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

7
8 **SUPERIOR COURT OF CALIFORNIA**
9 **COUNTY OF SAN DIEGO**

10
11 FIRST AMENDMENT COALITION,

12 Petitioner,

13 v.

14 CITY OF SAN DIEGO,

15 Respondent.

Case No. 25CU033245C

**CITY OF SAN DIEGO'S OPPOSITION
TO MOTION FOR JUDGMENT
GRANTING VERIFIED PETITION
FOR DECLARATORY RELIEF AND
WRIT OF MANDATE**

I/C Judge: Hon. Terrie E. Roberts
Date: June 12, 2026
Time: 10:30 a.m.
Dept.: 68
Complaint filed: June 25, 2025
Trial: Not Set

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1 **I. INTRODUCTION**

2 The First Amendment Coalition (FAC) asks this Court to resolve broad and unsettled
3 statutory questions such as whether kinetic-energy shotgun systems are categorically “firearms”
4 and whether certain injuries always constitute “great bodily injury”, even though none of those
5 determinations is necessary to resolve this petition. The California Public Records Act (CPRA)
6 requires a record-by-record, content-specific analysis, not sweeping legal rulings divorced from
7 the documents actually at issue.

8 The City does not seek to conceal information. The City merely seeks to delay disclosure
9 until the City’s internal investigation is complete, which cannot occur until the San Diego District
10 Attorney’s Office (DA’s Office) has either concluded its investigation about whether to bring
11 charges or, if the DA’s Office brings charges, until the prosecution is complete. Once these
12 preliminary items are complete, the City proposes a staged production plan with statutory
13 redactions and proposes *in camera* review for the limited categories of records presenting
14 legitimate privacy, medical-confidentiality, or tactical-sensitivity concerns. This approach ensures
15 transparency while preserving the Court’s ability to avoid unnecessary rulings that could
16 unintentionally reshape statewide law governing less-lethal tools and use-of-force investigations.

17 The petition should be denied, or, at minimum, the City requests an opportunity to call
18 witnesses to testify regarding the basis of the City’s exemptions to allow the Court to rule on them
19 so the City may review the specific records before deciding any further questions.

20 **II. FACTUAL AND PROCEDURAL BACKGROUND**

21 At 11:17 p.m. on October 25, 2024, San Diego Police responded to a domestic violence
22 report stating that Marcus Evans had pointed and cocked a gun at the reporting party. Almost two
23 hours later, after officers were able to evacuate three other people from the residence in which
24 Evans was located, officers were finally able to take him into custody. To do so, officers used a
25 beanbag shotgun for the third time and used a police service dog (PSD) to bite and hold him. 619
26 News Media was on scene and broadcast a video showing the essential moments of the incident.
27 (Plotkin-Wolff Decl. at ¶ 3.)
28

1 **III. AUTHORITY AND ARGUMENT**

2 Under CPRA and Penal Code section 837.2(b), some law enforcement records are
3 generally subject to disclosure unless specific exemptions apply. In this case, POBRA¹ provides
4 procedural protections for officers under investigation, which intersect with CPRA disclosure
5 obligations and lead to the conclusion that the City properly asserted exemptions in response to
6 FAC's Request.

7 **A. The California Public Records Act and Passage of SB 1421 and AB 748.**

8 The California Public Records Act was passed by the California Legislature in 1968 and
9 generally requires that non-exempt records of a government agency be disclosed to the public. The
10 Public Records Act exempts certain types of records from disclosure, including investigatory
11 records of a police agency (Cal. Gov't Code § 7923.600), investigatory records of a prosecutorial
12 agency (*Id.*), personnel records of a peace officer (Cal. Penal Code § 832.7(a)), and any other
13 records made confidential or privileged by state or federal law (Cal. Gov't Code § 7927.705). The
14 Public Records Act also exempts any interest served by not disclosing the record clearly outweighs
15 the public interest served by disclosure of the record. Cal. Gov't Code § 7922.000.

16 In 2018, the California Legislature passed Senate Bill 1421, modifying the existing
17 exemptions and making police investigations into certain types of incidents subject to public
18 disclosure. Among other things, SB 1421 made subject to public disclosure records relating to the
19 report, investigation, or findings of 1) an incident involving the discharge of a firearm at a person
20 by a peace officer, or 2) an incident in which the use of force by a peace officer against a person
21 resulted in death or great bodily injury. *See* Cal. Penal Code § 832.7(b)(1).

22 Senate Bill 1421 and subsequent amendments also require extensive redaction of all
23 records produced. Penal Code § 832.7 states:

24 (6) An agency shall redact a record disclosed pursuant to this section only
25 for any of the following purposes:

26 (A) To remove personal data or information, such as a home address,
27 telephone number, or identities of family members, other than the names and work-
related information of peace and custodial officers.

28 ¹ POBRA is codified at California Government Code sections 3300 through 3313.

1 (B) To preserve the anonymity of whistleblowers, complainants,
2 victims, and witnesses.

3 (C) To protect confidential medical, financial, or other information of
4 which disclosure is specifically prohibited by federal law or would cause an
5 unwarranted invasion of personal privacy that clearly outweighs the strong public
6 interest in records about possible misconduct and use of force by peace officers and
7 custodial officers.

8 (D)

9 (i) Where there is a specific, articulable, and particularized
10 reason to believe that disclosure of the record would pose a significant
11 danger to the physical safety of the peace officer, custodial officer, or
12 another person.

13 (ii) In an action to compel disclosure brought pursuant to
14 Section 7923.000 of the Government Code, in determining whether a
15 redaction made pursuant to clause (i) is appropriate, a court shall
16 consider whether a particular peace officer is currently operating
17 undercover and their duties demand anonymity.

18 Cal. Penal Code § 837(b)(6).

19 Senate Bill 1421 includes specific provisions for delay of disclosure of the records during
20 an active criminal or administrative investigation into the incident, or during the pendency of
21 criminal charges. Generally, disclosure of records may be delayed for up to 60 days during an
22 active criminal investigation if the agency determines that the public interest in delaying disclosure
23 clearly outweighs the public interest in disclosure, and may be delayed after 60 days and up to a
24 maximum of 18 months if the agency determines that disclosure could reasonably be expected to
25 interfere with a criminal enforcement proceeding. Cal. Penal Code § 832.7(b)(8)(A). Disclosure
26 may be delayed during an administrative investigation into an incident until the investigating
27 agency determines whether law or agency policy was violated, but no longer than 180 days. Cal.
28 Penal Code § 832.7(b)(8)(C). If criminal charges are filed, disclosure may be delayed until the
charges are resolved – presumptively in recognition that the due process rights of a defendant
facing criminal charges outweighs the public interest in prompt disclosure of the records. Penal
Code section 832.7(b)(8)(B) states:

If criminal charges are filed related to the incident in which misconduct occurred or force was used, the agency may delay the disclosure of records or information until a verdict on those charges is returned at trial or, if a plea of guilty or no contest is entered, the time to withdraw the plea pursuant to Section 1018.

(emphasis added).

1 At the same time SB 1421 was passed in 2018, the California Legislature passed AB 748.
2 AB 748 modifies the length of time audio and video records depicting a disclosable force incident
3 may be withheld. When it was passed initially, AB 748 modified Government Code section
4 6254(f), which provided generally that investigatory records of a police agency are exempt from
5 disclosure under the Public Records Act. Following the re-organization and re-numbering of the
6 Public Records Act in 2020, the relevant language now appears in a slightly modified form in
7 Government Code section 7923.625.

8 Section 7923.625(e) states:

9 For purposes of this section, a video or audio recording relates to a critical
10 incident if it depicts any of the following incidents:

11 (1) An incident involving the discharge of a firearm at a person by a peace
officer or custodial officer.

12 (2) An incident in which the use of force by a peace officer or custodial
officer against a person resulted in death or in great bodily injury.

13 The statute provides that, “[n]otwithstanding any other provision of this article”, a video or audio
14 recording that relates to a critical incident may be withheld only during an active criminal or
15 administrative investigation initially up to 45 days, then up to a year, if disclosure would
16 substantially interfere with the investigation. Cal. Gov’t Code § 7923.625(a)(1)-(2). After one
17 year, the agency may continue to withhold the record only if it demonstrates, by clear and
18 convincing evidence, that disclosure would substantially interfere with the investigation. Cal.
19 Gov’t Code § 7923.625(a)(2). Section 7923.625 further provides that redaction may be used to
20 protect the privacy interest of a subject depicted in the recording if the agency determines the
21 public interest in disclosure is clearly outweighed by the public interest in non-disclosure because
22 release would violate a reasonable expectation of privacy, or may be withheld if the expectation
23 of privacy cannot be protected through redaction. Cal. Gov’t Code § 7923.625(b)(1)-(2).

24 The first several analyses of the bill did not mention these changes to existing law. Rather,
25 they focused on requirements that agencies using body-worn cameras have a policy addressing
26 procedures for and limitations on public access consistent with the Public Records Act. The
27 statutory provisions at issue in this case are first discussed in the June 25, 2018 Senate Judiciary
28 Committee analysis, which provides some insight into the origin and intent of the language:

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The bill is modeled in part on the policy recently implemented by the Los Angeles Police Department, which established a rule to generally require disclosure of records of a critical incident within 45 days.

Like the LAPD policy, AB 748 gives agencies the flexibility to withhold records of critical incidents for longer than 45 days if necessary to protect the due process interests of an individual or an active investigation. AB 748 also adds to the privacy protections related to the disclosure of body camera footage as established in AB 459 (Chau), which was signed into law last year.

AB 748 is a balanced approach that takes into account the various interests in nondisclosure while ultimately mandating the release of body camera footage and other similar files when there is a paramount interest in public disclosure.

(Request for Judicial Notice (RJN), Ex. 1 at 7).

The August 29, 2018 Assembly Committee on Privacy and Consumer Protection analysis provides more insight into the bill, including a lengthy discussion of bills brought in the preceding years that did not pass and the competing interests of public transparency, privacy, and preserving the integrity of active investigations. The Committee analysis includes language from the California Police Chief Association opposition raising concerns about protection of “ongoing investigations or active prosecutions” and agreeing “[w]hile there may be a legitimate public interest in disclosure of the audio and video recordings covered by this bill, there is an equal, if not more compelling, public interest in the successful completion of impartial investigations and the pursuit of justice.” (RJN, Ex. 1 7.) The Committee analysis addresses those concerns as follows:

That being said, the current version of the bill appears to reasonably protect the investigatory exemption that law enforcement currently utilizes by giving police the ability to withhold footage of critical incidents for up to 45 days if the agency determines that disclosure would substantially interfere with an active investigation. Moreover, this 45-day period under the bill can be extended. It would not be until after one year of withholding footage, that an agency would be required to show by clear and convincing evidence that disclosure would substantially interfere with an active investigation. At that point the agency would arguably be able to withhold the footage indefinitely. Furthermore, as a matter of public policy, it may prove beneficial to provide a degree of consistency and uniformity across the state in how such recordings are to be disclosed or withheld under the CPRA.

(RJN, Ex. 1 at 7.) Although AB 748 does not specifically include language addressing the withholding of records during an active prosecution, this response demonstrates that the Assembly Committee on Privacy and Consumer Protection felt the language in the statute would permit the records to be withheld in that situation.

1 **B. The Public Safety Officers Procedural Bill of Rights Act (POBRA)**

2 Enacted in 1976, POBRA provides procedural rights and protections to police officers and
3 other public safety officers, during internal investigations, civil lawsuits, and prosecutorial
4 investigations. The California Legislature designed these rights to balance the public interest in
5 maintaining the efficiency and integrity of law enforcement with the officers’ interest in fair
6 treatment. See Cal. Gov’t Code § 3301 (declaring the rights and protections provided to peace
7 officers under POBRA are a matter of statewide concern). California Government Code sections
8 3300, 3301, and 3303 set forth procedural safeguards for public safety officers during
9 interrogations, including the right to representation, the right to be informed of the nature of the
10 investigation, and a one-year statute of limitations for investigations. Cal. Gov’t Code §§ 3301,
11 3303, and 3304.

12 Courts have consistently recognized POBRA’s purpose of balancing competing interests.
13 In *Lozano v. City of Los Angeles*, 73 Cal. App. 5th 711 (2022), the court emphasized that POBRA
14 reflects the Legislature’s intent to balance the public interest in maintaining the efficiency and
15 integrity of law enforcement with the personal interest of peace officers in receiving fair treatment
16 during investigations that may lead to punitive action. *See also* Cal. Gov’t Code § 3304.

17 POBRA protections apply to investigations concerning alleged criminal activities and
18 when civil litigation is pending. *Id.*, *Bettencourt v. City and County of San Francisco*, 146 Cal.
19 App. 4th 1090 (2007). If a criminal investigation or prosecution is pending, POBRA makes it
20 mandatory to toll the internal investigation until the criminal matter is concluded. *Id.*, *Bacilio v.*
21 *City of Los Angeles*, 28 Cal. App. 5th 717 (2018). These tolling provisions ensure that the one-
22 year statute of limitations is extended in situations where external factors, such as criminal or civil
23 proceedings, may delay the completion of an internal investigation. This is what happened in this
24 matter.

25 **C. The Interplay between the CPRA, SB 1421, AB 748, and POBRA**

26 Where, as here, there are two statutes affecting an area of law – when law enforcement
27 records must be disclosed under the CPRA with the restrictions provided for by POBRA – both
28 statutes remain valid absent an express declaration of legislative intent. A court may only find an

1 implied repeal of an earlier statute when the statutes are irreconcilable, clearly repugnant, and so
2 inconsistent that they cannot operate together. *County of Tulare v. Campbell*, 50 Cal. App. 4th 847,
3 849 (1996), *see also Isaak v. Superior Court*, 73 Cal. App. 5th 792, 800-801 (2022). Thus, where
4 both statutes can operate concurrently, the integrity of both statutes must be maintained.

5 Neither SB 1421 nor AB 473 explicitly overruled the tolling provisions of POBRA.
6 Government Code section 3304 provides that the one-year limitations period for completing an
7 investigation and notifying an officer of proposed discipline is tolled during the pendency of civil
8 litigation, a criminal investigation or prosecution related to the misconduct. *See Bacilio v. City of*
9 *Los Angeles*, 28 Cal. App. 5th at 719, *Department of Corrections & Rehabilitation v. State*
10 *Personnel Bd.*, 247 Cal. App. 4th 700 (2016), and *Breslin v. City and County of San Francisco*,
11 146 Cal. App. 4th 1064 (2007).

12 Given the absence of an express repeal or irreconcilable conflict between the CPRA, SB
13 1421, AB 473 and POBRA, this Court should find that a public agency is permitted to withhold
14 disclosure of records until criminal investigations by prosecutorial agencies, any criminal
15 prosecution that may occur as a result of that investigation, and then the internal investigation is
16 complete, or the prosecuting agency formally declines to prosecute, even if this extends beyond
17 the 180-day disclosure period. This interpretation ensures that both statutes operate harmoniously,
18 preserving the legislative intent behind each. *County of Tulare v. Campbell*, 50 Cal. App. 4th at
19 847, *Isaak v. Superior Court*, 73 Cal. App. 5th at 801, and *BondGraham v. Superior Court*, 95 Cal.
20 App. 5th 1006 (2023).

21 **D. Legal Standard for Review of Writs under the CPRA**

22 State law establishes a civil judicial review process to expeditiously resolve lawsuits
23 brought under the California Public Records Act. Government Code section 7923.000 states: “Any
24 person may institute a proceeding for injunctive or declarative relief, or for a writ of mandate, in
25 any court of competent jurisdiction, to enforce that person’s right under this division to inspect or
26 receive a copy of any public record or class of public records.” Section 7923.005 goes on to state:
27 “In a proceeding under Section 7923.000, the court shall set the times for hearings and responsive
28

1 pleadings with the object of securing a decision as to the matters at issue at the earliest possible
2 time.”

3 Where a petitioner makes a prima facie showing that requested records are public and being
4 improperly withheld, the Court may conduct an *in camera* inspection of the records at issue. Cal.
5 Gov’t Code § 7923.105; *Yarish v. Nelson*, 27 Cal. App. 3d 893, 903-04 (1972). The Court shall
6 decide the case based on examination of the briefing, evidence, and argument presented by the
7 parties and any in camera review of records if applicable. Cal. Gov’t Code § 7923.105.

8 **E. The disclosure and redaction provisions under Penal Code section**
9 **832.7, Government Code section 7923.625, and POBAR must be read**
10 **together and considered in the context of the full statutory scheme.**

11 FAC primarily argues that the City may not delay production because the October 25, 2024
12 incident was a critical incident involving the use of a firearm in which great bodily injury was
13 inflicted. By doing so, FAC is asking this Court to resolve broad and unsettled statutory law, even
14 though none of those determinations is necessary to resolve this petition. The CPRA requires a
15 record-by-record, content-specific analysis, not sweeping legal rulings divorced from the
16 documents actually at issue.

17 FAC does not discuss the interplay between the City’s asserted exemptions, the delay
18 provisions set forth under Penal Code section 832.7 when releasing video under Government Code
19 § 7923.625, and the tolling provisions of POBRA because they are different statutes. It is true that
20 the statutes address the same subject matter: public release of records related to an incident
21 involving discharge of a firearm at a person under the entitlements of the Public Records Act.

22 Unfortunately, although SB 1421 and AB 748 were enacted around the same time, it does
23 not appear from the legislative history that the California Legislature considered the interplay
24 between the two or how POBRA affects production. This is most clear when reviewing the
25 redaction provisions of SB 1421 and AB 748. Assembly Bill 748 governs release of video and
26 audio records depicting “[a]n incident involving the discharge of a firearm at a person by a peace
27 officer or custodial officer” and states that an agency may use redaction to protect the privacy
28 interests of “a subject depicted in the recording” if it demonstrates that release would violate the

1 subject’s reasonable expectation of privacy. Cal. Gov’t Code § 7923.625(b)(1) and (e). At the same
2 time, SB 1421 governs the release of “[a] record related to the report, investigation, or findings
3 of...[a]n incident involving the discharge of a firearm at a person by a peace officer or custodial
4 officer” and requires that such records be redacted to remove personal data or information and
5 preserve the anonymity of victims and witnesses, among other things. Cal. Penal Code §
6 832.7(b)(1)(A)(i) and (b)(6). Video and audio files depicting an officer-involved shooting plainly
7 qualify as records “related to the report, investigation, or findings of...[a]n incident involving the
8 discharge of a firearm at a person by a peace officer or custodial officer” and are therefore subject
9 to the redaction provisions of Penal Code section 832.7. Further, failure to apply the tolling
10 provisions of POBRA to the mandatory provisions of SB 1421 to AB 748 records would lead to
11 the absurd result that the City may be required to produce all the requested documents while a civil
12 proceeding, a prosecution, a prosecutorial investigation, or an internal investigation is pending.

13 The statutes impose different and potentially contradictory requirements on the same
14 category of records. For that reason, they must be read together within the context of the statutory
15 schemes and their provisions harmonized.

16 In interpreting a statute, the Court’s fundamental task is to determine the Legislature’s
17 intent to effectuate the law’s purpose. *Los Angeles Unified School Dist. v. Superior Court*, 14
18 Cal.5th 758, 767-68 (2023). The Court first examines the statutory language, giving it a plain and
19 commonsense meaning, but it does not examine that language in isolation. *Id.* at 768. Rather the
20 language is examined “in the context of the statutory framework as a whole in order to determine
21 its scope and purpose and to harmonize the various parts of the enactment.” *Id.*

22
23 If the language is clear, courts must generally follow its plain meaning unless a
24 literal interpretation would result in absurd consequences the Legislature did not
25 intend. If the statutory language permits more than one reasonable interpretation,
26 courts may consider other aids, such as the statute's purpose, legislative history, and
27 public policy.’ [Citation.] ‘Furthermore, [the Court] consider[s] portions of a statute
28 in the context of the entire statute and the statutory scheme of which it is a part,
giving significance to every word, phrase, sentence, and part of an act in pursuance
of the legislative purpose.

Id.

1 In this case, the CPRA, AB 748, and SB 1421, do not consider the tolling provisions of
2 POBRA, which has the laudable goal of balancing the public interest in maintaining the efficiency
3 and integrity of law enforcement with the personal interest of peace officers in receiving fair
4 treatment during investigations that may lead to punitive action. *See Lozano v. City of Los Angeles*,
5 73 Cal. App. 5th 711 (2022). Additionally, AB 748 is a much less comprehensive statute than SB
6 1421 and does not account for different circumstances that may be presented. For example, AB
7 748 does not address withholding of records (1) when criminal charges are filed and an active
8 prosecution is taking place as is contemplated under Penal Code section 832.7(b)(8)(B), (2) when
9 all records related to the incident are confidential and prohibited from disclosure under Welfare &
10 Institutions Code section 827, (3) when all records related to the incident are confidential and
11 prohibited from disclosure under Welfare & Institutions Code section 5328, (4) when “on the facts
12 of the particular case, the public interest served by not disclosing the record clearly outweighs the
13 public interest served by disclosure of the record”, which by its terms applies to “any record” under
14 Government Code section 7922.000 and has been held to apply to SB 1421 records. *See Becerra*
15 *v. Superior Court*, 44 Cal. App. 5th 897, 924-25 (2020). Although the language that AB 748 states
16 that records “may be withheld only as follows”, reading that phrase literally would have the effect
17 of overriding other statutory provisions, which the legislative history does not support to be the
18 intended result.

19 The CPRA exempts investigatory files compiled by law enforcement agencies for law
20 enforcement purposes from disclosure unless otherwise required by law. *See Castanares v.*
21 *Superior Court*, 98 Cal. App. 5th 295 (2023). This exemption applies to records of investigations
22 conducted by state or local police agencies, including those under review by the United States
23 Department of Justice (DOJ), Internal Affairs, or the District Attorney’s Office (DA). The
24 exemption is designed to protect the integrity of ongoing investigations and the privacy of
25 individuals involved. *Id.*

26 While Penal Code section 832.7, as amended by SB 1421 and AB 748, provides that certain
27 law enforcement records, such as those involving the discharge of a firearm or use of force
28 resulting in death or great bodily injury, are not confidential and must be disclosed. Even though

1 these officer-related records are now subject to disclosure, section 832.7 reflects continuing
2 legislative concern for certain privacy and safety interests and competing public interests. For
3 example, section 832.7(b) provides that an agency responding to a record request “shall redact”
4 disclosed records to 1) remove personal data or information outside the name and work-related
5 information of the officers; 2) to preserve the anonymity of complainants and witnesses; 3) to
6 protect confidential medical, financial, or other information whose disclosure is specifically
7 prohibited by federal law or would cause an unwarranted invasion of personal privacy that
8 outweighs the public's interest in the records; and 4) where there is reason to believe that disclosure
9 of the record would pose a significant danger to the physical safety of the officer or another person.
10 *See Gov’t Code § 832.7(b)(5)*. Subdivision (b) also provides that an agency “may redact a record
11 disclosed pursuant to this section ... where, on the facts of the particular case, the public interest
12 served by not disclosing the information clearly outweighs the public interest served by disclosure
13 of the information.” *See Id.* § 832.7(b)(7).

14 Additionally, an agency may temporarily withhold records of incidents involving an
15 officer's discharge of a firearm or use of force resulting in death or great bodily injury by delaying
16 disclosure when the incidents are the subject of an active criminal or administrative investigation.
17 *See Id.* § 832.7(b)(8)(A)-(C). These provisions align with the investigatory exemptions under the
18 CPRA, section 7923.600, which allows agencies to withhold records if disclosure would
19 substantially interfere with an active investigation. *See Castanares v. Superior Court*, 98 Cal. App.
20 5th 295.

21 An agency may withhold records under California Government Code section 7923.600 if
22 those records pertain to an active investigation and if the agency demonstrates that the records fall
23 squarely within the exemption. Thus, investigatory records related to officer-involved shootings
24 or use of force may be withheld if disclosure would interfere with an active investigation. The
25 agency must also reassess the basis for withholding at regular intervals and provide written
26 justification for continued nondisclosure, including an estimated timeline for disclosure.

27 The most reasonable reading of the statutes together, in the context of the statutory schemes
28 as a whole, is that a public agency may withhold records during the pendency of a civil suit, a

1 prosecutorial investigation, a prosecution, and an agency’s internal investigation if the agency can
2 demonstrate that the records fit squarely within the exemptions provided for by POBRA. Here, the
3 City can, and has, met its obligation to demonstrate that the records at issue are exempt from
4 disclosure under Government Code sections 7923.600, 7927.705, 7922.000, 7927.705, Penal Code
5 section 832.7(a)), and the tolling provisions of POBRA.

6 As indicated in the supporting Declaration of Julie Epperson, the records sought include
7 information that could identify, locate, or expose witnesses, complainants, or other involved
8 persons, including but not limited to names, contact information, personal identifiers, and narrative
9 details that would allow identification even if names were redacted. Premature disclosure of
10 witness identities or witness statements could subject witnesses to intimidation, harassment,
11 retaliation, or undue influence, and could deter cooperation from witnesses in this matter and in
12 future investigations. (Epperson Decl. ¶¶ 8 and 9).

13 The records include non-public investigative details including: specific timelines,
14 unreleased video segments, interview strategies, inconsistencies being evaluated by the public, and
15 leads not yet corroborated. Disclosure of these details could enable involved people to tailor
16 statements, coordinate accounts, or otherwise interfere with fact-finding. The records also include
17 law enforcement techniques, procedures, and operational information, including how and when to
18 use less-lethal options such as a beanbag shotgun and a police K9, the disclosure of which could
19 reduce the effectiveness of those techniques and could create safety risks for officers and the
20 public. (*Id.* at ¶¶ 10 and 11).

21 If criminal charges are filed, disclosure of the requested records during the pendency of the
22 prosecution could prejudice the prosecution and the defense by affecting witness recollection,
23 contaminating witness testimony, and influencing potential jurors through pretrial publicity.
24 Disclosure during the prosecution could reveal prosecution or investigative strategy, including the
25 order of witnesses, anticipated evidentiary themes, and areas of impeachment, thereby impairing
26 the fair administration of justice. (*Id.* at ¶¶ 12 and 13).

27 The City is coordinating the completion of its internal investigation to avoid interfering
28 with the criminal investigation and prosecutorial review. Completing the internal administrative

1 investigation before the criminal matter is resolved could create a substantial risk of interfering
2 with the criminal process, including compelling statements, creating discoverable materials, or
3 generating disclosures that could be used to circumvent criminal investigative confidentiality. The
4 internal administrative investigation may require interviews of involved employees and witnesses.
5 Conducting those interviews while the criminal matter is pending could create conflicts with
6 constitutional rights, criminal defense strategy, prosecutorial needs, and could complicate the
7 ability to obtain complete and candid statements. Additionally, the internal administrative
8 investigation may rely on evidence and findings developed in the criminal investigation and
9 prosecution, including trial testimony, forensic results, and judicial rulings. Deferring completion
10 of the internal investigation until after prosecution promotes accuracy, completeness, and
11 consistency. (*Id.* at ¶¶ 15-18).

12 After the prosecution is complete, San Diego Police Department can evaluate what portions
13 of the requested records, if any, may be disclosed consistent with applicable California law,
14 including appropriate redactions to protect privacy, safety, and legally protected information.
15 Additionally, while not as important as the above, it is imperative that public sentiment does not
16 affect the DA’s office whether to prosecute the officers involved in the Evans arrest and uses of
17 force. However, the DA’s office has not yet decided whether it will file charges against the officers.
18 If the DA’s office files charges, POBRA at Government Code section 3304, requires the records
19 be withheld until the prosecution comes to an end. *See Dept. of Corrections & Rehab v. State*
20 *Personnel Bd.*, 247 Cal. App. 4th 700.

21 With the investigation by the DOJ, and now the investigation by the DA’s office, SDPD’s
22 internal investigation is not yet complete. A criminal investigation by the DA’s office is pending.
23 Additionally, the public’s interest in this matter was provided through 619 News Media. (Plotkin-
24 Wolff Decl., at ¶ 6). Thus, if the Court is inclined to order production prior to the completion of
25 the DA’s review and the internal investigation, the City respectfully requests that, in compliance
26 with *Sacramento Television Stations, Inc. v. Superior Court*, 111 Cal. App. 5th 984 (2025), the
27 Court review the records and recordings to determine for itself whether their disclosure would
28

1 interfere with the investigation by the DA, a possible prosecution, and then SDPD's internal
2 investigation.

3 **IV. CONCLUSION**

4 In this case, the review by the DOJ, the ongoing review by the DA's office, and the tolling
5 of the one-year time period to complete an internal investigation under POBRA indicate that the
6 records likely fall under the investigatory exemptions of CPRA. POBRA further supports
7 withholding confidential materials to protect the integrity of the investigation and the procedural
8 rights of the officers involved. The City has provided specific written justifications for any delays
9 or denials of disclosure. Thus, the City requests that the Court deny FAC's motion for judgment
10 on the petition, engage in an *in camera* review to determine whether the materials should be
11 produced prior to the conclusions of the prosecutorial investigation, any prosecution, and the
12 internal investigation, or, alternatively, hold an evidentiary hearing allowing the City to present
13 witnesses to establish the validity of the exemptions.

14 Dated: March 16, 2026

HEATHER FERBERT, City Attorney

15
16 By 

Stacy J. Plotkin-Wolff
Senior Chief Deputy City Attorney

17
18 Attorneys for Respondent/Defendant
19 CITY OF SAN DIEGO

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6
7
8 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO**
9

10 DECLARATION OF
11 SERVICE

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

12
13 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
14 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.

15 On March 16, 2026, I served the following document(s):

- 16
- 17 • CITY OF SAN DIEGO'S OPPOSITION TO MOTION FOR JUDGMENT GRANTING
VERIFIED PETITION FOR DECLARATORY RELIEF AND WRIT OF MANDATE
 - 18 • CITY OF SAN DIEGO'S REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF ITS
OPPOSITION TO MOTION FOR JUDGMENT GRANTING VERIFIED PETITION
FOR DECLARATORY RELIEF AND WRIT OF MANDATE
 - 19 • DECLARATION OF STACY J. PLOTKIN-WOLFF IN SUPPORT OF CITY OF SAN
DIEGO'S OPPOSITION TO MOTION FOR JUDGMENT GRANTING VERIFIED
20 PETITION FOR DECLARATORY RELIEF AND WRIT OF MANDATE
 - 21 • DECLARATION OF JULIE EPPERSON IN SUPPORT OF CITY OF SAN DIEGO'S
OPPOSITION TO MOTION FOR JUDGMENT GRANTING VERIFIED PETITION
22 FOR DECLARATORY RELIEF AND WRIT OF MANDATE

23 on the following parties in this action:

24
25 David Loy
FIRST AMENDMENT COALITION
534 4th Street, Suite B
26 San Rafael, CA 94901-3334
Ph: (415) 460-5060
27 dloy@firstamendmentcoalition.org
28

Attorney for Petitioner

PROOF OF SERVICE

1
2 [] **(BY U.S. MAIL)** I served the individual(s) named by placing a true and correct copy
3 of the documents in a sealed envelope and placed it for collection and mailing with the
4 United States Postal Service this same day, at my address shown above, following
5 ordinary business practices. [CCP § 1013(a)]

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

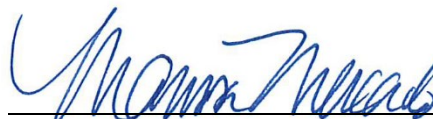
10 [] **(BY FAX)** On March 16, 2026, I transmitted the above-described document(s) by
11 facsimile machine to the fax number(s) set forth above or as stated on the attached
12 service list. The transmission originated from facsimile phone number (619) 533-5856
13 and was reported as complete and without error. The facsimile machine properly
14 issued a transmission report, a copy of which is attached hereto. [CCP § 1013(e); CRC
15 Rule 2008]

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

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

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

I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct. Executed on March 16, 2026, at San Diego, California.



Marissa Mercado
Legal Secretary

PROOF OF SERVICE