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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **COUNTY OF FRESNO**
15

16 AMERICAN CIVIL LIBERTIES UNION OF
NORTHERN CALIFORNIA, a nonprofit
17 corporation, and FIRST AMENDMENT
COALITION, a nonprofit corporation,
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Petitioners,
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v.
20 THE CITY OF FRESNO, and THE FRESNO
CITY COUNCIL,
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Respondents.
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Case No. 23CECG04744
**RESPONDENTS' NOTICE OF MOTION
AND MOTION FOR JUDGMENT ON
THE PLEADINGS**
Date: August 28, 2024
Time: 1:30 p.m.
Dept.: 404
The Hon. Robert M. Whalen, Jr.
Action Filed: November 15, 2023
Trial Date: TBD

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24
25 **TO PETITIONERS AND THEIR COUNSEL OF RECORD:**
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27 PLEASE TAKE NOTICE that on August 28, 2024, at 1:30 p.m., or as soon thereafter as
28 may be heard or as soon thereafter as counsel may be heard in Department 404 of the above-entitled

1 court located at 1130 O Street, Fresno, California, Respondents CITY OF FRESNO (“City”) and
2 FRESNO CITY COUNCIL (collectively “Respondents”) will, and hereby do, move this Court,
3 pursuant to Code of Civil Procedure section 438, for an order granting Judgment in favor of the City
4 as to the Verified Petition for Peremptory Writ of Mandate and Complaint for Injunctive and
5 Declaratory Relief (“Petition”) of Petitioners AMERICAN CIVIL LIBERTIES UNION OF
6 NORTHERN CALIFORNIA and FIRST AMENDMENT COALITION (collectively
7 “Petitioners”).

8 **MOTION**

9 Petitioners have brought suit against Respondents under the alleging that a standing
10 committee of less than a quorum of the City Council advised the Council on budgetary matters
11 during several annual budgetary cycles going back to Fiscal Year (“FY”) 2018, without having
12 noticed public meetings under the Ralph M. Brown Act (“Brown Act”). The Petition fails to state
13 a cause of action under the Brown Act because the Petition describes separate temporary committees
14 for each budgetary cycle, all of which were advisory and did not have subject matter jurisdiction
15 over the City’s budget. Furthermore, Petitioners cannot premise liability based on past events
16 because a “cease and desist” letter was not sent to the City within nine months of the alleged creation
17 of the standing committee in 2018. To the extent that Petitioners’ action is based on ongoing or
18 threatened future violations, there is no indication that any such violations will take place. As such,
19 the Petition lacks merit and the instant Motion should be granted with prejudice.


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This Motion is based on this Notice of Motion and Motion, the Memorandum of Points and Authorities, the Request for Judicial Notice, the Declaration of Anthony R. Taylor and attached exhibit (demonstrating compliance with the meet and confer requirement of Code of Civil Procedure section 439), on the files for this action, and upon any argument or material that may be presented to the Court at the hearing for this Motion.

DATED: May 30, 2024

ALESHIRE & WYNDER, LLP
ANTHONY R. TAYLOR
MICHAEL R. LINDEN

By: 
MICHAEL R. LINDEN
Attorneys for Respondents
CITY OF FRESNO, et al.

1 **PROOF OF SERVICE**

2 *American Civil Liberties Union, et al. v. City of Fresno, et al.*
3 **Fresno County Superior Court Case No. 23CECG04744**

4 **STATE OF CALIFORNIA, COUNTY OF FRESNO**

5 At the time of service, I was over 18 years of age and not a party to this action. I am
6 employed in the County of Fresno, State of California. My business address is 2440 Tulare Street,
7 Suite 410, Fresno, CA 93721.

8 On May 30, 2024, I served true copies of the following document(s) described as
9 **RESPONDENTS' NOTICE OF MOTION AND MOTION FOR JUDGMENT ON THE**
10 **PLEADINGS** on the interested parties in this action as follows:

11 Angélica Salceda, Esq. *Attorneys for Plaintiff*
12 AMERICAN CIVIL LIBERTIES UNION AMERICAN CIVIL LIBERTIES UNION
13 OF NORTHERN CALIFORNIA, INC. OF NORTHERN CALIFORNIA
14 39 Drumm Street
15 San Francisco, CA 94111
16 Telephone: (415) 621-2493
17 E-mail: asalceda@aclunc.org

18 David Loy, Esq. *Attorneys for Plaintiff*
19 FIRST AMENDMENT COALITION FIRST AMENDMENT COALITION
20 534 4th Street, Suite B
21 San Rafael, CA 94901-3334
22 Telephone: (415) 460-5060
23 E-mail: dloy@firstamendmentcoalition.org

24 **BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the
25 persons at the addresses listed in the Service List and placed the envelope for collection and mailing,
26 following our ordinary business practices. I am readily familiar with the practice of Aleshire &
27 Wynder, LLP for collecting and processing correspondence for mailing. On the same day that
28 correspondence is placed for collection and mailing, it is deposited in the ordinary course of business
with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a
resident or employed in the county where the mailing occurred. The envelope was placed in the
mail at Fresno, California.

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s)
to be sent from e-mail address rramirez@awattorneys.com to the persons at the e-mail addresses
listed in the Service List. I did not receive, within a reasonable time after the transmission, any
electronic message or other indication that the transmission was unsuccessful.

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

Executed on May 30, 2024, at Fresno, California.


Shelly Ramirez