern Neighborhoods Plans and
21 certified the Eastern Neighborhoods Program EIR ("PEIR").

22 41. Once certified, the Eastern Neighborhoods PEIR established a threshold of
23 significance regarding shadows within the Eastern Neighborhoods area of the City:

24 Implementation of the proposed [Eastern Neighborhoods Rezoning]
25 project would have a significant shadow impact if it were to
26 Create a new shadow in a manner that substantially affects outdoor
recreation facilities or other public areas.

27 In addition, shadow effects would be significant if they would affect,
28 in an adverse manner, the use of any park or open space under the
jurisdiction of the Recreation and Park Department, or significantly
detract from the usability of other existing publicly accessible open

1 space, or alter temperature so as to substantially affect public areas,
2 or change the climate either in the community or region.

3 42. The reference above to park or open space under the jurisdiction of the Recreation
4 and Parks Department is derived in part from San Francisco Planning Code sections 147 and 295(a).
5 Section 295 is the only City Planning Code provision relating to shadow which applies to the project,
6 and provides, in pertinent part, that: "No building permit authorizing the construction of any
7 structure that will cast any shade or shadow upon any property under the jurisdiction of, or
8 designated for acquisition by, the Recreation and Park Commission may be issued except upon prior
9 action of the Planning Commission pursuant to the provisions of this Section...."

10 43. Under Section 295, "property designated for acquisition by the Recreation and Park
11 Commission" means property which a majority of each of the Recreation and Park Commission and
12 the Planning Commission, meeting jointly, with the concurrence of the Board of Supervisors, have
13 recommended for acquisition from the Open Space Acquisition and Park Renovation Fund, which
14 property is to be placed under the jurisdiction of the Recreation and Park Commission.

15 44. Section 295(b) requires the Planning Commission to disapprove the issuance of any
16 building permit governed by Section 295 if it finds that the proposed project will have any adverse
17 impact on the use of the property under the jurisdiction of, or designated for acquisition by, the
18 Recreation and Park Commission because of the shading or shadowing that the development will
19 cause, unless it is determined that the impact would be insignificant. The Planning Commission
20 cannot make such a determination until the general manager of the Recreation and Park Department,
21 in consultation with the Recreation and Park Commission, has had an opportunity to review and
22 comment to the Planning Commission upon the proposed project.

23 45. Because the Planning Commission determined that the Project was not subject to
24 Section 295, no such hearing occurred in this case.

25 46. Therefore, with regard to a proposed project's shadows, the City only recognizes a
26 potential environmental effect under CEQA if a project creates new shadows on public parks or
27 open public spaces officially designated by the City under Section 295.
28

1 47. Public school schoolyards within the City are under the jurisdiction of the San
2 Francisco Unified School District ("SFUSD"), and not the Recreation and Park Commission. There
3 is currently no legislation being proposed or considered by the Board to include San Francisco
4 Unified School District schoolyards under Section 295 of the Planning Code. Further, the San
5 Francisco Unified School District was not an Appellant during the Appeal before the Board.

6 **SF Administrative Code Section 31.16**

7 48. A determination by the Planning Department that a project is exempt from CEQA
8 may be appealed pursuant to Section 31.16 of the City's Administrative Code.

9 49. The grounds for appeal of an exemption determination must be limited to whether
10 the project conforms to the requirements of CEQA for an exemption. (Admin. Code § 31.16(e)(3).)

11 50. If the Board reverses a CEQA determination, the Board must "adopt specific findings
12 setting forth the reasons for its decision." (Admin. Code § 31.16(b)(8).)

13 51. Upon the Board's reversal, "the prior CEQA decision and any actions approving the
14 project in reliance on the reversed CEQA decision, shall be deemed void." (Admin. Code
15 § 31.16(b)(11).)

16 **GENERAL ALLEGATIONS**

17 **The Project**

18 52. The "Project" that is the subject of the Board Actions and this lawsuit will replace an
19 existing laundromat with an eight-story, 85-foot-tall, approximately 67,300-square-foot building
20 containing 75 dwelling units (18 studio, 27 one-bedroom, and 30 two-bedroom units) and ground
21 floor retail uses. Of the 75 total units, 8 are set aside for lower income households, and all of the
22 units are "affordable by design."

23 53. To reduce automobile traffic in the area and to respond to neighborhood concerns
24 regarding pedestrian safety, the Project eliminated automobile parking from the Property, and
25 instead provides a bicycle storage room with 76 Class 1 bicycle spaces and 14 Class 2 bicycle
26 spaces.

27 54. The Project also provides six street trees and seven bicycle racks on Mission Street,
28 as well as open space in the form of common terraces on the second floor and rooftop of

1 approximately 1,050 square feet and 5,750 square feet, respectively, and approximately 1,100 square
2 feet of private decks.

3 **The Project's Entitlement Proceedings**

4 55. On March 11, 2014, RRTI submitted a Preliminary Project Assessment for the
5 Project.

6 56. On May 9, 2014, the Planning Department issued its response to the Preliminary
7 Project Assessment. With regard to the Project's shadows, the Planning Department stated, "The
8 proposed project would include the construction of a building greater than 40 feet in height. A
9 preliminary shadow fan analysis has been prepared by Planning Department staff that indicates that
10 the proposed project would not cast shadows on recreational resources. Therefore, no shadow study
11 is required."

12 57. RRTI filed its formal development application on January 8, 2016.

13 58. While the Project applications were being processed by the City, interest groups
14 Mission Economic Development Agency ("MEDA") and the Calle 24 Latino Cultural District
15 Council complained that the Project did not provide 100% of its units as affordable units, but did
16 not raise concerns about the Project's height, bulk, or shadows.

17 59. On August 30, 2017, the Planning Department prepared an initial study to evaluate
18 the potential environmental impacts of the Project pursuant to the requirements of CEQA. In
19 particular, the initial study evaluated whether the potential environmental impacts of the Project
20 were addressed in the Eastern Neighborhoods PEIR and thus, whether the Project was subject to
21 streamlined review under Public Resources Code section 21083.3 and CEQA Guidelines section
22 15183.

23 60. The initial study evaluated whether the Project would result in significant impacts
24 that: (1) are peculiar to the Project or Project site; (2) were not identified as significant project-
25 level, cumulative, or off-site effects in the PEIR; or (3) were previously identified significant effects,
26 which as a result of substantial new information that was not known at the time that the Eastern
27 Neighborhoods PEIR was certified, are determined to have a more severe adverse impact than
28 discussed in the PEIR.

1 61. If the initial study identified such impacts, they would be evaluated in a project-
2 specific mitigated negative declaration or EIR. Because no such impacts were identified, the initial
3 study recognized that no further environmental review could be required for the Project beyond that
4 provided in the Eastern Neighborhoods PEIR and the Project-specific initial study.

5 62. Unlike the environmental checklist form included as Appendix G to the CEQA
6 Guidelines, the City's initial study checklist includes an evaluation of potential shadow impacts.

7 63. With regard to potential shadow impacts, the City's initial study checklist determined
8 the following:

9 Planning Code section 295 generally prohibits new structures above
10 40 feet in height that would cast additional shadows on open space
11 that is under the jurisdiction of the San Francisco Recreation and Park
12 Commission between one hour after sunrise and one hour before
13 sunset, at any time of the year, unless that shadow would not result in
14 a significant adverse effect on the use of the open space. Under the
15 Eastern Neighborhoods Rezoning and Area Plans, sites surrounding
16 parks could be redeveloped with taller buildings without triggering
17 section 295 of the Planning Code because certain parks are not subject
18 to section 295 of the Planning Code (i.e., under jurisdiction of
19 departments other than the Recreation and Parks Department or
20 privately owned). The Eastern Neighborhoods PEIR could not
21 conclude if the rezoning and community plans would result in less-
22 than-significant shadow impacts because the feasibility of complete
23 mitigation for potential new shadow impacts of unknown proposals
24 could not be determined at that time. Therefore, the PEIR determined
25 shadow impacts to be significant and unavoidable. No mitigation
26 measures were identified in the PEIR.

19 The proposed project would construct an approximately 85-foot-tall
20 building; therefore, the Planning Department prepared a preliminary
21 shadow fan analysis to determine whether the project would have the
22 potential to cast new shadow on nearby parks. The preliminary
23 shadow fan analysis indicates that the proposed project would not cast
24 shadows on any neighborhood parks or recreational resources subject
25 to Planning Code section 295. In addition, the proposed project
26 would not cast shadows on the play yard of the Zaida T. Rodriguez
27 early education school adjacent to the south of the site.

23 The proposed project would shade portions of nearby streets,
24 sidewalks, and properties at times within the project vicinity.
25 Shadows upon streets and sidewalks would not exceed levels
26 commonly expected in urban areas and would be considered a less-
27 than-significant effect under CEQA. Although occupants of nearby
28 property may regard the increase in shadow as undesirable, the
 limited increase in shading of private properties as a result of the
 proposed project would not be considered a significant impact under
 CEQA.

1 For the above reasons, the proposed project would not result in
2 significant impacts related to shadow that were not identified in the
Eastern Neighborhoods PEIR.

3 64. On August 30, 2017, the Planning Department issued a CPE, pursuant to CEQA, the
4 CEQA Guidelines, and Chapter 31 of the San Francisco Administrative Code, finding that the
5 Project was consistent with the development density established by zoning, community plan, and
6 general plan policies in the Eastern Neighborhoods Rezoning and Area Plans for the Project site,
7 for which a PEIR was certified.

8 65. The CPE determined that the Project "was eligible for streamlined environmental
9 review per Section 15183 of the [CEQA] Guidelines and California Public Resources Code
10 Section 21083.3."

11 66. In particular, the CPE made the following finding:

12 This determination concludes that the proposed project at 2918-2924
13 Mission Street is consistent with and was encompassed within the
14 analysis in the Eastern Neighborhoods PEIR, including the Eastern
15 Neighborhoods PEIR development projections. This determination
16 also finds that the Eastern Neighborhoods PEIR adequately
17 anticipated and described the impacts of the proposed 2918-2924
18 Mission Street project, and identified the mitigation measures
19 applicable to the 2918-2924 Mission Street project. The proposed
20 project is also consistent with the zoning controls and the provisions
21 of the Planning Code applicable to the project site. Therefore, no
22 further CEQA evaluation for the 2918-2924 Mission Street project is
23 required. In sum, the Eastern Neighborhoods PEIR and this
24 certificate of determination and accompanying project-specific initial
25 study comprise the full and complete CEQA evaluation necessary for
26 the proposed project.

27 67. The CPE further determined that the Project "is in conformance with the height, use
28 and density for the site described in the Eastern Neighborhoods PEIR and would represent a small
part of the growth that was forecast for the Eastern Neighborhoods plan areas. Thus, the plan
analyzed in the Eastern Neighborhoods PEIR considered the incremental impacts of the proposed
2918-2924 Mission Street project. As a result, the proposed project would not result in any new or
substantially more severe impacts than were identified in the Eastern Neighborhoods PEIR."

68. With regard to shadow impacts, the CPE determined that the Project "would not cast
new shadow that would negatively affect the use and enjoyment of a recreational resource, and

1 therefore would not contribute to the significant and unavoidable shadow impacts described in the
2 Eastern Neighborhoods PEIR."

3 69. In its Conclusion section, the CPE made the following findings:

- 4 • The proposed project is consistent with the development density
5 established for the project site in the Eastern Neighborhoods
6 Rezoning and Area Plans;
- 7 • The proposed project would not result in effects on the
8 environment that are peculiar to the project or the project site that
9 were not identified as significant effects in the Eastern
10 Neighborhoods PEIR;
- 11 • The proposed project would not result in potentially significant
12 off-site or cumulative impacts that were not identified in the
13 Eastern Neighborhoods PEIR;
- 14 • The proposed project would not result in significant effects,
15 which, as a result of substantial new information that was not
16 known at the time the Eastern Neighborhoods PEIR was certified,
17 would be more severe than were already analyzed and disclosed
18 in the PEIR; and
- 19 • The project sponsor will undertake feasible mitigation measures
20 specified in the Eastern Neighborhoods PEIR to mitigate project-
21 related significant impacts.

22 The CPE thus concluded that "no further environmental review shall be required for the proposed
23 project pursuant to Public Resources Code Section 21083.3 and CEQA Guidelines Section 15183."

24 70. At its September 14, 2017, hearing on the Project, the Planning Commission
25 continued the public hearing to November 30, 2017, contrary to the wishes of Petitioner. The
26 purpose of the continuance was to delay the Project so as to allow interest group MEDA more time
27 to negotiate its purchase of the Property.

28 71. MEDA's offer to buy the Property, which was supported by Supervisor Ronen, did
not approach fair market value and was therefore financially infeasible.

72. On November 10, 2017, counsel for Petitioner transmitted a letter to the City
Attorney stating that the City Planning Code requirement that the Project provide 14.5% of its base
units as affordable did not become effective until two months after the current density bonus version
of the Project was proposed. As a result, the Project's on-site inclusionary requirement should be
based on the Planning Code requirement at the time of application, and should not be subject to the
December 7, 2018 deadline.

1 73. At its November 30, 2017 public hearing, the Planning Commission approved a
2 conditional use authorization for the Project via Motion No. 20066. This action served as the
3 approval action to which a CEQA-based appeal could be filed under the City's Administrative Code.

4 74. On January 2, 2018, the City Clerk received an appeal letter from J. Scott Weaver,
5 West Bay Law, on behalf of Calle 24 Latino Cultural District Council ("Appellant"), which appealed
6 the Planning Department's CPE determination ("Appeal").

7 75. On February 5, 2018, Planning Staff prepared a report for the Board's February 13,
8 2018 meeting, which responded to the Appeal. As framed by the Planning Department:

9 The decision before the Board is whether to uphold the Planning
10 Department's determination that the Project is not subject to further
11 environmental review (beyond that conducted in the CPE Initial
12 Study and the PEIR) pursuant to CEQA section 21083.3 and CEQA
13 Guidelines section 15183 and deny the appeal, or to overturn the
14 Department's CPE determination for the Project and return the CPE
15 to the Department for additional environmental review. The Board's
16 decision must be based on substantial evidence in the record. (See
17 CEQA Guidelines section 15183(b) and (c).)

18 76. The Planning Department's February 5 response squarely rejected the Appeal's
19 claims of shadow impacts:

20 The Appellant contends that the Eastern Neighborhoods Area Plan
21 PEIR analysis cannot be relied upon to support the exemption with
22 respect to impacts related to shadow, yet again fails to provide any
23 evidence of such claims. The PEIR determined shadow impacts to be
24 significant and unavoidable because it could not determine the
25 feasibility of complete mitigation for potential new shadow impacts
26 of unknown proposals. The CPE Initial Study page 31 describes the
27 project-specific preliminary shadow fan analysis that was prepared
28 for the Project and states that the Project would not cast shadows on
any neighborhood parks or outdoor public recreational facilities, and
correctly determines that the Project would not result in significant
shadow impacts that were not identified in the Eastern Neighborhoods
PEIR. The Appeal Letter does not provide any evidence that the
project would result in new or substantially more severe shadow
impacts than were identified in the Eastern Neighborhoods PEIR.

77. Shortly before the scheduled February 13, 2018 Appeal hearing before the Board,
Planning Commissioner Myrna Melgar, who had on November 30, 2017 voted against the Planning
Commission approval of the Project, contacted the Planning Department, claiming that the existing
laundromat on the Project site should be considered a historic resource for its association with the

1 Mission Coalition of Organizations during the late 1960's and early 1970's. This claim was not
2 raised by Appellant.

3 78. Commissioner Melgar's claim had not been considered in the initial study for the
4 Project, so the Planning Department determined that additional research was required to assess
5 whether the Project would result in a significant impact to a historic resource that is peculiar to the
6 Project or the Property and that was not disclosed as a significant effect in the Eastern
7 Neighborhoods PEIR, and requested a continuance of the Board of Supervisors hearing on the
8 Appeal.

9 79. At the February 13, 2018 Board hearing, the Board voted to continue the hearing to
10 June 19, 2018, to allow additional time for the Planning Department to prepare an analysis of the
11 potential effects of the Project on historic resources.

12 80. The Planning Department prepared a Historic Resource Evaluation and found that
13 the Property lacked sufficient integrity to convey its identified historic significance under Criterion
14 1 of the California Register of Historical Resources and determined that the laundromat building
15 was not a historic resource as defined under CEQA Guidelines section 15064.5.

16 81. Other than delaying the Project by four months, Commissioner Melgar's insistence
17 on further historical studies had no bearing on the Appeal.

18 82. On June 11, 2018, the Planning Department prepared a "Supplemental Responses"
19 document that further addressed the issues raised in the Appeal. The City's Supplemental Responses
20 included a February 2, 2018 shadow analysis prepared by RWDI, a technical consultant experienced
21 in conducting CEQA and Section 295 shadow analyses. The Planning Department's supplemental
22 analysis of the Project's shadows determined that:

23 Although not required by CEQA, in San Francisco the environmental
24 review of projects includes an analysis of whether new shadow from
25 a proposed project would affect the use and enjoyment of parks or
26 open spaces that are publically accessible.

27 There are 143 public schools and approximately 110 private schools
28 in San Francisco. In general, schoolyards are not considered to be
publically accessible, as they are only accessible to the students,
faculty, and staff associated with the school. As such, shadow on
schoolyards is typically not evaluated as part of CEQA review in San
Francisco. However, over 40 public schools citywide are currently
enrolled in the San Francisco Shared Schoolyard Project. Information

1 on the Shared Schoolyard Project may be found at
2 <http://www.sfsharedschoolyard.org/>. Only schoolyards that are
3 enrolled in the Shared Schoolyard Project are considered to be
4 publically accessible, and participating schoolyards are included as
5 public open spaces within the shadow analysis for CEQA review. The
6 Zaida T. Rodriguez School located next to the Project site is not a
7 participating schoolyard; thus, shadow effects of the proposed project
8 on the Zaida T. Rodriguez schoolyard are not considered
9 environmental impacts under CEQA. This issue is further discussed
10 in the Department's February 5, 2018 appeal response (pages 28 and
11 29). Accordingly, the CPE initial study did not find any significant
12 shadow impacts that are peculiar to the Project or Project site that
13 were not previously disclosed in the Eastern Neighborhoods PEIR.

8 Although shadow effects of the Project on non-publically accessible
9 schoolyards are not considered environmental impacts under CEQA,
10 the Project sponsor retained a shadow consultant to prepare a
11 quantitative shadow analysis in accordance with the Department's
12 shadow analysis methodology that evaluates the shadow effects of the
13 project on the two nearby schoolyards for informational purposes
14 (*RWDI, Shadow Analysis 2918 Mission Street, February 7, 2018* –
15 included as Attachment G). The Zaida T. Rodriguez School is
16 comprised of two campuses. The 2950 Mission Street main campus
17 is located to the south of the Project site, and includes an
18 approximately 4,500-square-foot schoolyard located on the western
19 side of the building fronting Osage Alley. The 421 Bartlett Street
20 annex is located across Osage Alley to the west of the Project site,
21 with its approximately 2,000-square-foot schoolyard located on the
22 eastern side of the building, also fronting Osage Alley...

16 The shadow analysis shows that the proposed Project would not cast
17 any new shadows on the 2950 Mission Street campus schoolyard
18 between 8:59 a.m. and 4:44 p.m. on any day of the year. Outside of
19 these hours, morning and evening shadows would fall on the
20 northeastern corner of the schoolyard area; however, this location is
21 used for staff parking and storage and not as a play area. With respect
22 to the 421 Bartlett Street annex, the proposed Project would cast new
23 shadows on the schoolyard in the morning throughout the year.
24 Shadows would range in duration from 143 minutes to 273 minutes
25 and would not occur after 11:51 a.m. on any day of the year. The
26 duration of shadow varies with the time of year. In general, the
27 maximum area of shading occurs before 9 a.m., and by 11 a.m., one
28 quarter of the schoolyard or less would be shadowed. Mature trees
on the schoolyard currently shade portions of the schoolyard during
the mornings.^[1]

24 Development projects located in proximity to schools is not an
25 unusual circumstance in San Francisco. As discussed above, shadow
26 on schoolyards that are not publicly accessible open space is not an
27 environmental impact under CEQA. Accordingly, environmental
28 review of other development projects that shade schoolyards
throughout the city have determined that such effects are not physical

1 These shading trees may be viewed via Google Maps: <https://www.google.com/maps/@37.7502176,-122.4188433,3a,75y,240.91h,100.75t/data=!3m6!1e1!3m4!1sPwmnMqxabxYUFNhhnc2SJw!2e0!7i16384!8i8192>

1 environmental impacts. Accordingly, the CPE initial study did not
2 find any significant shadow impacts that are peculiar to the Project or
3 Project site that were not previously disclosed in the Eastern
4 Neighborhoods PEIR.
(Emphases added.)

5 83. In its "Conclusion," the City's Supplemental Responses document provides as
6 follows:

7 As discussed in the CEQA Guidelines section ... of the
8 Department's Appeal Response dated February 5, 2018, CEQA
9 section 21083.3 and CEQA Guidelines section 15183 **mandate** that
10 projects that are consistent with the development density established
11 by existing zoning, community plan or general plan policies for
12 which an EIR was certified, **shall not** require additional
13 environmental review unless there are project-specific effects that
14 are peculiar to the project or its site and that were not disclosed as
15 significant effects in the prior EIR.

16 CEQA Guidelines section 15064(f) provides that the determination
17 of whether a project may have one or more significant effects shall
18 be based on substantial evidence in the record of the lead agency.
19 CEQA Guidelines 15604(f)(5) offers the following guidance:
20 "Argument, speculation, unsubstantiated opinion or narrative, or
21 evidence that is clearly inaccurate or erroneous, or evidence that is
22 not credible, shall not constitute substantial evidence. Substantial
23 evidence shall include facts, reasonable assumption predicated
24 upon facts, and expert opinion supported by facts."

25 The Appellant has not provided substantial evidence to support a
26 claim that the CPE fails to conform to the requirements of CEQA
27 pursuant to CEQA section 21083.3 and CEQA Guidelines section
28 15183. The Planning Department conducted necessary studies and
analyses necessary to make an informed decision about the
environmental effects of the project, based on substantial evidence in
the record, in accordance with the Planning Department's CPE Initial
Study and standard procedures, and pursuant to CEQA and the
CEQA Guidelines. Therefore, the Planning Department respectfully
recommends that the Board of Supervisors uphold the Department's
CPE and reject the appeal.
(Emphases in original.)

29 84. Neither Appellant, the Board, nor any member of the public submitted evidence that
30 refuted Staff's determination.

31 The Board Actions

32 85. On June 19, 2018, the Board held a noticed public meeting on the Appeal. Appellant
33 raised a host of arguments, but did not raise any historic resource arguments, which were the basis
34 of the continuance.

1 86. During Staff's presentation of the analyses performed under CEQA, City Senior
2 Environmental Planner Julie Moore stated:

3 The question before you is: Has the Appellant demonstrated that the
4 CEQA determination – the CPE – is not based on substantial
5 evidence? The Department believes the CPE fully meets the
6 requirements of CEQA and is supported by substantial evidence. The
7 Department's written appeals responses address all of the Appellant's
8 claims, but I'd like to focus on three key issues. As I will discuss, the
9 existing building on the Project site is not a historic resource under
10 CEQA, and therefore there would be no peculiar historic impact. The
11 Appellant's claims regarding Eastern Neighborhood's growth
12 projections are incorrect and misleading, as are arguments regarding
13 environmental impacts of changing transportation patterns,
14 gentrification and displacement. And finally, the environmental
15 impacts on the Zaida T. Rodriguez School were analyzed in the CPE.

16 ...

17 Finally, with respect to claims regarding environmental effects on the
18 adjacent school, the Eastern Neighborhoods EIR evaluated effects of
19 development throughout the Plan area and considered that projects
20 would be constructed adjacent to sensitive receptors, such as
21 residences, schools, daycares, senior citizen facilities and hospitals.
22 The location of the preschool adjacent to the Project site is not a new
23 or unforeseen circumstance not analyzed in the EIR. The
24 environmental effects were analyzed in the CPE and all significant
25 impacts on the school must be reduced or avoided through applicable
26 regulations and mitigation measures identified in the EIR.

27 87. Supervisor Ronen then expressed her belief, without providing evidence, that all of
28 the City's schools will eventually be included in the Shared School Yards Program, and that the
Project's CEQA analysis should be based on the potential inclusion of the Zaida T. Rodriguez school
into that program.

 88. After the close of public comment, Supervisor Ronen responded to testimony
regarding the misuse of CEQA by focusing her indignation on the fact that Petitioner, who has no
experience in building multi-family housing, might profit by selling the entitled Project to a
residential developer:

 Well you know what I think is misplaced is that Mr. Tillman has no
intention of building housing on this site. Mr. Tillman is exploiting
the process for his own personal gain. He knows he can get more
money by selling this property if it's entitled than if it's not. And he
told me that on the phone, that he has every intention of selling this
property. He has no intention of building housing there. So let's just
be honest about that. Let's be honest about – this is about getting top
dollar for a piece of property and exploiting whatever processes that

1 there are in order to do that. Let's not pretend that somehow by using
2 the law and CEQA to make sure that the neighborhood is protected
3 from environmental impacts is somehow an exploitation of the
Project, but what Mr. Tillman is doing is not.

4 89. Supervisor Ronen admitted that the Project's CEQA review was adequate except for
5 shadow impacts. She contended that the CEQA analysis was deficient because it should have
6 studied the school's potential for inclusion in the Shared School Yard Program, which may never
7 occur:

8 I think that the majority of the CEQA review in this project was
9 sufficient, but I find one area that it wasn't sufficient, and that is
10 particularly the area of the shadow impact on the two school yards.
11 The intention of the Shared School Yard Program and the City and
12 County of San Francisco is that all shared school – all school yards –
all SFUSD school yards will become shared school yards and will be
open to the public when school is out, and there has been, in my
opinion, not enough analysis as to how the shadow of this – the
impacts of this project will impact that public open space.

13 90. Supervisor Ronen then moved to reverse the City's CPE determination and to direct
14 Staff to prepare findings in support of the reversal. The motion was unanimously approved without
15 any discussion by the Board.

16 91. The effect of Supervisor Ronen's derivation from the City's threshold of significance
17 for shadows not only voided the Project approvals, it has created new procedural barriers for future
18 housing projects. Petitioner is informed and believes that the Planning Department now requires all
19 new projects to include nearby school yards in the CEQA shadow impacts analysis even if they are
20 not now and may never be part of the Shared School Yards Program. Over 250 schools are located
21 in the City, thus numerous pending and future housing projects in the City may now be blocked in
22 contravention to the concerns of the State Legislature and the City's former and current Mayors
23 regarding the critical shortage of market rate and affordable housing.

24 92. The second of the two Board Actions took place on July 10, 2018, wherein the Board
25 adopted proposed findings supporting the CPE reversal.

26 93. Prior to the July 10 Board meeting, RRTI submitted correspondence objecting to the
27 proposed findings.
28

1 94. During the July 10 meeting, the Board approved Motion No. M18-094, thereby
2 adopting findings to reverse the CPE determination. This motion was approved by a simple roll call
3 vote without discussion.

4 95. On August 9, 2018, RRTI served on Respondents its Notice of Intent to File CEQA
5 Petition. The proof of service is filed herewith.

6 96. RRTI timely filed and served this action.

7 **FIRST CAUSE OF ACTION**

8 **(Writ of Mandate – CCP § 1094.5, PRC § 21168.5**

9 **Abuse of Discretion)**

10 97. Petitioner hereby incorporates by reference all paragraphs of this Petition as if set
11 forth fully herein.

12 98. Under CEQA, abuse of discretion is established if the local agency has not proceeded
13 in a manner required by law or if the determination or decision is not supported by substantial
14 evidence. (Pub. Res. Code § 21168.5.)

15 99. Under Code of Civil Procedure section 1094.5(b), abuse of discretion is established
16 if Respondents have not proceeded in the manner required by law or if the Board Actions are not
17 supported by the findings, or the findings are not supported by the evidence in the record.

18 100. Substantial evidence is defined as "enough relevant information and reasonable
19 inferences from this information that a fair argument can be made to support a conclusion, even
20 though other conclusions might also be reached." (14 CCR § 1384(a).) Substantial evidence
21 includes facts, reasonable assumptions predicated on facts, and expert opinion supported by facts;
22 however, it does not include argument, speculation, or unsubstantiated opinion or narrative. (Pub.
23 Res. Code §§ 21080(e), 21082.2(c).)

24 101. Both Board Actions constituted abuses of discretion.

25 102. The June 19 Board Action that reversed the CPE did not proceed in a manner
26 required by law because it failed to comply with the procedural and substantive requirements of
27 CEQA.

28

1 103. CEQA mandates that projects that are consistent with the development density
2 established by existing zoning, community plan or general plan policies for which an EIR was
3 certified, shall not be subject to additional environmental review except as might be necessary to
4 examine whether there are project specific significant effects which are peculiar to the project or its
5 property.

6 104. The City's analysis of the Project determined, based on substantial evidence in the
7 record, including numerous studies, that there were no Project-specific environmental effects that
8 were peculiar to the Project or the Property, and that the City did not have the ability to require
9 further environmental review.

10 105. By reversing the CPE determination, the Board failed to proceed in the manner
11 required by CEQA.

12 106. The July 10 Board Action supporting the CPE reversal relied on inadequate findings
13 that did not support the Board Action and were not supported by substantial evidence in the record.

14 107. One of the findings adopted by the Board claims that "there are environmental effects
15 that are peculiar to the Project" that were not previously analyzed, but there is no reference to any
16 evidence in the record demonstrating a peculiar environmental effect relating to shadows. To the
17 contrary, the evidence clearly demonstrates that the City's shadow regulations do not apply to the
18 Zaida T. Rodriguez schoolyard.

19 108. Although not required under CEQA, the City conducted an analysis of the Project's
20 shadows on the nearby schoolyards. Neither the initial study nor the City's supplemental shadow
21 analysis found any significant shadow impacts that were peculiar to the Project or Project site that
22 were not previously disclosed in the Eastern Neighborhoods PEIR.

23 109. Another Board finding claims that "even if the School is not part of the Shared
24 Schoolyard Project currently or does not become part of the Project in the near future, the shadow
25 impacts on a public school site are important impacts to be considered as part of the CEQA analysis."
26 This finding is not only contrary to CEQA, it is contrary to the City's threshold of significance set
27 forth in the Eastern Neighborhoods PEIR, which is based on the completely opposite premise.
28 Moreover, there is no evidence in the record supporting this finding.

1 110. The July 10 Board Action supporting the CPE reversal was also contrary to law, as
2 Planning Code section 295, which is the only City law that regulates shadows relevant to the Project,
3 does not apply to the Property.

4 111. Petitioner has no plain, speedy and adequate remedy at law, other than the relief
5 sought in this Petition.

6 **SECOND CAUSE OF ACTION**

7 **(Writ of Mandate – CCP §1094.5**

8 **Lack of Fair Hearing)**

9 112. Petitioner hereby incorporates by reference all paragraphs of this Petition as if set
10 forth fully herein.

11 113. Pursuant to Code of Civil Procedure section 1094.5(b), the Board Actions must be
12 set aside if there was a lack of a fair hearing.

13 114. The Board's practice regarding appeals of proposed development projects is to defer
14 to the Supervisor that represents the district where the project would be located. This practice has
15 been referred to as the "supervisory prerogative."

16 115. As a result, even though the Board consists of eleven Supervisors, the approval or
17 disapproval of a development project is controlled by a single Supervisor.

18 116. The Property is located within District 9, which is represented by Supervisor Ronen.

19 117. Supervisor Ronen is allied with Mission District activists, including Appellant, that
20 oppose new housing development that provides less than 100% of its units as affordable units.
21 Supervisor Ronen has opposed the Project at all times relevant to this action.

22 118. As she admitted during the June 19 Board Action, Supervisor Ronen was upset that
23 RRTI might earn a profit should the Project be approved and sold to a residential developer.
24 Supervisor Ronen's admitted prejudice against the Project, combined with the Board's supervisory
25 [prerogative pattern and practice, prevented Petitioner from receiving a fair hearing.

26 119. At all relevant times, Supervisor Ronen's intent has been to defeat the Project by
27 creating unreasonable delays.

28

1 FOURTH CAUSE OF ACTION

2 (42 USC § 1983

3 **Violation of Equal Protection Clause)**

4 130. Petitioner hereby incorporates by reference all paragraphs of this Petition as if set
5 forth fully herein.

6 131. The actions of Defendants were clearly arbitrary, capricious and unreasonable,
7 having no real or substantial relation to the public health, safety, morals or general welfare, and
8 therefore they deprived Petitioner of its civil rights guaranteed by the Equal Protection Clause of
9 the Fourteenth Amendment of the United States Constitution, California Constitution and Federal
10 and California Statutes, and these rights are enforceable via 42 U.S.C. Section 1983.

11 132. Defendants intentionally treated Petitioner differently from other similarly situated
12 persons and entities.

13 133. Petitioner is informed and believes that Defendants have never reversed a CPE
14 determination for other development projects within the Eastern Neighborhoods area based on the
15 potential for shadows to fall on property not subject to Planning Code section 295.

16 134. This new standard for a CPE reversal was established by a single Board member
17 solely to defeat this Project.

18 135. Defendants' conduct in this regard was plainly arbitrary, irrational and intended to
19 discriminate and deprive Petitioner of its rights without any rational basis to a legitimate state
20 interest.

21 136. Defendants' conduct set forth above was acted upon under color of state law.

22 137. Defendants have a clear and present duty to comply with the Fourteenth Amendment
23 of the United States Constitution and Article I, Section 7, of the California Constitution, and
24 Petitioner has a clear, present and beneficial interest in performance of such duty.

25 138. As an actual and proximate result of Defendants' actions, Petitioner has suffered
26 compensatory and consequential damages in an amount to be proven at trial, but exceeding the
27 jurisdictional minimum of this Court.

28

1 **FIFTH CAUSE OF ACTION**

2 **(42 USC § 1983**

3 **Violation of Substantive Due Process)**

4 139. Petitioner hereby incorporates by reference all paragraphs of this Petition as if set
5 forth fully herein.

6 140. The Board's Actions were clearly arbitrary, capricious and unreasonable, having no
7 real or substantial relation to the public health, safety, morals or general welfare, and deprived
8 Petitioner of its civil rights guaranteed by the Due Process Clause of the United States Constitution,
9 Fourteenth Amendment, and by the California Constitution, Article I, section 7.

10 141. Further, if the Board's decision on this Project is allowed to stand, it will set a
11 precedent for the Board to arbitrarily and capriciously block future projects by manufacturing new
12 CEQA standards and effects without any relevance to the facts or the law, thus creating a lack of
13 due process for all existing and future housing development in the City. Such lack of due process
14 would create substantial uncertainty for housing developers and would thus inevitably have a severe
15 chilling effect on the production of new housing in City at the height of its severe housing crisis.

16 142. The Board's conduct in this regard was plainly arbitrary and capricious and intended
17 to deprive Petitioner of its substantive due process rights without any rational basis to a legitimate
18 state interest.

19 143. The Board's conduct set forth above was acted upon under color of state law pursuant
20 to 42 U.S.C. section 1983.

21 144. Defendants have a clear and present duty to comply with the substantive due process
22 requirements of the United States and California Constitutions, and Petitioner has a clear, present
23 and beneficial interest in performance of such duty.

24 145. As an actual and proximate result of Defendants' actions, Petitioner has suffered
25 compensatory and consequential damages in an amount to be proven at trial, but exceeding the
26 jurisdictional minimum of this Court.

27
28

1 **SIXTH CAUSE OF ACTION**

2 **(5th Amendment -- Taking)**

3 146. Petitioner hereby incorporates by reference all paragraphs of this Petition as if set
4 forth fully herein.

5 147. Local governments may not condition the approval of a land use permit on the
6 owner's relinquishment of a portion of his property unless there is a "nexus" and "rough
7 proportionality" between the government's demand and the effects of the proposed land use.

8 148. Supervisor Ronen, acting on behalf of the Board under its practice of "supervisory
9 prerogative," refused to deny the Appeal unless Petitioner agreed to sell the Property to MEDA or
10 to agree to convert the Project so that all of its units were below market.

11 149. The Board's demands violated the "unconstitutional conditions doctrine," which is
12 analyzed under a *per se* takings approach.

13 150. After Petitioner refused to sell the Property to MEDA at a discounted price or to
14 convert the Project to 100% affordable, the Board, through Supervisor Ronen, granted the Appeal
15 and voided the Project approvals.

16 **SEVENTH CAUSE OF ACTION**

17 **(Writ of Mandate – CCP § 1085 and/or 1094.5**

18 **Violation of Housing Accountability Act)**

19 151. Petitioner hereby incorporates by reference all paragraphs of this Petition as if set
20 forth fully herein.

21 152. Abuse of discretion is established if the respondent has not proceeded in the manner
22 required by law, the order or decision is not supported by the findings, or the findings are not
23 supported by the evidence.

24 153. Respondents failed to proceed in the manner required by the HAA.

25 154. The HAA, which is frequently referred to as the "Anti-NIMBY Law," is intended to
26 limit the ability of local governments to reject or make infeasible housing developments without a
27 thorough analysis of the economic, social, and environmental effects of the action.
28

1 155. The Project constitutes a housing development project within the meaning of
2 Section 65589.5(h) of the HAA, and therefore at all relevant times, the City has a mandatory duty
3 to comply with the HAA in reviewing and taking action on the Project.

4 156. Subdivision (j) of the HAA severely restricts a local agency's ability to deny a
5 housing project. It is designed to protect projects that comply with a City's objective development
6 standards, but has engendered local opposition powerful enough to induce a legislative body to
7 ignore its legal duties. Subdivision (j) provides in full:

8 When a proposed housing development project complies with
9 applicable, objective general plan and zoning standards and criteria,
10 including design review standards, in effect at the time that the
11 housing development project's application is determined to be
12 complete, but the local agency proposes to disapprove the project or
13 to approve it upon the condition that the project be developed at a
14 lower density, the local agency shall base its decision regarding the
15 proposed housing development project upon written findings
16 supported by substantial evidence on the record that both of the
17 following conditions exist:

18 (1) The housing development project would have a specific, adverse
19 impact upon the public health or safety unless the project is
20 disapproved or approved upon the condition that the project be
21 developed at a lower density. As used in this paragraph, a "specific,
22 adverse impact" means a significant, quantifiable, direct, and
23 unavoidable impact, based on objective, identified written public
24 health or safety standards, policies, or conditions as they existed on
25 the date the application was deemed complete.

26 (2) There is no feasible method to satisfactorily mitigate or avoid the
27 adverse impact identified pursuant to paragraph (1), other than the
28 disapproval of the housing development project or the approval of the
project upon the condition that it be developed at a lower density.

21 157. Respondents did not and cannot make any findings pursuant to Section 65589.5(j)(1)
22 and (2).

23 158. The new shadow standard imposed by the Board to defeat the Project was not in
24 effect when the Project's application was determined to be complete.

25 159. There exist no objective health or safety regulations regarding shadows under
26 federal, state or City law.

27 160. Respondents did not identify any evidence in the record demonstrating a specific
28 adverse impact on the public health or safety that would meet the criteria of Section 65589.5(j)(1).

1 161. The Legislature recently adopted extensive findings describing the necessity of
2 fortifying the HAA:

3 (J) California's housing picture has reached a crisis of historic
4 proportions despite the fact that, for decades, the Legislature has
5 enacted numerous statutes intended to significantly increase the
6 approval, development, and affordability of housing for all income
7 levels, including this section.

8 (K) The Legislature's intent in enacting this section in 1982 and in
9 expanding its provisions since then was to significantly increase the
10 approval and construction of new housing for all economic segments
11 of California's communities by meaningfully and effectively curbing
12 the capability of local governments to deny, reduce the density for, or
13 render infeasible housing development projects and emergency
14 shelters. That intent has not been fulfilled.

15 (L) It is the policy of the state that this section should be interpreted
16 and implemented in a manner to afford the fullest possible weight to
17 the interest of, and the approval and the approval and provision of,
18 housing. (Gov. Code § 65589.5(a)(2)(J)-(L).)

19 162. The Board acted in bad faith when it adopted the Board Actions.

20 163. The HAA requires courts to award attorneys' fees to an applicant if the local agency
21 disapproves a project in violation of Section 65589.5(j).

22 164. Petitioner has no plain, speedy and adequate remedy at law, other than the relief
23 sought in this Petition.

24 **EIGHTH CAUSE OF ACTION**

25 **(Writ of Mandate – CCP § 1094.5**

26 **Violation of Density Bonus Law)**

27 165. Petitioner hereby incorporates by reference all paragraphs of this Petition as if set
28 forth fully herein.

1 166. Petitioner invoked, and the Project is subject to, the DBL.

2 167. The DBL imposes limitations on the ability of a local agency to disapprove
3 qualifying projects, and mandates an award of attorneys' fees and costs to the developer if successful
4 in court. (Gov. Code § 65915(d)(3),(e)(1).)

5 168. The DBL expressly states that it "shall be interpreted liberally in favor of producing
6 the maximum number of total housing units." (Gov. Code § 65915(r).)

1 169. The DBL prohibits a local agency from applying "any development standard that will
2 have the effect of physically precluding the construction of a development [that qualifies for a
3 density bonus] at the densities or with the concessions or incentives permitted by this section."
4 (Gov. Code § 65915(e)(1).)

5 170. The new development standard regarding shadows that was created and imposed by
6 the Board Actions precluded development of the Project.

7 171. Under the City's Administrative Code, the Board Actions not only reversed the CPE
8 decision for the Project, they deemed void "any actions approving the project in reliance on the
9 reversed CEQA decision," including the Planning Commission's conditional use authorization that
10 was the subject of the Appeal.

11 172. As a result, the Board Actions voided the Project's DBL approval.

12 173. Respondents failed to make any of the requisite findings identified in the DBL to
13 support the Board Actions.

14 174. Petitioner has no plain, speedy and adequate remedy at law, other than the relief
15 sought in this Petition.

16 **NINTH CAUSE OF ACTION**

17 **(Gov. Code § 815.6**

18 **Violation of Mandatory Duties)**

19 175. Petitioner hereby incorporates by reference all paragraphs of this Petition as set forth
20 fully herein.

21 176. Government Code section 815.6 provides: "Where a public entity is under a
22 mandatory duty imposed by an enactment that is designed to protect against the risk of a particular
23 kind of injury, the public entity is liable for an injury of that kind proximately caused by its failure
24 to discharge the duty unless the public entity establishes that it exercised reasonable diligence to
25 discharge the duty."

26 177. As explained herein, the HAA and DBL impose mandatory and obligatory duties on
27 the City that required approval of the Project based on clear implementation guidelines that involved
28

1 the application of purely objective standards and that required no substantial expertise or judgment
2 by the City.

3 178. The mandatory duties on the City imposed by the Legislature's enactment and various
4 amendments to the HAA and DBL are "designed" to protect against the particular injury Petitioner
5 has suffered - wrongful denial of a housing project resulting in substantial financial and reputational
6 injury.

7 179. Petitioner has incurred and will continue to incur injury as a proximate result of the
8 City's violation of its mandatory duties under the HAA and DBL to approve the Project based on its
9 compliance with all applicable contractual requirements and all applicable objective planning and
10 zoning requirements.

11 180. The City failed to exercise reasonable diligence in denying the Project in violation
12 of its mandatory duties under the HAA and DBL.

13 181. Petitioner therefore is entitled to judgment ordering the City to comply with its
14 mandatory duty to approve the Project.

15 182. Petitioner has no plain, speedy and adequate remedy at law, other than the relief
16 sought in this Petition.

17 **TENTH CAUSE OF ACTION**

18 **(Declaratory Judgment)**

19 183. Petitioner hereby incorporates by reference all paragraphs of this Petition as if set
20 forth fully herein.

21 184. A real and actual controversy has arisen and now exists between Petitioner and
22 Defendants regarding the lawfulness of Defendants' actions.

23 185. Petitioner asserts that the Board Actions are unlawful and must be set aside.
24 Petitioner is informed and believes that Defendants assert that the Board Actions are lawful and that
25 the Project approvals are void.

26 186. Petitioner asserts that the Project's affordability requirement should not be vitiated
27 by the Board Actions in the event that this Court sets aside the Board Actions. Petitioner is informed
28 and believes that Defendants assert that the Project's December 7, 2018 deadline to secure a site

1 permit in order to avoid an increase in the Project's affordability requirement to 25% is not affected
2 by this litigation.

3 187. Defendants have not agreed to toll the December 7, 2018 deadline while this
4 litigation is pending.

5 188. Declaratory relief would promote both the public interest and vindicate the rights of
6 Petitioner.

7 189. Petitioner has no plain, speedy or adequate remedy at law other than the relief sought
8 in this action. A determination and declaratory judgment by the Court that the Defendants' actions
9 are unlawful is necessary and appropriate at this time.

10 **ELEVENTH CAUSE OF ACTION**

11 **(Injunctive Relief)**

12 190. Petitioner hereby incorporates by reference all paragraphs of this Petition as if set
13 forth fully herein.

14 191. Unless Defendants, and each of them, are restrained by order of this Court, it will be
15 necessary for Petitioner to commence successive actions against Defendants regarding the
16 enforcement of the December 7, 2018 deadline.

17 192. Unless Defendants, and each of them, are enjoined from enforcing the December 7,
18 2018 deadline to secure a site permit for the Project, Petitioner will suffer irreparable injury in that
19 the Project will likely become financially infeasible.

20 193. Petitioner has no plain, speedy, or adequate remedy at law, and injunctive relief is
21 expressly authorized by Sections 526 and 731 of the Code of Civil Procedure.

22 194. Petitioner is entitled to seek a temporary restraining order, preliminary injunction,
23 and/or permanent injunction enjoining Defendants from requiring the Project to secure a site permit
24 by December 7, 2018 or at any time during the pendency of this litigation.

25 **PRAAYER FOR RELIEF**

26 WHEREFORE, Petitioner prays that:

27 1. As to the First Cause of Action: the Court issue a peremptory writ of mandate
28 compelling Respondents to set aside the Board Actions with the effect that said actions are void *ab*

1 *initio* or otherwise of no force and effect and that the Planning Commission's Project approvals are
2 reinstated.

3 2. As to the Second Cause of Action: the Court issue a peremptory writ of mandate
4 compelling Respondents to set aside the Board Actions with the effect that said actions are void *ab*
5 *initio* or otherwise of no force and effect and that the Planning Commission's Project approvals are
6 reinstated.

7 3. As to the Third Cause of Action: the Court enter judgment in favor of Petitioner and
8 award compensatory and consequential damages against Defendants.

9 4. As to the Fourth Cause of Action: the Court enter judgment in favor of Petitioner
10 and award compensatory and consequential damages against Defendants.

11 5. As to the Fifth Cause of Action: the Court enter judgment in favor of Petitioner and
12 award compensatory and consequential damages against Defendants.

13 6. As to the Sixth Cause of Action: the Court enter judgment in favor of Petitioner and
14 award compensatory and consequential damages against Defendants.

15 7. As to the Seventh Cause of Action: the Court issue a peremptory writ of mandate
16 compelling Respondents to set aside the Board Actions with the effect that said actions are void *ab*
17 *initio* or otherwise of no force and effect and that the Planning Commission's Project approvals are
18 reinstated.

19 8. As to the Eighth Cause of Action: the Court issue a peremptory writ of mandate
20 compelling Respondents to set aside the Board Actions with the effect that said actions are void *ab*
21 *initio* or otherwise of no force and effect and that the Planning Commission's Project approvals are
22 reinstated.

23 9. As to the Ninth Cause of Action: the Court enter judgment in favor of Petitioner and
24 ordering Respondents to rescind and set aside the Board Actions.

25 10. As to the Tenth Cause of Action: the Court issue declaratory judgment that the Board
26 Actions are unlawful and the Project is subject to the affordability requirement as set forth in the
27 Project approvals, and not a higher affordability requirement.

28

1 11. As to the Eleventh Cause of Action:

2 a. the Court issue a temporary restraining order and/or preliminary injunction
3 enjoining Respondents from requiring Petitioner to obtain a site permit on or before the December 7,
4 2018 deadline or to allow any increases to the Project's affordability requirement during the
5 pendency of this litigation;

6 b. the Court award a permanent injunction preserving the Project's affordability
7 requirement and tolling the deadline for Petitioner to secure a site permit during the pendency of
8 this litigation.

9 12. The Court award Petitioner its reasonable attorneys' fees and other litigation
10 expenses.

11 13. The Court award Petitioner damages according to proof under Code of Civil
12 Procedure section 1095.

13 14. Petitioner recovers costs of suit.

14 15. The Court grant such other and further relief as it may deem proper and just.

15
16 Dated: August 20, 2018

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

17
18 By: DAVID H. BLACKWELL
19 DAVID H. BLACKWELL
20 Attorneys for Petitioner and Plaintiff
21 RRTI, Inc.
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VERIFICATION

1
2
3 I have read the foregoing VERIFIED PETITION FOR WRIT OF MANDATE;
4 COMPLAINT FOR DAMAGES, INJUNCTIVE AND DECLARATORY RELIEF and know its
5 contents.

6 I am an officer of RRTI, INC., a party to this action, and am authorized to make this
7 verification for and on its behalf, and I make this verification for that reason. The matters stated in
8 the foregoing document are true of my own knowledge except as to those matters which are stated
9 on information and belief, and as to those matters I am informed and believe that they are true.

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

12 Executed on 8/20/18, at San Francisco, California.

13
14 
15 ROBERT TILLMAN