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18 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
19 **FOR THE COUNTY OF FRESNO**

20 AMERICAN CIVIL LIBERTIES UNION OF
NORTHERN CALIFORNIA, a nonprofit
21 corporation, and FIRST AMENDMENT
COALITION, a nonprofit corporation,

22 Petitioners,
23

24 v.

25 THE CITY OF FRESNO, and THE HONORABLE
MEMBERS OF THE FRESNO CITY COUNCIL,

26 Respondents.
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CASE NO. 23CECG04744

**REPLY IN SUPPORT OF
PETITIONERS' MOTION FOR
JUDGMENT ON VERIFIED
PETITION FOR PEREMPTORY
WRIT OF MANDATE AND
COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF**

Date: December 3, 2025

Time: 1:30 p.m.

Dept.: 97D

Judge: Hon. Robert Whalen

Petition Filed: November 15, 2023

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II. ARGUMENT

A. The Undisputed Evidence and Respondents' Unshaken Belief in the Propriety of Their Actions Demonstrate This Case Is Not Moot and Justify Prospective Relief to Prevent Future Violations.

In contending this “action is moot because there is no evidence” the “Budget Committee currently exists,” Respondents’ Opposition (“Opp.”), at 4:4–5, the City misunderstands both the facts and law. On the undisputed facts, the City Council voted to create the Budget Committee in 2018 and ratified its existence year after year. Cappetta Decl. ¶¶ 2–3, 10–17 & Exs. 2–3, 10–17. The City cites no evidence, because there is none, that the Council ever voted to dissolve the Budget Committee. At best, Respondents argue the Budget Committee is not currently meeting. But that does not mean the Committee no longer exists.¹

The facts confirm a writ is needed to prevent further Brown Act violations. In 2023, after five years of secret Budget Committee meetings, a current Council member and then-Budget Committee member expressed his preference that the Committee secretly discuss budgetary matters to avoid “a fight, which won’t look good publicly.” Cappetta Decl. ¶ 63 & Ex. 63. The City Clerk warned that the Budget Committee should be dissolved or made public to comply with the Brown Act, but the Committee continued to meet in secret. *Id.* ¶¶ 21, 74–75 & Exs. 21, 74–75. The Budget Committee planned to continue to meet on budgetary matters even after the FY 24 budget passed. *Id.* ¶¶ 74–75 & Exs. 74–75. The City only stopped planning and holding the secret meetings after they were exposed in the press. *See* Mem. P. & A. Supp. Mot. for J., July 2, 2025, at 13:17–28 (citing evidence).

Instead of disputing the facts, Respondents distort the law. Their argument depends on assuming the fallacious conclusion that a committee created and ratified by the City Council and tasked with addressing the same subject matter year after year is not a standing committee because it is somehow a series of “temporary committees” that are automatically dissolved and reconstituted each year. Opp. at 14:1–2. That is Respondents’ unfounded position on the merits,

¹ Petitioners did not “concede” or “admit” the Budget Committee only existed between January and June 2023 or has not existed recently. Opp. at 4:5, 4:17. By making the City’s response to their cease and desist letter an exhibit to their motion, Cappetta Decl. ¶ 79 & Ex. 79, Petitioners did not admit its contentions.

1 and it cannot be bootstrapped into a reason not to decide the merits.

2 Therefore, in contending that a “budget ad hoc committee” was not “created for either the
3 FY 25 or FY 26 budget cycles,” Opp. at 4:28–5:1, Respondents merely recycle their position that
4 the standing Budget Committee was “ad hoc.” They took this position before this action was filed,
5 Cappetta Decl. ¶ 79 & Ex. 79, in their motion for judgment on the pleadings, Mot. J. Pleadings at
6 5:14–16, in opposition to Petitioners’ first motion for judgment, Opp. Mot. J. at 5:25–28, and in
7 opposition to this motion, Opp. at 2:25–3:2. By continuing to double down, Respondents confirm
8 exactly why this case is not moot and prospective relief is necessary.

9 Even if the Budget Committee was somehow dissolved, the City’s argument fails.
10 The issue is not whether the Budget Committee now exists after its secret meetings were exposed.
11 The issue is whether there is any “reasonable expectation the allegedly wrongful conduct will be
12 repeated.” *Ctr. for Loc. Gov’t Accountability v. City of San Diego* (“Center”), 247 Cal. App. 4th
13 1146, 1157 (2016). The “voluntary discontinuance of alleged illegal practices” cannot moot a case
14 “where by the mere volition of a party the challenged practices may be resumed” and there is no
15 “assurance” they will not be. *Marin Cnty. Bd. of Realtors, Inc. v. Palsson*, 16 Cal. 3d 920, 929
16 (1976). Accordingly, a case is not moot on the mere claim that a committee at issue “has been
17 dissolved,” because “a ‘new’ committee ... could easily appear in the absence of the injunction[.]”
18 *UFW of Am., AFL-CIO v. Dutra Farms*, 83 Cal. App. 4th 1146, 1164 (2000).

19 After years of secret Budget Committee meetings, the City refused to make an
20 unconditional commitment against such meetings or concede that it violated the Brown Act,
21 showing abundant reason to believe it would repeat its violations. *Shapiro v. S.D. City Council*, 96
22 Cal. App. 4th 904, 916 (2002) (holding “courts may presume that municipality will continue
23 similar practices in light of city attorney’s refusal to admit violation,” and when past actions
24 reflect an “ongoing procedure,” a “court could reasonably infer, in light of the city attorney’s
25 refusal to change that procedure, that there would be continuing or future threatened Brown Act
26 violations”) (citations omitted); *see also Center*, 247 Cal. App. 4th at 1157 (holding case was not
27 moot where city’s actions “did not equate to a change in the City’s legal position” and city “has
28 not conceded its former practice ... violated the Brown Act”); *Cal. All. for Util. Safety & Educ. v.*

1 *City of San Diego*, 56 Cal. App. 4th 1024, 1030 (1997) (noting “courts may presume that
2 municipality will continue similar practices in light of city attorney’s refusal to admit violation”).

3 These controlling cases cannot be avoided on the alleged ground that the Budget
4 Committee does not currently exist, because it could easily be revived or recreated. Nor can the
5 City escape liability for the Budget Committee’s secret meetings merely because the Committee
6 was not “required by law to be formed.” Opp. at 5:26–27. To hold otherwise would allow agencies
7 to violate the Brown Act with impunity by holding secret standing committee meetings for years,
8 stop holding them when exposed, and then assert creation of the committee was optional, as is true
9 for many if not all standing committees. The law prohibits this kind of cat-and-mouse game.

10 The City finds no support in *TransparentGov Novato v. City of Novato*, 34 Cal. App. 5th
11 140 (2019). In that case, the court held a Brown Act claim was moot because the city made an
12 “unconditional commitment” not to resume the challenged practice and adopted an “unequivocal”
13 new policy to prevent it “*before* TransparentGov filed the petition.” *Id.* at 149, 151. Here, by
14 contrast, Fresno refused to make an unconditional commitment in response to Petitioners’ cease
15 and desist letter, and the City Council has adopted no “specific policy that by its terms ensures the
16 complained-of activity will not occur.” *Id.* at 152. Unlike Novato’s actions, Fresno’s conduct
17 remains *equivocal*, because it has refused to make an unconditional commitment to refrain from
18 holding secret Budget Committee meetings, failed to adopt a formal policy against holding such
19 meetings, and vehemently denied that it violated the Brown Act.

20 While the evidence suggests the City was trying to cover its tracks after the secret meetings
21 were exposed, the record need not demonstrate that fact to justify issuing a writ. The issue is not
22 the City’s professed intent. What the defendant “intends to do” may affect the right to an
23 injunction when there is “no evidence” the defendant “has done” the acts sought to be prohibited.
24 *Korean Phila. Presbyterian Church v. Cal. Presbytery*, 77 Cal. App. 4th 1069, 1084 (2000). Here,
25 the evidence shows the City has done exactly what Petitioners ask the Court to prohibit.

26 Accordingly, the issue is whether the record shows an objectively reasonable likelihood the
27 violations will recur without a court order, which it clearly does. Indeed, the City has carefully
28 avoiding saying it will never resume secret standing Budget Committee meetings year after year.

1 If the City were genuinely committed to not resuming such meetings, it could have made an
2 unconditional commitment to that effect at any time after receiving Petitioners' cease and desist
3 letter, including after this action was filed. Gov. Code § 54960.2(b). The City's persistent refusal
4 to make such a commitment confirms a writ of mandate is necessary.

5 The violation of holding secret Budget Committee meetings cannot be "cured" by the City
6 Council's approval of budgets in open session. Opp. at 2:17. The Brown Act requires an advisory
7 body such as the Budget Committee to hold open meetings regardless of whether its
8 recommendations are later discussed in public. Gov. Code § 54952(b); *Dep't of Fin. v. Comm'n on*
9 *State Mandates*, 30 Cal. 4th 727, 732 (2003); *Frazer v. Dixon Unified Sch. Dist.*, 18 Cal. App. 4th
10 781, 792 (1993). The Brown Act covers advisory committees to guarantee the people's right to
11 observe and comment on all phases of policymaking, not merely final approval. *Sacramento*
12 *Newspaper Guild, etc. v. Sacramento Cnty. Bd. of Supervisors*, 263 Cal. App. 2d 41, 50 (1968)
13 (Brown Act guarantees access to "collective inquiry and discussion stages, as well as the ultimate
14 step of official action," to prevent "crystallization of secret decisions to a point just short of
15 ceremonial acceptance"). By the City's logic, any secret meeting of an advisory body could be
16 excused if the body's recommendation is later discussed in open session. That is not the law.

17 **B. This Action Is Proper and Timely for Both Prospective and Retrospective Relief.**

18 Petitioners properly seek both prospective relief to prevent future violations of the Brown
19 Act and retrospective relief declaring that the City violated the Act in the past. Gov. Code
20 §§ 54960, 54960.2.

21 **1. A Request for Prospective Relief Does Not Require a Cease and Desist Letter.**

22 The Brown Act does not require a cease and desist letter to seek prospective relief. *Center*,
23 247 Cal. App. 4th at 1154. To justify prospective relief, the facts need only show a reasonable
24 expectation that the violations will recur, which they abundantly do. *Id.* at 1157.

25 **2. Petitioners' Cease and Desist Letter Was Timely as to Retrospective Relief.**

26 Petitioners sent a timely cease and desist letter in September 2023 for seeking a
27 retrospective declaration that secret meetings in 2023 violated the Brown Act. Cappetta Decl. ¶ 78
28 & Ex. 78. The Brown Act requires that *each* meeting of a legislative body be conducted openly,

1 with proper notice and an opportunity for public participation. *See* Gov. Code §§ 54952.2(a),
2 54954–54954.3, 54954.5–54956.5, 54962. Accordingly, the City separately violated the Brown
3 Act each time the standing Budget Committee held a secret meeting. Each violation of the Brown
4 Act started a new clock for sending a cease and desist letter as to that violation.

5 Petitioners sent the “cease and desist letter ... within nine months of the alleged
6 violation[s]” for which they seek a retrospective declaration. *Id.* § 54960.2(a)(2). The City held
7 secret Budget Committee meetings in April and June 2023, well within nine months of the cease
8 and desist letter. Cappetta Decl. ¶¶ 62–71 & Exs. 62–71. Petitioners seek a retrospective
9 declaration only as to those violations. Notice of Mot. & Mot. for J., July 2, 2025, at 2:11–13.

10 **C. Section 54960.2’s Nine-Month Window Cannot Bar Evidence Showing that the**
11 **Budget Committee is a Standing Committee with Continuing Jurisdiction and the**
City Has a Pattern and Practice of Violating the Brown Act.

12 Undisputed evidence of repeated Brown Act violations is not “irrelevant” because the
13 violations occurred more than nine months before the cease and desist letter. Opp. at 2:11.
14 The nine-month time limit governs only the deadline for sending a cease and desist letter. It is not
15 a rule of evidence. It does not bar background evidence showing that the Budget Committee is a
16 standing committee with continuing subject matter jurisdiction and that the City has a pattern and
17 practice of violations justifying prospective relief. *See Alch v. Superior Ct.*, 122 Cal. App. 4th 339,
18 374 n.30 (2004) (statute of limitations does not “bar an employee from using the prior acts as
19 background evidence in support of a timely claim”); *Fitzgerald v. Henderson*, 251 F.3d 345, 365
20 (2d Cir. 2001) (“A statute of limitations does not operate to bar the introduction of evidence that
21 predates the commencement of the limitations period but that is relevant to events during the
22 period.”); *United States v. Ashdown*, 509 F.2d 793, 798 (5th Cir. 1975) (holding “statute of
23 limitations” is “not a rule of evidence” and “has no bearing on the admissibility of evidence”);
24 *cf. People v. Terry*, 70 Cal. 2d 410, 422 (1969) (holding statute of limitations “does not prohibit
25 the introduction of evidence of prior criminal acts”); *Roman Cath. Archbishop of L.A. v. Superior*
26 *Ct.*, 131 Cal. App. 4th 417, 458 (2005) (holding “admissible ‘other crimes’ evidence is not
27 restricted by the statute of limitations”).

28 Taken to its logical end, Respondents’ position could exempt any standing committee with

1 continuing jurisdiction from the Brown Act. Under Respondents’ theory, no evidence proving
2 continuing jurisdiction could be considered if it fell outside the nine-month window, even though
3 such jurisdiction can last more than nine months. Because a standing committee might address
4 only certain topics or take specific actions within a nine-month period, it could always be made to
5 appear ad hoc if the evidentiary record were so limited. This is precisely the type of formalistic
6 maneuvering the Brown Act was enacted to prevent. *See, e.g.,* 79 Ops. Cal. Atty. Gen. 69, 73
7 (1996); *Sacramento Newspaper Guild*, 263 Cal. App. 2d at 50–51.

8 Even if Petitioners were limited to seeking retrospective relief for violations within the
9 nine-month window, undisputed evidence of the Budget Committee’s continuous operation before
10 2023 remains relevant to show that it was a standing committee with continuing subject matter
11 jurisdiction over budgetary matters for years, rather than a temporary, one-off ad hoc committee
12 for the FY 24 budget.

13 **D. In Actual Function Year After Year, the Budget Committee Is a Legislative Body.**

14 Respondents do not dispute the historical facts that the Budget Committee met secretly for
15 years to discuss budgetary matters and make recommendations to the City Council about adopting
16 and adjusting annual budgets. Instead, they invoke a host of irrelevant fallacies.

17 **1. The City’s Form of Government Does Not Exempt It from the Brown Act.**

18 The Budget Committee remains subject to the Brown Act regardless of whether Fresno’s
19 charter provides for a “Strong Mayor” or “Council-Manager” government. Opp. at 9:16–17.
20 The Brown Act governs all cities, charter or otherwise. *S.D. Union v. City Council*, 146 Cal. App.
21 3d 947, 958 (1983). A standing committee that advises the City Council on budgets year after year
22 remains covered by the Brown Act regardless of whether the Mayor proposes the budget, the City
23 Council approves it, or the Mayor can veto it.

24 Petitioners are not required to prove that the Budget Committee has “the final word” over
25 budgets or power “to control the City’s budget process.” Opp. at 10:9, 11:22. A standing
26 committee covered by the Brown Act may be entirely “advisory” rather than “decisionmaking,”
27 and an advisory committee’s “jurisdiction” under the Brown Act requires only the power to give
28 advice on its “subject matter.” Gov. Code § 54952(b); *see also* 79 Ops. Cal. Atty. Gen. at 73

1 (noting it is “irrelevant” that a committee “is advisory rather than decision making”).²

2 In contending otherwise, the City improperly attempts to rewrite the Brown Act by
3 deleting the term “advisory.” *Cornette v. Dep’t of Transp.*, 26 Cal. 4th 63, 73–74 (2001) (“A court
4 may not rewrite a statute, either by inserting or omitting language, to make it conform to a
5 presumed intent that is not expressed.”). By the City’s logic, no advisory standing committee
6 would be covered by the Brown Act, because no advisory committee has final control over its
7 subject matter. The Brown Act cannot be construed to mandate such “absurd results.” *Segura v.*
8 *Superior Ct.*, 113 Cal. App. 5th 1242, 1252 (2025).

9 **2. Respondents Cannot Refute the Undisputed Facts that the Budget Committee**
10 **Exercised Continuing Subject Matter Jurisdiction.**

11 The City does not dispute the mountain of evidence showing that the Budget Committee
12 met repeatedly for five years to advise the City Council on how to balance the budget and make
13 mid-year budget adjustments. *See, e.g.*, Cappetta Decl. ¶¶ 1, 6–9 & Exs. 1, at 4, 6–9 (describing
14 Budget Committee’s role in yearly budget process); *id.* ¶¶ 22–37, 41–60, 62, 69–71, 74–75 & Exs.
15 22–37, 41–60, 62, 69–71, 74–75 (reflecting nearly 40 Budget Committee meetings planned and/or
16 held throughout the years between 2018 and 2023). That is how a standing committee works.

17 Regardless of whether the City Council originally intended for the Budget Committee to be
18 an ad hoc body for a single budget cycle, the undisputed evidence demonstrates that the
19 Committee has functioned year after year as a standing committee with continuing jurisdiction to
20 advise on budgetary matters. The only “illusion” at issue, Opp. at 9:2, is the City’s unfounded
21 insistence that the Budget Committee can be deemed “ad hoc” when it has continually addressed
22 the same subject matter year after year.

23 **3. Respondents Cannot Avoid the Brown Act with Subterfuge or Disclaimers.**

24 The City continues to ignore the settled rule that “the intent of the Brown Act cannot be
25 avoided by subterfuge.” *Roberts v. City of Palmdale*, 5 Cal. 4th 363, 376 (1993). The Brown Act

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27 ² If “a party has alleged more than is required,” that “does not obligate him to prove more than is
28 essential.” *Berman v. Bromberg*, 56 Cal. App. 4th 936, 945 (1997) (quoting *Thompson v. County*
of Fresno, 59 Cal. 2d at 686, 690 (1963)).

1 was adopted precisely because of “local government’s dismissive attitude to open meeting
2 requirements and the tactics adopted to avoid them,” such as “simply labelling” meetings “with
3 other names.” Cal. Att’y Gen. Op. No. 22-402, 2024 CAL. AG LEXIS 1, *8–9 (Feb. 29, 2024)
4 (citation omitted). Accordingly, the Court must “follow function over form in carrying out the
5 Legislature’s purposes” of ensuring transparency and preventing Fresno from evading the Brown
6 Act with mere subterfuge or disclaimers. 79 Ops. Cal. Atty. Gen. at 73.

7 The latter Attorney General opinion remains directly on point and confirms the Budget
8 Committee is a standing committee. Respondents cannot distinguish it on the basis that the
9 committee at issue addressed not only “budgets,” which have fixed terms, but also “audits,
10 contracts, and personnel matters,” which “are not so delineated and thus do not have limited
11 terms.” Opp. at 12–13. First, audits, contracts, and personnel matters often do have fixed terms or
12 regular deadlines. Second, the timing or cycle within which certain matters are addressed is
13 irrelevant to whether a standing committee has continuing subject matter jurisdiction. The Budget
14 Committee advised the City Council on budgetary matters year after year for five years.
15 The details of budgets may vary over time, but the Committee’s jurisdiction to advise on
16 budgetary matters remains the same—just as, for example, the details of land use matters may
17 vary, but a standing land use committee’s jurisdiction over those matters remains the same.

18 Respondents cannot prevail by contending “each fiscal year has a different budget” and
19 thus the Budget Committee somehow dissolved automatically when the “budget process ends by
20 June 30.” Opp. at 13:9–12. That position would destroy the Brown Act by empowering local
21 governments to designate virtually any standing committee as “ad hoc.” The existence of an
22 annual budget deadline or variations in different budgets cannot prevent a ruling that the Budget
23 Committee is a standing committee with continuing jurisdiction. Each annual budget might vary
24 as revenues and expenses fluctuate, but a committee that advises on budgets year after year
25 remains a standing committee with continuing jurisdiction over the same subject “matter presented
26 for [its] consideration.” 79 Ops. Cal. Atty. Gen. at 72.

27 In any event, the Budget Committee did more than advise the City Council before the
28 annual budget deadline. It also advised the Council on whether “to amend or supplement the

1 budget after its adoption.” Opp. at 13:17–18; *see also* Cappetta Decl. ¶¶ 22–25 & Exs. 22–25
2 (evincing Budget Committee’s yearly meetings for mid-year budget review). The Budget
3 Committee thus operated continuously before and after the annual deadline to approve a budget.
4 *See* Cappetta Decl. ¶¶ 74–75 & Exs. 74–75 (planning Budget Committee meetings to discuss
5 budget-use policies after FY 24 budget passed and before considering any amendments).

6 As Petitioners have already explained, the City finds no support in *Taxpayers for Livable*
7 *Cmtys. v. City of Malibu*, 126 Cal. App. 4th 1123 (2005). The ad hoc committee at issue in that
8 case was not subject to the Brown Act because it performed a one-off task in a limited time frame.
9 *Id.* at 1129. Although its members were also members of a standing committee, the standing
10 committee had jurisdiction over matters that did not include the task of the ad hoc committee. *Id.*
11 at 1127. Here, the undisputed facts show that the City Council created the Budget Committee
12 specifically to address budgetary matters, and the Committee repeatedly met year after year to
13 advise the Council on those matters. On those undisputed facts, the Budget Committee is a
14 standing committee.

15 The City Council, not the Council President, created the Budget Committee. Cappetta
16 Decl. ¶¶ 2–3 & Exs. 2–3. As a standing committee created by the Council, the Budget Committee
17 remains subject to the Brown Act regardless of whether the President appoints its members under
18 Fresno Municipal Code § 2-316. *Frazer*, 18 Cal. App. 4th at 792–93 (holding school board’s
19 adoption of “policy calling for appointment of a committee” to advise superintendent and board
20 made committee subject to the Brown Act, even if superintendent selected the members, because
21 Brown Act did not require “that the Board itself *appointed* the members”).

22 III. CONCLUSION

23 For the foregoing reasons, Petitioners respectfully request that the Court grant this motion,
24 enter declaratory judgment that Respondents violated the Brown Act by holding secret meetings of
25 the Budget Committee in April and June 2023 and issue a writ of mandate compelling
26 Respondents to comply with the Brown Act in any future meetings of the Budget Committee.
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Dated: October 1, 2025

Respectfully submitted,

FIRST AMENDMENT COALITION



By: _____

DAVID LOY

Attorneys for Petitioner
FIRST AMENDMENT COALITION

Dated: October 1, 2025

FERGUSON LAW PC



By: _____

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Attorneys for Petitioner
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Dated: October 1, 2025

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FOUNDATION OF NORTHERN CALIFORNIA, INC.



By: _____

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1 **PROOF OF SERVICE**

2 At the time of service, I was over 18 years of age and not a party to this action. I am
3 employed in the County of Marin, State of California. My business address is 534 4th Street,
Suite B, San Rafael, CA 94901-3334.

4 On October 1, 2025, I served true copies of the following document(s) described as:

5 **REPLY IN SUPPORT OF MOTION FOR JUDGMENT ON VERIFIED PETITION FOR**
6 **PEREMPTORY WRIT OF MANDATE AND COMPLAINT FOR INJUNCTIVE AND**
DECLARATORY RELIEF

7 on the interested parties in this action as follows:

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19 ☒ **BY E-MAIL OR ELECTRONIC TRANSMISSION:** I caused a copy of the
20 document(s) to be sent from e-mail address: legal.assistant@pacbell.net to the persons at
21 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.

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

24 Executed on October 1, 2025, at San Francisco, California.

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27 _____
Elena E. Ruiz