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**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF FRESNO**

DESIREE MARTINEZ, an individual,

Petitioner/Plaintiff

vs.

CITY OF CLOVIS, CLOVIS CITY  
COUNCIL, LUKE SERPA, in his official  
capacity as City Manager of Clovis, and  
DOES 1-20.

Respondents/Defendants

Case No.: 19CECG03855

VERIFIED PETITION FOR WRIT OF  
MANDATE AND COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF

[Code Civ. Proc. §§ 1085, 1087; Gov't Code  
§§ 65580 *et seq.*; Gov't Code § 65584.09;  
Gov't Code § 65587; Gov't Code § 65008; 42  
U.S.C. § 3601 *et seq.*; Gov't Code § 12900 *et  
seq.*; Gov't Code § 8899.50; Code Civ. Proc.  
§§ 526, 526(a), 1060.]

## INTRODUCTION

1  
2 1. Thirty years ago, Desiree Martinez's mother moved her four children and two  
3 grandchildren to Clovis, in order to ensure better education and a safer neighborhood for her  
4 family. For that first two-bedroom Clovis apartment, Desiree's family paid higher rent than they  
5 would have had to pay for a house in Fresno. After four or five years, they were able to afford a  
6 three-bedroom apartment a few blocks away. The children grew up and moved out; as an adult,  
7 Desiree moved back to Clovis in the mid-nineties, looking to raise her own child in a  
8 neighborhood of opportunity. Rent was still disproportionately high; working two jobs was not  
9 enough to cover day care too, so Ms. Martinez moved her family to the most affordable place  
10 nearest Clovis she could find. Now disabled, and relying on a housing voucher, Ms. Martinez  
11 wishes to relocate to Clovis. But homes affordable to low-income families like Ms. Martinez's  
12 are rare in Clovis, and that is no accident: Clovis's failure to comply with Housing Element Law  
13 is the direct result of City officials's, staff's, and residents's variously stated belief that low-  
14 income housing would "lower the Clovis standard," and degrade the "Clovis Way of Life."  
15 Respondents have designed the City's housing policy intentionally to exclude low-income  
16 families and families of color, by evading, delaying compliance, and otherwise violating state  
17 and federal law. As a direct result of this intentional conduct, and despite the fact that the City  
18 of Clovis is almost four years into an eight-year housing element planning period, the City still  
19 lacks an adequate housing element, leaving the housing needs of thousands of lower-income  
20 families and individuals unmet.

22 2. The State's Housing Element Law requires that, every eight years, cities and  
23 counties adopt revised housing elements to plan for the projected housing needs of all income  
24 groups, including identifying and zoning sites for new housing to accommodate 100 percent of  
25 the anticipated need. If a jurisdiction fails to identify enough sites to meet the entire housing  
26 need in one planning period, that unmet need "carries over": within the first year of the following  
27 planning period, the jurisdiction must rezone or identify sites for the previous planning period's  
28 carry-over. By March of 2016, the City of Clovis had a carry-over of 4,425 affordable units for

1 which it had neither identified nor zoned sites: affordable units identified, zoned or built during  
2 the then just-concluded eight-year planning period were a mere 21 percent of those needed,<sup>1</sup>  
3 compared to 150 percent of sites needed for higher-income housing. But by the end of 2016 –  
4 the first year of the following planning period – Clovis had still not met its deadline for catching  
5 up to its affordable housing carry-over. Since then, under pressure, Clovis has dragged its feet,  
6 proffering multiple illusory proposals to satisfy its now years-old unmet need for affordable  
7 housing. Although the State has finally approved one of these proposals, that plan does not in  
8 fact meet the requirements of California’s Housing Element Law. Moreover, the City’s policies  
9 privileging higher-income housing at the expense of lower-income housing continue to result in  
10 a discriminatory and disparate impact on protected racial groups and communities of color in this  
11 region.

12  
13 3. Petitioner Desiree Martinez (“Petitioner” or “Ms. Martinez”) seeks relief from  
14 unlawful acts and omissions under California’s Housing Element Law and laws prohibiting  
15 housing discrimination by Respondents City of Clovis, Clovis City Council and City Manager  
16 Luke Serpa (“Respondents”). Petitioner is a low-income woman of color who cannot find  
17 affordable housing in Clovis due to the insufficient supply of affordable units in the City.

18 4. Fresno County is experiencing an unprecedented housing crisis. Fresno County,  
19 where Clovis is located, has a shortage of 35,380 affordable rental homes according to a recently  
20 published report by the California Housing Partnership Corporation. According to the US  
21 Census Bureau’s American Community Survey, the overall residential rental vacancy rate in  
22 Fresno County is only 3.9 percent (a rate experts report to be far lower for low-income housing).  
23 Additionally, Fresno County has experienced a rise in homelessness of 15 percent since 2017,  
24 according to the Fresno Madera Continuum of Care.

25 5. Notwithstanding this critical affordable housing shortage, community members  
26 within the City of Clovis regularly pressure Respondents to prevent affordable housing from  
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<sup>1</sup> The Fresno Multi-Jurisdictional Housing Element, adopted March 7, 2016, acknowledged that “[w]hile the City rezoned sites that have capacity for 4,614 lower-income units, only the 717 units on sites zoned R-4 meet all the rezone program criteria.” *Housing Element* 2B-41.

1 being developed within the City. In response to this pressure, and under the cover of preserving  
2 the “Clovis Way of Life,” Respondents have engaged in a systematic effort to prevent the  
3 development of affordable housing in the City, despite the public’s interest in safe, affordable,  
4 and decent housing for all residents, thereby deterring low-income persons and persons of color  
5 from residing in Clovis.

6         6.       Instead of complying with state law, Respondents actively have sought for years  
7 to avoid their obligations under the Housing Element Law to provide for the development of  
8 affordable housing.

9         7.       Despite their legal obligation to do so, Respondents have failed to plan, identify,  
10 and zone land to meet the housing needs of thousands of low-income households through  
11 unlawful acts and omissions that have excluded, and continue to exclude, low-income persons in  
12 desperate need of affordable housing.

13         8.       Through these practices, Respondents have also violated federal and state laws  
14 forbidding housing discrimination against racial groups as well as persons of color.

15         9.       On October 11, 2018, due to the City’s failure to rezone sites to accommodate  
16 over 4,000 units from the last planning period, the California Department of Housing and  
17 Community Development (“HCD”) revoked its finding that the City’s Housing Element  
18 substantially complied with state law. Respondents failed to put forth a plan that would bring  
19 them into compliance. Instead the City adopted a Regional Housing Need Overlay (“RHN  
20 Overlay”) that purportedly allows high-density development on some sites, while it continues to  
21 permit very low-density development on those same sites.

22         10.      Consequently, although the City amended its Housing Element on March 4, 2019  
23 to incorporate the RHN Overlay sites, this new Housing Element still fails to substantially  
24 comply with the Housing Element Law. In particular, the inventory of sites intended to  
25 accommodate the City’s unmet need from the last planning period fails to comply with  
26 Government Code Section 65583.2, which requires that rezoned sites will have a minimum  
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1 density of 20 units per acre. Gov't Code § 65583.2(h).<sup>2</sup> In addition, sites in the inventory zoned  
2 "P-F" (Public Facilities) fail to comply with minimum statutory requirements, chief among them  
3 the requirement that such sites are demonstrated to be suitable for residential development. §  
4 65583(a)(3).

5 11. HCD's own staff, as well as third-party analysis, had identified how the Overlay  
6 failed to comply with state law requirements. Despite the Element's clear violations of Housing  
7 Element Law, HCD nevertheless found that Clovis's March 2019 adopted revised Housing  
8 Element substantially complies. In reaching its decision, HCD abused its discretion and failed  
9 to address the defects in the City's Overlay Program.

10 12. Petitioner seeks a writ of mandate compelling Respondents to comply in fact with  
11 Housing Element Law by rezoning adequate parcels to accommodate the unmet housing needs  
12 of low-income households from the prior as well as current planning periods, declaratory relief,  
13 and an injunction against Respondents to cease their discriminatory housing practices.  
14

#### 15 **VENUE AND JURISDICTION**

16 13. This Court has jurisdiction to hear the subject matter of this Petition for Writ of  
17 Mandate and Complaint for Declaratory Relief ("Complaint") pursuant to Code of Civil  
18 Procedure Sections 1085, 1087, 1060 and Government Code Sections 65583(h), 65587, and  
19 12989.1. This Court also has jurisdiction over each defendant named in this Complaint, as the  
20 acts and omissions alleged herein occurred in California. Venue is proper in this Court because  
21 all of the violations of law alleged herein occurred and are occurring in Fresno County.

#### 22 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

23 14. Petitioner has performed all conditions precedent to the filing of this petition, and  
24 has exhausted any and all administrative remedies available to her which she is required by law  
25 to exhaust. Petitioner has a direct and substantial beneficial interest in ensuring that the  
26 Respondents comply with state law requirements related to housing elements, land use, and  
27 zoning.  
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<sup>2</sup> Unless otherwise indicated all references are to the Government Code.

**PARTIES**

15. Petitioner DESIREE MARTINEZ is a Native American woman living in Fresno County. She is disabled after having her spine and spinal cord damaged as a result of domestic violence. Ms. Martinez currently receives \$203 a month in disability.

16. Ms. Martinez has a Tenant-Based Rental Assistance housing voucher from the City of Fresno to assist with her rent, which makes her rent payment approximately 30 percent of her income, or around \$194 a month. The program limits the maximum amount of rent it will pay to \$771. Ms. Martinez has been informed that she will be eligible for a permanent and similar voucher if she is able to locate affordable housing within the City of Clovis. Despite having a valuable housing subsidy that should make it possible for her to find stable housing, Ms. Martinez cannot afford to rent an apartment within Clovis, where the average monthly rent is \$1,140.

17. Ms. Martinez once lived in the City of Clovis, but since her disability she has been unable to afford living there. Ms. Martinez would like to return to Clovis and has made repeated efforts to secure housing in Clovis.

18. Respondent CITY OF CLOVIS is a governmental entity formed and existing under the laws of the State of California.

19. Respondent CLOVIS CITY COUNCIL is the legislative body charged with the authority to regulate and administer land use activities within its territory by, among other means, the City's General Plan, zoning ordinances, and land use permits, subject at all times to the obligations and limitations of all applicable state, federal, and other laws, including housing element, planning, and zoning law.

20. Respondent LUKE SERPA, in his official capacity only, is the City Manager for the City of Clovis and is responsible for implementing City Council policies as well as administering City programs and services in a manner consistent with the laws of the state of California.

21. Respondents are sued in their official capacities and are referred to collectively as either "the City" or "Clovis."

1           22.     Petitioner is ignorant of the true names and capacities of the persons or entities  
2 named herein as DOES 1 through 20, but is informed and believes, and on that basis alleges, that  
3 Respondents are legally required to act in the manner herein sought. Petitioner will seek leave  
4 to amend this complaint when said Respondents's true names and capacities have been  
5 ascertained.

## 6                                   **STATUTORY FRAMEWORK**

### 7           **California's Housing Element Law**

8           23.     To combat exclusionary zoning and alleviate the affordable housing crisis, the  
9 Housing Element Law declares that the attainment of decent housing and a suitable living  
10 environment for every California family is a priority of the highest order, that housing affordable  
11 to low- and moderate-income households requires cooperation from all levels of government,  
12 and that local and state governments are responsible for improving and developing housing to  
13 meet the needs of all economic segments of the community. § 65580, *et seq.*

14           24.     Every California city and county must prepare and adopt a comprehensive, long-  
15 term general plan for the physical development of land within the governmental entity's  
16 jurisdiction. § 65300, *et seq.* The general plan governs the use of land within the city or county,  
17 and is the "constitution" of land use planning. The general plan has seven mandatory elements,  
18 including the housing element. The housing element is required to facilitate the development of  
19 each jurisdiction's share of the region's housing needs at each income level. Only the housing  
20 element is subject to specific statutory requirements and is reviewed by the state to determine if  
21 it has met those requirements.

22           25.     The housing element must be updated on a regular basis and revised by a statutory  
23 deadline. § 65588(e)(2)(A). HCD begins each new housing element cycle by determining how  
24 many housing units are needed in each region of the state according to population growth  
25 forecasts. § 65584.01. HCD then allocates that number, the Regional Housing Needs Allocation  
26 ("RHNA"), divided among four income categories – very low-, low-, moderate- and above  
27 moderate-income – to the council of governments for the region. Here, the Fresno Council of  
28

1 Governments (“FCOG”) assigns each locality within FCOG, including Clovis, with its “fair  
2 share” of the RHNA for each income category. *See* § 65584.

3         26. A city’s housing element must identify “adequate sites” to accommodate the  
4 jurisdiction’s assigned “fair share” of its housing need at each income level. § 65583. This  
5 entails “an inventory of land suitable and available for residential development, including vacant  
6 sites and [non-vacant] sites having realistic and demonstrated potential for redevelopment during  
7 the planning period.” § 65583(a)(3). State law allows jurisdictions to rely on specified “default”  
8 densities as sufficient to accommodate the housing needs for lower-income households. Clovis’s  
9 default density is 20 dwelling units to the acre. § 65583.2(c)(3)(B)(iii).

10         27. When there is a shortfall of adequate sites, the housing element must include a  
11 program to rezone additional sites as necessary to accommodate its full RHNA share. §§  
12 65583(c) and 65583.2(h). If a jurisdiction’s inventory of sites fails to accommodate its entire  
13 housing need during one planning period, the remaining, or unmet, need from that planning  
14 period carries over to the next planning period. This is known as the “carry-over.” The carry-  
15 over must be accommodated within the first year of the next planning period. § 65584.09. Any  
16 sites rezoned to accommodate the carry-over must have a minimum density of 20 units per acre  
17 and be large enough to accommodate at least 16 units. At least 50 percent of these sites must be  
18 zoned solely for residential use, except that all of the lower-income need may be accommodated  
19 on sites zoned for mixed-use if those sites allow “100 percent residential use” and require “that  
20 residential use occupy 50 percent of the total floor area.” § 65583.2(h). If at least 20 percent of  
21 the units in a development are affordable, then the development must be permitted by-right, or  
22 without discretionary review. *Id.*

23         28. HCD is responsible for reviewing draft and adopted housing elements. § 65585(b)  
24 and (h). During its review, HCD must determine whether the draft or adopted element  
25 substantially complies with state law. § 65585(d). HCD can revoke previous findings of  
26 substantial compliance with the Housing Element Law. § 65585(i)(1)(B).  
27  
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1           29.     HCD publishes technical assistance memos to interpret recent legislative changes  
2 to the Housing Element Law. In a memo interpreting the requirements of Government Code  
3 Section 65584.09, HCD states that a Fifth Cycle Housing Element that has not already completed  
4 the re-zoning to accommodate the carry-over from the prior planning period does not  
5 substantially comply with Housing Element Law.

6           30.     If a jurisdiction fails to substantially comply with the Housing Element Law, a  
7 court can order it to come into compliance pursuant to Section 65754.

8           31.     Thereafter, the court must enjoin development pursuant to Section 65755. The  
9 court must suspend, to the extent it deems appropriate, the jurisdiction's land use powers,  
10 including, but not limited to, the authority to issue building permits, zoning changes, variances,  
11 subdivision map approvals, or otherwise to approve any construction or development, except  
12 housing units affordable to very low- and low-income households as defined in Government  
13 Code Section 65589.5(h)(3) and Health and Safety Code Section 50079.5, and except as provided  
14 in Government Code Section 65755(b).

15           32.     Once a local jurisdiction does adopt a housing element program that complies  
16 with the Housing Element Law, the law expressly provides for the enforcement of that program  
17 (*i.e.*, meeting the deadlines and requirements of the programs adopted pursuant to the housing  
18 element) under Section 1085 of the California Code of Civil Procedure. § 65583(h). In such a  
19 writ action, the local government bears the burden of proof. § 65587(d)(2).

## 20 **Fair Housing Laws**

21           33.     The federal Fair Housing Act ("FHA") prohibits local governments and  
22 individuals from denying or otherwise making unavailable housing to persons based on race and  
23 color, among other protected classes. 42 U.S.C. § 3601, *et seq.*

24           34.     The California Fair Employment and Housing Act ("FEHA") prohibits  
25 discrimination on the same bases as the federal Fair Housing Act, including race and color. §  
26 12900, *et seq.*  
27  
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1           35. Both the federal Fair Housing Act and the California Fair Employment and  
2 Housing Act prohibit practices that have a disparate impact or discriminatory effect on protected  
3 groups.

4           36. State law also prohibits local governments from discriminating against housing  
5 development that is intended for occupancy by low-income households. § 65008 (a) and (b).

## 6                                   **FACTUAL ALLEGATIONS**

### 7           **Respondents's Long History of Intentional Non-Compliance**

8           37. Respondents and their representatives have repeatedly articulated a desire to avoid  
9 compliance with the state's Housing Element Law.

10           38. In July of 2016, HCD found the City's adopted 2016 Housing Element complied  
11 with state law on the condition that the City completed rezoning to accommodate the Fourth  
12 Cycle carry-over by December 31, 2016.

13           39. On or about June 30, 2017, in an internal e-mail to City officials, Respondent  
14 Serpa expressed his belief that accommodating the carry-over from the Fourth Cycle RHNA –  
15 now two years overdue – was not “achievable.” Clovis's Community and Economic  
16 Development Director Andy Haussler said in a reply e-mail that he “agree[d it] does not seem  
17 achievable.” In fact, eight years after the City had received its Fourth Cycle housing need  
18 allocation, and well into its Fifth Cycle, the City of Clovis still had made insignificant progress  
19 toward fully accommodating the housing need from the previous planning period.

20           40. The City continued to fail to rezone to accommodate its carry-over. On or about  
21 August 27, 2018, HCD revoked its previous finding that the City's Housing Element substantially  
22 complied with Housing Element Law.

23           41. On or about September 10, 2018, in defense of the City's non-compliance,  
24 Respondent Serpa claimed in a television interview that there is “not a lot of market” for multi-  
25 family housing in Clovis, despite the RHNA allocation and the desire of persons such as  
26 Petitioner to live in Clovis.  
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1           42.     At its October 15, 2018 meeting, Respondent City Council discussed HCD's  
2 action, the City Housing Element's lack of compliance with state law (discussed *infra*), and ways  
3 to avoid compliance with Housing Element Law. City Councilmember José Flores referred to  
4 the City's legal obligations to comply with Housing Element Law as a "hard pill to swallow" and  
5 a "burden" that would "lower the Clovis standard."

6           43.     At this meeting, City Councilmember Vong Mouanoutoua queried City staff  
7 whether there are "any cities who do not comply [with Housing Element Law] that we can look  
8 to, to see how they do it," including communities such as "Bel Air and Beverly Hills."

9           44.     On or about October 15, 2018, City Planner Bryan Araki described the required  
10 rezone programs as quick-fix stopgaps that did not make sense; he suggested that the City could  
11 seek to "get rid of" the rezone programs once it had received the expected recertification from  
12 HCD.

13           45.     City staff and councilmembers seemed to express consensus that their ultimate  
14 goal was to find and emulate other cities' rezone programs that would "make more sense" for  
15 Clovis, *i.e.*, programs that do not rezone for lower-income housing.

16           46.     Clovis has long been aware of its obligations under the Housing Element Law,  
17 but repeatedly has refused to take seriously its duty to comply, and has actively sought ways to  
18 avoid compliance.

19           47.     Petitioner is entitled to relief because Clovis has failed to accommodate its carry-  
20 over from the prior cycle, and its amended Housing Element fails to substantially comply with  
21 Housing Element Law.

22 **Clovis's Current Need for Affordable Housing**

23           48.     The population of Clovis is now approximately 117,003 people, a 134 percent  
24 increase from its 1990 population. City of Clovis, *Analysis of Impediments to Fair Housing*  
25 *Choice*, 2019, at 6. The City's population is anticipated to grow to 133,800 by 2030. *Id.* at 9.  
26 The median income for the City, regardless of household size, is between \$63,983 and \$68,682.  
27 *Housing Element 2-11*; City of Clovis, *Analysis of Impediments to Fair Housing Choice*, 2019,  
28

1 at 15. This amount is higher than any other jurisdiction in Fresno County, exceeds the Fresno  
2 County average by nearly \$20,000, and has, according to the City, “increased significantly over  
3 the last ten years.” *Id.*

4 49. 30 percent of households in the City are low-, very low-, or extremely low-  
5 income. City of Clovis, *Analysis of Impediments to Fair Housing Choice*, 2019, Table 2 –  
6 Income Distribution in Clovis, at 17.

7 50. The Department of Housing and Urban Development (“HUD”) has set the fair  
8 market rent for a one-bedroom unit in the metropolitan area of Fresno County at \$787 for 2020.  
9 U.S. Department of Housing and Urban Development, *FY 2020 Fair Market Rent*. This same  
10 metric indicates that the “small area”<sup>3</sup> fair market rents for a one-bedroom unit in Clovis for 2020  
11 are the following: \$1,040 for the 93611 ZIP code, \$850 for the 93612 ZIP code, and \$1,180 for  
12 the 93619 ZIP code.<sup>4</sup> U.S. Department of Housing and Urban Development, *FY 2020 Small Area*  
13 *FMRs for Fresno County, CA*. The median gross rent for the City is between \$1,140 and \$1,164.  
14 City of Clovis, *Analysis of Impediments to Fair Housing Choice*, 2019, at 23; American  
15 Community Survey, *Median Gross Rent*, Table K202511.  
16

17 51. The City of Clovis has a severe deficit of affordable housing, resulting in many  
18 households being “burdened” with high housing costs – paying more than 30 percent of their  
19 income for housing – and pricing out many families and individuals, such as Petitioner. The  
20 2019 housing element states that 57 percent of renters and 78 percent of lower-income renters in  
21 Clovis are “housing cost burdened.” *Housing Element* 2-32. According to the American  
22 Community Survey, 42 percent of Clovis renting households pay more than 35 percent of their  
23 household income on gross rent. American Community Survey, *Selected Housing*  
24 *Characteristics*, Table DP04. Approximately 12 percent of the City’s households are low-  
25 income and paying more than 50 percent of their gross income towards housing costs. City of  
26 Clovis, *Analysis of Impediments to Fair Housing Choice*, 2019, at 54. A disproportionate number  
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<sup>3</sup> HUD defines Small Areas using ZIP Codes within a metropolitan area.

<sup>4</sup> The fair market rent for 93613, \$790, is excluded here because 93613 is a PO Box-only ZIP code.

1 of Clovis renters compared to homeowners pay 30 percent or more of their monthly income,  
2 “reflect[ing a] need for affordable rental housing . . . for low- and very low-income households.”  
3 *Id.* at Table 10 – City of Clovis Affordability by Group, at 22.

4 52. The City’s percentage of total multi-family units has decreased by 2.7 percent to  
5 26.8 percent since 2000, while its percentage of single-family homes during this same time period  
6 has increased by 6.4 percent to 73.2 percent. City of Clovis, *Analysis of Impediments to Fair*  
7 *Housing Choice*, 2019, Table 6 – Total Dwelling Units by Type, at 20.

8 53. This is consistent with findings of the California Housing Partnership  
9 Corporation, which found that Fresno County needs **35,380** more affordable rental homes to meet  
10 current demand, and that almost three-quarters of Fresno County’s lowest-income renters spend  
11 more than half of their income on rent.

12 54. Clovis, as the third-fastest growing city in California, and according to FCOG’s  
13 methodology, was assigned a RHNA for its Fifth Cycle (2015-2023) that required zoning at  
14 densities that could accommodate 3,466 units affordable to lower-income households.

15 55. Clovis’s lack of action during the Fourth Housing Element Cycle – specifically  
16 its failure to identify and zone for thousands of units affordable to lower-income households –  
17 demonstrates its continuing unwillingness to zone land to accommodate its own low-income  
18 population, or to share the burden of a crushing regional housing need, even though the City has  
19 enough vacant land to accommodate at least 4,614 lower-income units. City of Clovis, *Analysis*  
20 *of Impediments to Fair Housing Choice*, 2019, at 50.

21 56. The City has taken numerous actions to benefit its high-income population.  
22 During the same period of time in which it failed to zone 221 acres for higher-density residential  
23 uses, the City has zoned, annexed, or approved the planning of over 6,000 acres of land for  
24 commercial and low-density (above moderate-income) residential uses.

25 57. Clovis is an increasingly wealthy city. From 2013 to 2017, the mean household  
26 income has increased from \$80,267 to \$88,815. American Community Survey, *Selected*  
27 *Economic Characteristics*, Table DP03. Yet 14.3 percent of the City’s “foreign-born” population  
28

1 lives in poverty, compared to just 9.5 percent of native residents. City of Clovis, *Analysis of*  
2 *Impediments to Fair Housing Choice*, 2019, at 11.

3 58. The City's increasing wealth has not benefited all of its residents; in particular,  
4 there is a massive disparity between percentage-of-income increases for Whites as compared to  
5 Hispanic and African American households, signaling a desire on the City's part to accommodate  
6 only high-income earners. Since 2010, the median household income, in Clovis, for both  
7 Hispanic and African American households has risen by roughly 50 percent; in contrast, and  
8 during this same time, incomes for White, Asian, and Native Hawaiian/Pacific Islander  
9 households have risen by 62.8 percent, 94.3 percent, and 268.7 percent, respectively. City of  
10 Clovis, *Analysis of Impediments to Fair Housing Choice*, 2019, Table 1 – Clovis Household  
11 Median Income by Race, at 17; City of Clovis, *Analysis of Impediments to Fair Housing Choice*,  
12 2010, Table 1 – Clovis Household Median Income by Race, at 16.

13 59. HUD's Affirmatively Furthering Fair Housing Tool ("AFFH-T") shows that more  
14 than one-half of Clovis's African American households are renter households. U.S. Department  
15 of Housing and Urban Development, *AFFHT0004*, Table 16 - Homeownership and Rental Rates  
16 by Race/Ethnicity. A little less than one-half of Hispanic or Latino households and 32 percent  
17 of Asian households in the City are rental households. *Id.* But only 34 percent of White  
18 households rent. *Id.*; see also Table 2 – Demographic Trends. This is despite the fact that around  
19 70 percent of Clovis's population is White. American Community Survey, *ACS Demographic*  
20 *and Housing Estimates*, Table DP05.

21 60. Clovis is a safe, prosperous city with high performing schools, making it a  
22 desirable community for members of all socio-economic and racial backgrounds. According to  
23 the California Department of Education, Clovis's school test results have been an average of 18  
24 percent higher than state averages over the last four years. According to the Clovis Unified  
25 School District website, in 2018 and 2019 it was "the only district in the Central Valley to be  
26 recognized as a California Honor Roll School District." Only 8.5 percent of Clovis residents age  
27  
28

1 25 or older have less than a high school education or equivalency, and nearly 33 percent have a  
2 bachelor's degree. City of Clovis, *Analysis of Impediments to Fair Housing Choice*, 2019, at 11.

3 61. Violent crime rates in Clovis are among the lowest in the Valley, at 2.14 violent  
4 crimes per 1,000 persons. United States Department of Justice, Federal Bureau of Investigations,  
5 *Crime in the United States*, 2014, Table 8 (California). In fact, the only other city in the Valley  
6 with a lower rate is Orange Cove, which has one-tenth the population of Clovis. *Id.*  
7 Concentrations of poverty are similarly low within Clovis and are limited solely to the southwest  
8 portion of the City, where Clovis's residents of color, single parents, disabled, and impoverished  
9 residents are primarily concentrated. See City of Clovis, *Analysis of Impediments to Fair Housing*  
10 *Choice*, 2019, Maps 2-4 and 6-7,<sup>5</sup> at 10, 12-13, 16, 18.

11 62. Notwithstanding the significant need for affordable housing in Clovis, and the  
12 disproportionate impact that this lack of affordable housing has on lower-income families and  
13 people of color, Respondents have engaged in a systematic effort to avoid their duties to provide  
14 for the development of affordable housing within the City. Further, this abdication of their duties  
15 has disparately impacted rent-burdened racial groups as well as families of color.

### 17 **Clovis's Purported Housing Element Compliance**

18 63. The due date for the City's Housing Element for the Fifth Cycle (the current  
19 planning period covering 2015-2023)<sup>6</sup> was December 31, 2015. The City did not adopt its Fifth  
20 Cycle Housing Element until April of 2016.

21 64. The adopted April 2016 Housing Element explicitly acknowledged that the City  
22 had a carry-over of 4,425 units from the last planning period. The Housing Element included  
23 Program 4, which obligated the City to rezone sites to accommodate, no later than December 31,  
24 2016, those 4,425 units from the previous planning period.

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27  
28 <sup>5</sup> Map 2 – City of Clovis Minority Concentration; Map 3 – City of Clovis Single Parent Household Concentration;  
Map 4 – City of Clovis Persons with a Disability Concentration; Map 6 – City of Clovis Median Income  
Concentration; Map 7 – City of Clovis Poverty Rate.

<sup>6</sup> SB 375 changed the planning period for most jurisdictions from five years to eight years.

1           65.     On July 22, 2016, HCD found that the City's adopted Element was in substantial  
2 compliance with state law; HCD conditioned its finding of compliance on the City implementing  
3 Program 4 of its Housing Element by December 31, 2016.

4           66.     During 2016, only one rezoning action met the Program 4 criteria: on November  
5 14, 2016, the City adopted Ordinance 16-28, which zoned for 216 units of high-density  
6 residential development.

7           67.     HCD sent a letter to Clovis in 2018 inquiring whether the City had implemented  
8 Program 4, which had been a condition of HCD's finding of compliance. In the City's response  
9 to HCD's inquiry, it described an anticipated schedule of rezone actions, comprised of a  
10 commercial corridor overlay and two general plan amendments that could provide zoning for  
11 1,000 residential units combined. Included with the City's response was a proposed rezone  
12 amendment (eventually adopted as Ordinance 18-22) providing zoning for 55 units and a  
13 proposed public-private partnership that would purportedly provide zoning for another 1,400  
14 units. The City informed HCD that it would address the thousands of remaining units from the  
15 Fourth Cycle RHNA deficit in 2020.  
16

17           68.     On or about September 17, 2018, the City adopted Ordinance 18-22, providing  
18 zoning for 55 high-density units pursuant to Program 4. However, between the December 31,  
19 2016 statutory deadline to rezone to accommodate the carry-over from the Fourth Cycle and this  
20 September 2018 rezoning, the City Council adopted more than *40 other ordinances* that rezoned  
21 thousands of acres, the vast majority of this completed rezoning accommodating single-family  
22 above moderate-income residences. To date, the City's remaining carry-over for lower-income  
23 homes is 3,829 units.

24           69.     On or about September 24, 2018, the City responded to HCD's written comments  
25 that the City's housing element appeared to no longer substantially comply with the Housing  
26 Element Law by providing a purported solution to address its carry-over, which included General  
27 Plan and Zoning Ordinance Amendments. In its response, the City informed HCD that it had  
28 commenced Public-Facilities (P-F) and RHN Overlay rezone programs (discussed *infra*),

1 claiming that this new effort would implement Program 4 by amending the General Plan and  
2 Development Code to permit multi-family housing in P-F Zone Districts, and by applying a  
3 multi-family overlay zone to selected existing single-family residential zone districts.

4 70. On or about October 11, 2018, HCD issued a letter to the City, stating that the  
5 City's September 24 response did not demonstrate timely implementation of Program 4.  
6 Consequently, HCD revoked its previous conditional finding regarding the City's Housing  
7 Element because it no longer substantially complied with the Housing Element Law.

8 71. On or about November 5, 2018, the Clovis City Council adopted Ordinance 18-  
9 26, amending the P-F zone district to allow multi-family housing as a permitted use, applying the  
10 RHN Overlay to particular sites, and adding the RHN Overlay development standards to the  
11 City's Development Code. The City forwarded a copy of the ordinance to HCD the following  
12 day. On or about December 3, 2018, the Clovis City Council adopted Ordinance 18-28, which  
13 rezoned 887 acres of land to the P-F Zone District. Included in these rezoned sites was property  
14 owned and operated by Fresno State University that Clovis eventually included in the P-F  
15 Program's site inventory. The City forwarded a copy of Ordinance 18-28 to HCD on December  
16 11, 2018.

17 72. On or about January 7, 2019, Gavin Newsom was sworn in as Governor of  
18 California. Three days later, HCD, on information and belief, instructed the City to create an  
19 appendix to its Housing Element detailing the inventory of sites provided by the new rezone  
20 programs under Ordinances 18-26 and 18-28, along with an analysis of suitability and availability  
21 of those sites within the meaning of Sections 65583(a)(3) and 65583.2. On or about March 4,  
22 2019, the Clovis City Council officially amended its Housing Element to incorporate this site  
23 inventory as an appendix.

#### 24 **The Overlay Program**

25 73. The Overlay Program applies an "affordable housing overlay" to vacant  
26 residential parcels between 1 and 10 acres within the City limits. This appendix inventory of  
27 sites where the Overlay applies totals 115.35 acres and purportedly accommodates 4,037 units.  
28

1           74.     The Overlay Program sites do not meet the Government Code Section 65583.2(h)  
2 requirement that sites be zoned at a minimum density of 20 units per acre, because the Overlay  
3 sites's underlying zoning designation allows for much lower density. In fact, the underlying zone  
4 district for a majority of the Overlay sites is for single-family residences with density capped at  
5 7 units to the acre. As long as the underlying zoning does not require a minimum density of 20  
6 units per acre, these sites cannot be relied on to accommodate the carry-over. Clovis does not  
7 explain why it uses an overlay program rather than rezoning the sites to actually conform with  
8 the developable density the City is claiming they provide.

9           75.     The Overlay Program does not satisfy the City's obligation to rezone sites to  
10 accommodate its tremendous carry-over from the last planning period. The City's amended  
11 housing element does not substantially comply with Housing Element Law.

#### 12 **The P-F Program**

13           76.     The City's amended housing element also relies on a program to allow multi-  
14 family on P-F zoned sites. This appendix inventory in the revised Housing Element includes  
15 32.91 acres and purportedly provides 1,119 units on six sites:

- 16                   ▫ Site 1 (Shepard Avenue) – 6.8 developable acres, owned by private party.  
17                   Currently vacant.
- 18                   ▫ Site 3 (Bullard/Willow Avenue) – 10 developable acres, owned by Fresno  
19                   State University. Currently used for agricultural science.
- 20                   ▫ Site 7 (Locan Avenue) – 3.48 developable acres, owned by private party.  
21                   Currently vacant.
- 22                   ▫ Site 8 (Lind Avenue) – 2.3 developable acres, owned by City of Clovis.  
23                   Currently used as a parking facility and for general storage.
- 24                   ▫ Site 9 (Ashlan and Thompson) – 5.83 acres, owned by private party.  
25                   Currently vacant.
- 26                   ▫ Site 10 (Ashlan and McCall) – 3.61 developable acres, owned by the City  
27                   of Clovis. Remnant property from the Clovis Wastewater Reuse Facility.  
28

1           77. For the non-vacant properties—Sites 3, 8, and 10—the City has failed to provide  
2 sufficient information to permit a finding that these sites have “realistic and demonstrated  
3 potential” for development, as required under the Housing Element Law. § 65583(a)(3). Factors  
4 enumerated under Housing Element Law that determine whether a non-vacant site can be  
5 developed, but which were not examined for these sites, include: development trends, market  
6 conditions, the availability of regulatory incentives, the jurisdiction’s “past experience with  
7 converting existing uses to higher-density residential development,” “current market demand for  
8 the existing use,” and “an analysis of any existing leases or other contracts that would perpetuate  
9 the existing use or prevent redevelopment of the site for additional residential development.” §  
10 65583.2(g)(1). Until Clovis has conducted such analysis, and provided the information, these  
11 sites cannot be considered adequate under Section 65583 given the inherent barriers to  
12 development, such as the presence of an agricultural science facility, that accompany these  
13 unconventional sites.  
14

15           78. On or about October 2, 2018, Clovis City Planner Bryan Araki responded to an e-  
16 mail from a citizen concerned that the P-F Program would result in a significant number of  
17 affordable housing units in Clovis. In his response, Mr. Araki stated that “[t]he Public Facility  
18 land than [*sic*] can be claimed for housing is limited” because only two of the P-F sites in its  
19 inventory, located on corners of Ashlan and Thompson Avenues and Shaw and Locan Avenues,  
20 met “the criteria of being vacant and not currently funded for a project.”

21           79. The City itself admitted in this October 2, 2018 e-mail that Sites 7 and 9 are the  
22 only vacant sites that are not currently funded for another project. This admission indicates that  
23 Site 1, listed as a vacant site in the City’s submissions to HCD, is already funded for another  
24 project, and thus is not available to accommodate the carry-over.

25           80. The need to establish that P-F Program sites are actually available for residential  
26 development is especially important, given that the City is attempting to zone sites for residential  
27 development that were not originally intended for residential use. Although the City is permitted  
28

1 under law to zone affordable housing in zones that are not strictly residential, the sites must  
2 actually be *available* for residential development. § 65583(a)(3).

### 3 **HCD's Findings Regarding the Revised Housing Element**

4 81. On or about November 13, 2018, counsel for Petitioner sent a comment letter to  
5 HCD regarding Ordinance 18-26. That letter pointed out that despite the high-density levels  
6 permitted by the Overlay Program, low-density development was still permitted by the  
7 underlying zoning designations, and that this underlying zoning was a barrier to potential  
8 development at higher densities.

9 82. Sometime in November 2018, an HCD staff member circulated an internal e-mail  
10 analyzing whether Ordinance 18-26 complied with Housing Element Law. In this e-mail, the  
11 staff member made the same point Petitioner's counsel had made: that the sites within the  
12 Overlay Program do not meet the Government Code Section 65583.2(h) minimum density  
13 requirement of 20 units per acre because the sites's underlying zoning designations have  
14 minimum density levels significantly below 20 units per acre. This same staff member  
15 contemporaneously raised concerns internally regarding intergovernmental immunity and doubts  
16 over whether it was appropriate for the City to have included Fresno State-owned property  
17 (discussed *infra*) as part of the City's P-F Program. This is because, as a University, Fresno State  
18 operates under its own zoning laws and is immune from the City's zoning and planning  
19 regulations and actions. Any decision to plan for housing on Fresno State's campus has to go  
20 through the Chancellor of the University, not the City.<sup>7</sup>

22 83. On or about January 2 and 3, 2019, City staff e-mailed HCD staff to see if any  
23 additional information regarding their rezone programs was needed.

24 84. On or about January 7, 2019, Gavin Newsom was sworn in as Governor of  
25 California.

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<sup>7</sup> At a December 3 Council meeting, City staff admitted that Clovis's rezoning of Fresno State property "mean[t] very little to [Fresno State] because they operate under their own zoning laws."

1           85.     On or about January 10, 2019, HCD e-mailed the City asking for an inventory of  
2 sites affected by the new rezone programs in an appendix to be attached to its Housing Element.

3           86.     On or about February 19, 2019, Governor Newsom convened a summit in Long  
4 Beach for jurisdictions, including Clovis, that were non-compliant with Housing Element Law.  
5 Governor Newsom directed HCD's staff, including its Director, to attend the summit and to be  
6 at the disposal of the jurisdictions in attendance.

7           87.     According to e-mails from City Councilmember Vong Mouanoutoua, obtained in  
8 a Public Records Act request, Governor Newsom "praised" the City for the housing element  
9 work it had done and "directed" HCD to provide a "speedy" resolution. HCD staff soon after  
10 told the City of Clovis it was "on the right track."

11           88.     These e-mails also revealed that during the summit, Councilmember  
12 Mouanoutoua met privately with HCD's Housing Policy Manager. According to the  
13 councilmember, this individual also "praised" the City for the very same zoning actions which,  
14 five months prior, the same individual had deemed insufficient to allow the City's Housing  
15 Element to remain in compliance with state law.

16           89.     The Housing Policy Manager discussed with Councilmember Mouanoutoua the  
17 multiple comments that counsel for Petitioner had provided to HCD during Clovis's housing  
18 element review process, including the November 13, 2018 comment letter that identified the  
19 disparity between the density levels permitted by the Overlay Program and those sites's  
20 underlying zoning.

21           90.     On or about March 4, 2019, the Clovis City Council adopted Resolution 19-22,  
22 creating an appendix of housing element sites that were provided by Ordinances 18-26 and 18-  
23 28 and their respective rezone programs. The City soon after forwarded Resolution 19-22 to  
24 HCD.

25           91.     On or about March 14, 2019, Petitioner's counsel sent a comment letter regarding  
26 Resolution 19-22 to HCD. This letter reiterated the argument (*see* Paragraphs 74 and 81) that  
27 development of affordable housing on sites with minimum density levels of 35 units per acre  
28

1 under the City's Overlay Program was infeasible because the underlying zoning of these sites  
2 continued to allow very low densities.

3 92. This March 14, 2019 letter also objected to the City's including the Fresno State-  
4 owned property as part of the City's P-F Program. It repeated<sup>8</sup> that not only is this property not  
5 available for development because it is owned by a public entity not subject to the City's zoning  
6 and planning actions, but also that the property is much too valuable to Fresno State<sup>9</sup> for the  
7 University to use it for residential development. The intergovernmental immunity barrier in  
8 particular had been previously raised by HCD's own staff, and acknowledged by the City itself.  
9 (See Paragraph 82.)

10 93. On or about March 25, 2019, despite HCD's staff and third parties raising the  
11 inconsistency between the City's rezone programs and the requirements of state law, HCD made  
12 a written finding that the rezone programs satisfied the necessary statutory requirements, and that  
13 the City's adopted revised Housing Element complied with state law.

14 94. On or about April 11, 2019, counsel for Petitioner submitted a Public Records Act  
15 request to HCD seeking documents pertaining to the City's Housing Element and  
16 communications with the City.

17 95. On or about April 15, 2019, HCD provided Petitioner's counsel with records  
18 responsive to its April 11, 2019 Public Records Act request.

19 96. On information and belief, HCD withheld or inadequately searched for responsive  
20 records, including the internal communications critical of Clovis's rezone programs. (See  
21 Paragraph 82.) HCD invoked Section 6255 to exempt records on the basis of public interest, but  
22 refused to provide any information explaining the need for the exemption.  
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28 <sup>8</sup> CCLS had previously raised these points to HCD in comment letters dated September 21 and October 10, 2018.  
<sup>9</sup> During discussions between CCLS and Fresno State staff, including President Castro, Fresno State staff asserted  
that the property is currently used for agricultural education, and that it is one of the few (if only) parcels of  
agricultural land used by the school's Agricultural Sciences and Technology Department.

1           97.     On or about April 18, 2019, counsel for Petitioner submitted a Public Records Act  
2 request to Clovis seeking documents pertaining to the City's Housing Element and  
3 communications with HCD.

4           98.     A comparison of the records the City produced with the records HCD produced  
5 found multiple discrepancies between documents covering the same time period. HCD's  
6 production had omitted e-mails exchanged between the two entities, along with documents from  
7 the summit in Long Beach, and other items, revealing a pattern of incomplete production of  
8 responsive and disclosable public records. Petitioner's counsel made HCD aware of these  
9 discrepancies.

10           99.     HCD responded to notice of the discrepancies by providing the e-mails and Long  
11 Beach summit documents CCLS had referenced.

12           100.    HCD was aware of the significant, facial deficiency of the City's amended  
13 Housing Element due to internal as well as third-party criticisms of both its Overlay and P-F  
14 Programs, yet nonetheless found that Clovis's 2019 revised housing element complied with state  
15 law.  
16

17 **A Significant Shortfall Remains**

18           101.    Close to three years after the required statutory deadline, the City still has not  
19 implemented Program 4 of its current Housing Element because rezoned sites that do not comply  
20 with § 65583.2 are ineligible to accommodate the carry-over. The City still has a deficit of 3,829  
21 units to accommodate from the last planning period, which ended in 2013.  
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102. The carry-over calculation is reflected in the chart below:

2008-2013 shortfall	4,425 units
Rezonings completed by 2016	- 216 units
Rezonings completed by 2018	- 55 units
RHN Overlay Programs	- 0 units
P-F Program	- 325 units <sup>10</sup>
Total Remaining Shortfall	3,829 units

103. The City has offered facially inadequate plans to meet its Fourth Cycle RHNA, and the City admits that its rezone plans do not “make sense” and will likely be “gotten rid of.” HCD’s recertification of that facially inadequate plan cannot and does not render Clovis’s Housing Element compliant with Housing Element Law.

### CAUSES OF ACTION

#### FIRST CAUSE OF ACTION

#### Writ of Mandate – Inadequate Housing Element (Government Code §§ 65583, 65583.2; Code of Civil Procedure § 1085)

104. Petitioner incorporates by reference the allegations contained in each of the foregoing paragraphs, and incorporates them herein as if separately alleged.

105. Pursuant to Section 65583(c)(1), a housing element must identify actions to make sites available with appropriate zoning and development standards to accommodate any portion of the RHNA that could not be accommodated in the inventory of sites identified pursuant to Section 65583(a)(3), **and** must meet the requirements of Section 65584.09. Any action identified to fulfill the requirements of Section 65584.09 would have to be completed within the first year of the planning period. § 65584.09.

<sup>10</sup> The total units provided by Sites 7 and 9 of the P-F Program. Sites 1, 3, 8, and 10 are not included in the calculation because the City indicates those sites are funded for other projects. (See Paragraphs 77-79.)

1           106. On March 4, 2019, the City adopted a revised Housing Element that did not  
2 include sites sufficient to accommodate the unmet housing need that carried over from the prior  
3 planning period.

4           107. The City's revised Housing Element includes an appendix inventory of sites  
5 rezoned in order to satisfy Section 65584.09 that do not in fact meet the statutory requirements  
6 for sites zoned to accommodate the unmet housing need from the prior planning period as  
7 detailed in Section 65583.2.

8           108. An action identified in a housing element to satisfy Section 65584.09 that was not,  
9 or could not be, completed in time to comply with Section 65584.09 does not fulfill the  
10 requirements of Section 65583(c)(1). And a housing element that does not fulfill the  
11 requirements of Section 65583(c)(1) is inadequate and is not in substantial compliance with  
12 Housing Element Law.

13           109. Petitioner is directly and beneficially interested in having Respondents comply  
14 with all applicable provisions of law and their legal duties, as set forth herein.

15           110. Respondents have a mandatory duty to comply with the state's Housing Element  
16 Law. Respondents have had the ability to perform the duties set forth herein, at all times relevant  
17 to this action, and have failed and refused to perform their legal duties. Respondents have acted  
18 arbitrarily and capriciously in refusing to carry out or discharge their mandatory duties as alleged  
19 herein.

20           111. Unless compelled by this Court to perform those acts and duties, and to refrain  
21 from acts prohibited by law, Respondents will continue to refuse said duties and continue to  
22 violate the law, and Petitioner and other low-income persons and persons of color will be injured  
23 as a result.

24           112. Petitioner has no plain, speedy, or adequate remedy, other than the relief sought.  
25 Petitioner seeks a petition for writ of mandate to compel Respondents to immediately comply  
26 with its mandatory statutory duties and to refrain from violating statutory prohibitions as set forth  
27 herein.  
28

SECOND CAUSE OF ACTION  
Writ of Mandate – Failure to Accommodate the Unmet Housing Need  
(Gov’t Code § 65584.09; C.C.P. § 1085)

113. Petitioner incorporates by reference the allegations contained in each of the foregoing paragraphs, and incorporates them herein as if separately alleged.

114. Pursuant to Section 65584.09, the City of Clovis was required to rezone or identify sites to accommodate the unmet housing need, or carry-over, for 4,425 lower-income households from the prior planning period within the first year of the current planning period, or by December 31, 2016. This requirement is in addition to any zoning or rezoning required to accommodate the jurisdiction’s share of the RHNA for the new planning period.

115. To date, the City has failed to zone for enough acreage at the required density and with adequate capacity as required by Section 65583.2 to accommodate the unmet lower-income housing need from its prior planning period.

116. Petitioner is directly and beneficially interested in having Respondents comply with all applicable provisions of law and their legal duties, as set forth herein.

117. Respondents have had the ability to perform the duties set forth herein, at all times relevant to this action, and have failed and refused to perform their legal duties. Respondents have acted arbitrarily and capriciously in refusing to carry out or discharge their mandatory duties as alleged herein.

118. Unless compelled by this Court to perform those acts and duties and to refrain from acts required by law, Respondents will continue to refuse said duties and continue to violate the law, and Petitioners and other low-income persons will be injured as a result.

119. Petitioner has no plain, speedy, or adequate remedy, other than the relief sought. She seeks a petition for a writ of mandate to compel the City to immediately comply with its mandatory and statutory duties and to refrain from violating statutory prohibitions as set forth herein.

THIRD CAUSE OF ACTION  
Writ of Mandate – Failure to Implement Program 4 of the Housing Element  
(Gov’t Code § 65587; C.C.P. § 1085)

120. Petitioner incorporates by reference the allegations contained in each of the foregoing paragraphs, and incorporates them herein as if separately alleged.

121. Once adopted, a local government has a mandatory duty to implement the programs in its housing element and to take the specific actions mandated in that element. Failure to implement actions programmed into the housing element contravenes mandatory duties imposed by law once the jurisdiction adopts its housing element, and effectively constitutes an action inconsistent with the housing element and in violation of the law.

122. The City included Program 4 in its March 2019 Housing Element, requiring the City to complete rezoning necessary to accommodate the unmet housing need that had carried over past the prior planning period deadline as of December 31, 2016.

123. Sites rezoned to accommodate this carry-over must meet the specific requirements of Section 65583.2(h).

124. The City has failed to implement Program 4 and still has not rezoned sites to accommodate the carry-over to comply with Section 65583.2(h).

125. Petitioner is directly and beneficially interested in having Respondents comply with all applicable provisions of law and their legal duties, as set forth herein.

126. Respondents have a mandatory duty to comply with the state’s Housing Element Law, including to implement Program 4.

127. Respondents have had the ability to perform the duties set forth herein, at all times relevant to this action, and have failed and refused to perform their legal duties. Respondents have acted arbitrarily and capriciously in refusing to carry out or discharge their mandatory duties as alleged herein.

128. Unless compelled by this Court to perform those acts and duties and to refrain from acts prohibited by law, Respondents will continue to refuse said duties and continue to violate the law, and Petitioners and other low-income persons will be injured as a result.

1           129. Petitioner has no plain, speedy, or adequate remedy, other than the relief sought.  
2 She seeks a petition for a writ of mandate to compel the City to immediately comply with its  
3 mandatory and statutory duties and to refrain from violating statutory prohibitions as set forth  
4 herein.

5                               FOURTH CAUSE OF ACTION  
6                               Unlawful Land Use Discrimination  
7                               (Gov't Code § 65008; C.C.P. § 1085)

8           130. Petitioner incorporates by reference the allegations contained in each of the  
9 foregoing paragraphs, and incorporates them herein as if separately alleged.

10          131. Respondents have failed to comply with state laws intended to facilitate the  
11 development of housing affordable to lower-income households.

12          132. Respondents's actions and omissions intentionally discriminate against the  
13 development of housing intended for occupancy by persons of households with very low and low  
14 incomes.

15          133. Respondents know or should know that the failure to implement Clovis's Housing  
16 Element would have, and has had, the effect of denying housing opportunities, especially housing  
17 affordable to lower-income households, and discriminating against individuals and families with  
18 very low and low incomes, and against individuals and families of color.

19          134. The acts and omissions of the City alleged herein have a disparate impact and  
20 discriminatory effect on persons with very low and low incomes in violation of Government  
21 Code Section 65008. The City's acts and omissions disproportionately burden, and severely limit  
22 opportunities for, development of housing intended for low-income households.

23          135. Petitioner is informed and believes, and on that basis alleges, that the City knows  
24 or should know, in light of the pressing lack of available affordable housing, that its acts and  
25 omissions – including its failure to create and implement housing element programs intended to  
26 facilitate the production of affordable housing – would have discriminatory consequences.

27          136. Petitioner is beneficially interested in having Respondents comply with all  
28 applicable provisions of law and their legal duties, as set forth herein. Petitioner has standing to

bring this claim for writ of mandate, both as a result of her beneficial interest and on behalf of the public interest, as set forth herein.

137. Respondents have a mandatory duty to comply with state law that prohibits discrimination in housing.

138. Respondents have had the ability to perform the duties set forth herein, at all times relevant to this action, and have failed and refused to perform their legal duties. Respondents have acted arbitrarily and capriciously in refusing to carry out or discharge their mandatory duties as alleged herein.

139. Unless compelled by this Court to perform those acts and duties, Respondents will continue to refuse to carry out those duties and continue to violate the law. Petitioner and other low-income households will continue to be injured as a result, with consequent injury to the public interest.

140. Petitioner has no plain, speedy, or adequate remedy, other than the relief sought. She seeks a petition for a writ of mandate to compel the City to immediately comply with its mandatory and statutory duties and to refrain from violating statutory prohibitions as set forth herein.

FIFTH CAUSE OF ACTION  
Federal Fair Housing Act  
(42 USC § 3601, *et seq.*)

141. Petitioner incorporates by reference the allegations contained in each of the foregoing paragraphs, and incorporates them herein as if separately alleged.

142. The Fair Housing Act makes it “unlawful to discriminate against any person in the terms, conditions, or privileges of sale or rental, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin.” 42 U.S.C. § 3604(b).

143. The failure of the City to accommodate and to provide opportunities to develop very low- and low-income housing through its failure to comply with Housing Element Law has an adverse and disparate impact on racial groups as well as people of color.

1           144. Approximately 24 percent of an estimated 35,538 households in the City have  
2 household incomes of \$34,999 or less. American Community Survey, *Selected Economic*  
3 *Characteristics*, Table DP03. Among this adversely affected group of low-, very low-, and  
4 extremely low-income households, there is significant variation by race and color. For Clovis,  
5 44 percent of African American households are part of this adversely affected group, even though  
6 African Americans comprise just 3 percent of Clovis's population. American Community  
7 Survey, *ACS Demographic and Housing Estimates*, Table DP05 and Table B19001B. 29.3  
8 percent of Hispanic or Latino households and 22 percent of Asian households earn less than  
9 \$34,999 a year. *Id.* at Tables B19001I and B19001D. In contrast, only 22.6 percent of these low-  
10 income households are White, even though most of Clovis's population is White.

11           145. Many residents of color in the City have a severe housing cost burden, paying  
12 more than half of their income for housing. The HUD Affirmatively Furthering Fair Housing  
13 Data and Mapping Tool ("AFFH-T") shows that 15.31 percent of White households in Clovis  
14 are severely burdened compared to 20.30 percent of African Americans households and 18.52  
15 percent of Hispanic households. U.S. Department of Housing and Urban Development,  
16 *AFFHT0004*, Table 10 – Demographics of Households with Severe Housing Cost Burden.

17           146. The failure of the City to comply with Housing Element Law has a predictable  
18 adverse and disparate impact on racial groups as well as individuals and families of color in need  
19 of affordable housing. The City's actions, and inaction, have the effect of denying housing  
20 opportunities and the enjoyment of residence in the City to households in these protected classes  
21 to a greater degree than other households. These disparities are statistically significant and did  
22 not occur by chance.

23           147. Petitioner is informed and believes, and on that basis alleges, that Respondents  
24 knew or should have known of the discriminatory consequences of their acts and omissions.

25           148. The failure of the City to comply with Housing Element Law also constitutes  
26 intentional discrimination. The City knew its failure to plan for and accommodate housing  
27 affordable to low- and very low-income households would have a disparate impact on racial  
28

1 groups as well as people of color who statistically have lower incomes and are in greater need of  
2 affordable housing in Clovis than Whites. Respondents's actions and omissions intentionally  
3 discriminate against people of color and racial groups.

4 149. Petitioner has no plain, speedy, or adequate remedy, other than the relief sought.  
5 She seeks declaratory and injunctive relief to prohibit the City from violating fair housing laws.

6 150. Petitioner is harmed by Respondents' failure to comply with all applicable  
7 provisions of law and their legal duties, as set forth herein.

8 SIXTH CAUSE OF ACTION  
9 California Fair Employment and Housing Act  
10 (Gov't Code § 12900, *et seq.*)

11 151. Petitioner incorporates by reference the allegations contained in each of the  
12 foregoing paragraphs, and incorporates them herein as if separately alleged, including each and  
13 every factual allegation in the Fifth Cause of Action under the federal Fair Housing Act, *supra*.

14 152. The California Fair Employment and Housing Act, § 12900, *et seq.*, makes it  
15 unlawful for the City to discriminate through public land use practices, decisions, and  
16 authorizations because of race, color, national origin, sex, familial status, disability, sexual  
17 orientation, marital status, ancestry, source of income, or religion.

18 153. The failure of the City to plan for, accommodate, or promote very low- and low-  
19 income housing development through its failure to comply with Housing Element Law has an  
20 adverse and disparate impact on racial groups as well as individuals and families of color, and  
21 on those who rely on federal housing choice vouchers as a source of income.

22 154. The failure of the City to comply with Housing Element Law has a predictable  
23 adverse and disparate impact on racial groups as well as individuals and families of color in need  
24 of affordable housing. The City's action has the effect of denying housing opportunities and the  
25 enjoyment of residence in the City to households in these protected classes to a greater degree  
26 than other households. These disparities are statistically significant and did not occur by chance.

27 155. The failure of the City to comply with Housing Element Law also constitutes  
28 intentional discrimination. The City knew its failure to plan for and accommodate housing

1 affordable to low- and very low-income households would have a disparate impact on racial  
2 groups as well as people of color who statistically have lower incomes and are in greater need of  
3 affordable housing in Clovis than Whites. Respondents's actions and omissions intentionally  
4 discriminate against people of color and racial groups.

5 156. Petitioner is harmed by Respondents's failure to comply with all applicable  
6 provisions of law and their legal duties as set forth herein. Respondents knew or should have  
7 known of the discriminatory consequences of their acts and omissions.

8 157. Petitioner has no plain, speedy, or adequate remedy, other than the relief sought.  
9 Petitioner seeks declaratory and injunctive relief prohibiting Respondents from continuing to  
10 violate state fair housing laws.

11 SEVENTH CAUSE OF ACTION  
12 Duty to Affirmatively Further Fair Housing  
13 (Gov't Code § 8899.50; CCP § 1085)

14 158. Petitioner incorporates by reference the allegations contained in each of the  
15 foregoing paragraphs, and incorporates them herein as if separately alleged.

16 159. Section 8899.50(b) requires public agencies, including cities, to administer their  
17 programs and activities relating to housing and community development in a manner that  
18 affirmatively furthers fair housing, and to take no action that is materially inconsistent with its  
19 obligation to affirmatively further fair housing.

20 160. Affirmatively furthering fair housing means:

21 Taking meaningful actions, in addition to combating discrimination, that overcome  
22 patterns of segregation and foster inclusive communities free from barriers that restrict  
23 access to opportunity based on protected characteristics. Specifically, affirmatively  
24 furthering fair housing means taking meaningful actions that, taken together, address  
25 significant disparities in housing needs and in access to opportunity, replacing segregated  
living patterns with truly integrated and balanced living patterns, transforming racially  
and ethnically concentrated areas of poverty into areas of opportunity, and fostering and  
maintaining compliance with civil rights and fair housing laws.

26 § 8899.50(a). The duty to affirmatively further fair housing extends to all of a public agency's  
27 activities and programs relating to housing and community development.  
28

1           161. Clovis is subject to clear, mandatory duties and prohibitions imposed by Section  
2 8899.50.

3           162. The acts and omissions of the City alleged herein, including its failure to  
4 implement programs needed to facilitate affordable housing, discriminate against the  
5 maintenance and development of housing intended for occupancy by persons or households with  
6 very low, low and moderate incomes in Clovis, and on the basis of race, ethnicity, and national  
7 origin, and thereby create barriers to overcoming patterns of segregation rather than fostering  
8 inclusive communities free from barriers that restrict access to opportunity based on protected  
9 characteristics.

10           163. The acts and omissions of the City alleged herein have a discriminatory effect,  
11 including a statistically significant adverse and disparate impact, on Hispanics, African  
12 Americans and other people of color in violation of Section 8899.50. Households in each of  
13 these groups have a disproportionately greater need for affordable housing in comparison to  
14 households in Clovis generally. The City's failure, as alleged, to enact a compliant Housing  
15 Element and to implement its Housing Element programs, has the effect of denying housing  
16 opportunities, enjoyment of residence, and access to opportunity in Clovis to households in these  
17 protected groups to a significantly greater degree than to other households. These disparities are  
18 statistically significant and did not occur by chance.

19           164. The acts and omissions of Clovis alleged herein have created patterns of  
20 segregation and denied access to opportunity to residents and households on the basis of race,  
21 ethnicity and national origin.

22           165. The City's practices, as alleged, are materially inconsistent with its duty to  
23 affirmatively further fair housing and violate Section 8899.50.

24           166. Petitioner has no plain, speedy, and adequate remedy in the ordinary course of  
25 law.

26           167. Petitioner has a direct and beneficial interest in Respondents's compliance with  
27 all applicable provisions of law and their legal duties, as set forth herein.  
28

EIGHTH CAUSE OF ACTION  
Declaratory and Injunctive Relief  
(Code of Civil Procedure §§ 526, 526(a), 1060)

168. Petitioner incorporates by reference the allegations contained in each of the foregoing paragraphs, and incorporates them herein as if separately alleged.

169. Petitioner, other members of the public, and lower-income families are suffering irreparable injury as a result of the unlawful acts and omissions of Respondents. The injuries suffered are not easily quantified or compensable. They include but are not limited to impairment of physical and mental health, educational disadvantage, loss of economic productivity, instability in employment with consequent economic impacts on hunger and health, and many other adverse impacts—including the well-established deleterious effects of income and racial segregation on the community as a whole. No money damages or other legal remedy could adequately compensate Petitioner and low-income families for the irreparable harm the City's conduct has caused, continues to cause, and threatens to cause Petitioner and members of the public. The City, unless enjoined, will continue to prevent development of housing affordable to extremely low-income, very low-income, and low-income households, and which otherwise has an adverse impact on Petitioner, other members of the public, and other low-income families.

170. As a direct and proximate result of the City's actions, Petitioner, lower-income families, and other members of the public have suffered and will continue to suffer as a result of the City of Clovis's failure and refusal to accommodate affordable housing within its borders.

171. The City will continue to discourage or prohibit lower-income housing within its boundaries, while it continues to approve thousands of above-moderate income units, with callous indifference to the needs of the City's lower-income residents, and without regard to the burdens imposed on other jurisdictions in the region, unless the City's Housing Element substantially complies with Housing Element Law.

172. An actual controversy exists between Petitioner and the City because the City is acting arbitrarily and capriciously in failing to adopt a legally sufficient housing element. Petitioner, other members of the public, and lower-income families therefore are deprived,

1 among other things, of their rights under Cal. Gov't Code, Title 7, Div. 1, Ch. 3, Article 10.6  
2 (Gov't Code §§ 65580, *et seq.*) to a housing element that makes adequate provisions for the  
3 housing needs of all economic segments of the community.

4 173. Petitioner has a direct and beneficial interest in the City's complying with the law  
5 and ceasing its discriminatory actions.

6 174. Petitioner is entitled to a legal declaration of her rights and the City's obligations  
7 under applicable state law as alleged in this petition.

8 175. Petitioner has no plain, speedy, or adequate remedy at law other than the relief  
9 requested in this Petition for Writ of Mandate and Complaint for Declaratory and Injunctive  
10 Relief.

#### 11 **REQUEST FOR RELIEF**

12 WHEREFORE, Petitioner requests that the Court grant the following relief:

13 1. For a declaration that:

- 14 i. Respondents failed to zone or rezone adequate sites to accommodate the  
15 City's unmet housing need from the prior planning period as required by  
16 Government Code Section 65584.09;
- 17 ii. Respondents's 2019 revised Housing Element fails to comply with state  
18 law.
- 19 iii. Respondents failed to implement Program 4 of the City's Housing  
20 Element.
- 21 iv. Respondents's failure to comply with their legal obligations has an  
22 unlawful discriminatory effect on Petitioner and therefore violates  
23 Government Code Sections 65008 and 12900, *et seq.* and 42 USC Section  
24 3601, *et seq.*.

25 2. A peremptory writ of mandate/injunctive relief:

- 26 i. Requiring the Respondents to adopt, within 120 days, a housing element  
27 for the 2015-2023 planning period that actually and substantially complies  
28 with state law pursuant to Government Code Section 65754;

1           ii. Pursuant to Government Code Section 65755, enjoining the City's land  
2           use authority.

3           iii. Pursuant to Government Code Section 65584.09, ordering the City to  
4           implement Program 4, no later than a date certain, by zoning or rezoning  
5           adequate sites to accommodate the City's unmet share of the RHNA from  
6           the 2008-2013 planning period on sites that comply with Government  
7           Code Section 65583.2(h).

8           3.       For a preliminary and permanent injunction requiring the City to correct, no later  
9           than a date certain, the unlawful imbalance it has created between the oversupply of zoned parcels  
10          and built units for above moderate- and moderate-income housing, and the deficit in zoned  
11          parcels and built units for affordable housing, including but not limited to: incentives to  
12          affordable housing developers; an Affordable Housing Trust Fund; identification of a funding  
13          stream for incentives and a Trust Fund, such as a linkage fee; and/or use of a corrective approval  
14          ratio for entitling low-income and higher-income housing developments.  
15

16          4.       An award to Petitioner for reasonable attorney's fees and costs incurred herein,  
17          including but not limited to fees awardable pursuant to Cal. Code Civ. P. Section 1021.5 and  
18          Section 3612(c)(2) of the federal Fair Housing Act; and

19          5.       Any other and further relief as the Court deems just and proper.  
20  
21  
22  
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1 DATED: October 23, 2019

Respectfully submitted,

2 CENTRAL CALIFORNIA LEGAL SERVICES

3 PUBLIC INTEREST LAW PROJECT

4  
5 By: Emilia P. E. Morris  
6 Emilia P. E. Morris

7  
8 By: Valerie Feldman  
9 Valerie Feldman

10  
11 Attorneys for Petitioner

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**VERIFICATION**

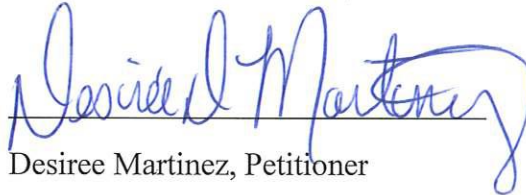
I, Desiree Martinez, state that:

1. I have read (or had read to me) the foregoing Writ of Mandate and Complaint for Declaratory and Injunctive Relief and know its contents.

2. I am a party to this action. To the extent that the Petition is based upon facts known to me, including the facts stated in ¶ 1, I verify them to be true, and otherwise I am informed and believe that all facts herein are true.

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

This verification was executed in Fresno, California, on October 21, 2019.

  
Desiree Martinez, Petitioner