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Attorneys for Respondents CITY OF FRESNO
and FRESNO CITY COUNCIL

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF FRESNO

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

Petitioners,

v.

THE CITY OF FRESNO, and THE FRESNO
CITY COUNCIL,

Respondents.

Case No. 23CECG04744

[Hon. Robert M. Whalen, Jr./ Dept 97D]

**REPLY BY RESPONDENTS TO
PETITIONERS' OPPOSITION TO
SUPPLEMENTAL MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF RESPONDENTS' MOTION
FOR NEW TRIAL**

Date: September 2, 2026
Time: 1:30 pm
Dept: 97D

Action Filed: November 15, 2023
Trial Date: March 18, 2026
Notice of Intent: May 19, 2026
Amended Notice of Intent: August 5, 2026

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1 Respondents, City of Fresno and the Fresno City Council (“Respondents” or “City”) hereby
2 incorporate by reference, as set forth in full herein, their reply to the Petitioners’ opposition to the
3 memorandum of points and authorities, pursuant to Code of Civil Procedure section 657, *et seq.*,
4 that Respondents filed and served on June 15, 2026.

5 A stipulation to defer entry of judgment in this case was filed with the Court on June 4, 2026,
6 which included that “[t]he Parties respectfully request that the Court defer entry of final judgment .
7 . . until after Respondents’ motion for a new trial *is decided* by this Court.” (*Id.* at page 2, lines 10
8 – 11 [emphasis added].) The stipulation does not include a limitation that the Respondents’ motion
9 for new trial be decided by August 3, 2026. Petitioners waived the argument they are making now
10 that the September 2, 2026 hearing date was improperly set by the Court by not including a limitation
11 that the Respondents’ motion for new trial be heard by August 3, 2026 in the stipulation.

12 Additionally, Code of Civil Procedure section 660(c) provides that “[i]f the motion [for new
13 trial] is not determined within the 75-day period, *or within that period as extended*, the effect shall
14 be a denial of the motion without further order of the court.” (*Id.* [emphasis added].) Petitioners
15 ignore that Respondents’ amended notice of intent to move for a new trial extended the 75-day
16 period for the Court to hear and decide Respondents’ motion for new trial per section 660(c).
17 Respondents filing an amended notice of intent to move for a new trial was proper because the above
18 stipulation does not include a limitation that the motion for new trial be heard by August 3, 2026.

19 Petitioners also argue that the expiration of the 75-day period for deciding a motion for new
20 trial is the equivalent of an automatic denial *with prejudice* of a motion for new trial even where, as
21 here, the deadline to file a motion for new trial has not yet expired. Code of Civil Procedure section
22 660(c) does not state that a denial with prejudice occurs after the expiration of the 75-day period for
23 a court to decide a motion for new trial. The law is well-settled that a denial of a motion without
24 prejudice allows a party to re-file a new motion if the deadline to file that new motion has not yet
25 expired (as in this case). Respondents properly filed an amended notice of intent to move for a new
26 trial because judgment has not yet been entered in this case. Even if, for the sake of argument only,
27 Respondents’ motion for new trial was denied by operation of law (without prejudice) there was not
28 a decision by the Court denying Respondents’ motion for new trial with prejudice and therefore

1 Respondents could file an amended notice of intent to move for a new trial.¹

2 Moreover, as Petitioners concede in their opposition, the Court has inherent authority to
3 change its decision at any time before entry of judgment and after a motion for new trial is filed.
4 (Opposition, at page 3, line 14 to page 4, line 17, footnote 1; *Fischer v. First Int'l Bank* (2003) 109
5 Cal. App. 4th 1433, 1451) Petitioners attempt to distinguish *Fischer* by arguing that the Court
6 cannot consider any new issues of fact beyond the evidence originally submitted before the Court's
7 decision. (*Id.* at page 3, lines 18 – 19.)

8 However, Petitioners do not explain how each of Respondents' arguments that were made
9 in their motion for new trial are dependent on new evidence. Petitioners appear to be referring to
10 the declarations and evidence submitted by Respondents in support of one of the several arguments
11 made by Respondents in support of their motion for new trial. Respondents' declarations and
12 evidence supported how a procedural error occurred in this case because the case was decided
13 through a motion for judgment when the decision is based on disputed facts.² That procedural error
14 is not dependent on the presentation of new facts. Instead, that basis for the Court to set aside its
15 decision concerns an issue that was decided by the Court (if a standing committee was formed by
16 the City Council in January 2023), which was not an issue argued by Petitioners in this case and in
17 their motion for judgment.

18 Petitioners argued in their motion for judgment that a standing committee *should have* been
19 formed by the City Council. In the decision, the Court found that a standing committee *was formed*
20 by the City Council in January 2023 and then the Council was required to hold agendized meetings
21 under the Brown Act. That issue is beyond the scope of Petitioners' motion for judgment and is
22 based on disputed facts.

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25 ¹ This is an alternative basis for the Court to consider Respondents' motion for new trial if the 75-
26 day period operated *arguendo* as a denial of Respondents' motion for new trial, which Respondents
dispute.

27 ² The majority of the arguments made by Respondents in their motion for new trial do not rely on
28 the declarations and evidence that Respondents submitted in support of their motion for new trial.

1 Deciding the above issue (that was not argued by Petitioners) is a procedural irregularity in
2 the decision. Likewise, issues of disputed fact, including the above issue, cannot be decided through
3 a motion for judgment as a matter of law. A motion for judgment must be decided based on
4 undisputed facts and issues that are raised in the motion for judgment (as explained by Respondents
5 in their reply brief that was filed with the Court on June 15, 2026).

6 For the foregoing reasons, the Court can vacate its May 4, 2026 decision on the Court's own
7 motion and take the matter under submission again, or grant Respondents' motion for new trial.

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9 Respectfully submitted,

10 DATED: August 13, 2026

ALESHIRE & WYNDER, LLP
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13 By:



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16 and FRESNO CITY COUNCIL
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STATE OF CALIFORNIA, COUNTY OF FRESNO

On August 13, 2026, I served true copies of the following document(s) described as **REPLY BY RESPONDENTS TO PETITIONERS' OPPOSITION TO SUPPLEMENTAL MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF RESPONDENTS' MOTION FOR NEW TRIAL** on the interested parties in this action as follows:

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address rramirez@awattorneys.com 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.

Executed on August 13, 2026, at Fresno, California.

Shelly Ramirez

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SERVICE LIST
American Civil Liberties Union, et al. v. City of Fresno, et al.
Fresno County Superior Court Case No. 23CECG04744

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