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8 CALIFORNIA RENTERS LEGAL ADVOCACY AND
9 EDUCATION FUND, SAN FRANCISCO BAY AREA
10 RENTERS FEDERATION, DYLAN CASEY, and SONJA
11 TRAUSS

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF SAN FRANCISCO – UNLIMITED CIVIL JURISDICTION

14 CALIFORNIA RENTERS LEGAL
15 ADVOCACY AND EDUCATION FUND,
16 SAN FRANCISCO BAY AREA RENTERS
17 FEDERATION, DYLAN CASEY, and SONJA
18 TRAUSS,

19 Petitioners and Plaintiffs,

20 vs.

21 CITY AND COUNTY OF SAN FRANCISCO, a
22 municipal corporation, BOARD OF
23 SUPERVISORS OF THE CITY AND COUNTY
24 OF SAN FRANCISCO, SAN FRANCISCO
25 PLANNING DEPARTMENT, SAN
26 FRANCISCO DEPARTMENT OF BUILDING
27 INSPECTION, and LONDON BREED, in her
28 official capacity as Mayor of the City and
County of San Francisco, inclusive,

Respondents and Defendants.

CASE NO.

**PETITION FOR WRIT OF MANDATE,
PROHIBITION, OR OTHER
EXTRAORDINARY RELIEF;
COMPLAINT FOR DECLARATORY
RELIEF; AND REQUEST FOR
IMMEDIATE STAY**

[CCP § 1085; Gov't Code § 65852.2]

Date:

Time:

Dept.:

Judge:

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1 Petitioners and Plaintiffs California Renters Legal Advocacy and Education Fund, San
2 Francisco Bay Area Renters Federation, Dylan Casey, and Sonja Trauss (“Petitioners” or
3 “Plaintiffs”) allege as follows:

4 1. Accessory Dwelling Units (“ADUs”), also known as granny flats, in-law units, and
5 secondary units, are an important housing resource. Constructing ADUs is a way to create
6 additional housing options, including rental housing, especially in areas primarily containing single-
7 family homes, such as the City and County of San Francisco (“San Francisco”).

8 2. Petitioner and Plaintiff California Renters Legal Advocacy and Education Fund
9 (“CaRLA”) is a California nonprofit corporation in good standing in this state, and lawfully allowed
10 to bring and maintain this petition and complaint. CaRLA was formed, in part, to advocate for the
11 construction of housing throughout the state, including in San Francisco, to meet the needs of
12 California residents. This advocacy includes litigation under certain state laws that limit the ability
13 of local governments to limit housing production. CaRLA actively supports the creation of ADUs
14 and champions judicial action under Gov’t Code § 65852.2 (“the State ADU Law”) to do so.
15 CaRLA brings this petition and complaint on its own behalf and on behalf of others affected by San
16 Francisco’s failure to comply with state law as alleged herein.

17 3. Petitioner San Francisco Bay Area Renters Federation (the “Federation”) is an
18 unincorporated association of renters whose mission includes advocating for the construction of
19 housing to meet the needs of California residents, including in San Francisco, under certain state
20 laws that limit the ability of local governments to limit housing production. The Federation actively
21 supports the creation of ADUs and champions judicial action under the State ADU Law to do so.
22 Its members are residents of the State of California and cut across socioeconomic lines, including
23 members with very low, low, moderate, middle, and higher incomes. The Federation has a direct
24 and substantial interest in ensuring that San Francisco complies with state laws requiring that it
25 properly process and approve ADU applications. It acts on behalf of its members, though its
26 actions benefit all similarly-situated residents and intended residents. Members of the Federation
27 were, are, will be, and would be eligible to apply for residency in San Francisco ADUs. As potential
28 residents of San Francisco ADUs, members of the Federation are affected by San Francisco’s

1 actions challenged herein. The Federation has a substantial interest in ensuring that San Francisco’s
2 actions are in conformity with the requirements of law, and in having those requirements properly
3 executed and its public duties enforced. Its members, as well as the general public, will be adversely
4 affected by the acts described herein and are aggrieved by the acts, decisions, and omissions of San
5 Francisco as alleged in this petition and complaint. The Federation is suing on its own behalf, on
6 behalf of its members, and on behalf of others affected by San Francisco’s acts described herein.

7 4. Petitioner and Plaintiff Dylan Casey (“Casey”) is a natural person and a potential
8 resident of, and renter in, the City of San Francisco, State of California. As a potential resident of
9 ADUs in San Francisco, Casey is affected by San Francisco’s actions challenged herein. Casey has
10 a substantial interest in ensuring that San Francisco’s decisions are in conformity with the
11 requirements of law, that those requirements are properly executed, and that the public duties of San
12 Francisco are enforced.

13 5. Petitioner and Plaintiff Sonja Trauss (“Trauss”) is a natural person and a resident of,
14 and renter in, the City of San Francisco, State of California. As a potential resident of ADUs in San
15 Francisco, Trauss is affected by San Francisco’s actions challenged herein. Trauss has a substantial
16 interest in ensuring that San Francisco’s decisions are in conformity with the requirements of law,
17 that those requirements are properly executed, and that the public duties of San Francisco are
18 enforced.

19 6. Respondent and Defendant City and County of San Francisco (“San Francisco”) is a
20 California county and municipal corporation. Through its governing body, the San Francisco Board
21 of Supervisors, San Francisco enacted a local ordinance to govern the development of ADUs within
22 its boundaries. Respondents and Defendants San Francisco Planning Department and San
23 Francisco Department of Building Inspection are San Francisco’s administrative bodies responsible
24 for reviewing and processing ADU applications. Respondent and Defendant London Breed is the
25 duly-elected mayor of San Francisco.

26 7. Given the predominance of areas in San Francisco zoned for single-family homes,
27 ADUs have the potential to be an important source of new rental housing in San Francisco. In order
28 to realize this potential, however, San Francisco will need regulations and an approval process that

1 allow for development of ADUs. Ensuring that San Francisco allows for increased ADU
2 development, and that its regulations are in conformity with the requirements of state law, directly
3 furthers CaRLA’s mission of advocating for increased housing development to support the
4 equitable growth of California. It will also reduce the rental rates for dwelling units generally paid
5 by residents and intended residents of San Francisco, including Casey and Trauss.

6 8. Through Gov’t Code § 65852.150(a), California expresses the policy that:

7 Accessory dwelling units are a valuable form of housing in California,
8 . . . provide housing for family members, students, the elderly, in-
9 home health care providers, the disabled, and others, at below market
10 prices within existing neighborhoods [and] offer lower cost housing to
11 meet the needs of existing and future residents within existing
12 neighborhoods, while respecting architectural character. . . . Accessory
13 dwelling units are, therefore, an essential component of California’s
14 housing supply.

13 9. By state law, valid local ADU ordinances are required to enhance, not inhibit, the
14 creation of ADUs. Gov’t Code § 65852.150(b) states:

15 It is the intent of the Legislature that an accessory dwelling unit
16 ordinance adopted by a local agency has the effect of providing for the
17 creation of accessory dwelling units and that provisions in this
18 ordinance relating to matters including unit size, parking, fees, and
19 other requirements, are not so arbitrary, excessive, or burdensome so
20 as to unreasonably restrict the ability of homeowners to create
21 accessory dwelling units in zones in which they are authorized by local
22 ordinance.

21 10. The State ADU Law preempts local legislation regulating ADUs except to the extent
22 permitted thereunder. Accordingly, the State ADU Law limits the ability of municipalities,
23 including San Francisco, to use approval standards to restrict ADU creation. It sets the “maximum
24 standards that local agencies shall use to evaluate a proposed accessory dwelling unit” and requires
25 that “[n]o additional standards . . . shall be utilized or imposed . . .” (Gov’t Code § 65852.2(a)(6))

26 11. The State ADU Law further mandates that local ordinances must allow only
27 ministerial ADU approval processes and prohibits the implementation of discretionary processes for
28 reviewing ADU applications (Gov’t Code § 65852.2(a)(4)) Local ordinances that violate this

1 subdivision are rendered “null and void,” and the locality is thereafter required to review ADU
2 applications under the state standards until a compliant ordinance is enacted. (*Id.*)

3 12. Further, the State ADU Law provides that “[n]o other local ordinance, policy, or
4 regulation shall be the basis for the denial of a building permit or a use permit under this
5 subdivision.” (Gov’t Code § 65852.2(a)(5).)

6 13. San Francisco’s ADU ordinance is codified at Planning Code § 207(c) and provides
7 two exceptions to density limits to allow for ADUs. If an ADU is proposed on a lot with an existing
8 single-family home and complies with all Planning Code requirements, it is considered a “No-
9 Waiver” ADU, meaning that the applicant does not need to obtain a waiver of any applicable land
10 use restrictions. (Planning Code § 207(c)(6).) If an ADU is proposed and does not meet these
11 requirements, it is a “Waiver” ADU governed by Planning Code § 207(c)(4). The No-Waiver
12 exemption was originally enacted on May 12, 2017 in order to bring San Francisco into compliance
13 with the State ADU Law. (S.F. Ord. No. 095-17.) The last substantive amendment to subsection
14 (c)(6) was effective on September 10, 2018.

15 14. Both the Waiver and No-Waiver ADU regulations are provided as “exemptions to
16 dwelling unit density limits.” Absent such an exemption, the density limits for single-family
17 districts would allow only one dwelling unit by right on most lots. (See Planning Code § 209.1,
18 Zoning Control Table.) Therefore, outside of the Waiver and No-Waiver density exemptions,
19 ADUs would be prohibited on the vast majority of single-family lots in San Francisco.

20 15. Both the Waiver and No-Waiver regulations prohibit ADUs in new developments.
21 Section 207(c)(4)(C)(ii) limits Waiver ADUs to buildings that have existed for at least three years
22 as of the date the ADU application is filed. Section 207(c)(6)(B)(iii) similarly limits No-Waiver
23 ADUs to lots containing existing single-family homes. Therefore, neither ADU category allows for
24 ADUs in newly-proposed, single-family homes, and ADUs in new developments are prohibited by
25 the San Francisco Planning Code.

26 16. The State ADU Law requires local agencies to allow ADUs to be located on any lot
27 that is “zoned to allow single-family or multifamily use [which] includes a proposed or existing
28

1 single-family dwelling.” The word “proposed” was specifically added in 2017 by amendment in
2 2017, effective 2018, to allow for ADUs in new developments.

3 17. San Francisco’s prohibition on ADUs in proposed single-family-home developments
4 imposes an additional, and more restrictive, standard on ADU applications. This restriction is
5 therefore in conflict with, and is preempted by, Government Code § 65852.2(a)(6).

6 18. The permitting process for No-Waiver ADUs that expand the envelope of an existing
7 single-family home involve discretionary procedures outlined in San Francisco Planning Code §
8 311. Although Planning Code § 207(c)(6)(B) establishes a 120-day time period for review of No-
9 Waiver ADU permits, they are not exempted from review under § 311, thus requiring a longer
10 review period than is allowed by the State ADU Law.

11 19. San Francisco’s community notification and discretionary review procedures provide
12 a process through which neighbors can object to new development. Under this process, neighbors
13 and other interested parties are notified of local permit applications that constitute an “alteration.”
14 (Planning Code § 311(b), (c).) The public is given a time period thereafter to apply for discretionary
15 review. If a discretionary review application is submitted, the San Francisco Planning Commission
16 must hold a public hearing and vote to either take discretionary review or decline to take
17 discretionary review. If the Planning Commission votes to take discretionary review, it can then
18 deny, modify or approve the permit application based on discretionary considerations. This process
19 can delay ADU permit approval for many months or can result in the conditioning or denial of an
20 ADU permit.

21 20. The State ADU Law prohibits the application of Planning Code § 311 to ADU permit
22 applications. (Gov’t Code § 65852.2(a)(4).) San Francisco’s procedures for reviewing ADU
23 applications that increase the dimensions of existing buildings clearly conflict with, and are
24 preempted by, state-mandated requirements and prohibitions governing ADUs.

25 21. Petitioners and Plaintiffs have a beneficial interest in compelling San Francisco’s
26 ministerial duties as described herein. Petitioners and Plaintiffs exhausted the administrative
27 remedies available to them to the extent they were required. Petitioners and Plaintiffs have no
28 plain, speedy, or adequate remedy to challenge Respondents’ and Defendants’ acts described herein

1 other than the relief sought in this petition and complaint, and therefore writ relief and/or
2 declaratory relief is necessary in order to compel San Francisco to perform its ministerial duty
3 and/or correct its legislative action which is unlawful and/or in excess of its authority. Petitioner
4 and Plaintiffs seek an immediate stay to enjoin San Francisco from enforcing San Francisco
5 Planning Code section 207(c)(6).

6 WHEREFORE, Petitioners and Plaintiffs pray for relief as follows:

7 1. For writ of mandate or other appropriate relief, including an injunction, declaration,
8 and/or order, declaring San Francisco Planning Code § 207(c)(6) null and void;

9 2. For writ of mandate or other appropriate relief, including an injunction, declaration,
10 and/or order, declaring San Francisco Planning Code § 207(c)(6)(B), limiting ADUs to lots with
11 existing single-family homes, null and void;

12 3. For writ of mandate or other appropriate relief, including an injunction, declaration,
13 and/or order, commanding San Francisco to refrain from enforcing San Francisco Planning Code §
14 207(c)(6);

15 4. For writ of mandate or other appropriate relief, including an injunction, declaration,
16 and/or order, commanding the San Francisco Planning Department and San Francisco Department
17 of Building Inspection to review and process ADU permit applications according to state standards
18 set forth in Government Code § 65852.2, without applying San Francisco Planning Code § 311 to
19 such ADU permit applications;

20 5. For costs, including attorney's fees under CCP § 1021.5; and

21 6. For such other and further relief as the Court deems justified.

22 Date: December 7, 2018

Respectfully submitted,

ZACKS, FREEDMAN & PATTERSON, PC

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27 By: Ryan J. Patterson
Attorneys for Petitioners and Plaintiffs,
California Renters Legal Advocacy and
28 Education Fund, San Francisco Bay Area Renters
Federation, Dylan Casey, and Sonja Trauss

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VERIFICATION

I, Ryan J. Patterson, declare as follows:

I am a natural person and a resident of the State of California. I am an attorney and the lead counsel for Petitioners and Plaintiffs California Renters Legal Advocacy and Education Fund, San Francisco Bay Area Renters Federation, Dylan Casey, and Sonja Trauss, and am authorized to execute this verification on their behalf. I have read the foregoing Petition for Writ of Mandate, Prohibition, or Other Extraordinary Relief, Complaint for Declaratory Relief, and Request for Immediate Stay and am familiar with its contents. The facts recited therein are true of my personal knowledge, including based on my review of the statutes and ordinances at issue therein and my experience in the field of San Francisco and California accessory dwelling unit law.

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

Executed in San Francisco, CA on December 7, 2019



Ryan J. Patterson