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13 FIRST AMENDMENT COALITION

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15 SUPERIOR COURT OF CALIFORNIA
16 COUNTY OF SAN FRANCISCO

17 FIRST AMENDMENT COALITION, a
18 California non-profit corporation,

19 Petitioner,

20 v.

21 THE SAN FRANCISCO POLICE
22 DEPARTMENT, SAN FRANCISCO
23 MAYOR LONDON BREED, In her
Official Capacity as Mayor,

24 Respondents.

Case No.

**VERIFIED PETITION FOR WRIT OF
MANDATE AND DECLARATORY AND
INJUNCTIVE RELIEF UNDER THE
CALIFORNIA PUBLIC RECORDS ACT AND
THE SAN FRANCISCO SUNSHINE
ORDINANCE**

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INTRODUCTION

1. The First Amendment Coalition (“FAC”) files this Petition pursuant to the California Public Records Act and the San Francisco Sunshine Ordinance to vindicate the public’s right to understand the political and law-enforcement processes that led to the now-infamous police raid on journalist Bryan Carmody’s home and office. The Carmody raid, which shocked the journalism world and brought national condemnation on the City of San Francisco, was plainly the result of political, law enforcement and legal processes gone awry. For example:

- The San Francisco Police Department (“SFPD”) was able to obtain five separate warrants--for Mr. Carmody’s home, office and phone--despite black-letter law barring the use of search warrants on journalists in such circumstances.
- The city’s political leadership initially cheered on these plain violations of the California Constitution, changing their tune only after it became clear they stood alone nationally in approving of an armed raid on a working journalist resulting in the seizure of a vast trove of constitutionally protected information.
- Police Chief William Scott, who initially defended the raid, came to at least tacitly acknowledge the overreach by his department -- but has faced virtually no criticism from anyone in the city’s elected leadership.

2. Despite these clear signs that both the city’s law-enforcement establishment and its political leadership suffered crucial breakdowns leading to the Carmody raid, the public knows virtually nothing about how the debacle came about. Who approved these raids within the police department? What role did the city’s elected leaders play in pushing for and/or authorizing the Police Department’s heavy handed tactics? Why has there been such silence from the Office of the Mayor about the police department’s egregious invasion of press freedoms?

1 3. In an effort to answer these questions, FAC duly submitted requests to both SFPD
2 and the Office of the Mayor (“Mayor”), seeking records regarding the Carmody raid and the
3 underlying investigation into the death of former San Francisco Public Defender Jeff
4 Adachi. FAC’s requests have been denied in their entirety by SFPD in violation of the city’s
5 Sunshine Ordinance, and the requests to the Mayor have yielded a smattering of documents that
6 plainly falls far short of what the CPRA and Sunshine Ordinance require. FAC has explained
7 these shortcomings to both SFPD and the Mayor, and yet both agencies continue to stonewall.
8

9 4. Thus, FAC brings this action seeking to force SFPD and the Mayor to comply with
10 the Sunshine Ordinance and California Public Records Act (“the CPRA”), including the CPRA’s
11 core purpose as stated in the preamble, Government Code § 6250, to provide “access to
12 information concerning the conduct of the people’s business,” which “is a fundamental and
13 necessary right of every person in this state.”
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16 **INTRODUCTORY FACTS – UPON INFORMATION AND BELIEF:**

17 5. On the morning of May 10, 2019, several officers from the San Francisco Police
18 Department (“SFPD”) appeared with a sledgehammer and pickaxe to batter down the front gate
19 of journalist Bryan Carmody’s apartment. Police entered Mr. Carmody’s home pursuant to a
20 search warrant they obtained despite black-letter California law barring the use of search warrants
21 to seize the unpublished notes and sources of journalists. They carted away a long list of
22 computers, phones and other materials.

23 6. Police then obtained an additional search warrant for Mr. Carmody’s nearby
24 office. There, police seized yet more computers, phones and other materials, and police kept Mr.
25 Carmody in handcuffs for several hours during the successive searches.

26 7. It later emerged that, in addition to the home and office warrants, SFPD obtained
27 three warrants for Mr. Carmody’s phone records.
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8. The May 10 raid was the culmination of a political furor that arose after several news outlets published and broadcast stories that accurately reported on the facts and circumstances of Mr. Adachi's unfortunate demise, based in part on a police report regarding that event. A false narrative arose in City Hall and within the SFPD that this police report had been stolen and Mr. Carmody (who held a SFPD Press Pass) was part of some ill-defined conspiracy to obstruct justice and damage the standing of the late Mr. Adachi, an elected public official.

9. The Board of Supervisors and the Mayor publicly demanded that SFPD investigate how the police report found its way into the hands of journalists. These elected public officials set into motion a chain of events that would lead to the May 10 raid.

10. The public reaction to SFPD's May 10 raid was swift and definitive. Press advocates, politicians and others immediately denounced it in the local and national press as an egregious assault on freedom of the press and a clear violation of California's Shield Law, Article 1, § 2(b) of the California Constitution, and Penal Code § 1524(g). It later emerged that, in addition to obtaining search warrants for Mr. Carmody's home and office, SFPD also obtained warrants for Mr. Carmody's phone records.

FAC'S REQUESTS

11. The First Amendment Coalition ("FAC") made a series of requests under the California Public Records Act and the San Francisco Sunshine Ordinance to the Mayor and the SFPD for records regarding Mr. Adachi's death and the investigation into Mr. Carmody's activities as a journalist. As alleged more fully below, the responses FAC received from the two agencies were inadequate under California and San Francisco law.

12. FAC thus files this Petition under the CPRA, Government Code § 6250 *et seq.* and the San Francisco Sunshine Ordinance, Admin. Code § 67.1 *et seq.* ("Sunshine Ordinance") to compel the SFPD's and the Mayor's compliance with those laws. FAC further files this Petition to shed light on the process by which SFPD, at the urging of elected city leaders, went so far as to violate the constitutional rights of a working journalist on at least five separate occasions

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by, among other things, executing clearly unlawful search warrants and seizing a vast trove of information they were not entitled to possess under Article 1, § 2(b) of the California Constitution and § 1524(g) of the California Penal Code.

PARTIES

13. Petitioner FAC is a non-profit organization headquartered in San Rafael, California, dedicated to enforcing the right of access to information under the CPRA, the Ralph M. Brown Act, the First Amendment to the United States Constitution, and Article I, § 3(b) of the California Constitution, enacted by an 83 percent vote of the people for Proposition 59 in 2004.

14. Respondent SFPD is the law enforcement arm of the City and County of San Francisco (“the City”). Respondent Mayor London Breed (“Mayor”) is the duly elected Mayor of the City and is named as a Respondent in her official capacity as Mayor. The SFPD and the Office of the Mayor are both subject to the Sunshine Ordinance, and are local agencies as defined by Government Code § 6252(a) and therefore subject to the CPRA.

JURISDICTION AND VENUE

15. The Court has jurisdiction of this matter under Article I, section 3 of the California Constitution, the CPRA, and Code of Civil Procedure §1085. Venue is proper in this Court under Government Code section 6259(a) and Code of Civil Procedure §393 because, upon information and belief, all of the records sought herein are in the possession of SFPD and the Office of the Mayor, all of whose offices are located in the City and County of San Francisco.

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FACTUAL BACKGROUND

A.

First Amendment Coalition's Requests to SFPD

16. By letter dated June 3, 2019, petitioner FAC made a request to SFPD under the CPRA and the Sunshine Ordinance for records regarding the death of Jeff Adachi and records regarding any purported criminal activity conducted or witnessed by Mr. Carmody. A copy of the June 3 SFPD request is attached hereto as **Exhibit A**.

17. SFPD responded with a June 6, 2019 letter from Lt. Kathryn Waaland which denied the June 3 request in its entirety under Government Code § 6254(f), stating that “this case is an open and ongoing investigation” and that public disclosure might hamper its “successful completion.” The June 6 letter provided no basis for denying FAC’s June 3 request under the San Francisco Sunshine Ordinance. A copy of the June 6 SFPD response is attached hereto as **Exhibit B**.

18. By letter dated June 12, 2019, FAC replied to SFPD’s June 6 letter by reminding the Department that the Office of the Medical Examiner, in its March 22 report, had concluded that Mr. Adachi’s death was accidental. The letter also pointed out that SFPD Chief Scott had publicly stated that there was no longer any criminal investigation into how Mr. Carmody had obtained the police report, the only remaining investigation being conducted by the separate Department of Police Accountability into how the search warrants had been obtained in the first place. The letter concluded that because there was no possibility of any criminal prosecutions in connection with the requested records, those records should be released pursuant to San Francisco Administrative Code §67.24(d). A copy of FAC’s June 12 reply is attached here to as **Exhibit C**.

19. On June 24, 2019, SFPD provided a further response, again asserting (without explanation) that, “The investigation regarding former Public Defender Jeff Adachi and the investigation regarding Mr. Carmody are both open and ongoing investigations...” A copy of SFPD’s June 24 response is attached here as **Exhibit D**.

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20. In an order dated August 2, 2019, granting in part a motion by Petitioner and others to unseal the search warrants regarding Mr. Carmody and his possession of the police report regarding Mr. Adachi’s death, the Hon. Christopher C. Hite of the San Francisco Superior Court concluded that, “There have been no charges filed in this matter and there does not appear to be an ongoing criminal investigation by any governmental agency at this time.”

B.

First Amendment Coalition’s Requests to Mayor Breed

21. By letter dated June 3, 2019, FAC made a written request to the Mayor and her staff pursuant to the CPRA and the Sunshine Ordinance for records specified in an attachment titled “June 4 Public Records Request to Mayor Breed.” The request specifically included records from personal communications devices or accounts as required by the California Supreme Court in City of San Jose v. Superior Court, 2 Cal. 5th 608 (2017). A copy of the attachment titled “June 4 Public Records Request to Mayor Breed” is attached as **Exhibit E**.

22. The Mayor’s office responded by email dated June 14 from Mr. Hank Heckel, Compliance Officer. The email attached a PDF of records being released by the Mayor’s office. The email stated that certain personal information had been redacted but did not assert, as required, any exemptions from the CPRA or Sunshine Ordinance’s disclosure requirements that would justify withholding. A copy of the June 14 email is attached as **Exhibit F**.

23. On June 18, 2019, FAC’s Legal Fellow Glen A. Smith responded to the June 14 email by pointing out that the Mayor’s response was incomplete and requesting that the Compliance Officer double check the extent of the search for responsive records and the Mayor’s response. A copy of Mr. Smith’s June 18 email is attached as **Exhibit G**.

24. On June 28, the Mayor’s office further responded by email, providing a copy of an additional record the Mayor’s office claimed they had overlooked. The June 28 letter stated that the production of records was otherwise complete. A copy of the June 28 email from the Office of the Mayor is attached hereto as **Exhibit H**.

FIRST CAUSE OF ACTION
(Sunshine Ordinance-SFPD)

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3 25. Petitioner realleges as though fully set forth herein each allegation set forth in
4 paragraphs 1 through 24 above.

5 26. SFPD has not produced any records responsive to the June 3 request made by
6 FAC.

7 27. The Sunshine Ordinance obligates SFPD to produce records that might otherwise
8 be exempt from disclosure under Government Code § 6254(f), the discretionary exemption to the
9 CPRA's mandatory disclosure requirements that is the lone exemption asserted by SFPD.
10 Specifically, Admin. Code § 67.24(d) specifies that police investigative records "shall be
11 disclosed" once "the District Attorney or court determines that a prosecution will not be sought
12 against the subject involved."

13 28. Despite SFPD's assertion in the June 24 letter that there is an open investigation
14 concerning Mr. Adachi and Mr. Carmody, there is no prospect of any criminal prosecution arising
15 from the purported investigation. The Medical Examiner has ruled that Mr. Adachi's death was
16 accidental. The SFPD Chief of Police has stated that there is no criminal investigation involving
17 Mr. Carmody. The Hon. Christopher C. Hite has concluded that there are no "ongoing" criminal
18 investigations. Moreover, there never was any underlying crime in the release of the police report
19 to Mr. Carmody. At worst, an officer may have violated SFPD policy by releasing the report
20 without authorization.

21 29. Moreover, the release of the requested records would not jeopardize any existing
22 investigation. The initial police report regarding Mr. Adachi's death was discussed in detail in
23 several television news broadcasts beginning on February 23, 2019. The SFPD investigation was
24 also discussed in detail in the Medical Examiner's report dated March 22 and publically released.
25 Among the records that the SFPD has refused to release is a declaration and cover letter from the
26 Office of the Public Defender, addressed to the Chief of the SFPD, that was also distributed to the
27 Board of Supervisors.
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1 30. This Court has jurisdiction and the authority under the Sunshine Ordinance to
2 issue an order to the SFPD to release records in response to FAC's June 4 request. See
3 Administrative Code §67.21(f).
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5 **SECOND CAUSE OF ACTION**
6 **(CPRA/Sunshine Ordinance-Office of the Mayor)**

7 31. Petitioner realleges as though fully set forth herein each allegation set forth in
8 paragraphs 1 through 30 above.

9 32. Petitioner is informed and believes, and on that basis alleges, that the Mayor and
10 her staff failed to make an adequate search for records responsive to the June 4 request, and the
11 Mayor is therefore withholding public records from disclosure in violation of the Sunshine
12 Ordinance and the CPRA. No documents were produced from February, March or April of 2019.
13 No documents were produced from any personal communications devices. No documents or
14 records of communications directly involving the Mayor were produced even though the Mayor
15 has made public statements about this matter. No social media records were produced even
16 though the Mayor (or her staff) maintains social media accounts. And no calendar entries were
17 released despite the requirements of the Sunshine Ordinance that such entries be maintained and
18 publicly available. See, Admin. Code § 67.29-5.

19 33. This Court has the authority to issue an order to compel compliance with the
20 Sunshine Ordinance under Administrative Code § 67.21(f). The filing of a Petition for Writ of
21 Mandate, and the issuance of an order requiring compliance with the CPRA, are proper under
22 Government Code §§ 6258 & 6259.

23 34. Petitioner has no plain, speedy and adequate remedy to obtain the records it has
24 requested, other than this Petition. Under Government Code § 6250, access to information is a
25 "fundamental and necessary right of every person in this state," and under Article I, § 3(b)(1) of
26 the California Constitution, petitioner has a constitutional right of access to the writings of public
27 officials. Petitioner also has a right of access to documents on government employees' and
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1 officials' "private" electronic devices under both the Public Records Act and Article I, § 3(b) of
2 the California Constitution. City of San Jose v. Superior Court, 2 Cal. 5th 608 (2017).

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4 **PRAYER FOR RELIEF**

5 WHEREFORE, as to each Cause of Action, Petitioner prays for relief as follows:

6 1. That the Court order the applicable Respondent to produce forthwith the records
7 requested in Petitioner's public records requests, including but not limited to Exhibits A (SFPD)
8 and E (the Mayor);

9 2. Alternatively, if the Court does not immediately order production of the records
10 requested, that it order each Respondent to show cause why the public records should not be
11 released, to prepare a log of withheld records, and thereafter order the requested records to be
12 disclosed;

13 3. Alternatively, if the Court does not immediately order the requested records to be
14 disclosed and released, that the Court conduct an *in camera* review of the records requested for
15 which each Respondent may now claim some exemption from disclosure, and thereafter order the
16 same to be released;

17 4. That the Court Order each Respondent to conduct an adequate search for the
18 requested records, including a search for records on the "private" (i.e., nongovernmental)
19 electronic devices and accounts of City officials, including but not limited to Mayor Breed and
20 Chief Scott, as well as a search for documents which may be stored on City servers, and thereafter
21 order such documents produced;

22 5. For a declaration that the withheld materials are public records as defined by
23 Government Code § 6252(e) and the Sunshine Ordinance in that they contain information relating
24 to the conduct of the people's business, prepared, owned, used or retained by Respondents, and
25 are subject to disclosure under Article I, § 3(b) of the California Constitution as writings of public
26 officials, and that each Respondent violated the CPRA and the Sunshine Ordinance by failing to
27 promptly make the materials available to Petitioners and the public.
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6. For an award of attorney's fees and costs to Petitioner pursuant to Government Code § 6259(d) and/or Code of Civil Procedure § 1021.5; and

7. For such other and further relief as the Court may deem just and proper.

Dated: August [redacted], 2019

CANNATA, O'TOOLE, FICKES & OLSON LLP

KARL OLSON
Attorneys for Petitioner
FIRST AMENDMENT COALITION

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VERIFICATION

I, David E. Snyder, declare as follows:

1. I am the Executive Director of the First Amendment Coalition, one of the petitioners in this action, and I am authorized to make this verification on its behalf.

2. I have read the foregoing VERIFIED PETITION FOR WRIT OF MANDATE. The same is true of my own knowledge, except as to matters stated on information and belief, and as to those matters, I believe them to be true.

3. I declare under penalty of perjury that the foregoing is true and correct.

Executed in _____, on August ____, 2019.

By _____
David E. Snyder