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Attorneys for Respondent  
CITY OF SAN DIEGO

Exempt from fees per Gov't Code § 6103  
To the benefit of the City of San Diego

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO**

FIRST AMENDMENT COALITION,

Petitioner,

v.

CITY OF SAN DIEGO,

Respondent.

Case No. 25CU033245C

**RESPONDENT CITY OF SAN  
DIEGO'S ANSWER TO  
PETITIONER'S VERIFIED  
PETITION AND AFFIRMATIVE  
DEFENSES**

I/C Judge: Hon. Richard S. Whitney  
Dept.: 68  
Complaint filed: June 25, 2025  
Trial: Not Set

Respondent City of San Diego (City) hereby answers Petitioner First Amendment Coalition (FAC)'s Verified Complaint for Declaratory Relief and Writ of Mandate under the California Public Records Act. The City denies any allegations in the Petition, whether express or implied, that are not expressly admitted, denied, or qualified herein.

**EXPRESS ADMISSIONS**

1. The allegations contained in paragraphs 1-4 are statements of Petitioner's contentions and legal conclusions to which no response is required, and on that basis, the City denies the allegations contained therein.

2. Answering Paragraphs 1-4, Respondent admits San Diego police officers used force when apprehending Marcus Evans (Evans), that the officers used force including a beanbag shotgun three times and a police service dog (PSD) bit Evans in the underlying matter. The City

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1           3.       denies that these uses of force caused significant harm or great bodily injury to  
2 Evans; and also denies that the City did not have a valid reason for withholding the withheld  
3 records.

4           4.       Answering Paragraph 5, the City admits it provided a redacted call log in response  
5 to Petitioner's request; the response will speak for itself upon admission in evidence.

6           5.       Answering Paragraph 6, the City admits that Petitioner is a non-profit organization  
7 headquartered in San Rafael, California and is without sufficient knowledge or information to form  
8 a belief as to the truth of the remaining allegations and on that basis, the City denies the allegations  
9 contained therein.

10          6.       The City admits the allegations contained in Paragraphs 7 and 11-14.

11          7.       The allegations contained in Paragraphs 8, 9, and 10 are a statement of Plaintiff's  
12 contentions and legal conclusions to which no response is required, and on that basis, the City  
13 denies the allegations therein.

14          8.       Answering Paragraph 15, the City denies any insinuation that Evans was calm  
15 during the entire incident or that the officers knew he was unarmed. The City admits the remaining  
16 allegations.

17          9.       Answering Paragraph 16, the City admits that San Diego police officers shot three  
18 beanbag rounds at Evans, which hit him in the torso and shin, that two PSD's were sent in an  
19 attempt to apprehend Evans who reportedly had a gun and was seen lurking near the retaining wall  
20 prior to the officers' arrival on-scene (and where weapons were found after he was arrested), and  
21 that the second PSD performed a bite and hold while officers arrested Evans; Respondent denies  
22 the remaining allegations contained therein.

23          10.      Answering Paragraph 17, the City admits that the Petition correctly quotes Evans'  
24 complaint; and Evans' complaint will speak for itself upon admission in evidence.

25          11.      Answering Paragraph 18, the City admits Evans cried out and that prosecutors did  
26 not pursue charges against him because the victim and the witnesses refused to cooperate.

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1           12.     Answering Paragraph 19, the City admits that Evans’ arrest was the subject of some  
2 media coverage.

3           13.     Answering Paragraphs 20 and 21, Evans’ Government Claims form will speak for  
4 itself upon admission in evidence.

5           14.     The City is without sufficient knowledge or information to form a belief as to the  
6 truth of the allegations contained in Paragraphs 22, 23, and 24 and, on that basis, the City denies  
7 the allegations contained therein.

8           15.     Answering Paragraph 25, the City admits Evans’ complaint incorrectly claimed that  
9 the incident caused a break in his right tibia; and Evans’ complaint will speak for itself upon  
10 admission in evidence.

11          16.     The allegations contained in paragraphs 26 and 27 are statements of Petitioner’s  
12 contentions and legal conclusions to which no response is required and, on that basis, the City  
13 denies the allegations contained therein.

14          17.     Answering Paragraphs 28 and 31, the City admits SDPD Procedure 1.38, dated  
15 May 24, 2022, is correctly quoted; and that Exhibit C will speak for itself upon admission in  
16 evidence.

17          18.     The allegations contained in paragraphs 29 and 30 are statements of Petitioner’s  
18 contentions and legal conclusions to which no response is required and, on that basis, the City  
19 denies the allegations contained therein.

20          19.     Answering Paragraphs 32 and 33, the City admits that Petitioner made requests to  
21 Respondent for access to records under the Public Records Act on March 12, 2025, seeking various  
22 records related to the October 24, 2024, incident involving Evans, and that the City provided some  
23 redacted records to Petitioner; the request and the response will speak for themselves upon  
24 admission in evidence.

25          20.     Answering paragraph 34, the City admits that it responded to Petitioner’s request;  
26 the written response will speak for itself upon admission in evidence.

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21. The allegations contained in paragraphs 35, 36, 37, 38, 39, 40, and 41 are statements of Petitioner's contentions and legal conclusions to which no response is required and, on that basis, the City denies the allegations contained therein.

22. Answering paragraph 42, City incorporated by reference its admissions and general denials of paragraphs 1-41 above.

23. The allegations contained in paragraphs 43-48 are statements of Petitioner's contentions and legal conclusions to which no response is required and, on that basis, the City denies the allegations contained therein

### **AFFIRMATIVE DEFENSES**

Respondent City of San Diego asserts the following affirmative defenses:

#### **FIRST AFFIRMATIVE DEFENSE**

##### **(Failure to State a Claim)**

The Petition fails to state facts sufficient to constitute a cause of action against Respondent.

#### **SECOND AFFIRMATIVE DEFENSE**

##### **(No Violation of Law)**

The conduct and actions/decision(s) alleged in the Petition complied with all applicable provisions of state and local law including, without limitation, the California Public Records Act.

#### **THIRD AFFIRMATIVE DEFENSE**

##### **(No Present Duty)**

The Petition fails to state a basis on which a writ of mandate can be granted because the City has no present duty to perform the acts sought to be compelled and there is no corresponding right in Petitioner thereto.

#### **FOURTH AFFIRMATIVE DEFENSE**

##### **(Deference Required)**

The relief Petitioner requests is barred because it would require the Court to substitute its judgment for that of the City, in violation of the principles of separation of powers, and/or to engage in continuous judicial supervision over state and local government affairs.

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**FIFTH AFFIRMATIVE DEFENSE**

**(Adequate Remedy at Law)**

Petitioner has an adequate remedy at law.

**SIXTH AFFIRMATIVE DEFENSE**

**(Compliance with Applicable Law)**

The Petition is barred because the City complied in each and every respect with all applicable procedural and substantive laws, including those set forth in California Government Code section 65300 *et seq.*, the San Diego Municipal Code, and all other applicable statutes and regulations.

**SEVENTH AFFIRMATIVE DEFENSE**

**(Substantial Evidence)**

The facts alleged in the Petition, and in the cause of action, do not constitute a cause of action against the City in that decision(s) are supported by substantial evidence in light of the whole record and its findings adequately explain the decisions.

**EIGHTH AFFIRMATIVE DEFENSE**

**(Full Performance)**

The City has appropriately, completely and fully performed and discharged all obligations and legal duties arising out of the matters alleged in the Petition.

**NINTH AFFIRMATIVE DEFENSE**

**(No Attorneys' Fees)**

Petitioner failed to allege facts sufficient to support an award of attorneys' fees in its favor.

**TENTH CAUSE OF ACTION**

**(Ripeness)**

The Petition is barred because the matter is not ripe.

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**ELEVENTH CAUSE OF ACTION**

**(Rule of Reasonableness)**

The City is informed and believed that the conduct of the City, and its agents and employees, in connection with the claim alleged, and all matters alleged and complained of, was reasonable and Petitioner’s conduct was unreasonable.

**TWELFTH AFFIRMATIVE DEFENSE**

**(Compliance with the CPRA)**

Any responsive records or information set forth therein not disclosed by Respondent to Petitioner are exempt from disclosure under the California Public Records Act, including but not limited to Government Code section 7923.615.

**THIRTEENTH AFFIRMATIVE DEFENSE**

**(Compliance with Public Safety Officers Procedural Bill of Rights)**

Any responsive records or information set forth therein not disclosed by Respondent to Petitioner are protected by the Public Safety Officers Procedural Bill of Rights Act.

**ADDITIONAL AFFIRMATIVE DEFENSES**

The City alleges that there may be additional affirmative defenses to the causes of action alleged by Petitioner are currently unknown. Therefore, the City reserves the right to amend this answer to allege additional affirmative defenses as they become known.

**RELIEF REQUESTED**

**WHEREFORE**, Respondent prays for relief as follows:

1. That the Court dismiss the Petition with prejudice;
2. That the Court deny all relief prayed for by Petitioner in the Petition, and enter judgment in favor of Respondent;
3. That Petitioner take and recover nothing whatsoever by the Petition;
4. That the Court award Respondent its reasonable costs of suit herein; and

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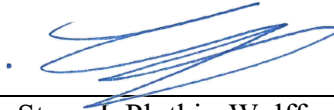
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1           5.       That the Court award such other and further relief that the Court deems just and  
2 proper.

3           Dated: August 4, 2025

HEATHER FERBERT, City Attorney

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6 By



Stacy J. Plotkin-Wolff  
Senior Chief Deputy City Attorney

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8 Attorneys for Respondent  
CITY OF SAN DIEGO  
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8 (619) 533-5800; Fax (619) 533-5856  
9 Attorneys for CITY OF SAN DIEGO

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**SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO**

DECLARATION OF  
SERVICE

**Case Name:** *First Amendment Coalition v City of San Diego*  
**Case No.** 25CU033245C  
**Judge:** Hon. Richard S. Whitney /Dept. 68  
***[IMAGED or EFILED]***

I, the undersigned declare that I am, and was at the time of service of the papers herein referred to, over the age of eighteen years and not a party to the action; and I am employed in the County of San Diego, California, in which county the within-mentioned service occurred. My business address is 1200 Third Avenue, Suite 1100, San Diego, California, 92101.

I served the following document(s):

- Respondent City of San Diego's Answer to Petitioner's Verified Petition and Affirmative Defenses

on the following parties in this action:

|  |                                |
|--|--------------------------------|
| David Loy<br>FIRST AMENDMENT COALITION<br>534 4th Street, Suite B<br>San Rafael, CA 94901-3334<br>Ph: (415) 460-5060<br><a href="mailto:dloy@firstamendmentcoalition.org">dloy@firstamendmentcoalition.org</a> | <i>Attorney for Petitioner</i> |
|--|--------------------------------|

[ ] **(BY U.S. MAIL)** I served the individual(s) named by placing a true and correct copy of the documents in a sealed envelope and placed it for collection and mailing with the United States Postal Service this same day, at my address shown above, following ordinary business practices. [CCP § 1013(a)]

I further declare that I am readily familiar with the business' practice for collection and processing of correspondence for mailing with the United States Postal Service; and that the correspondence shall be deposited with the United States Postal Service this same day in the ordinary course of business.

**PROOF OF SERVICE**



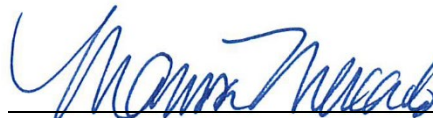
1  
2 [ ] **(BY FAX)** On August 4, 2025, I transmitted the above-described document(s) by  
3 facsimile machine to the fax number(s) set forth above or as stated on the attached  
4 service list. The transmission originated from facsimile phone number (619) 533-5856  
5 and was reported as complete and without error. The facsimile machine properly  
6 issued a transmission report, a copy of which is attached hereto. [CCP § 1013(e); CRC  
7 Rule 2008]

8 [X] **(BY ELECTRONIC SERVICE)** Based upon a court order, local rule, an agreement of  
9 the parties to accept service by email or electronic transmission, and/or pursuant to  
10 California Rule of Court 2.251, I caused the documents to be sent to the persons at the e-  
11 mail address(es) listed and/or by submitting an electronic version of the document(s) to  
12 One Legal, LLC through the user interface at [www.onelegal.com](http://www.onelegal.com). [CCP § 1010.6; CRC  
13 Rule 2.251(c)]

14 [ ] **(BY OVERNIGHT DELIVERY)** I served the individual(s) named by placing a true  
15 and correct copy of the documents in a sealed envelope(s) to be delivered overnight via  
16 an overnight delivery service in lieu of delivery by mail to the addressee(s) listed  
17 above, or as stated on the attached service list: [CCP § 1013]

18 [ ] **(BY PERSONAL SERVICE)** I provided copies to Nationwide Legal for personal  
19 service on this date, \_\_\_\_\_, as to the law office of \_\_\_\_\_ at the  
20 address indicated above. A certificate of service signed by Nationwide Legal will be  
21 filed with the Court upon request. [CCP § 1011]

22 I declare under penalty of perjury under the laws of the State of California that the  
23 foregoing is true and correct. Executed on August 4, 2025, at San Diego, California.

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Marissa Mercado  
Legal Secretary

**PROOF OF SERVICE**