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Superior Court of California, County of San Diego

04/05/2019 at 02:57:48 PM

Clerk of the Superior Court By Jacqueline J. Walters, Deputy Clerk

BRIGGS LAW CORPORATION [FILE: 1007.43] Cory J. Briggs (State Bar no. 176284) Anthony N. Kim (State Bar no. 283353) 99 East "C" Street, Suite 111 Upland, CA 91786 Telephone: 909-949-7115

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Attorneys for Plaintiff and Petitioner CREED-21

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

CREED-21,

Plaintiff and Petitioner,

vs.

CITY OF SAN DIEGO; and DOES 1 through 100,

Defendants and Respondents.

DOES 101 through 1,000,

Defendants and Real Parties in Interest.

CASENO. 37-2019-00018043-CU-WM-CTL

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

Plaintiff and Petitioner CREED-21 ("Petitioner") alleges as follows:

Parties

- 1. Petitioner is a non-profit organization formed and operating under the laws of the State of California. At least one of Petitioner's members resides in, or near, the City of San Diego, California, and has an interest in, among other things, ensuring compliance with environmental laws and protecting the City's quality of life.
- 2. Defendant and Respondent CITY OF SAN DIEGO ("CITY") is a "public agency" under Section 21063 of the Public Resources Code and a "local government" under Section 30109 of the Public Resources Code. As a "public agency," CITY is required to comply with California Environmental Quality Act ("CEQA"), Public Resources Code Section 21000 et seq.

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

Background Information

- 4. On or about March 19, 2019, CITY approved its so-called Parking Requirement Regulatory Reform for Multifamily Residential Development in Transit Priority Areas, as reflected in Ordinance no. O-21057 and Resolution nos. R-312234 and 312235 (collectively, the "Project"). In general terms, the Project eliminates minimum parking-space requirements for multifamily housing projects.
- 5. CITY concluded that the Project is exempt from environmental review under CEQA. Petitioner opposes the Project based on CITY's failure to subject the Project to CEQA.

Notice Requirements and Time Limitations

- 6. This proceeding is being commenced not more than 35 days after the notice described in Public Resources Code Section 21167(d) was filed with the county clerk (if such a notice was filed).
- 7. Petitioner has caused a Notice of Commencement of Action to be served on Defendants/Respondents, as required by Public Resources Code Section 21167.5. A true and correct copy of the Notice of Commencement of Action is attached to this pleading as Exhibit "A."
- 8. Petitioner will have caused a copy of this pleading to be served on the Attorney General not more than 10 days after the commencement of this lawsuit, as required by Public Resources Code Section 21167.7 and Code of Civil Procedure Section 388.

Jurisdiction and Exhaustion of Administrative Remedies

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

- 10. Petitioner exhausted administrative remedies to the extent required by law. Alternatively and additionally, neither Public Resources Code Section 21177(a)-(b) nor any other exhaustion-of-remedies requirement may be applied to Petitioner.
- 11. Defendants/Respondents' conduct in approving the Project without complying with CEQA and other applicable laws constitutes a prejudicial abuse of discretion because, as alleged in this pleading, they failed to proceed in a manner required by law.
- 12. Petitioner has no plain, speedy, and adequate remedy in the ordinary course of law, since its members and other members of the public will suffer irreparable harm as a result of Defendants/Respondents' violations of CEQA and other applicable laws. Defendants/Respondents' approval of the Project also rests on their failure to satisfy a clear, present, ministerial duty to act in accordance with the applicable laws. Even when Defendants/Respondents are permitted or required by law to exercise their discretion in approving projects under those laws, they remain under a clear, present, ministerial duty to exercise their discretion within the limits of and in a manner consistent with those laws. Defendants/Respondents have had and continue to have the capacity and ability to approve the Project within the time limits of and in a manner consistent with those laws, but Defendants/Respondents have failed and refused to do so and have exercised their discretion beyond the limits of and in a manner that is not consistent with those laws.
- 13. Petitioner has a beneficial right and interest in Defendants/Respondents' fulfillment of all their legal duties, as alleged in this pleading.

FIRST CAUSE OF ACTION: Illegal Approval of Project (Against All Defendants/Respondents and Real Parties in Interest)

- 14. Paragraphs 1 through 13 are fully incorporated into this paragraph.
- 15. The Project does not comply with all applicable laws. By way of example and not limitation (including alternative theories of liability):
 - A. The Project violates CEQA. In particular:
- i. CEQA applies to every discretionary project proposed to be carried out or approved by a public agency, unless the project is exempt from CEQA. Generally speaking, the public agency must review the potentially significant environmental impacts of every discretionary

project subject to CEQA review that the agency proposes to carry out or approve. Such review involves determining whether the proposal is exempt, should be the subject of a negative declaration, or should be the subject of an environmental impact report.

- ii. The use of a CEQA exemption is inappropriate when a project may have significant environmental impacts or when there are potentially significant environmental impacts due to unusual circumstances.
- iii. The Project constitutes a "project" under CEQA because its approval involved the exercise of discretion and has the potential to cause significant direct, indirect, or cumulative adverse impacts (if not all such impacts) on the environment, including but not limited to conflicts in Defendants/Respondents' land-use and zoning regulations.
- iv. These significant direct, indirect, or cumulative adverse impacts on the environment give rise to Defendants/Respondents' legal obligation to subject the Project to CEQA review.
- v. Defendants/Respondents' refusal to apply CEQA to the Project and subject it to environmental review constitutes a violation of CEQA.
- vi. As a result of Defendants/Respondents' violation of CEQA, Petitioner has been harmed insofar as Petitioner, its members, other members of the public, and the responsible decision-makers were not fully informed about the potential adverse environmental impacts of the Project, and insofar as Petitioner, its members, and other members of the public did not have an opportunity to participate meaningfully in the analysis of such impacts prior to approval of the Project.
- 16. There is currently a dispute between Petitioner and Defendants/Respondents over the Project's legal force and effect. Petitioner contends that the Project has no legal force or effect because it violates CEQA and/or one or more other applicable laws. Defendants/Respondents dispute Petitioner's contention. The parties therefore require a judicial determination of the Project's legal force and effect (if any).

Prayer

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

- A. A judgment or other appropriate order determining or declaring that Defendants/Respondents failed to fully comply with CEQA and/or one or more other applicable laws as they relate to the Project and that there must be full compliance therewith before final approval and implementation of the Project may occur;
- B. A judgment or other appropriate order determining or declaring that Defendants/Respondents failed to comply with CEQA and/or one or more other applicable laws as they relate to the Project and that its approval and implementation was illegal in at least some respect, rendering the approval and implementation null and void;
- C. Injunctive relief prohibiting Defendants/Respondents (and any and all persons acting at the request of, in concert with, or for the benefit of one or more of them) from taking any action on any aspect of, in furtherance of, or otherwise based on the Project unless and until Defendants/Respondents comply with CEQA and all other applicable laws, as determined by the Court;
- D. Any and all other relief that may be authorized by CEQA or other applicable laws, or any combination of them, but is not explicitly or specifically requested elsewhere in this Prayer;
- E. Any and all legal fees and other expenses incurred by Petitioner in connection with this proceeding, including but not limited to reasonable attorney fees as authorized by the Code of Civil Procedure; and
 - F. Any and all further relief that this Court may deem appropriate.

Date: April 5, 2019.

Respectfully submitted,

BRIGGS LAW CORPORATION

By:

Cory J. Briggs

Attorneys for Plaintiff and Petitioner CREED-21

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

Exhibit "A"

BRIGGS LAW CORPORATION

San Diego Office: 4891 Pacific Highway, Sutte 104 San Diego, CA 92110

Telephone: 619-497-0021

Inland Empire Office: 99 East "C" Street, Suite 111 Upland, CA 91786

> Telephone: 909-949-7115 Facsimile: 909-949-7121

> > BLC File(s): 1007.43

Please respond to: Inland Empire Office

5 April 2019

City Clerk Elizabeth Maland City of San Diego 202 "C" Street, 2nd Floor San Diego, CA 92101 Via Fax Only to 619-533-4045

Re: Notice of Commencement of Action

Dear City Clerk:

I represent CREED-21 and am sending this Notice of Commencement of Action on my client's behalf.

Please be advised that an action is to be commenced by my client in San Diego County Superior Court against your agency. The action will challenge your agency's approval of the so-called Parking Requirement Regulatory Reform for Multifamily Residential Development in Transit Priority Areas, as reflected in Ordinance no. O-21057 and Resolution nos. R-312234 and 312235 on or about March 19, 2019, on the grounds that the approval violated the California Environmental Quality Act (PUB. RES. CODE § 21000 et seq.). The action may also challenge your agency's approval of the project based on one or more violations of other laws.

If you have any questions, please feel free to contact me.

Sincerely,

BRIGGS LAW/ CORPORATION

Cory I. Briggs

BRIGGS LAW CORPORATION

San Diego Office: 4891 Pacific Highway, Suite 104 San Diego, CA 92110

Telephone: 619-497-0021 Facsimile: 909-949-7121 Inland Empire Office: 99 East "C" Street, Suite 111 Upland, CA 91786

Telephone: 909-949-7115
Facsimile: 909-949-7121

FACSIMILE COVER SHEET

| Recipient: City Clerk Eliza | abeth Maland |
|------------------------------|-------------------------------|
| Recipient's fax number: 619 | -533-4045 |
| Date: April 5, 2019 | BLC File: 1007.43 |
| Total Pages (including cover | sheet): 2 |
| Sender: Cory J. Briggs | |
| Sender's fax number:61 | 9-515-6410 X 909-949-7121 |
| Message: Please see the att | tached notice of commencement |
| of action. Thank you. | |
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| Original Document to Follow | ?Yes X_No |

CONFIDENTIALITY

The document accompanying this facsimile transmission contains information that may be either confidential, legally privileged, or both. The information is intended only for the use of the recipient(s) named on this cover sheet. If not done by or at the direction of the recipient(s), disclosure, copying, distribution, or reliance on any of the contents of this transmission is strictly prohibited. If you have received this facsimile transmission in error, please notify us immediately by telephone so that we can arrange for its return at no cost to you.

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BRIGGS LAW CORPORATION

San Diego Office: 4891 Pacific Highway, Suite 104 San Diego, CA 92110

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Inland Empire Office: 99 East "C" Street, Suite 111 Upland, CA 91786

Telephone: 909-949-7115 Facsimile: 909-949-7121

FACSIMILE COVER SHEET

| Recipient; City Clerk Elizabeth Maland |
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| Recipient's fax number: 619-533-4045 |
| Date: April 5, 2019 BLC File: 1007.43 |
| Total Pages (including cover sheet): 2 Sender: Cory J. Briggs |
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| Sender's fax number: 619-515-6410 X 909-949-7121 |
| Message: Please see the attached notice of commencemen |
| of action. Thank you. |
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VERIFICATION

STATE OF CALIFORNIA, COUNTY OF San Diego

| | I have read the foregoing COMPLAINT FOR DECLARATORY AND I | |
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| | FOR WRIT OF MANDATE etc. | and know its contents. |
| \neg | ☐ CHECK APPLICABLE PARAGR. | |
| | I am a party to this action. The matters stated in the foregoing document | |
| x | those matters which are stated on information and belief, and as to those | |
| ت | I am 📝 an Officer 🗌 a partner 🖺 a | of CREED-21 |
| | a party to this action, and am authorized to make this verification for and on reason. It is informed and believe and on that ground allege that the true. The matters stated in the foregoing document are true of my ow are stated on information and belief, and as to those matters I believe them to I am one of the attorneys for a party to this action. Such party is absent from the county of aforesaid where this verification for and on behalf of that party for that reason. I am informed matters stated in the foregoing document are true. Executed on April 5, 20, 19, at San Diego I declare under penalty of perjury under the laws of the State of California that | matters stated in the foregoing document are n knowledge except as to those matters which be true. e such attorneys have their offices, and I make and believe and on that ground allege that the |
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| | Theresa Quiroz | OQuero |
| | Type or Print Name | Signature |
| | PROOF OF SERVICE | |
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| | STATE OF CALIFORNIA, COUNTY OF | |
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| | | of business. I am aware that on motion of the |
| - | party served, service is presumed invalid if postal cancellation date or postag | |
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**(FOR PERSONAL SERVICE SIGNATURE MUST BE THAT OF MESSENGER)

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