

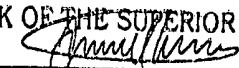


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FILED
ALAMEDA COUNTY

FEB 27 2019

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 6 CITY OF OAKLAND'S DEPARTMENT OF
 HOUSING AND COMMUNITY DEVELOPMENT
 7 RENT ADJUSTMENT PROGRAM

CLERK OF THE SUPERIOR COURT
 By 
 JANICE THOMAS, Deputy

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 9 **COUNTY OF ALAMEDA**

10 JONATHAN OWENS,

Case No. RG18914638

11 Petitioner,

ASSIGNED FOR ALL PURPOSES TO
 HON. JEFFREY BRAND
 DEPARTMENT 511

12 v.

13 CITY OF OAKLAND'S DEPARTMENT OF
 HOUSING AND COMMUNITY
 14 DEVELOPMENT RENT ADJUSTMENT
 PROGRAM, and DOES 1 through 25,

**RESPONDENT CITY OF OAKLAND'S
 RENT ADJUSTMENT PROGRAM'S
 OPPOSITION TO PETITION FOR
 ADMINISTRATIVE WRIT OF
 MANDATE**

15 Respondents.

Reservation No.:

17

Date: April 2, 2019

18

Time: 9:00 a.m.

19

Dept.: 511

20

Petition filed: July 27, 2018

Trial Date: April 2, 2019

21

Lauren Barghout
 Mark Steinberg,
 22 Ralph Gregory Johnson,
 Emily Baron
 23 And Does 1-20,

24

Real Parties in Interest

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I. INTRODUCTION

The City's Rent Ordinance was enacted to encourage investment in residential housing as well as to protect the welfare of tenants living in these housing units. The City's Rent Adjustment Ordinance ("Rent Ordinance") limits rent increases, encourages rehabilitation, reduces the financial incentives to terminate tenancies, and gives owners the opportunity to have a fair return on their property. The single-family home is traditionally a unit that encompasses a "single" family who maintains the household together, shares all living spaces, and makes a single payment to a landlord or bank for use of the entire space. In this context, a traditional single-family home is not served by the purpose(s) of the City's Rent Ordinance.

A single-family home can be exempt from the provisions and requirements of the City's Rent Ordinance because it is also exempt under the Costa-Hawkins Act. If properties meet certain requirements, Costa-Hawkins exempts property owners from local rent ordinances and enables them to establish rental rates for the dwelling or unit. Relevant to a single-family home, Costa-Hawkins exempts a "dwelling unit" that is "alienable separate from the title to any other dwelling unit" – meaning, essentially, that the "dwelling unit" can be sold separate from any other "dwelling unit." If a single-family home is utilized in the traditional manner described above, it is a "dwelling unit" that is "alienable separate from the title to any other dwelling unit." As such, it is exempt under Costa-Hawkins and the City's Rent Ordinance.

Petitioner Jonathan Owens owns a single-family home in Oakland, California and argues that the single-family home is a "dwelling unit." Petitioner, however, has transformed his single-family home into the equivalent of a "rooming house" because he rents bedrooms/spaces in the house to three separate individuals. Although Petitioner lives in his home, once he rents the other bedrooms/spaces in the house to others, the "dwelling unit" is no longer the single-family home as a "whole." Instead, there are now four separate "dwelling units." Not only are these four "dwelling units" not "alienable separate" from each other, the number of units in the property exceeds the maximum number of units to meet different exemption from the City's Rent Ordinance for small, owner-occupied, rental properties.

With three tenants, Petitioner's single-family home is transformed into precisely the type

1 of property and has the type of residents that the City's Rent Ordinance seeks to protect. Each of
2 Petitioner's tenants resides in a separate "dwelling unit" within the single-family home. Their
3 "dwelling units" are not exempt under Costa-Hawkins or the City's Rent Ordinance. The units
4 are, therefore, "covered units" under the City's Rent Ordinance and subject to its provisions and
5 rent-control requirements. Petitioner's writ arguing the contrary must be denied.

6 **II. FACTUAL AND PROCEDURAL BACKGROUND**

7 Petitioner lives in a single-family home at 3420 Rubin Drive in Oakland, California. (Tab
8 37 Administrative Record ("AR") 319.) Petitioner rented his single-family home to three
9 separate tenants. (Tab 24 AR 3:15-4:27.) Including the room(s) that Petitioner uses for himself,
10 there are a total of four separate "dwelling units" in the single-family home. (Tab 24 AR 154:15-
11 155:27; 165:10-17.)

12 In May 2016, one of Petitioner's tenants, Real Party in Interest Lauren Barghout
13 ("tenant"), filed a tenant's petition with the City's Rent Adjustment Program ("RAP") alleging
14 that she had suffered a decrease in the housing services she received as part of her tenancy. (Tab
15 37 AR 319.) The parties appeared for a hearing on the tenant's petition in August 2016.
16 Petitioner opposed the tenant's petition and argued that the single-family property was not subject
17 to the regulations of the City's Rent Ordinance because it was exempt under the Costa-Hawkins
18 Act in California Civil Code section 1954.52(a)(3) – it was alienable separate from the title to any
19 other dwelling unit. (Tab 24 AR 111-13.) The hearing officer disagreed that the property was
20 exempt from the City's Rent Ordinance and issued a decision on the merits of the tenant's claim.
21 (Tab 22 AR 144.) Both the tenant and Petitioner appealed to the Rent Board. (Tab 16 AR 95;
22 Tab 18 AR 116.)

23 The Rent Board held a hearing in August 2017 with less than the full Rent Board.¹
24 During the hearing the partial Rent Board voted to continue the hearing to be heard before the full
25 Rent Board. (Tab 12 AR 88:9-26.) The only issue raised in Petitioner's appeal was whether the
26 single-family home was exempt under Costa-Hawkins. (Tab 12 AR 69:6-70:13.) The full Rent
27

28 ¹ In advance of the Rent Board hearing, the tenant and Petitioner settled the tenant's appeal and she agreed to dismiss her appeal. The tenant did not appear or participate in the Rent Board hearing(s). (Tab 12 AR 5-7.)

1 Board voted to affirm the hearing officer’s decision. (Tab 3 AR 37.) The Rent Board concluded
2 that the single-family home had been divided into four separate dwelling units and, therefore, did
3 not satisfy the Costa-Hawkins exemption and was, instead, a “covered unit” under the City’s Rent
4 Ordinance and subject to its regulations. (Tab 3 AR 37.)

5 III. LEGAL ANALYSIS

6 A. Standard of Review.

7 Where the facts are undisputed, this Court reviews de novo questions of law including
8 issues of statutory interpretation. *T & A Drolapas & Sons, LP v. San Francisco Residential Rent*
9 *Stabilization and Arbitration Bd.*, 238 Cal. App. 4th 646, 651 (2015) (citing *Cassidy v. Cal. Bd. of*
10 *Accountancy*, 220 Cal. App. 4th 620, 627 (2013)). When conducting statutory review, “a court
11 should ascertain the intent of the Legislature so as to effectuate the purpose of the law. In
12 determining such intent, the court turns first to the words themselves for the answer.” *Carter v.*
13 *Cohen*, 188 Cal. App. 4th 1038, 1046 (2010) (citations omitted) (citing *Rodriguez v. Solis*, 1 Cal.
14 App. 4th 495, 505 (1991)). Courts must read and give effect to statutes according to the “usual,
15 ordinary import of the language employed in framing them.” *Id.* The various parts of a statutory
16 enactment must be “harmonized” by considering the particular clause or section in the context of
17 the statutory framework as a whole.” *Id.*

18 B. City’s Rent Ordinance.

19 The City’s Rent Ordinance regulates the City’s rental housing market. The City
20 recognizes that stability in housing is important – tenants desire to be free from the fear of
21 eviction motivated by a property owner’s desire to increase rents and property owners desire the
22 ability to expeditiously terminate tenancies of problem tenants. O.M.C. 8.22.010(A). The
23 City’s Rent Ordinance, however, only applies to “covered” residential units in the City. Under
24 the City’s Rent Ordinance, a “covered unit” means “any *dwelling unit*, including joint living and
25 work quarters, and all housing services located in Oakland and used or *occupied in*
26 *consideration of payment of rent* with the exception of those units designated in Section
27 8.22.030(A) as exempt. O.M.C. 8.22.020. Section 8.22.030(A) designates as exempt from the
28 City’s Rent Ordinance dwelling units that are exempt under Costa-Hawkins (California Civil

1 Code § 1954.52). O.M.C. 8.22.030(A)(7).

2 **C. The Costa-Hawkins Act.**

3 The Costa-Hawkins Rental Housing Act provides, with limited exceptions, that “an owner
4 of residential real property may establish the initial rental rate for a dwelling or unit.” Cal. Civ.
5 Code, §§ 1954.53(a); *Mosser Cos. v. San Francisco Rent Stabilization & Arbitration Bd.*, 233
6 Cal. App. 4th 505, 511 (2015). Petitioner asserts that his property is exempt under Costa-
7 Hawkins pursuant to section 1954.52(a)(3)(A), which states in part:

8
9 (a) Notwithstanding any other provision of law, an owner of residential real
10 property **may establish the initial and all subsequent rental rates for a
11 dwelling or a unit** about which any of the following is true:

12 (3)(A) It is **alienable separate from the title to any other dwelling unit** or is a
13 subdivided interest in a subdivision . . .

14 Cal. Civ. Code § 1954.52(a)(3)(A) (emphasis added). If a “unit” or “dwelling unit” is alienable
15 separate from the title to any other dwelling unit, it can be sold separately from any other unit. If
16 a unit is alienable separate from the title to any other dwelling unit, it is exempt under Costa-
17 Hawkins, is not a “covered unit,” and is exempt from the City’s Rent Ordinance.

18 **D. The tenant’s room(s) – not Petitioner’s single-family home – is the “dwelling unit”
19 under the City’s Rent Ordinance and Costa-Hawkins.**

20 Petitioner’s single-family home is not a “unit” or a “dwelling unit” for purposes of Costa-
21 Hawkins or the City’s Rent Ordinance. Instead, the “dwelling unit” is his *tenant’s living
22 quarters*. The tenant’s living quarters are not alienable separate from the title to any other
23 dwelling unit – a bedroom cannot be sold separate from the other bedrooms in the home.
24 Therefore, the tenant’s “dwelling unit” is not exempt under Costa-Hawkins and is, instead, a
25 “covered unit” under the City’s Rent Ordinance.

26 It is undisputed that Petitioner owns a single-family home that is “alienable separate from
27 the title to any other dwelling unit.” (Tab 22 AR 145-46; Tab 24 AR 154:15-25.) Petitioner’s
28 home can be sold separate from any other piece of property. If Petitioner were renting his single-
family home *as a single rental unit*, it would be exempt under Costa-Hawkins and the City’s Rent

1 Ordinance. Cal. Civ. Code § 1954.52(a)(3)(A). Instead, however, it is undisputed that Petitioner
2 is living in his single-family home and renting the remaining bedrooms in his home to three
3 individuals. These individuals have separate rental agreements or arrangements with Petitioner.
4 (Tab 24 AR 154:15-155:27.)

5 Costa-Hawkins does not specifically define a “single-family” home or further interpret a
6 unit that is “alienable separate from the title of any other dwelling unit.” Cal. Civil Code §
7 1952.54(a)(3). Petitioner does not cite to case law or other authority that determines a “single-
8 family” home that includes *multiple* “dwelling units” that are rented to separate, individual
9 tenants is exempt under Costa-Hawkins. Further, Petitioner does not cite to case law or other
10 authority that precludes the City’s interpretation of a “dwelling unit” under Costa-Hawkins or its
11 Rent Ordinance. As evidenced in multiple Rent Board decisions discussed below, the City has a
12 historical practice of treating units rented *within* a single-family home as separate, “covered
13 units” under the City’s Rent Ordinance.

14
15 **1. Prior Rent Board cases support the interpretation of “dwelling unit” used in the
instant matter.**

16 In prior cases, the RAP and Rent Board have treated rooms rented by separate individuals
17 in a single-family, owner-occupied home as “covered units” under the City’s Rent Ordinance.
18 The property in *Li v. Liberty Properties, LLC* (T15-0101) was a two-story, owner-occupied,
19 single-family house. (City’s Request for Judicial Notice (“RJN”), Ex. A.) The owner rented the
20 rooms in the house to separate tenants. (RJN, Ex. A.) One of the tenants filed a tenant’s petition
21 with the RAP arguing that a rent increase was improper. The owner responded that the unit was
22 exempt from the City’s Rent Ordinance because it contained fewer units than the maximum
23 allowed to be exempt under the City’s Rent Ordinance.² In ruling that the tenant’s unit was,
24 indeed, a “covered unit” under the Rent Ordinance, the hearing officer stated in part:

25
26 The question then is whether or not the unit at 157 8th Street is one unit or
multiple units. The evidence from all parties was abundantly clear that 157 8th

27 ² The City’s Rent Ordinance exempts dwelling units in a residential property that “is divided into a maximum of
three (3) units, one of which is occupied by an owner of record or his authorized agent.” C.M.C.

1 Street has been **divided by the owner into three separate units. That single**
2 **address is rented to three separate families, each who pay rent separately.**
3 Each family has its own room, each of which has a lock on the door. **It is clear**
4 **from the evidence that each family rented their unit separately from each**
5 **other family.** In fact, Hey Chan, who has lived there longer than the tenant,
6 rented the room to him. The fact that there is a common area kitchen and
7 bathroom does not change these facts.

8 (RJN, Ex. A at 7 (emphasis added).) The property was divided into multiple units and rented to
9 separate families. The owner treated the rooms within the house as separate “dwelling units.”
10 The hearing officer found that the tenant’s unit was a “covered unit” under the City’s Rent
11 Ordinance and the Rent Board affirmed the decision on appeal. (RJN, Ex. B.)

12 In *Jin v. Ha Lee* (T14-0284), the tenant filed a tenant’s petition alleging an improper rent
13 increase and a decrease in housing services. (RJN, Ex. C.) The owner filed a response arguing
14 that the property was exempt from the City’s Rent Ordinance because it had fewer than the
15 maximum number of units allowed in an owner-occupied property to be exempt under the City’s
16 Rent Ordinance. The building was a duplex. (RJN, Ex. C.) Half of the duplex had two units and
17 the owner lived in the other half where he rented one room to a tenant. Although the tenants and
18 owner all shared a kitchen and bathroom, it was undisputed that the units had locks on the doors
19 and the tenants were not welcome to use the other rooms in the house. (RJN, Ex. C.) Finding
20 that each unit was a “covered unit” under the City’s Rent Ordinance, the hearing officer stated:

21 When a property owner **subdivides a single rental unit into multiple rental**
22 **units, each individual rental counts as a “unit.”** Therefore, if the owner rents
23 two units in her half of the duplex and an additional two (or three) units in the
24 other half of the duplex, then the tenant’s unit is not exempt [from the City’s Rent
25 Ordinance]. The owner has the burden of proof to establish an exemption.

26 (RJN, Ex. C (emphasis added).) The hearing officer analyzed the tenant’s petition under the
27 provisions of the City’s Rent Ordinance and the Rent Board affirmed the hearing officer’s
28 decision. (RJN, Ex. D.)

29 The hearing officer in *Anderson v. Jenkins* (T06-0005) initially found that, at the time the
30 tenant filed his petition, the residences were exempt from the City’s Rent Ordinance. (RJN, Ex.

1 number of units in the residence exceeded the maximum number of units to be exempt from the
2 City's Rent Ordinance. (RJN, Ex. F.) The hearing officer first noted that, if the property
3 contained more than three rental units, the units would be covered under the City's Rent
4 Ordinance. (RJN, Ex. F.) If, on the other hand, the property contained less than three rental units
5 (with the owner in one of the units), the property would be exempt from the City's Rent
6 Ordinance. (RJN, Ex. F.) The hearing officer then stated:

7
8 At the hearing, the landlord testified that there are three houses on the property.
9 Two of the houses are leased as single-family residences. The third house – in
10 which the landlord lives – has a basement unit. The landlord's niece has lived in
11 the basement unit . . . for which she pays the landlord . . . This basement unit has
12 its own bathroom and kitchen, the only entrance is an outside door apart from the
13 entrance to the upper portion of the house

14 However, the landlord contends that the basement unit is illegal and, therefore,
15 should not be considered to be a "unit" for the purpose of determining exemption
16 from the Rent Ordinance . . .

17 Section 8.22.030(D) of the Rent Ordinance exempts certain units in owner-
18 occupied properties "divided into three or fewer units" . . . A California Court of
19 Appeal considered the situation of a landlord who had illegally rented residential
20 units in a warehouse before obtaining Certificates of Occupancy . . . The Court [of
21 Appeal] quote[d] with approval a portion of the [underlying] Rent Board
22 Decision: '[t]o permit landlords to rent out illegal units but to avoid the
23 obligations imposed by the Ordinance is contrary to the purpose and intent of the
24 Ordinance.'

25 This principle squarely applies in the present case. To hold otherwise would, in
26 effect, reward a landlord for his or her illegal act.

27 (RJN, Ex. F.) After resolving the jurisdictional issues and finding the property was covered under
28 the City's Rent Ordinance, the hearing officer ruled on the merits of the tenant's petition. The
Rent Board affirmed the hearing officer's decision. (RJN, Ex. G.)

Petitioner also cites to a neighboring jurisdiction's ordinance, the Alameda Rent
Stabilization Ordinance, to support his petition. (Petitioner's Memorandum of Points and
Authorities ("MPA") at 7-8.) However, Alameda's Rent Ordinance simply states that single-
family residences constitute rental units that are separately alienable from the title of any other
dwelling. The City does not disagree that a single-family home is exempt under Costa-Hawkins
if it is rented as an entire unit without subdividing. The Alameda Rent Ordinance does not state

1 otherwise.

2 A decision based on another neighboring jurisdiction's ordinance(s), the Berkeley
3 Municipal Code, supports the City's application of its Rent Ordinance to single-family homes that
4 have been subdivided. (RJN, Ex. H.) In *Rojas v. Tyler* (RWN-1284), the hearing officer
5 considered this issue and stated:

6
7 A single family residence, as defined in the Costa-Hawkins Rental Housing Act . .
8 . is a unit that is alienable separate from the title to any other dwelling unit; in
9 other words, a unit that can be sold by itself. **It is undisputed that these tenants**
10 **are not a single family; they rent individual rooms and have separate rental**
11 **agreements with the master tenant.** It is also undisputed that the subject
12 building can be sold separately, as can any hotel, motel, rooming house or
13 boarding house. Thus, **the question is, how the term "unit" is defined in a**
14 **rental situation such as this . . . This property is currently, and has been**
15 **historically, operated as a "rooming house" . . . Thus, each bedroom constitutes**
16 **a rental unit and, because a bedroom cannot be sold separately, the property**
17 **is not exempt from the Ordinance's registration requirements.**

18 (RJN, Ex. H (emphasis added).) Berkeley's Rent Board affirmed the hearing officer's decision.

19 (RJN, Ex. I.) Although the City of Berkeley has regulations that also define a "rental unit" and a
20 "rooming house," the manner in which they apply their Ordinance to single-family dwellings with
21 rented, subdivided, rooms mirrors that used by the City's Rent Board.

22 **2. The Rent Board's definition of "dwelling unit" is not inconsistent with the**
23 **permanent single-family home exemption under the City's Rent Ordinance.**

24 Petitioner argues that the Rent Board's current definition of a "dwelling unit" is
25 nonsensical and ignores the procedures for obtaining a permanent exemption for a single-family
26 home under the City's Rent Ordinance. (Petitioner's MPA at 8.) Petitioner argues that a single-
27 family home's exemption would fluctuate based on the number of bedrooms rented out by a
28 landlord. (Petitioner's MPA at 8.) The Rent Board, however, treats a "dwelling unit" as the unit
where a separate tenant lives and for which he pays rent *regardless* of whether this unit is
contained in what might otherwise be an exempt property. A single-family home might have a
permanent exemption if used as an *entire* "dwelling unit." However, as explained above, if the
owner later subdivides the single-family home in some manner, the units – not the home – are
now the "dwelling units" for purposes of and subject to the City's Rent Ordinance.

1 The Rent Board can also consider new evidence or evidence of fraud or mistake, if it
2 surfaces, to void an otherwise permanent exemption. Depending on the circumstances, evidence
3 of a subdivided single-family home might warrant changing the status of an exempt property.
4 O.M.C. § 8.22.030(B)(1)(b)-(c). Petitioner’s argument that a permanent single-family exemption
5 under the City’s Rent Ordinance contradicts the Rent Board’s current interpretation of a
6 “dwelling unit” is without merit.

7
8 **3. The definitions of “unit” in the City’s Planning Code and California Building**
9 **Code serve a purpose separate and distinct from that in the City’s Rent**
10 **Ordinance.**

11 Petitioner also cites to the California Building Code (“CBC”) section 202 and the Oakland
12 Planning Code (“OPC”) section 17.09.040 as supporting authority for his interpretation of
13 “single-family” home and “dwelling unit” under Costa-Hawkins. The California Building Code
14 and Oakland Planning Code, however, are designed with a purpose that is separate and distinct
15 from that in the Rent Ordinance. The California Building Code and the Oakland Planning Code
16 regulate construction and City spaces, and ensure safety in structures in the City. The Rent
17 Ordinance, on the other hand, is designed to regulate tenancies and the conduct of landlords and
18 tenants – whether or not the tenancy occurs in a legally permitted or structurally sound unit. *See,*
19 *e.g., Da Vinci Group v. San Francisco Residential Rent Stabilization and Arbitration Bd.*, 5 Cal.
20 App. 4th 24 (1992); *Carter*, 188 Cal. App. 4th at 1047-52. Varying definitions of a “unit” or
21 “dwelling unit” in the California Building Code and the Oakland Planning Code, therefore, do not
22 provide support for Petitioner’s definition of a “single-family” home or argument that a
23 subdivided home with rented rooms is exempt under Costa-Hawkins.

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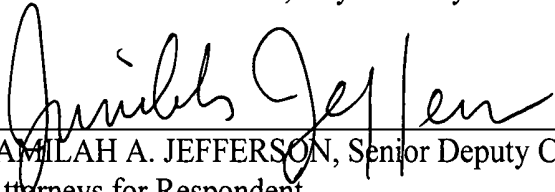
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IV. CONCLUSION

Costa-Hawkins and the City's Rent Ordinance are designed to regulate "dwelling units." Petitioner's single-family home is not a "dwelling unit" for purposes of Costa-Hawkins or the City's Rent Ordinance. Instead, Petitioner's tenant's individual bedroom(s) within the single-family house constitutes the regulated "dwelling unit." The "dwelling unit" contained in the single-family home is not alienable separate from the title to any other unit. The bedrooms cannot be separately sold. For these reasons, the tenant's "dwelling unit" is not exempt under Costa-Hawkins or the City's Rent Ordinance. The "dwelling unit" is subject to the regulations in the City's Rent Ordinance. Accordingly, Petitioner's writ must be denied.

Dated: February 27, 2019

BARBARA J. PARKER, City Attorney

By: 
JAMILAH A. JEFFERSON, Senior Deputy City Attorney
Attorneys for Respondent
CITY OF OAKLAND DEPARTMENT OF HOUSING
AND COMMUNITY DEVELOPMENT RENT
ADJUSTMENT PROGRAM

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PROOF OF SERVICE

Jonathan Owens v. City of Oakland's Dept. of Housing and Community Development, et al.
Alameda County Superior Court Case No. 18914638

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is City Hall, One Frank H. Ogawa Plaza, 6th Floor, Oakland, California 94612. On the date set forth below I served the within documents:

**RESPONDENT CITY OF OAKLAND'S RENT ADJUSTMENT PROGRAM'S
OPPOSITION TO PETITION FOR ADMINISTRATIVE WRIT OF MANDATE**

- by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below, or as stated on the attached service list, on this date before 5:00 p.m.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Oakland, California addressed as set forth.
- by causing personal delivery by (name) of the document(s) listed above to the person(s) at the address(es) set forth below.
- by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- by causing such envelope to be sent by Federal Express/ Express Mail.

Clifford E. Fried, Esq.
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Attorneys for Petitioner

I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business.

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

Executed on February 27, 2019 at Oakland, California.



ELIZABETH FERREL