1	1			
2	2			
3	3			
4	4			
5	5			
6	6			
7	BEFORE THE HEARING EXAMINER			
8	FOR THE CITY OF SEATTLE			
9	9 In Re: Appeal by			
10	0 ESCALA OWNERS ASSOCIATION NOTICE OF API	PEAL		
11	1 of Decisions Re Land Use Application			
12				
13				
14	4 I. INTRODUCTION	I. INTRODUCTION		
15		Appellant Escala Owners Association supports increased density and increased residential development downtown. Any assertion otherwise misunderstands the Escala's intent and reasons		
16	for filing this appeal. Escala is not filing this appeal to challenge the general concept of building a			
17	adverse impacts that will occur as a result of this project and has	tower on the project site. Escala is filing this appeal because SDCI has ignored specific significant adverse impacts that will occur as a result of this project and has violated the most basic legal		
18	that, as a matter of law, SDCI failed to follow proper process and	failed to adequately disclose,		
19	9 analyze, and mitigate the specific and real impacts that this proposal the residents of Escala.	will have on the public and on		
20				
21	Director of the Seattle Department of Construction and Inspections d	This appeal follows in the wake of Escala's earlier appeal of the Analysis and Decision of the Director of the Seattle Department of Construction and Inspections dated October 26, 2017 and the		
22	Final Recommendation of the Downtown Design Review Board meeting. That appeal resulted in a ruling by the Hearing Examiner			
23		Department of Construction and Inspection to re-assess the health related impacts resulting from the		
24	24			
25 26	On April 23, 2020, the department issued a revised MUP decision. The revised MUP decision relied, in part, on a second addendum to the Downtown Height and Density EIS. Notice of that second addendum was published on November 18, 2019. This appeal seeks review of the revised MUP			

1 2	decision and the department's continued failure to prepare an environmental impact statement before making the MUP decision.		
3	Because of uncertainty regarding the availability of an administrative appeal, appellant will also be		
4	filing a superior court appeal challenging these and earlier related decisions. We will ask the court to stay that appeal until the examiner's jurisdiction over this appeal is determined.		
5	II. APPELLANT INFORMATION		
6	1. Appellant:		
7	Name: Escala Owners Association, c/o John Sosnowy		
8	Address: 1920-4th Avenue, #2308, Seattle, WA 98101		
9	Phone:(206) 409-4681Email:john@sosnowy.com		
10	In what format do you wish to receive documents from the Office of Hearing Examiner?		
11	Check One: U.S. Mail Fax X Email Attachment		
12	2. Authorized Representative:		
13	•		
14	NameClaudia M. Newman and David Bricklin, Bricklin & Newman, LLPAddress1424 Fourth Avenue, Suite 500, Seattle, WA 98101		
15	Phone:: (206) 264-8600		
16	Fax: (206) 264-9300		
16	Email: newman@bnd-law.com, bricklin@bnd-law.com, and cahill@bnd-law.com		
17	In what format do you wish to receive documents from the Office of Hearing Examiner?		
18	Check One: U.S. Mail Fax X Email Attachment		
19 20	III. DECISION BEING APPEALED		
20	1. Escala is appealing the Revised Analysis and Decision of the Director of the Seattle		
21	Department of Construction and Inspections dated April 23, 2020, including the department's decision not to prepare an EIS before making the revised MUP decision and the adequacy of		
22	the department's substantive SEPA conditions. The applicant name stated in the Decision for this project is Jodi Patterson O'Hare.		
23			
24	2. <b>Property address of decision being appealed</b> : 1933 5 <sup>th</sup> Ave., Seattle, Washington, 98101.		
25	3. Elements of decision being appealed. Check one or more as appropriate:		
26	X Adequacy of conditions Variance (Departures)		

1	_ Design Review and Departure <u>X</u> Adequacy of EIS		
2	Conditional Use   Interpretation (See SMC 23.88.020)     X EIS not required   Short Plat		
	A Ets not required Short Flat   Major Institution Master Plan Rezone		
3	<u>X</u> Other (specify: <u>See objections to the Decision below</u> )		
4			
5	IV. APPEAL INFORMATION		
6	1. What is your interest in this decision? (State how you are affected by it)		
7			
8			
9	taller than any other building in the neighborhood. Escala is a 30-story residential tower that is directly adjacent to and west of the project site. It is home to 408 residents who are all members of		
10	the Escala Owners Association. Members of the Escala Owners Association will be significantly and adversely impacted by the proposal.		
11	The proposal will have devastating impacts to the residents of Escala. The building will loom over		
12	existing Escala condominiums causing many of the residents to almost completely lose access to sunlight during the day for most of the year. This level of lack of daylight is known to cause serious		
13	health impacts. This is an environmental health issue. This is not about periodic shadow impacts		
14	depending on where the sun is in the morning or afternoon. A decision in favor of the Escala on the		
15	issues raised in this appeal would substantially eliminate or redress the health related injuries to Escala's residents threatened by this proposal.		
16	2. What are your objections to the decision? (List and describe what you believe to be the errors, omissions, or other problems with this decision.)		
17			
18	The Decision by the Director of SDCI and the Recommendation of the Design Review Board were both made in error and should be reversed for the following reasons:		
19	1. The newiged MUD decision may issued in violation of the State Environmental Dalies: A st		
20	1. The revised MUP decision was issued in violation of the State Environmental Policy Act (SEPA), ch. 43.21A, and state and local regulations implementing that law. SEPA requires		
21	preparation of an environmental impact statement for project's that – like this one – will have significant adverse environmental impacts. The City issued the revised MUP		
22	decision without first completing an EIS that analyzed the project's environmental health impacts. The revised MUP cannot stand in the absence of the required EIS.		
23	a. The City is relying on an EIS prepared fifteen years ago before this project was proposed and before the Escala existed – as providing the required analysis of this		
24	proposal's impacts on Escala's residents. The City's reliance on that EIS is bizarre		
25	<ul><li>and, in the words of more conventional legal standards, arbitrary and capricious.</li><li>b. The City also relies on two addenda it has published. But addenda are no substitute</li></ul>		
26	for an EIS. SEPA's obligation to prepare an EIS is not excused by issuing an addendum.		

1	The eddende that were not the functional or substanting substitute for on FIG. The		
1 2	c. The addenda that were not the functional or substantive substitute for an EIS. The procedures for preparing an addendum are different from those for preparing an EIS. The content is different too. The addende are not adapted substitutes for the		
3	EIS. The content is different, too. The addenda are not adequate substitutes for the required EIS.		
4	d. The addenda's analyses of the health impacts are misleading and incomplete. Among other things, the addenda ignore the connection between a loss of light and		
5	depression; they seek to minimize impacts by focusing on light conditions when a resident is facing the window, instead of facing the middle of the room; they		
6	minimize impacts by suggesting actions <i>the residents</i> could or should take to mitigate the impacts (SEPA's mitigation obligations fall on the applicant, not the		
7	neighbors); the mitigation measures suggested for the residents are not reasonable;		
8	and the addenda trivialize the impacts by suggesting that the lack of impact on other downtown residents somehow makes the impact to Escala's residents less significant.		
9	e. The addendum's statement that the substantive SEPA policies in SMC 25.05.675		
10	limit the scope of procedural disclosure and analysis of environmental impacts is incorrect. The scope of procedural disclosure and analysis of impacts that is		
11	required under SEPA is broader than and goes beyond substantive limitations in SMC 25.05.675.		
12	2. The hearing examiner's earlier decision provided a list of terms that were required to be		
13	incorporated into the dock management plan for the project. Included on that list was a		
14	requirement that the dock master "shall ensure that trucks parked in the Project's loading dock do not block the alley and are contained within the loading dock facility." The		
15	Director's April 23, 2020 Decision incorporates this requirement, but neither the		
16	Applicant, nor SDCI provided evidence to demonstrate that it's possible for this project to meet this condition. Because the developer cannot make the changes that will be necessary		
17	to meet this condition after it's built (i.e. increased setback), SDCI and the applicant must prove that it will be possible for the landowner to meet this condition before the MUP		
18	permit is approved.		
19	3. Relief Requested.		
20	Appellant requests that the Hearing Examiner reverse the Director's decision and remand with		
21	instructions to prepare an environmental impact statement for the 5 <sup>th</sup> and Virginia Proposal as required by law and to reconsider the MUP in light of the information in the final EIS. Appellant		
22	also requests that Examiner direct the department to demonstrate that the new dock management		
23	condition 3.c can be met and to require changes to the project as necessary to ensure that it can and will be met.		
24	Filed on behalf of ESCALA OWNERS ASSOCIATION this 6th day of May, 2020.		
25	$\int -\Lambda \cap \Omega \cdot \Omega$		
26	By: Varill. Bil. per e-mail authorization		
	John Sosnowy, on behalf of Escala Owners Assoc.		

NOTICE OF APPEAL - 4

**Bricklin & Newman, LLP** Attorneys at Law 1424 Fourth Avenue, Suite 500 Seattle WA 98101 Tel. (206) 264-8600 Fax. (206) 264-9300

1	
2	6 - 1 - 0 - 0
3	And by: Varill. Bil.
4	David A. Bricklin
5	Claudia M. Newman BRICKLIN & NEWMAN, LLP
6	Representative of Escala Owners Assoc.
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	
26	