

From: [Tod Hickman](#)
To: [City Clerk](#); [Lara Weisiger](#)
Cc: [Estela Villagrana](#)
Subject: [EXTERNAL] Public Comment item 3-B closed session 7-1-2025
Date: Tuesday, July 1, 2025 2:28:33 PM
Attachments: [2025-06-30 THFINAL Petition COMP RELIEF.pdf](#)

Madam Clerk,

Please add the attached pdf "2025-06-30 THFINAL Petition COMP RELIEF.pdf (492KB)" as my public comment for tonight's closed session item 3-B.

And send to City management, City attorney, and City Council.

Please confirm receipt and inclusion into public record.

Thank you,

Tod Hickman
Steeltown Winery LLC
DBA Building 43 Winery
Alameda NAS Historic Preservationist

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4

5 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
6 **FOR THE COUNTY OF ALAMEDA**

7 TQF 'J KEMO CP)
8 *Petitioner*)

CASE NO.:

9 v.)

10 CITY OF ALAMEDA,)
11 CITY MANAGER JENNIFER OTT,)
12 CITY ATTORNEY YIBIN SHEN,)
13 MAYOR MARILYN ASHCRAFT,)
14 CODE ENFORCEMENT OSCAR
DAVALOS

VERIFIED PETITION FOR CCP §1085
WRIT OF MANDATE FOR
COMPREHENSIVE RELIEF

15 *Respondents*
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1 **I. INTRODUCTION**

2 Petitioner Tod Hickman seeks a writ of mandate under Code of Civil Procedure §1085
3 compelling Respondents City of Alameda, Officer Oscar Davalos, City Attorney Yibin Shen,
4 and City Manager Ott to vacate unlawful code enforcement actions, including an improper "Red
5 Tag," revocation of Certificate of Occupancy, and ongoing retaliatory actions specifically aimed
6 at silencing Petitioner's protected speech criticizing the City administration and exposing
7 corruption, in particularly that of Mayor Ashcraft.

8 Immediate relief is necessary to halt Respondents' violations of Petitioner's constitutional rights
9 and prevent further irreparable harm to Petitioner's personal interests and livelihood.

10 **II. PARTIES**

- 11 1. Petitioner Tod Hickman is an individual and managing member of Steeltown LLC, DBA
12 Building 43 Winery, which leases commercial premises located at 2440 Monarch Street
13 from the City of Alameda. Petitioner has been directly targeted due to his protected
14 speech and advocacy against actions of the current City administration. Petitioner is a
15 Qualified Commercial Tenant under California law, exempting him from rent obligations
16 during periods when the premises are unlawfully red-tagged.
- 17 2. Respondent City of Alameda is a municipal corporation responsible for enforcing
18 building and safety codes and is the landlord of the premises leased by Petitioner's
19 managed business.
- 20 3. Respondent Oscar Davalos is employed by the City of Alameda as a Code Enforcement
21 Officer and has engaged in unlawful enforcement actions targeting Petitioner
22 individually, exceeding his lawful authority and has made a false police report against
23 Petitioner.
- 24 4. Respondent Yibin Shen is the City Attorney for Alameda, who improperly authorized
25 outside counsel and initiated litigation against Petitioner without City Council
26 authorization, improperly acted as both landlord attorney and enforcement attorney, and
27 engaged in conflicts of interest affecting Petitioner, including engaging in felonious
28 activity by illegally placing his name on inspection warrants.

1 5. Respondent Ott is the City Manager of Alameda, responsible for administrative oversight
2 and management, who has participated in the lease negotiation and enforcement process
3 and who has failed to prevent ongoing retaliation and unlawful enforcement actions
4 against Petitioner, despite her duty to enforce impartial administrative procedures and
5 maintain compliance with municipal code standards.

6 6. **Respondent Mayor Ashcraft** is the elected Mayor of Alameda, who personally
7 participated in, coordinated, directed, and explicitly supported retaliatory actions against
8 Petitioner following his protected public criticism and advocacy. Mayor Ashcraft
9 leveraged her official influence, including direct interference with Petitioner's lease
10 renewal negotiations, orchestration of defamatory public campaigns (negative Yelp
11 reviews), participation in legislative retaliation, and misuse of city resources and
12 authority for explicit personal and retaliatory purposes against Petitioner.

13 **III. JURISDICTION AND VENUE**

14 Jurisdiction is proper under Code of Civil Procedure §1085.

15 Venue is currently proper in Alameda County, the location of Respondents and Petitioner's
16 business. However, Petitioners now reside in Butte County and anticipate requesting a change of
17 venue pursuant to California Code of Civil Procedure §§394 and 397, due to significant and
18 well-founded concerns regarding local bias, conflicts of interest, and retaliatory actions by
19 Alameda County officials, including:

- 20 • Prior judicial proceedings involving Petitioners within Alameda County demonstrated
21 clear judicial bias and denial of procedural fairness.
 - 22 • Alameda County District Attorney's Office actively and improperly participated in
23 malicious and retaliatory prosecution efforts against Petitioner, directly implicating
24 significant prosecutorial misconduct.
 - 25 • A sitting Alameda County Deputy District Attorney currently serves as a member of the
26 Alameda City Council, creating an inherent conflict of interest and potential undue
27 influence over judicial proceedings in Alameda County.
- 28

- 1 • Given these extraordinary circumstances, Petitioners request that this Court transfer these
2 proceedings to Butte County or another neutral county to ensure fairness, impartiality,
3 and due process.

4 **IV. LEGAL STANDARDS AND STATUTORY GROUNDS FOR RELIEF**

5 Petitioner seeks relief pursuant to California Code of Civil Procedure §1085, authorizing this
6 Court to compel Respondents to perform mandatory duties or cease unlawful actions.

7 Respondents' actions violate clearly established statutory duties and constitutional protections,
8 grouped as follows:

9 **A. Mandamus and Venue Statutes**

- 10 1. **Code of Civil Procedure §1085:** Authorizes this Court to issue writs compelling public
11 officials and entities to perform legally mandated duties or halt unlawful actions.
12 2. **Code of Civil Procedure §§394 and 397:** Authorize venue transfer explicitly due to
13 demonstrated local judicial bias, prosecutorial misconduct, and inherent conflicts of
14 interest compromising impartial adjudication.

15 **B. Building, Safety, and Administrative Procedural Violations**

- 16 3. **California Government Code §53069.4:** Prohibits enforcement actions during a timely-
17 filed administrative appeal by automatically staying enforcement. Respondents violated
18 this statute through post-hoc issuance and enforcement of the "Red Tag" after Petitioner's
19 appeal.
20 4. **California Building Code, Title 24, §111.4:** Requires notice, an opportunity to cure, and
21 procedural due process before revoking Certificates of Occupancy. Respondents violated
22 this statute by summarily revoking Petitioner's occupancy certificate without notice,
23 legitimate basis, or procedural fairness.
24 5. **California Health & Safety Code §§13145–13146:** Explicitly limit enforcement
25 authority over fire-related codes to officially designated fire authorities. Respondent
26 Davalos violated these statutes by unilaterally invoking fire-code enforcement without
27 lawful authority, despite repeated approvals from the designated Fire Marshal.
28

1 **C. Felony Misconduct, Government Ethics, and Mandatory Duty Violations**

- 2 **6. Penal Code §115 and Government Code §6200:** Prohibit felony-level misconduct
3 involving the filing of false documents and falsification or alteration of public records.
4 Respondent Shen violated these statutes by unlawfully placing his name on inspection
5 warrants without authority or authorization.
- 6 **7. Penal Code §148.5:** Prohibits knowingly filing false police reports. Respondent Davalos
7 violated this statute by submitting false information to the Alameda Police Department,
8 initiating baseless and malicious criminal proceedings against Petitioner.
- 9 **8. Government Code §1090:** Prohibits public officials from engaging in governmental
10 contracts or decisions in which they hold financial or direct conflicts of interest.
11 Respondents Ott, Shen, and Ashcraft violated this statute through her conflicting dual
12 role in lease negotiations and code enforcement actions against Petitioner.
- 13 **9. Government Code §87100:** Prohibits public officials from using their official position
14 for personal advantage or retaliation. Respondents Ott, Shen, and Ashcraft violated this
15 statute through retaliatory actions, selective enforcement, and malicious prosecution
16 targeting Petitioner.
- 17 **10. Government Code §815.6:** Imposes liability on public officials and entities for failure to
18 discharge mandatory statutory duties. Respondent Davalos failed to fulfill mandatory
19 duties by not filing a required return after executing an inspection warrant and exceeded
20 his lawful authority through unauthorized code enforcement actions.

21 **D. Civil Rights, Tenant Protections, and Prohibitions on Retaliation**

- 22 **11. California Civil Code §52.1 (Bane Act):** Protects individuals from threats, intimidation,
23 coercion, or retaliation intended to interfere with statutory and constitutional rights.
24 Respondents violated this statute by engaging in retaliatory enforcement, malicious
25 prosecution, intentional intimidation, witness coercion, and selective enforcement actions
26 intended to silence Petitioner's protected activities.
- 27 **12. California Civil Code §§1940.2, 1942.5:** Explicitly protect tenants against retaliatory
28 eviction, harassment, selective enforcement, and related retaliatory acts. Respondents

1 violated these tenant protection statutes by targeting Petitioner's protected speech,
2 advocacy, and litigation activities through retaliatory eviction attempts and selective
3 enforcement actions.

4 **E. Federal and State Constitutional Violations**

5 **13. First Amendment, U.S. Constitution & California Constitution Article I, §2:**

6 Guarantee Petitioner's right to free speech, government petitioning, and advocacy
7 activities. Respondents violated these constitutional protections through retaliatory
8 enforcement actions, intimidation, harassment, malicious prosecution, and coordinated
9 defamatory campaigns aimed at silencing Petitioner's protected speech and criticism of
10 public officials.

11 **14. Fourteenth Amendment, U.S. Constitution & California Constitution Article I, §7:**

12 Guarantee Petitioner's right to due process, equal protection, and impartial administrative
13 and judicial proceedings. Respondents violated these constitutional protections through
14 arbitrary occupancy revocation, selective enforcement, biased administrative hearings,
15 conflicts of interest, and systematic deprivation of procedural fairness.

16 **F. Reservation of Rights Under Government Claims Act (Tort Damages)**

17 **15. Petitioner expressly reserves all rights under the California Government Claims Act**
18 **(Gov. Code §§810–996.6)** to file separate tort claims seeking monetary damages against
19 Respondents arising from their retaliatory, selective, malicious, and unlawful conduct
20 described herein.

21 **V. FACTUAL BACKGROUND**

22 This section details the factual circumstances that form the basis for Petitioner's claims for relief.
23 It outlines Petitioner's protected speech, City officials' retaliatory actions, selective enforcement,
24 malicious prosecution, lease manipulation, and ongoing intimidation and harassment.

25 **A. Petitioner's Protected Speech and Advocacy Activities: 2021-present**

26 For over three years, Petitioner Tod Hickman actively engaged in protected speech, publicly
27 criticizing Alameda City policies, transparency issues, financial mismanagement, and
28 noncompliance with California Environmental Quality Act (CEQA) standards. Petitioner's

1 advocacy included filing multiple CEQA lawsuits (cases 24CV084231, 24CV091053, and
2 24CV105078) intended to ensure City accountability and transparency. Petitioner’s outspoken
3 public criticism at City Council meetings and litigation led to increasing hostility and retaliatory
4 responses from City officials, particularly Mayor Ashcraft and senior staff.

5 **B. Public Intimidation, Defamation, and Threats by Respondents: 2023-Present**

6 Respondents repeatedly attempted to silence Petitioner through public intimidation, threats, and
7 defamation. At City Council meetings, Respondents increased police presence specifically
8 targeting Petitioner. At Petitioner's most recent City Council appearance (January 2025), Mayor
9 Ashcraft explicitly threatened Petitioner with arrest and directed police officers to physically
10 surround him. Further, Respondents falsely implied serious misconduct by Petitioner, including
11 defamatory implications of violence or criminal behavior (June 2023), designed to damage
12 Petitioner’s reputation and discourage continued protected speech and public advocacy.

13 **C. Retaliatory Lease Renewal Actions and Unlawful Lease Litigation: Early 2024–Present**

14 Petitioner operated his business continuously at the 2440 Monarch Street premises for over ten
15 years, consistently meeting lease obligations and complying with city requirements. When
16 Petitioner's lease approached expiration in early 2024, Petitioner initiated lease renewal
17 negotiations with the City of Alameda.

18 Respondents, through City Manager Ott, immediately sought retaliatory lease terms intended to
19 punish Petitioner for his ongoing protected speech, public advocacy, and CEQA litigation against
20 the City. Specifically, in September 2024, Respondents demanded renewal lease terms that
21 effectively doubled Petitioner's rent, far exceeding fair market values and conditions provided to
22 similarly situated Alameda businesses.

23 After Petitioner objected to these retaliatory lease conditions, Respondents swiftly escalated by
24 filing litigation against Petitioner in November 2024 without first obtaining required City
25 Council approval. The City's lawsuit against Petitioner sought to compel the appointment of their
26 hired broker, imposing additional unfair conditions and financial burdens designed to further
27 retaliate against Petitioner and forcing a constructive eviction.

1 This improper litigation was procedurally and legally defective from its inception. The pleadings
2 failed to name an authorized agent or representative of the City, as explicitly required by law,
3 and were filed without required City Council authorization, directly violating California
4 Government Code §§41803, 54950–54963 (Ralph M. Brown Act transparency requirements),
5 and the City Charter. These procedural defects rendered the litigation void and demonstrated
6 Respondents' willingness to misuse official authority and disregard statutory obligations.

7 Respondents' retaliatory and unlawful lease actions violated tenant protection laws prohibiting
8 retaliatory eviction and enforcement (Civil Code §§1940.2, 1942.5) and conflict-of-interest
9 statutes explicitly prohibiting governmental decision-making driven by retaliatory or personal
10 motivations (Gov. Code §§1090, 87100).

11 These actions directly harmed Petitioner's business stability, undermined his leasehold rights,
12 and illustrated Respondents' systematic abuse of governmental authority to punish protected
13 advocacy.

14 **D. Fraudulent Inspection Warrant and Selective Enforcement by Shen and Davalos:**
15 **November 2024-Present**

16 Respondents Shen (City Attorney) and Davalos (Code Enforcement Officer) improperly secured
17 and executed an inspection warrant based upon false pretenses in November 2024. Shen placed
18 his name unlawfully on the inspection warrant as the municipal attorney without prosecuting
19 authority, violating Penal Code §115 and Government Code §6200.

20 Davalos unlawfully enforced fire-code violations without authority, despite annual inspections
21 and clearance by the City's official Fire Marshal. Davalos also failed to file a mandatory return
22 after executing the warrant, violating Government Code §815.6

23 **E. Malicious Criminal Prosecution and Improper Influence Over Alameda County District**
24 **Attorney: January 2025-Present**

25 Respondents improperly influenced the Alameda County District Attorney's Office—the
26 beginning of which just happened to coincide with Deputy DA Greg Boller's election to
27 Alameda City Council in January 2025-- to initiate two unfounded misdemeanor criminal
28

1 charges (cases 25CR001439A and 25CR003903) against Petitioner. These charges lacked
2 probable cause, credible evidence, and any legitimate public interest justification.

3 Respondents specifically pursued a baseless Court Order Violation charge, and Davalos
4 knowingly filed a false police report to support this malicious prosecution, violating Penal Code
5 §148.5. The improper influence over prosecutorial discretion constituted selective prosecution
6 and clear retaliation against Petitioner's protected advocacy and grounds for change of venue.

7 **F. Mishandling and Unexplained Loss of Petitioner's Police Reports: May 2025**

8 Petitioner filed official reports with the Alameda Police Department regarding harassment,
9 retaliation, and felonious conduct by Yibin Shen. These police reports subsequently disappeared
10 under suspicious circumstances, suggesting deliberate mishandling. The unexplained loss
11 prevented adequate investigation and allowed Respondents to evade accountability, enabling
12 ongoing harassment and retaliation against Petitioner.

13 **G. Retaliatory Timing and Post-Hoc Invocation of "Red Tag" Enforcement: May 2025**

14 Respondents deliberately issued a "Red Tag" enforcement action against Petitioner's business
15 precisely on the opening weekend of Petitioner's critical revenue-generating season. This timing
16 was strategically designed to maximize financial damage and disrupt Petitioner's business.

17 Throughout the preceding winter months, Respondent Davalos continuously cited new and
18 shifting violations each time Petitioner complied with previously alleged deficiencies, effectively
19 ensuring there was no achievable path to compliance. Davalos's repeated citations and constantly
20 changing violations demonstrate a pattern of selective, retaliatory enforcement aimed at
21 permanently harming Petitioner's business and livelihood.

22 Upon Petitioner's timely filing of an administrative appeal that triggered an automatic
23 enforcement stay (Gov. Code §53069.4), Davalos improperly and retroactively invoked Section
24 404 of the Uniform Code for Dangerous Buildings for the first time, labeling Petitioner's
25 previously-approved patio use as "imminently hazardous." This post-hoc invocation was
26 intended specifically to circumvent statutory stay protections, violating Petitioner's procedural
27 due process rights.

1 **H. Defective and Biased Administrative Appeal Hearing (June 3, 2025)**

2 On or about June 3, 2025, an administrative appeal hearing was held regarding the City's
3 retaliatory enforcement actions against Petitioner. From the outset, the appeal hearing was
4 procedurally flawed, fundamentally unfair, and openly biased in favor of Code Enforcement
5 Officer Oscar Davalos and the City. Rather than providing Petitioner with a neutral and impartial
6 forum to challenge Respondents' actions, the hearing panel explicitly acted as an advocate for the
7 City's enforcement interests.

8 During the hearing, Respondents denied Petitioner basic procedural rights, including a
9 meaningful opportunity to present evidence, cross-examine witnesses, and properly challenge the
10 basis for the City's enforcement actions. The panel refused to genuinely consider Petitioner's
11 arguments or documentation, instead accepting Davalos's claims at face value without impartial
12 review or scrutiny.

13 Further exacerbating the hostile environment, Respondents employed heightened police presence
14 at the appeal hearing, which intimidated Petitioner and his witnesses, discouraging them from
15 fully and freely participating in the process. Rather than an impartial hearing, the event appeared
16 deliberately structured to affirm predetermined enforcement decisions.

17 The appeal process bore little resemblance to legitimate adjudicative proceeding. Instead, it
18 represented a continuation of Respondents' ongoing retaliation and selective enforcement against
19 Petitioner. This biased appeal proceeding violated Petitioner's procedural due process rights
20 explicitly guaranteed by the Fourteenth Amendment to the U.S. Constitution and Article I, §7 of
21 the California Constitution, undermining Petitioner's right to a fair and impartial hearing.

22 **I. Defamation, Smear Campaigns, and Coordinated Negative Publicity: 2022-Present**

23 Respondents, particularly Mayor Ashcraft and her allies, orchestrated coordinated smear
24 campaigns, including defamatory allegations and negative Yelp reviews designed to harm
25 Petitioner's personal and business reputation. This intentional campaign explicitly targeted
26 Petitioner's protected speech activities and CEQA litigation, further illustrating a clear retaliatory
27 motive and intent to silence criticism.

1 **J. Systematic Abuse of Governmental Authority by Respondents**

2 Respondents systematically abused governmental authority to retaliate against Petitioner's
3 protected speech and advocacy. City Attorney Shen initiated litigation and retained outside
4 counsel without necessary City Council approval, violating Gov. Code §§41803 and the Ralph
5 M. Brown Act (Gov. Code §§54950–54963). City Manager Ott’s dual role explicitly violated
6 conflict-of-interest statutes (Gov. Code §§1090, 87100). Mayor Ashcraft participated directly in
7 retaliatory conduct, violating constitutional protections, ethical standards, and statutory duties.

8 Respondents’ collective misconduct breached the Bane Act (Civil Code §52.1), tenant
9 protections (Civil Code §§1940.2, 1942.5), and Petitioner's rights under the First and Fourteenth
10 Amendments.

11 **K. Irreparable Injury, Ongoing Retaliation, and Lack of Adequate Remedies**

12 Respondents' retaliatory conduct has caused Petitioner substantial financial losses, including
13 canceled business contracts, forced client refunds, and severe harm to business reputation and
14 goodwill.

15 Petitioner has experienced emotional distress, intimidation, and interference with constitutionally
16 protected rights. Given the ongoing nature of Respondents’ retaliatory actions and continued
17 misconduct, Petitioner lacks any adequate remedy at law, necessitating immediate judicial
18 intervention and writ relief.

19 **VI. IRREPARABLE HARM**

20 Respondents' unlawful actions have caused, and continue to cause, irreparable financial loss,
21 severe reputational damage, personal and professional harm, loss of goodwill, and deprivation of
22 Petitioner's constitutional rights, none of which can be adequately compensated through
23 monetary damages alone.

24 **VII. NO ADEQUATE REMEDY AT LAW**

25 Petitioner has exhausted administrative remedies available to him. Further administrative action
26 would be futile due to Respondents’ demonstrated retaliatory motive, procedural misconduct,
27 and deliberate refusal to provide any clear path to compliance or resolution.
28

1 **VIII. CAUSES OF ACTION**

2 **First Cause of Action: Retaliation in Violation of Public Policy**

3 (Cal. Const., Art. I, §§ 2, 3; Civil Code §§ 1940.2, 1942.5; Common Law)

- 4 1. Petitioner realleges and incorporates by reference all preceding paragraphs as though
- 5 fully set forth herein.
- 6 2. Petitioner exercised protected rights, including publicly criticizing city officials, filing
- 7 CEQA lawsuits against the City, and petitioning public authorities regarding misuse of
- 8 public resources and violations of public trust.
- 9 3. In response, Respondents engaged in a sustained pattern of retaliatory conduct, including,
- 10 but not limited to: improper issuance of meritless "Red Tag" notices, revocation of
- 11 Petitioner's Certificate of Occupancy, selective and retaliatory lease terms and litigation,
- 12 and the initiation of malicious criminal charges.
- 13 4. Respondents' retaliatory conduct violates California's constitutional guarantees of free
- 14 speech and petition, explicit statutory prohibitions against retaliation (Civil Code
- 15 §§1940.2, 1942.5), and common-law protections against governmental abuse of power.
- 16 5. Petitioner suffered harm as a result of Respondents' retaliatory actions, including
- 17 reputational injury, significant business disruption, emotional distress, and financial
- 18 damages. Respondents' conduct was willful, malicious, oppressive, and warrants
- 19 equitable relief and damages.

20 **Second Cause of Action: Selective Enforcement in Violation of Equal Protection**

21 (U.S. Const., 14th Amend.; Cal. Const., Art. I, §7; CCP §1085)

- 22 6. Petitioner realleges and incorporates by reference all preceding paragraphs as though
- 23 fully set forth herein.
- 24 7. Respondents, acting under color of law, selectively enforced lease terms, municipal
- 25 codes, and other regulatory provisions specifically against Petitioner. These selective
- 26 enforcement actions included unjustified rent increases, denial of rent deferrals, unlawful
- 27 revocation of occupancy permits, malicious prosecution, and discriminatory
- 28 administrative procedures, which were not similarly applied to other Alameda businesses.

1 8. Respondents' selective enforcement lacked rational basis and was driven explicitly by
2 retaliatory intent, animus, and desire to suppress Petitioner's protected speech and
3 advocacy regarding municipal corruption, transparency violations, and misuse of city
4 resources.

5 9. Such conduct violates the Equal Protection Clauses of the U.S. and California
6 Constitutions and constitutes arbitrary governmental action redressable by writ of
7 mandate pursuant to CCP §1085.

8 **Third Cause of Action: Violation of Procedural and Substantive Due Process**

9 (U.S. Const., 14th Amend.; Cal. Const., Art. I, §7)

10 10. Petitioner realleges and incorporates by reference all preceding paragraphs as though
11 fully set forth herein.

12 11. Respondents violated Petitioner's procedural and substantive due process rights by
13 summarily revoking Petitioner's occupancy rights without proper notice, legitimate
14 justification, or meaningful opportunity to challenge the revocation, and by conducting a
15 fundamentally unfair administrative appeal hearing on June 3, 2025.

16 12. Respondents' actions constitute explicit violations of due process protections under state
17 and federal constitutions and require immediate judicial redress.

18 **Fourth Cause of Action: Breach of Lease and Covenant of Good Faith and Fair Dealing**

19 (Civil Code §§1940.2, 1942.5; Common Law)

20 13. Petitioner realleges and incorporates by reference all preceding paragraphs as though
21 fully set forth herein.

22 14. Respondents breached explicit lease terms and implied covenants by imposing retaliatory
23 lease conditions, selectively denying rent deferrals, demanding excessive rent increases,
24 and improperly initiating lease-related litigation without required City Council
25 authorization.

26 15. Petitioner suffered substantial economic harm, business disruption, and reputational
27 injury as a direct result of Respondents' breach.
28

1 **Fifth Cause of Action: Malicious Prosecution and False Police Reporting**

2 (Penal Code §148.5; Common Law)

3 16. Petitioner realleges and incorporates by reference all preceding paragraphs as though
4 fully set forth herein.

5 17. Respondent Davalos knowingly filed false police reports against Petitioner, directly
6 causing the initiation of unfounded criminal charges (Cases 25CR001439A and
7 25CR003903) by improperly influencing the Alameda County District Attorney’s Office.

8 18. Petitioner suffered severe reputational harm, emotional distress, and economic damages
9 resulting from Respondents' malicious prosecution and false reporting.

10 **Sixth Cause of Action: Abuse of Process**

11 (Common Law)

12 19. Petitioner realleges and incorporates by reference all preceding paragraphs as though
13 fully set forth herein.

14 20. Respondents misused legal and administrative procedures—including improper litigation,
15 fraudulent inspection warrants, and malicious enforcement actions—for the explicit
16 purpose of retaliating against Petitioner, suppressing protected speech, and causing
17 unnecessary expense and harm.

18 **Seventh Cause of Action: Breach of Fiduciary Duty and Public Trust**

19 (Gov. Code §§1090, 87100; Common Law)

20 21. Petitioner realleges and incorporates by reference all preceding paragraphs as though
21 fully set forth herein.

22 22. Respondents Ott, Shen, Davalos, and Mayor Ashcraft breached fiduciary duties and
23 public trust obligations by using governmental authority for retaliatory purposes, personal
24 advantage, and improper proprietary benefit, directly harming Petitioner.

25 **Eighth Cause of Action: Intentional and Negligent Infliction of Emotional Distress**

26 (Common Law)

27 23. Petitioner realleges and incorporates by reference all preceding paragraphs as though
28 fully set forth herein.

1 24. Respondents engaged in continuous retaliatory harassment, malicious prosecution,
2 defamation, intimidation tactics, threats of arrest, and improper public humiliation,
3 causing Petitioner severe emotional distress and psychological injury.

4 **Ninth Cause of Action: Violation of Ralph M. Brown Act and Cal. Public Records Act**
5 (Gov. Code §§54950–54963, 6250–6270)

6 25. Petitioner realleges and incorporates by reference all preceding paragraphs as though
7 fully set forth herein.

8 26. Respondents violated transparency laws, including unauthorized initiation of litigation
9 and retention of outside counsel without City Council approval, as well as mishandling,
10 withholding, or improperly losing official public records filed by Petitioner documenting
11 Respondents' misconduct.

12 **Tenth Cause of Action: Felony Misconduct—Falsification and Improper Filing of Public**
13 **Documents**

14 (Penal Code §115; Gov. Code §§6200, 815.6)

15 27. Petitioner realleges and incorporates by reference all preceding paragraphs as though
16 fully set forth herein.

17 28. Respondents Shen and Davalos committed felony-level misconduct by improperly
18 falsifying public inspection warrants and failing to perform mandatory statutory duties,
19 such as filing mandatory returns after executing warrants, causing harm to Petitioner.

20 **Request for Criminal Referral and Investigation**

21 29. Petitioner explicitly requests this Court formally refer Respondents' alleged
22 misconduct—including falsification of public records, false police reporting, malicious
23 prosecution, and other potential criminal acts—to appropriate prosecutorial and
24 investigative authorities for criminal investigation and possible prosecution.

25 **Reservation of Rights under Government Claims Act (Gov. Code §§810–996.6)**

26 30. Petitioner expressly reserves all rights to separately pursue monetary damages claims
27 against Respondents for retaliatory, malicious, selective, discriminatory, and unlawful
28

1 conduct described herein, consistent with California's Government Claims Act
2 procedures.

3 **PRAYER FOR RELIEF**

4 Petitioner respectfully requests the following relief:

- 5 1. **A Writ of Mandate** compelling Respondents to immediately vacate and set aside:
6 ○ The improperly issued "Red Tag."
7 ○ The unlawful revocation of Petitioner's Certificate of Occupancy.
8 ○ All enforcement actions and decisions arising from or related to the inadequate
9 and biased administrative appeal hearing conducted on June 4, 2025.
- 10 2. **An Order** requiring Respondents to immediately reinstate Petitioner's Certificate of
11 Occupancy and fully restore Petitioner's right to conduct lawful business operations,
12 including previously permitted patio usage and scheduled events, without further
13 interference or harassment.
- 14 3. **An Order** explicitly prohibiting Respondents from initiating, pursuing, or maintaining
15 an unlawful detainer action or any other eviction-related proceeding arising from
16 Respondents' unlawful enforcement actions or the improperly issued "Red Tag."
- 17 4. **An Order** explicitly prohibiting Respondents from engaging in further retaliatory,
18 discriminatory, or otherwise unlawful enforcement actions against Petitioner individually
19 or Petitioner's business operations.
- 20 5. **An Order** vacating all findings, actions, and decisions arising from Respondents' biased
21 and procedurally defective administrative appeal hearing conducted on June 4, 2025, and
22 directing this Court to conduct a de novo judicial review of the underlying administrative
23 violations, evidence, enforcement actions, and Respondents' retaliatory conduct, thereby
24 ensuring full and fair adjudication of Petitioner's rights and claims.
- 25 6. **Judicial Oversight** of any subsequent administrative or enforcement proceedings to
26 ensure compliance with constitutional due process, statutory protections, impartiality, and
27 fairness, given Respondents' demonstrated retaliatory motives and prior misconduct.
28

1 7. **A Declaration** from this Court affirming Petitioner’s Qualified Commercial Tenant
2 status, explicitly confirming exemption from rent obligations during periods of unlawful
3 enforcement actions and operational restrictions imposed by Respondents.

4 8. **Reservation of Rights** to seek monetary damages, including lost revenues, emotional
5 distress damages, litigation costs, attorney fees, and professional sanctions against
6 Respondents for intentional misconduct, malicious prosecution, and violations of
7 Petitioner’s constitutional rights, statutory protections, and civil rights under state and
8 federal law.

9 9. **Any Further Relief** this Court deems just and appropriate to rectify Respondents’
10 improper conduct and protect Petitioner from future retaliatory or discriminatory actions.

11 **VERIFICATION**

12 I, Tod Hickman, declare under penalty of perjury under the laws of the State of California that
13 the foregoing is true and correct, based on my own knowledge, except as to matters stated upon
14 information and belief, and as to those, I believe them to be true.

15 Executed on June 30, 2025, at Alameda, California.

16
17 *Tod Hickman*
18

19 _____
20 Tod Hickman, Petitioner

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