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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SAN DIEGO

11 FIRST AMENDMENT COALITION,

Case No. 25CU033245C

12 Petitioner,

13
14 v.
15
16 CITY OF SAN DIEGO,
17 Respondent.

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR JUDGMENT GRANTING
VERIFIED PETITION FOR
DECLARATORY RELIEF AND WRIT OF
MANDATE**

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19
20 *Assigned for all purposes to Hon. Richard S.
Whitney, Dept. C-68*

21 Date: June 12, 2026
22 Time: 10:30 a.m.
23 Dept.: C-68
24 Judge: Hon. Richard S. Whitney

25 Petition Filed: June 25, 2025

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1 **I. INTRODUCTION**

2 The First Amendment Coalition (“FAC”) asked the City of San Diego (“City”) to disclose
3 public records about a controversial incident in which police officers fired a shotgun at Marcus
4 Evans and deployed a police dog that mauled his arm. The incident was widely covered in the
5 media and resulted in a civil settlement of \$875,000. The City refused to disclose nearly all
6 records requested by FAC. Regardless of whether the officers acted unlawfully, California’s
7 landmark police transparency laws require the City to disclose the requested records. By denying
8 FAC’s request, the City is violating the California Public Records Act and the people’s right to
9 know all about the use of force on Mr. Evans.

10 In October 2024, a San Diego Police Department (“SDPD”) officer used a combustion-
11 powered shotgun to fire three rounds of 12-gauge kinetic energy weapon ammunition at Mr. Evans
12 that hit him in the torso and shin. SDPD also deployed a police dog that bit and held his arm.
13 Immediately afterward, he was taken to one hospital, transferred to another, and spent 18 hours in
14 both. As documented in his medical records, he suffered multiple gruesome wounds, including
15 one with a flap of muscle exposed, as well as a large bruise to his torso and a gash to his leg that
16 exposed his shinbone. His wounds required surgery and debridement—the removal of dead
17 tissue—and he was in such pain that he could not bend his leg.

18 Mr. Evans was never charged with a crime. He filed a civil lawsuit that the City settled for
19 \$875,000. SDPD’s use of force on Mr. Evans and the City’s settlement of his lawsuit are matters
20 of great public interest. To protect the people’s right to know, FAC asked the City to disclose all
21 public records related to SDPD’s use of force against Mr. Evans. Because SDPD shot at Mr.
22 Evans with a firearm and he suffered great bodily injury, California’s police transparency laws
23 mandate full disclosure of all relevant records.

24 Nonetheless, the City unlawfully refused FAC’s request, contending that it can keep
25 everything about this incident secret except a single call log. This action is necessary to uphold the
26 people’s right to know, and the Court is respectfully requested to order the immediate disclosure
27 of all records requested by FAC and declare that the City is in violation of the Public Records Act
28 and California’s police transparency laws.

II. FACTUAL BACKGROUND

Around 11:30 p.m. on October 24, 2024, SDPD officers responded to a 911 call that led them to a residence near the 6400 block of Duluth Avenue. Loy Decl. Ex. A at 2. The ensuing use of force by SDPD officers against Mr. Evans was captured by a local videographer. 619 News Media, *CAUGHT ON CAMERA: K9 Takes Down Suspect*, Youtube (Oct. 25, 2024), <https://www.youtube.com/watch?v=L2ERgHIR80k>. It was also widely covered in the press. Petition ¶ 19 (citing news coverage).

As depicted in the video, officers instructed those inside the residence to come out. Three persons did so with their hands raised. Each was apprehended by SDPD officers. Mr. Evans followed. At first, his hands were raised as well. He moved slowly, wearing only basketball shorts. He was barefoot and shirtless and told the officers that he was unarmed. He then asked the officers to explain their presence and insisted he had done nothing wrong.

Soon after 12:00 a.m. on October 25, 2024, one or more officers shot Mr. Evans with three “beanbag” shotgun rounds. Loy Decl. Ex. A at 4. According to the City, a “[b]eanbag” shotgun is a “Kinetic Energy Weapon (KEW)” that is a “standard Remington Model 870, 12-gauge shotgun that has been modified with an orange stock and fore-end.” Loy Decl. Ex. B at 1–2. It fires “12-gauge KEW ammunition, commonly known as a beanbag round,” that “consists of a fabric sock containing lead shot contained within a standard 2 ¾ inch shot shell casing.” Loy Decl. Ex. B at 2. SDPD also deployed two police dogs against Mr. Evans. Loy Decl. Ex. A at 4. The second dog bit and clung to Mr. Evans’s arm, jerking it from side to side while officers moved in to arrest him. The video shows that Mr. Evans cried out in pain.

The City “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.” Answer ¶ 2. The City further “admits that San Diego police officers shot three beanbag rounds at Evans, which hit him in the torso and shin, that two PSD’s were sent in an attempt to apprehend Evans,” and “that the second PSD performed a bite and hold while officers arrested Evans.” Answer ¶ 9. The City also “admits Evans cried out.” Answer ¶ 11.

1 SDPD officers took Mr. Evans to the emergency room at UCSD hospital in Hillcrest,
2 where he arrived at 1:19 a.m. on October 25, 2024. Loy Decl. Ex. C at 541. According to his
3 medical records, he arrived with “multiple wounds after being bitten by police dog and hit
4 multiple times by bean bag. He has exposed right tibia and multiple deep puncture wounds to left
5 forearm including one with a flap of muscle protruding.” *Id.* at 546. “Per PD,” or police
6 department, “the left forearm wounds are from the dog and right shin wound from the bean bag.”
7 *Id.* at 544. He also sustained a “bean bag” round to “RUQ,” or right upper quadrant of his torso.
8 His wounds were at “very high risk to become infected.” *Id.* at 546. Examination revealed a
9 “[b]ean bag mark to RUQ,” “multiple deep puncture wounds to forearm” with a “flap of muscle
10 exposed from one wound,” and a “wound to anterior shin with exposed tibia.” *Id.* at 545.¹

11 Photographs taken in the UCSD emergency room soon after his arrival depict his gruesome
12 injuries, including multiple puncture wounds to his arm, the trauma to his torso, and the gash torn
13 out of his right shin showing his exposed bone. *Id.* at 590–601. After preliminary treatment at
14 UCSD, Mr. Evans was transferred to Scripps Mercy Hospital in Hillcrest “due to high risk of
15 compartment syndrome and infection 2/2 deep puncture wounds.” *Id.* at 546.

16 Mr. Evans arrived at Scripps Mercy Hospital at 6:05 a.m. on October 25, 2024. He was
17 admitted to the emergency room at 6:18 a.m. and as an inpatient at 10:19 a.m., and he was not
18 discharged until 7:18 p.m. that evening, 18 hours after he first arrived in at UCSD’s emergency
19 room. Loy Decl. Ex. D at 206. As noted in records from Scripps Mercy, Mr. Evans sustained
20 “multiple dog puncture wounds” to his left forearm and “multiple lacerations and wounds from
21 dog bite and beanbag bullets.” *Id.* at 239, 248. He also had a “[l]inear laceration to left forehead,
22 approximately 2 cm in length.” *Id.* at 249.

23 Examination at Scripps Mercy showed Mr. Evans had a “circular abrasion with burn mark
24 to lateral aspect noted at upper right quadrant, inferior to rib cage,” *id.* at 250, and “multiple
25 lacerations and puncture wounds to left forearm.” *Id.* at 257. Specifically, he suffered a “2 cm
26 circular puncture wound to volar aspect of forearm, distal to elbow joint” and “[s]ix laceration[s]

27
28¹ Page numbers of the medical records are taken from Bates stamp numbers appearing at the
bottom right of each page. The records are redacted of irrelevant personal information.

1 to dorsal aspect of left forearm including 2 puncture wounds.” *Id.* at 257. As stated in the
2 examination notes, a “[s]mall flap of muscle is avulsed and appears devitalized.” *Ibid.* He also had
3 a “3 cm x 1 cm depth linear laceration distal to knee with burn mark to medial aspect” on his leg.
4 *Ibid.* He was “unable to bend knee secondary to reported pain.” *Ibid.* He underwent “copious
5 debridement” and his wounds were “dressed in wet-to-dry dressings.” *Id.* at 258. The wounds to
6 Mr. Evans’s “left forearm from dog bites” were of particular concern due to risk of infection. *Id.* at
7 246. A surgeon performed “incision and drainage” to his “forearm and/or wrist” due to “deep
8 abscess or hematoma.”² *Id.* at 229.

9 The City denies that SDPD’s “uses of force caused significant harm or great bodily injury
10 to Evans.” Answer ¶ 3. Mr. Evans was not charged with a crime arising from the incident. Answer
11 ¶ 11. He filed a civil lawsuit that the City paid him \$875,000 to settle. Loy Decl. Ex. E–G.

12 Under the California Public Records Act, FAC requested copies of “[a]ll video or audio
13 recordings relating to or depicting” SDPD’s “arrest of or use of force on Marcus Evans” and all
14 other “records relating to any report, investigation, or findings concerning” the incident. Loy Decl.
15 Ex. H (“Request”). The City withheld all requested records except a redacted call log, claiming the
16 records were exempt from disclosure as investigatory records and peace officer personnel records
17 and that they also fell under the catchall exemption. *Ibid.* (citing Gov. Code, §§ 7922.000,
18 7923.600, 7927.705; Evid. Code, § 1043). The City did not say the records were subject to
19 disclosure but temporary withholding was justified. The City continues to contend the records are
20 “exempt from disclosure under the California Public Records Act.” Answer at 6.

21 **III. ARGUMENT**

22 **A. The Public Records Act Protects the People’s Right to Open and Accountable
23 Government, Especially with Respect to Law Enforcement.**

24 The Public Records Act guarantees transparency as the cornerstone of accountability.
25 “Implicit in the democratic process is the notion that government should be accountable for its
26

27 ² Before Mr. Evans’s medical records were available to FAC, the Petition alleged that Mr. Evans
28 claimed his right tibia was broken as a result of SDPD’s actions. Petition ¶ 25. Upon review of the
medical records, it appears his tibia was not immediately broken due to SDPD’s use of force.

1 actions. In order to verify accountability, individuals must have access to government files.” (*CBS, Inc. v. Block* (1986) 42 Cal.3d 646, 651.) The California Constitution guarantees that “the writings of public officials and agencies shall be open to public scrutiny,” and “each local agency is hereby required to comply with the California Public Records Act.” (Cal. Const., art. I, § 3, subd. (b)(1), (7).) A statute “shall be broadly construed if it furthers the people’s right of access, and narrowly construed if it limits the right of access.” (Cal. Const., art. 1, § 3, subd. (b)(2).) The Legislature declared “access to information concerning the conduct of the people’s business is a fundamental and necessary right of every person in this state.” (Gov. Code § 7921.000.)

9 That is especially true with respect to law enforcement. “Given the extraordinary authority
10 with which they are entrusted, the need for transparency, accountability and public access to
11 information is particularly acute when the information sought involves the conduct of police
12 officers.” (*Pasadena Police Officers Ass’n v. Superior Court* (2015) 240 Cal.App.4th 268, 283.)
13 “Law enforcement officers carry upon their shoulders the cloak of authority to enforce the laws of
14 the state. In order to maintain trust in its police department, the public must be kept fully informed
15 of the activities of its peace officers.” (*Commission on Peace Officer Standards & Training v. Superior Court* (2007) 42 Cal.4th 278, 297 [“POST”]; see also *Long Beach Police Officers Ass’n v. City of Long Beach* (2014) 59 Cal.4th 59, 74 [noting that as to “officer-involved shootings, the public’s interest in the conduct of its peace officers is particularly great because such shootings often lead to severe injury or death”].)

20 **B. The City Must Disclose Public Records on Request Unless It Can Prove They
21 Fall Within a Narrowly Construed Exemption from Disclosure.**

22 Under the Public Records Act, the City must disclose public records upon request unless
23 they are expressly exempt from disclosure. (Gov. Code §§ 7920.510, subd. (b), 7920.525, subd.
24 (a), 7922.000, 7922.530, subd. (a); *City of San Jose v. Superior Court* (2017) 2 Cal.5th 608, 616.)

25 Records relating to police use of force are public records. (*Pasadena Police Officers Ass’n, supra*, 240 Cal.App.4th at p. 288.) The City bears the burden of demonstrating that records are
26 exempt from disclosure. (Gov. Code § 7922.000; *International Federation of Professional &*
27 *Technical Engineers, Local 21, AFL-CIO v. Superior Court* (2007) 42 Cal.4th 319, 329 [“Local

1 21”].) The City must prove “each fact the existence or nonexistence of which is essential” to its
2 position. (Evid. Code, § 500.) As stated in an analogous context, because the “records are in the
3 exclusive control of the defendant,” the City “has the burden of going forward with the evidence
4 on the issue although it is not the party asserting the claim” for disclosure of records. (*Wolf v.*
5 *Superior Court* (2003) 107 Cal.App.4th 25, 35.) An agency opposing disclosure must provide
6 evidence “specific enough to give the requester a meaningful opportunity to contest the
7 withholding of the documents and the court to determine to determine whether the exemption
8 applies.... Conclusory or boilerplate assertions that merely recite statutory standards are not
9 sufficient.” (*American Civil Liberties Union of Northern California v. Superior Court* (2011) 202
10 Cal.App.4th 55, 83 [citation and quotation marks omitted].) Because the party opposing disclosure
11 bears the burden of proof, any “doubtful cases must always be resolved in favor of disclosure.”
12 (*Essick v. County of Sonoma* (2022) 81 Cal.App.5th 941, 950.)

13 **C. To Promote Transparency in Law Enforcement, the Legislature Mandated
14 Disclosure of All Records Relating to Discharge of a Firearm at a Person by an
15 Officer or Use of Force that Results in Great Bodily Injury.**

16 California’s police transparency laws prohibit the City from denying FAC’s Request.
17 In Senate Bill 1421, which took effect January 1, 2019, the Legislature adopted landmark reforms
18 requiring transparency in law enforcement. As the Legislature found:

19 Peace officers help to provide one of our state’s most fundamental government
20 services. To empower peace officers to fulfill their mission, the people of
21 California vest them with extraordinary authority – the powers to detain, search,
22 arrest, and use deadly force. Our society depends on peace officers’ faithful
23 exercise of that authority. Misuse of that authority can lead to grave constitutional
24 violations, harms to liberty and the inherent sanctity of human life, as well as
25 significant public unrest.

26 (Stats. 2018, ch. 988, (“S.B. 1421”) § 1(a).) For these reasons, “[t]he public has a strong,
27 compelling interest in law enforcement transparency because it is essential to having a just and
28 democratic society.” (S.B. 1421, § 4.) Accordingly, “[t]he public has a right to know all about ...
29 officer-involved shootings and other serious uses of force.” (S.B. 1421, § 1(b).) To conceal
30 records of such incidents “undercuts the public’s faith in the legitimacy of law enforcement,
31 makes it harder for tens of thousands of hardworking peace officers to do their jobs, and endangers
32 public safety.” (*Ibid.*) “The legislative history is replete with statements about the importance of
33 public safety.”

1 transparency with respect to officers’ ‘use of force’ to help ‘build public trust’ in law
2 enforcement.” (*City of Vallejo v. Superior Court* (2025) 112 Cal.App.5th 565, 595.). S.B. 1421
3 was codified at Penal Code section 832.7, subdivision (b), and later updated by Senate Bill 16.
4 For convenience, all of Penal Code section 832.7, subdivision (b) is referred to as “S.B. 1421.”

5 California was once “one of the most secretive states in the nation in terms of openness
6 when it comes to officer misconduct and uses of force,” and “the legislative intent behind Senate
7 Bill 1421 was to provide transparency regarding instances of an officer’s use of significant force.”
8 (*Ventura County Deputy Sheriffs’ Ass’n v. County of Ventura* (2021) 61 Cal.App.5th 585, 593.)

9 Accordingly, S.B. 1421 mandates, “Notwithstanding subdivision (a), Section 7923.600 of
10 the Government Code,” which contains the investigatory records exemption, “or any other law,”
11 including those otherwise protecting peace officer personnel records, certain police records “shall
12 not be confidential and shall be made available for public inspection pursuant to the California
13 Public Records Act.” (Pen. Code, § 832.7, subd. (b)(1).)

14 In relevant part, a public agency must disclose all records relating to any “incident
15 involving the discharge of a firearm at a person by a peace officer” or any “incident involving the
16 use of force against a person by a peace officer … that resulted in … great bodily injury.” (Pen.
17 Code, § 832.7, subd. (b)(1)(A)(i)–(ii).) Unless “temporary withholding for a longer period is
18 permitted” by the statute, which the City has not asserted, these records shall be disclosed “no later
19 than 45 days from the date of a request for their disclosure.” (Pen. Code, § 832.7, subd. (b)(11).)

20 S.B. 1421 “supersedes state law disclosure exemptions,” such as those for investigatory
21 records or peace officer personnel records, that “pose a direct conflict with its decree that records
22 within its scope are not confidential and shall be made available to the public.” (*First Amendment
23 Coalition v. Superior Court* (2023) 98 Cal.App.5th 593, 600.) It requires disclosure of all records
24 about any discharge of a firearm at a person or any force resulting in great bodily injury regardless
25 of whether an officer was “found to have used excessive force or acted in violation of department
26 policies pertaining to use of force.” (*City of Vallejo, supra*, 112 Cal.App.5th at p. 596.) Even if
27 officers acted entirely properly, the relevant records must be disclosed.

28

1 Assembly Bill 748 (“A.B. 748”) also took effect in 2019 and specifically requires
2 disclosure of any “video or audio recording that relates to a critical incident,” likewise without
3 regard to any finding of fault by officers. (Gov. Code, § 7923.625.) A “video or audio recording
4 relates to a critical incident if it depicts” an “incident involving the discharge of a firearm at a
5 person by a peace officer” or an “incident in which the use of force by a peace officer … against a
6 person resulted … in great bodily injury.” (Gov. Code, § 7923.625, subd. (e).)

7 By stating that critical incident recordings “may be withheld *only*” for limited time periods
8 stated in A.B. 748, which the City has not invoked, the law precludes the City from claiming any
9 exemption to conceal such recordings entirely. (Gov. Code, § 7923.625 [emphasis added]; see also
10 *Sacramento Television Stations Inc. v. Superior Court* (2025) 111 Cal.App.5th 984, 997 [holding
11 A.B. 748 precludes agencies from asserting critical incident recordings are exempt as investigatory
12 records].) Such recordings are not “personnel records” because they are a contemporaneous record
13 of police conduct, not generated during a subsequent administrative or disciplinary investigation.
14 (See *Long Beach*, *supra*, 59 Cal.4th at pp. 71–72.)

15 SDPD discharged a firearm at Mr. Evans by shooting at him with a combustion-powered
16 shotgun, and it used force on him resulting in great bodily injury. Therefore, the City is violating
17 both S.B. 1421 and A.B. 748 by denying FAC’s Request.

18 **D. By Firing a Combustion-Powered Shotgun at Mr. Evans, SDPD Discharged a
19 Firearm at a Person, and the City Must Disclose All Requested Records under
20 S.B. 1421 and A.B. 748.**

21 SDPD shot at Mr. Evans with a combustion-powered “standard Remington Model 870, 12-
22 gauge shotgun.” Loy Decl., Ex. B at 2. That shotgun is a “firearm” under S.B. 1421 and A.B. 748.
23 Because SDPD discharged a firearm at Mr. Evans, the City is unlawfully withholding the records
24 requested by FAC. The Court must construe the term “firearm” according to the Legislature’s
25 intent to promote police transparency, giving clear statutory text its “plain and commonsense
26 meaning.” (*City of San Jose*, *supra*, 2 Cal.5th at p. 616.) Here, “this standard approach to statutory
27 interpretation is augmented by a constitutional imperative” to construe statutes broadly in favor of
28 disclosure. (*Id.* at p. 617 [citing Cal. Const., art. 1, § 3, subd. (b)(2)].)

1 Although the Legislature did not define “firearm” in S.B. 1421 or A.B. 748, it has done so
2 elsewhere, and the Court must presume “the Legislature intended that similar phrases be accorded
3 the same meaning.” (*People v. Wells* (1996) 12 Cal.4th 979, 986; see also *Scottsdale Ins. Co. v.*
4 *State Farm Mutual Automobile Ins. Co.* (2005) 130 Cal.App.4th 890, 899 [absent contrary intent,
5 “we presume the Legislature intended that we accord the same meaning to similar phrases”].)

6 The Legislature has defined “firearm” as “a device, designed to be used as a weapon, from
7 which is expelled through a barrel, a projectile by the force of an explosion or other form of
8 combustion.” (Pen. Code, § 16520, subd. (a).) This definition derives without change from former
9 Penal Code section 12001, subdivision (b). (*People v. Gomez* (2025) 110 Cal.App.5th 419, 428.)

10 By reusing a term it has defined elsewhere, the Legislature intended S.B. 1421 and A.B.
11 748 to incorporate the definition of “firearm” in Penal Code section 16520. Alternatively, the
12 Court may look to the dictionary definition of an undefined statutory term. (*Reynosa v. Superior*
13 *Court* (2024) 101 Cal.App.5th 967, 986.) A dictionary definition of “firearm” is “a weapon from
14 which a shot is discharged by gunpowder,” <https://www.merriam-webster.com/dictionary/firearm>,
15 which is similar to the definition in Penal Code section 16520.

16 In addition, the “constitutional canon” requires the Court to construe the term “firearm”
17 broadly in a way “that maximizes the public’s access to information unless the Legislature has
18 expressly provided to the contrary,” which it has not done. (*Sierra Club v. Superior Court* (2013)
19 57 Cal.4th 157, 175 [citing Cal. Const., art. I, § 3, subd. (b)(2)].) Indeed, the Legislature has done
20 exactly the opposite by mandating disclosure of records relating to significant uses of force by
21 peace officers in the interest of promoting transparency, accountability, and community trust in
22 law enforcement. Accordingly, the term “firearm” must be construed broadly to include the
23 shotgun used to fire kinetic energy weapon ammunition at Mr. Evans.

24 Under the plain language of S.B. 1421 and A.B. 748, broadly construed in light of the
25 Legislature’s intent, SDPD discharged a firearm at Mr. Evans because it used a standard
26 combustion-powered shotgun to fire projectiles at him. A shotgun is a firearm because it expels
27 projectiles from a barrel by explosion or combustion and is designed to be used as a weapon. (See,
28 e.g., *People v. Frawley* (2000) 82 Cal.App.4th 784, 790 [noting “shotgun” was “firearm”]; cf.

1 *People v. Hall* (2017) 2 Cal.5th 494, 503 [holding “firearms condition” included “shotgun”].)
2 Indeed, the City classifies a “beanbag shotgun” as a “Kinetic Energy Weapon” that is “firing a
3 special projectile.” Loy Decl. Ex. B at 2. The City’s own policy requires that such shotguns be
4 “maintained in firearm cases” and treated with precautions similar to those for a firearm. Loy
5 Decl. Ex. B at 3. For example, they “shall be carried unloaded until time of deployment” with
6 “safety ‘on’” and “hammer down on an empty chamber.” *Ibid.* “To reduce the danger of injury
7 associated with unintentional discharge, the beanbag shotgun shall never be loaded or unloaded
8 inside a vehicle, in a police station, or under any overhead structure.” *Ibid.* Under City policy, the
9 “unintentional discharge of a KEW shall be treated the same as the unintentional discharge of a
10 firearm.”³ Loy Decl. Ex. B at 6.

11 The ammunition fired at Mr. Evans qualifies as a “projectile.” In the statutory definition of
12 “firearm,” the term “projectile” means any “body projected by exterior force, and continuing in
13 motion by its own inertia,” and it includes “projectiles capable of inflicting significant damage but
14 without the potential for real penetration, for example, rubber bullets.” (*People v. Heffner* (1977)
15 70 Cal.App.3d 643, 648 [discussing former Penal Code section 12001].)

16 If a combustion-powered weapon that shoots rubber bullets is a firearm, (*ibid.*), then so is
17 the combustion-powered shotgun used to fire “12-gauge KEW ammunition” full of “lead shot” at
18 Mr. Evans. Loy Decl. Ex. B at 2. Therefore, SDPD discharged a firearm at Mr. Evans, and the
19 City is violating S.B. 1421 and A.B. 748 by withholding the requested records.

20 That result tracks the Legislature’s intent to mandate transparency about significant uses of
21 force. While sometimes called “less lethal,” kinetic impact projectiles (“KIPs”) such as those fired
22 at Mr. Evans “have the potential to cause severe injuries and death.” (Rohini J. Haar, et al., *Death,*
23 *injury and disability from kinetic impact projectiles in crowd-control settings: a systematic review,*
24 (BMJ Open 2017), at p. 7, <https://bmjopen.bmjjournals.org/content/bmjopen/7/12/e018154.full.pdf>.)
25 The “muzzle velocity of KIPs is similar to lethal ammunition.” (*Ibid.*) At close distances, they can
26

27 ³ Although for SDPD’s internal purposes, intentional “discharge of a KEW” is not “reported as the
28 use of a firearm,” Loy Decl. Ex. B at 6, a beanbag shotgun still uses combustion to expel
projectiles from a barrel and qualifies as a firearm under S.B. 1421 and A.B. 748.

1 “result in severe injury, permanent disability and death.” (*Id.* at p. 8.) They are “weapons that
2 cause pain and incapacitation.” (*Ibid.*)

3 As one court explained, “beanbag” rounds “are made of lead shot contained in a cloth
4 sack” and “expelled from a twelve-gauge shotgun at a speed of between 280 and 300 feet per
5 second.” (*Deorle v. Rutherford* (9th Cir. 2001) 272 F.3d 1272, 1277 & fn. 8.) Such rounds can be
6 lethal at 30 feet and are potentially lethal at up to 50 feet. (*Id.* at p. 1277.) Although the City calls
7 them “beanbag” rounds, “[t]hat euphemism grossly underrates the dangerousness of this projectile.
8 The round is not some sort of ‘hackey-sack.’ It is a projectile capable of inflicting serious injury or
9 death, rather than some children’s toy.” (*Id.* at p. 1279, fn. 13.)

10 For that reason, the City’s own policy directs officers to target “the lower girdle area of the
11 subject. This would include the lower abdominal region (belly button area) and below. Generally,
12 the head, neck, thorax, heart, groin, and spine area should not be targeted.” Loy Decl. Ex. B at 2.
13 “In the event a person is struck by a KEW projectile, the arresting officer shall ensure that the
14 subject is taken to a medical facility for treatment prior to being booked into jail or released.” Loy
15 Decl. Ex. B at 5. The City’s policy reinforces the legal conclusion that SDPD officers discharged a
16 firearm at Mr. Evans by using a shotgun to fire kinetic energy weapon ammunition at him. For that
17 reason, the City is unlawfully denying FAC’s Request.

18 **E. The City Is Unlawfully Denying FAC’s Request Because It Cannot Prove the
19 Undisputed Evidence Is Insufficient to Show that Mr. Evans Suffered Great
Bodily Injury.**

20 Apart from discharge of a firearm, the City is unlawfully withholding the requested records
21 because it used force against Mr. Evans that resulted in great bodily injury. On the undisputed
22 facts documented in his medical records, he suffered significant or substantial injuries from the
23 deployment of “beanbag” rounds and a police dog.

24 Although the Legislature did not define “great bodily injury” in S.B. 1421 or A.B. 748, it
25 has done so elsewhere, and the Court must presume the Legislature intended to adopt the same
26 definition, especially when the term has been judicially construed. (*Wells, supra*, 12 Cal.4th at p.
27 986.) When “a term has developed a particular meaning in the law, we generally presume the
28 legislative body used the term in that sense.” (*In re Friend* (2021) 11 Cal.5th 720, 730.)

1 The Legislature is presumed to adopt previous judicial constructions of terms it uses. (*Hughes v.*
2 *Pair* (2009) 46 Cal.4th 1035, 1046; *People v. Weidert* (1985) 39 Cal.3d 836, 845–846; *Brooks v.*
3 *Mercy Hospital* (2016) 1 Cal.App.5th 1, 7.)

4 Elsewhere, the Legislature has defined “great bodily injury” as “a significant or substantial
5 physical injury.” (Pen. Code § 12022.7, subd. (f).) By reusing a term it specifically defined in
6 another statute that has been consistently interpreted and applied by courts, the Legislature
7 necessarily intended to incorporate the same definition into S.B. 1421 and A.B. 748.

8 As construed by courts, the definition of great bodily injury “contains no specific
9 requirement that the victim suffer ‘permanent,’ ‘prolonged’ or ‘protracted’ disfigurement,
10 impairment, or loss of bodily function.” (*People v. Escobar* (1992) 3 Cal.4th 740, 750; see also,
11 e.g., *People v. Saez* (2015) 237 Cal.App.4th 1177, 1188 [great bodily injury “need not be
12 permanent or cause lasting bodily damage”].) Great bodily injury may derive from “the
13 cumulative result of the course of conduct” rather than a “single act.” (*People v. Odom* (2016) 244
14 Cal.App.4th 237, 247.) Proof that “injury is ‘great’—that is, significant or substantial within the
15 meaning of section 12022.7—is commonly established by evidence of the severity of the victim’s
16 physical injury, the resulting pain, or the medical care required to treat or repair the injury.”
17 (*People v. Cross* (2008) 45 Cal.4th 58, 66.)

18 In case of any doubt on that point, the “constitutional canon” requires the Court to construe
19 great bodily injury broadly in a way “that maximizes the public’s access to information unless the
20 Legislature has *expressly* provided to the contrary,” which it has not done. (*Sierra Club, supra*, 57
21 Cal.4th at p. 175 [citing Cal. Const., art. I, § 3, subd. (b)(2)].) Indeed, as noted above, the
22 Legislature has done the opposite by mandating transparency about significant uses of force by
23 law enforcement. Accordingly, for purposes of disclosing public records, the term “great bodily
24 injury” must be construed broadly.

25 In this action to compel disclosure of public records, the City bears the burden to prove the
26 records at issue are *not* subject to disclosure. (Gov. Code § 7922.000; *Local 21, supra*, 42 Cal.4th
27 at p. 329.) Because the Legislature has mandated disclosure of records about use of force that
28 resulted in great bodily injury (Pen. Code, § 832.7, subd. (b)(1)(A)(ii); Gov. Code, § 7923.625,

1 subd. (e)(2)), the City must prove that Mr. Evans did *not* suffer great bodily injury. In other words,
2 the City must show the evidence is *insufficient* to find great bodily injury. Any doubt must be
3 “resolved in favor of disclosure.” (*Essick, supra*, 81 Cal.App.5th at p. 950.)

4 Based on the injuries described in his hospital records and depicted in gruesome
5 photographs taken soon after he was shot with “beanbag” rounds and mauled by a police dog, the
6 City cannot prove the evidence is insufficient to show that Mr. Evans suffered great bodily injury.
7 Indeed, it is unlikely the City would have paid \$875,000 to settle his civil case if he had not
8 suffered significant or substantial injury. He sustained multiple puncture wounds to his arm that
9 bled profusely and required surgery to prevent infection. He was treated in two different hospitals
10 for 18 hours. The “beanbag” rounds caused a large bruise to his torso and a gash to his right shin
11 that exposed his shinbone. He had so much pain from the latter that he could not bend his knee.

12 On the undisputed facts, Mr. Evans’s injuries are at least as significant as, if not more
13 severe than, those found by California courts as sufficient to qualify as great bodily injury.
14 Accordingly, the City cannot prove its officers did *not* cause him to suffer great bodily injury.
15 As courts have held, evidence sufficient to show “great bodily injury” includes wounds, bruising,
16 and pain comparable to or less severe than those suffered by Mr. Evans. (*People v. Medellin*
17 (2020) 45 Cal.App. 5th 519, 529 [holding “injury requiring three stitches at a hospital to repair”]
18 was sufficient to establish great bodily injury]; *People v. Washington* (2012) 210 Cal.App.4th
19 1042, 1047–1048 [noting “some physical pain or damage, such as lacerations, bruises, or
20 abrasions” can qualify as great bodily injury]; *People v. Jung* (1999) 71 Cal.App.4th 1036, 1042
21 [“Abrasions, lacerations, and bruising can constitute great bodily injury.”]; *People v. Bustos*
22 (1994) 23 Cal.App.4th 1747, 1755 [holding “multiple abrasions, lacerations, and contusions” were
23 great bodily injury]; *cf. People v. Flores* (2013) 216 Cal.App.4th 251, 262 [holding victim
24 suffered serious bodily injury where he was “badly bitten by defendant’s dog ... suffered two
25 puncture wounds” and “was taken to the emergency room by ambulance”].)

26 Because the City cannot prove Mr. Evans did not suffer great bodily injury, the City is
27 unlawfully denying FAC’s Request.

28

1 **F. The Records Requested by FAC Are Subject to Mandatory Disclosure under**
2 **S.B. 1421 and A.B. 748, and the City May Not Defy the Legislature by**
3 **Withholding the Records under the Catchall Exemption.**

4 As explained above, S.B. 1421 and A.B. 748 preclude the City from invoking the
5 exemptions for investigatory records or peace officer personnel records. Nor can the City rely on
6 Government Code section 7927.705, which “is not an independent exemption” but “merely
7 incorporates other prohibitions” outside the Public Records Act, such as restrictions on disclosure
8 of peace officer personnel records. (*Copley Press, Inc. v. Superior Court* (2006) 39 Cal.4th 1272,
9 1283.) Those restrictions are disallowed here.

10 The City cannot invoke the catchall exemption. In other cases, perhaps the catchall
11 exemption allows an agency to withhold records if it can prove “on the facts of the particular case
12 the public interest served by not disclosing the record clearly outweighs the public interest served
13 by disclosure of the record.” (Gov. Code, § 7922.000.) The catchall exemption was designed to
14 cover unusual scenarios not anticipated in the Public Records Act, (*CBS, supra*, 42 Cal.3d at p.
15 662), such as voluminous requests that create an undue burden of overwhelming “expense and
16 inconvenience,” (*American Civil Liberties Union Foundation v. Deukmejian* (1982) 32 Cal.3d
17 440, 452–453), or certain records not otherwise addressed, for example “academic research.”
18 (*Humane Society of U.S. v. Superior Court* (2013) 214 Cal.App.4th 1233, 1255.) But it does not
19 apply here because the Legislature has expressly mandated disclosure of the records at issue.

20 The catchall exemption cannot defeat the mandate of S.B. 1421 and A.B. 748 that records
21 related to discharge of a firearm or force resulting in great bodily injury must be disclosed and
22 cannot be entirely withheld as confidential based on their contents. (*First Amendment Coalition, supra*, 98 Cal.App.5th at p. 600.) To hold otherwise would improperly nullify the statutory
23 mandate to disclose such records and render it superfluous. (*Imperial Merchant Services, Inc. v. Hunt* (2009) 47 Cal.4th 381, 390 [“We do not presume that the Legislature performs idle acts, nor
24 do we construe statutory provisions so as to render them superfluous.”].)

25 In other cases, perhaps an agency may assert the catchall exemption because a request for
26 voluminous records about numerous incidents under S.B. 1421 or A.B. 748 presents an allegedly
27 “onerous burden.” (*Becerra v. Superior Court* (2020) 44 Cal.App.5th 897, 929.) That concern is

1 not at issue here since FAC only sought records about a single incident. Because the authority of
2 *Becerra* is coextensive only with its facts (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084,
3 1097), it did not hold that the catchall exemption can justify complete withholding of records
4 covered by S.B. 1421 or A.B. 748 on grounds other than undue burden due to volume.

5 Even assuming the catchall exemption could apply, the City cannot carry its “burden of
6 proof” under that exemption to “demonstrate a clear overbalance on the side of confidentiality.”
7 (*American Civil Liberties Union Foundation v. Superior Court* (2017) 3 Cal.5th 1032, 1043.)

8 The public has a compelling interest in the conduct of police officers, especially when they use
9 significant force. (*Long Beach, supra*, 59 Cal.4th at p. 74; *POST, supra*, 42 Cal.4th at p. 297;
10 *Pasadena Police Officers Ass’n, supra*, 240 Cal.App.4th at p. 283.) The public also has a strong
11 interest in “evaluating the [City’s] decision to settle the claim with public funds.” (*Register Div. of*
12 *Freedom Newspapers v. County of Orange* (1984) 158 Cal.App.3d 893, 906; cf. *Maranatha Corr.,*
13 *LLC v. Dep’t of Corr. & Rehab.* (2008) 158 Cal.App.4th 1075, 1086 [“The Legislature has made
14 clear that the government’s business is the people’s business and that California’s citizens have a
15 right to full disclosure of all information which affects the public fisc.”].) The City cannot
16 overcome the public’s overwhelming interest in disclosure of records relating to a significant use
17 of force by police that resulted in a high six-figure settlement from City funds.

18 **IV. CONCLUSION**

19 For the foregoing reasons, the Court is respectfully requested to issue a writ of mandate
20 compelling the City to disclose all records requested by FAC immediately and declaring that the
21 City is in violation of the Public Records Act and California’s police transparency laws.

22 Dated: January 12, 2026

23 FIRST AMENDMENT COALITION

24 By _____



25 DAVID LOY

26 AARON R. FIELD

27 Attorneys for Petitioner FIRST
28 AMENDMENT COALITION

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF MARIN

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

On January 12, 2026, I served true copies of the following document(s) described as **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR JUDGMENT GRANTING VERIFIED PETITION FOR DECLARATORY RELIEF AND WRIT OF MANDATE** on the interested parties in this action as follows:

Stacy J. Plotkin-Wolff
Senior Chief Deputy City Attorney
Office of the City Attorney
1200 Third Avenue, Suite 1100
San Diego, California 92101-4100
Email: SJPWolff@sandiego.gov

10 Email: SJFWolf@sandiego.gov, marissag@sandiego.gov, maevalis@sandiego.gov
11 **BY E-MAIL OR ELECTRONIC TRANSMISSION:** I caused a copy of the
12 document(s) to be sent from e-mail address rregnier@firstamendmentcoalition.org 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.

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

15 Executed on January 12, 2026, at East Palo Alto, California.


Robin P. Regnier