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6 COALITION

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN DIEGO
10

11 FIRST AMENDMENT COALITION,

12 Petitioner,

13 v.

14 CITY OF SAN DIEGO,

15 Respondent.
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Case No. 25CU033245C

*Assigned for All Purposes to the Hon.
Terri E. Roberts, Dept C-68*

**PETITIONER'S REPLY IN SUPPORT OF
(1) [PROPOSED] ORDER GRANTING
PETITIONER FIRST AMENDMENT
COALITION'S MOTION FOR
JUDGMENT; (2) [PROPOSED]
JUDGMENT; AND (3) [PROPOSED]
PEREMPTORY WRIT OF MANDATE**

1 **I. INTRODUCTION**

2 The City’s objections to the proposed order, writ, and judgment are meritless. The First
3 Amendment Coalition (“FAC”) fully complied with the relevant procedure. The Court is
4 respectfully requested to sign FAC’s proposed order, writ, and judgment, which precisely track the
5 Court’s ruling by commanding the City to disclose records all covered by FAC’s request by July
6 17, 2026. No further delays should be permitted.

7 The Court should avoid a premature decision on precisely which records are covered by
8 the request, because the City has not carried its burden of proof to demonstrate exactly what
9 records are covered. As a factual matter, certain records created before the incident may be
10 covered by the request. As a legal matter, it is not self-evident that an agency may never be
11 compelled to disclose documents created after the date of a request.

12 If the Court signs FAC’s proposed order, writ, and judgment, the parties can meet and
13 confer about the scope of records covered by the request. If the parties do not agree, they may ask
14 the Court to resolve any disputes, based on a complete showing by the City of what records are in
15 dispute and full briefing and argument on the relevant legal issues. In the meantime, the City
16 cannot be prejudiced by being commanded to do what the Court ordered—disclose all records
17 covered by the FAC’s request by July 17, 2026. Nor is the City entitled to a stay of the Court’s
18 order because it has not cited much less met the strict requirements of the Public Records Act for
19 justifying a stay.

20 **II. FAC COMPLIED WITH THE RELEVANT PROCEDURE FOR SUBMITTING**
21 **THE PROPOSED ORDER, WRIT, AND JUDGMENT.**

22 Procedurally, the submission of a proposed order, writ, and judgment in this matter is
23 governed by Rule 3.1312, and FAC complied with that rule to the letter. Time is of the essence in
24 submitting a proposed order, and Rule 3.1312 imposes no duty to meet and confer after the losing
25 party has had an opportunity to comment.

26 Under Rule 3.1312, “the party prevailing on any motion must, within five days of the
27 ruling, serve by any means authorized by law and reasonably calculated to ensure delivery to the
28 other party or parties no later than the close of the next business day a proposed order for approval

1 as conforming to the court's order.” (Cal. Rules of Court, rule 3.1312, subd. (a).). FAC did exactly
2 that by emailing the proposed order, writ, and judgment to the City on June 29, 2026, the next
3 business day after the hearing. Accounting for the court holiday on July 3 and the intervening
4 weekend, the City responded with its comments on July 7, 2026, “[w]ithin five days after service.”
5 (Cal. Rules of Court, rule 3.1312, subd. (a).).

6 FAC then did exactly what the rule requires. “The prevailing party must, upon expiration
7 of the five-day period provided for approval, promptly transmit the proposed order to the court
8 together with a summary of any responses of the other parties or a statement that no responses
9 were received.” (Cal. Rules of Court, rule 3.1312, subd. (a).). By submitting Aaron Field’s
10 declaration on July 8, 2026, FAC did precisely that. Once the prevailing party receives the losing
11 party’s comments, the rule imposes no further duty to meet and confer, because of the compelling
12 interest in ensuring that the Court promptly signs an order conforming to its ruling.

13 The City may not invoke Rule 3.1590. That rule implements the provisions of Code of
14 Civil Procedure section 632 for a statement of decision and related judgment after a court has held
15 a bench trial on disputed questions of fact. That is not the case here. Instead, the Court granted
16 FAC’s motion for judgment on the undisputed facts. In general, a court need not issue a statement
17 of decision in deciding a motion. (See, e.g., *Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1294; *In re*
18 *Marriage of Turkanis & Price* (2013) 213 Cal. App. 4th 332, 354.) In particular, when a petition
19 for writ of mandamus is decided as a matter of law on undisputed facts, as the Court did here, a
20 statement of decision is not required. (*Davenport v. Unemployment Ins. Appeals Bd.* (1994) 24
21 Cal.App.4th 1695, 1700; cf. *Enter. Ins. Co. v. Mulleague* (1987) 196 Cal.App.3d 528, 539 “[A]
22 statement of decision is only required upon a trial of a question of fact. When the only issue
23 tendered to the trial court is one of law, a statement of decision is unnecessary.”) [citation and
24 footnote omitted].) Therefore, Rule 3.1590 does not apply to this case. In any event, Rule 3.1590
25 also imposes no duty to meet and confer on the contents of proposed documents after comments
26 have been received.

1 **III. THE COURT IS RESPECTFULLY REQUESTED TO ENTER FAC’S PROPOSED**
2 **ORDER, WRIT, AND JUDGMENT WITHOUT ANY STAY AND NOT MAKE A**
3 **PREMATURE DECISION ON THE SCOPE OF FAC’S REQUEST UNTIL OR**
4 **UNLESS THE CITY CARRIES ITS BURDEN TO PROVE WHAT RECORDS ARE**
5 **IN DISPUTE AND THE PARTIES HAVE FULLY BRIEFED ALL RELEVANT**
6 **ISSUES.**

7 In its ruling, the Court directed, “The City of San Diego is ordered to disclose all records
8 covered by Petitioner’s Request no later than July 17, 2026. The Court will sign a proposed order
9 consistent with this ruling.” (6/26/26 Minute Order at p. 8.) The Court is respectfully requested to
10 sign FAC’s proposed order, writ, and judgment, which precisely track the Court’s ruling by
11 commanding the City to disclose all records covered by FAC’s request.

12 The City incorrectly asks the Court to limit the order, writ, and judgment to records “from
13 the date of the subject Incident on October 25, 2024, to the date of the subject Request on March
14 12, 2025.” The City’s request is premature for two reasons.

15 First, as a factual matter, records predating the incident may well be within the scope of
16 FAC’s request, especially since records predating an incident are often within the scope of similar
17 requests. The request seeks any “video or audio recording” that “depicts” the incident (Gov. Code,
18 § 7923.625, subd. (e)), and any “record relating to the report, investigation, or findings of” the
19 incident. (Pen. Code, § 832.7(a)(1)(A)(i)-(ii).) While there might not be a recording that depicts
20 the incident before the incident occurred, the same is not necessarily true for any “record relating
21 to the report, investigation, or findings” of the incident.

22 For example, if an officer who used force against Mr. Evans was previously found to have
23 used excessive force, the City might have considered such records when investigating or
24 reviewing the incident. Alternatively, if one of the officers had previous experience with Mr.
25 Evans that was documented in a report, the City might have considered that report in assessing the
26 use of force on Mr. Evans. If so, such a record that predates the incident might be subject to
27 disclosure as a “record relating to the report, investigation, or findings of” the incident. (Pen.
28 Code, § 832.7(a)(1)(A)(i)-(ii).) At the very least, basic information about the officers involved in
the incident and any City policies relevant to their conduct surely predate the incident and are
covered by the request to the extent they relate to the City’s investigation or findings.

1 The City has the burden of proof. (See, e.g., *American Civil Liberties Union of Northern*
2 *California v. Superior Court* (2011) 202 Cal.App.4th 55, 83.) The City has not carried its burden
3 to prove there are no records predating the incident or postdating the request that are not “relat[ed]
4 to the report, investigation, or findings of” the “incident.” (Pen. Code, § 832.7(a)(1)(A)(i)-(ii).)
5 The only evidence proffered by the City on the scope of records covered by FAC’s request is a
6 single paragraph: “The records at issue include investigative reports, witness statements, body-
7 worn camera recordings, dispatch/audio recordings, photographs, internal affairs interview
8 recordings, disciplinary recommendations, and investigative timelines relating to the arrest and
9 uses of force in apprehending Marcus Evans in the early morning hours of October 25, 2024 in
10 San Diego, California after a reporting party called 911 to report Evans had attacked his live-in
11 girlfriend, pulled a handgun on the reporting party, and cocked the weapon.” (3/16/26 Epperson
12 Decl. ¶ 4.) That paragraph says nothing about the dates when documents were created, and it is far
13 from sufficient to show that no records created before the date of the incident or after the date of
14 the request are covered by FAC’s request. Accordingly, the Court is respectfully requested not to
15 enter an order, writ, and judgment prematurely exempting the City from disclosing records that
16 predate the incident or postdate the request.

17 Second, as a legal matter, it is not self-evident that the City’s duty to disclose records
18 terminates with records created by the date of FAC’s request. As stated in the Public Records Act,
19 “Except with respect to public records exempt from disclosure by express provisions of law, each
20 state or local agency, upon a request for a copy of records that reasonably describes an identifiable
21 record or records, shall make the records promptly available” to the requester. (Gov. Code, §
22 7922.530, subd. (a).) That language contains no limitation clearly excluding records that postdate
23 the request. While the agency must, “within 10 days from receipt of the request, determine
24 whether the request, in whole or in part, seeks copies of disclosable public records in the
25 possession of the agency” (Gov. Code, § 7922.535, subd. (a)), that language does not specify
26 when such records must be in the agency’s possession. Therefore, it does not clearly preclude a
27 holding that records postdating the request might be subject to disclosure, especially when the
28 Public Records Act must be construed broadly in favor of disclosure. (Cal. Const., art. I, § 3, subd.

1 (b)(2); *City of San Jose v. Superior Court* (2017) 2 Cal.5th 608, 617.) Nor do the cases cited by the
2 City address that precise question.

3 Under the federal Freedom of Information Act, an agency may not categorically refuse to
4 search for or disclose “documents produced after the date of the requester’s letter,” and instead,
5 the proper cutoff date must be addressed case by case. (*Public Citizen v. Department of State*
6 (D.C. Cir. 2002) 276 F.3d 634, 637; see also *McGehee v. Central Intelligence Agency* (D.C. Cir.
7 1983) 697 F.2d 1095, 1103 [holding that “neither the terms of the statute nor the case law
8 interpreting them supports a claim that the use of a time-of-request cut-off date is *always*
9 proper”].) Because the California Public Records Act was modeled on the Freedom of Information
10 Act, decisions construing the latter can be persuasive in construing the former. (See, e.g., *Times*
11 *Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325, 1338.)

12 Therefore, in some circumstances, the California Public Records Act might require
13 disclosure of documents created after a request was made. However, the Court need not and
14 should not decide that issue at the moment. The issue has not been fully briefed and argued on a
15 complete record of what documents might be in dispute, because the City failed to raise the issue
16 until after the Court’s ruling and did not carry its burden to prove what records are at issue.
17 For now, the Court is respectfully requested to enter FAC’s proposed order, writ, and judgment,
18 which merely confirm the Court’s ruling that the City must disclose all records covered by FAC’s
19 request without prejudging the complete scope of such records.

20 If the Court does so, the City would be required to disclose responsive records by July 17,
21 as the Court directed. The parties can then meet and confer on whether there is any dispute over
22 the scope of the City’s disclosure. If there is none, the issue will be moot. If there is a dispute that
23 cannot be resolved, the parties may ask the Court to make a fully informed decision on the scope
24 of the request based on all relevant evidence and argument.

25 In the meantime, the City cannot be prejudiced by FAC’s proposed order, writ, and
26 judgment, which simply command the City to do what the Court already directed and do not
27 prejudice the precise scope of all records covered by FAC’s request. Certainly, to enter an order
28 consistent with the Court’s ruling, which does not speak to the issues the City is attempting to

1 raise belatedly, is not “reversible error,” as the City errantly claims. By contrast, FAC would be
2 prejudiced by the City’s proposed order, writ, and judgment, which prematurely limit the scope of
3 FAC’s request before the City has carried its burden of proof and the parties have had an
4 opportunity for full briefing and argument on that issue.

5 Accordingly, the Court is respectfully requested to enter FAC’s proposed order, writ, and
6 judgment. The City is not entitled to any stay because it has not cited much less met the strict
7 requirements to stay an order compelling disclosure of public records. (Gov. Code, § 7923.500,
8 subd. (d) [“A stay of an order or judgment shall not be granted unless the petitioning party
9 demonstrates that the party will otherwise sustain irreparable damage and probable success on the
10 merits.”].) The City will suffer no irreparable harm because FAC’s proposed order, writ, and
11 judgment do not prejudge the precise scope of what is covered by FAC’s request, and the City
12 cannot show probable success on its meritless arguments when it has failed to carry its burden of
13 proof and ignored the relevant law.

14 **IV. CONCLUSION**

15 For the foregoing reasons, the Court is respectfully requested to enter FAC’s proposed
16 order, writ, and judgment without any stay.

17 Dated: July 13, 2026

18 FIRST AMENDMENT COALITION

19
20 By



21 DAVID LOY

AARON R. FIELD

22 Attorneys for Petitioner FIRST
23 AMENDMENT COALITION
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1 PROOF OF SERVICE

2 STATE OF CALIFORNIA, COUNTY OF MARIN

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

5 On July 13, 2026, I served true copies of the following document(s) described as
6 **PETITIONER'S REPLY IN SUPPORT OF (1) [PROPOSED] ORDER GRANTING**
7 **PETITIONER FIRST AMENDMENT COALITION'S MOTION FOR JUDGMENT; (2)**
8 **[PROPOSED] JUDGMENT; AND (3) [PROPOSED] PEREMPTORY WRIT OF**
9 **MANDATE** on the interested parties in this action as follows:

10 Jana Mickova Will
Office of the City Attorney
1200 Third Ave., Suite 1100
San Diego, California 92101
Email: jmickovawill@sandiego.gov; jnacar@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
13 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
15 foregoing is true and correct.

16 Executed on July 13, 2026, at East Palo Alto, California.

17 
18 Robin P. Regnier