Fifth Civil Number _____

In the Court of Appeal of the State of California

FIFTH APPELLATE DISTRICT

CITY OF FRESNO,

Defendant and Petitioner,

v.

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF FRESNO,

Respondent,

AMERICAN CIVIL LIBERTIES UNION OF SOUTHERN CALIFORNIA,

Plaintiff and Real Party in Interest.

From the Superior Court of the State of California
For the County of Fresno, B.F. Sisk Courthouse
Case No. 24CECG01635
The Hon. W. Kent Hamlin, Dept. 53, Tel.: (559) 457-6348

PETITION FOR WRIT OF MANDATE OR OTHER APPROPRIATE RELIEF AND REQUEST FOR STAY [ACCOMPANIED BY APPENDIX OF EXHIBITS]

LEWIS BRISBOIS BISGAARD & SMITH LLP
Tony M. Sain, SBN 251626
Tony.Sain@lewisbrisbois.com
Abigail J.R. McLaughlin, SBN 313208
Abigail.McLaughlin@lewisbrisbois.com
633 W. 5th Street, Suite 4000
Los Angeles, California 90071
Telephone: 213.250.1800
Facsimile: 213.250.7900

Attorneys for Defendant and Petitioner
CITY OF FRESNO

COURT OF APPEAL FIFTH APPELLATE DISTRICT, DIVISION	COURT OF APPEAL CASE NUMBER:
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: NAME: Tony M. Sain (SBN 251626); Abigail J.R. McLaughlin (SBN 313208) FIRM NAME: Lewis Brisbois Bisgaard & Smith LLP STREET ADDRESS: 633 W. 5th Street, Suite 4000 CITY: Los Angeles STATE: CA ZIP CODE: 90071 TELEPHONE NO.: (213) 250-1800 FAX NO.: (213) 250-7900 E-MAIL ADDRESS: Tony.Sain@lewisbrisbois.com; Abigail.McLaughlin@lewisbrisbois.com ATTORNEY FOR (*name*): Defendant and Petitioner, City of Fresno	SUPERIOR COURT CASE NUMBER: 24CECG01635
APPELLANT/ PETITIONER: CITY OF FRESNO RESPONDENT/ REAL PARTY IN INTEREST: SUPERIOR COURT OF FRESNO; AMERICAN CIVIL LIBERTIES UNION OF SOUTHERN CALIFORNIA	
CERTIFICATE OF INTERESTED ENTITIES OR PERSONS *(Check one):* ☒ INITIAL CERTIFICATE ☐ SUPPLEMENTAL CERTIFICATE	

Notice: Please read rules 8.208 and 8.488 before completing this form. You may use this form for the initial certificate in an appeal when you file your brief or a prebriefing motion, application, or opposition to such a motion or application in the Court of Appeal, and when you file a petition for an extraordinary writ. You may also use this form as a supplemental certificate when you learn of changed or additional information that must be disclosed.

1. This form is being submitted on behalf of the following party (*name*): Defendant and Petitioner, City of Fresno

2. a. ☒ There are no interested entities or persons that must be listed in this certificate under rule 8.208.

   b. ☐ Interested entities or persons required to be listed under rule 8.208 are as follows:

Full name of interested entity or person	Nature of interest *(Explain):*
(1)	
(2)	
(3)	
(4)	
(5)	

☐ Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: June 13, 2025

Abigail J.R. McLaughlin
(TYPE OR PRINT NAME)

/s/ Abigail J.R. McLaughlin
(SIGNATURE OF APPELLANT OR ATTORNEY)

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INTRODUCTION & SUMMARY OF THE ARGUMENT

Petitioner City of Fresno ("Defendant" or "City of Fresno") seeks relief from Respondent Court's order granting Plaintiff and Real Party in Interest American Civil Liberties Union of Southern California's ("Plaintiff" or "ACLU") peremptory writ of mandate and directing disclosure of records requested by Plaintiff via the California Public Records Act ("CPRA").

To put it simply, ACLU requested certain records from City of Fresno involving the City of Fresno's uses of force involving

any injuries by police dogs ("K-9s"), no matter how insignificant, and alleged that City of Fresno improperly withheld or redacted certain records that ACLU believed were disclosable under Penal Code § 832.7: which requires the CPRA disclosure of a record relating to the report, investigation, or findings of an incident involving the use of force against a person by a peace officer or custodial officer that resulted in death or great bodily injury.

The crux of this dispute is how to define "great bodily injury" ("GBI") for purposes of CPRA disclosure of police use of force incidents resulting in injuries: since the GBI term is not defined within Penal Code § 832.7 or the CPRA.

ACLU argued in support of, and Respondent Court embraced, a *broad* definition of GBI based on Penal Code § 12022.7, a sentencing enhancement statute that has nothing to do with police use of force or the CPRA: which defines GBI as a "significant or substantial physical injury." Significantly, however, relying upon case law that further evaluates the utterly unrelated Penal Code § 12022.7's definition of GBI in the context of sentencing enhancement, Respondent Court found that GBI for CPRA purposes could include anything from physical pain to lacerations, bruises, or abrasions: ostensibly creating such a broad definition of GBI that all records of any use of police force causing *any* injury of any degree (no matter how small), or even just physical pain, would be rendered disclosable under Penal Code § 832.7's 2019+ expansion of CPRA disclosability.

By contrast, petitioner City of Fresno argued in support of a CPRA-specific *narrow* definition of GBI that is both more consistent with how that term is used in the context of case law involving police use of force, as well as being more consistent with the legislative intent of the 2019 statutory revision: that its history reveals was amended away from broader scopes of potentially disclosable records so that only the most "serious" use of force complaints would be CPRA-disclosable.

Yet, in reaching its decision embracing the broad definition of GBI, Respondent Court erred: as such broad definition is in contradiction to both a plain text reading of Penal Code § 832.7 as well as the legislative intent behind such statute. Specifically, Respondent Court erred in granting Plaintiff's peremptory writ of mandate for three reasons.

First, Respondent Court failed to conduct a proper plain text reading of Penal Code § 832.7. A plain text reading would have led Respondent Court to the *dictionary* definition of GBI: which states that GBI occurs when there is physical injury suffered by the victim of a violent crime that causes a substantial risk of death, extended loss or impairment of a body part or function, or permanent disfigurement. Such plain text definition is far different from including mere physical pain, bruises, and lacerations – as the case law associated with the sentencing enhancement version of GBI does. Instead, Respondent Court improperly defined GBI based on Penal Code § 12022.7 and its associated case law, even though that statute has no bearing on

the CPRA and disclosure of documents, and turning to case law to define such a term is *not* a proper "plain text" reading. Such reliance on Penal Code § 12022.7 was thus in error.

Second, by adopting a broad definition of GBI that drops all the way down to physical pain, Respondent Court directly contradicted the legislative intent: which makes it clear that the revisions and amendments to Senate Bill 1421 ("SB 1421"), which codified Penal Code § 832.7 effective 2019, were meant to *reduce* its scope of CPRA disclosures away from broader disclosability down to only the most "serious" complaints; *not to expand* its scope. Indeed, there is no rational argument to be made that, in seeking to revise earlier drafts of SB 1421 so as to limit CPRA disclosures *only* to the most "serious" use of force injuries that the Legislature intended a revision that would, in effect, make *all* use of force incidents (or, at a minimum, *all* pain-inducing uses of force) disclosable.

Third, Respondent Court's error is further underscored by the fact that trial courts even within the Fresno County Superior Court conflict on how to define GBI. For example, in *Howey v. City of Fresno, et al.*, the trial court determined that GBI is interpreted to *exclude* burns, abrasions, punctures, or lacerations from a TASER. Yet, Respondent Court has interpreted GBI to include lacerations, abrasions, or punctures from a canine, as well as mere physical pain. Both definitions cannot be correct, and only one complies with the legislative intent that CPRA

disclosures under Penal Code § 832.7 should only be limited to the most "serious" uses of force.

Immediate writ relief is thus appropriate to provide guidance on what the CPRA defines as GBI, which is a hotly contested issue that has resulted in conflicting trial court opinions, while forcing law enforcement agencies to divert sometimes crushing amounts of resources away from public safety needs: so as to address overbroad CPRA requests seeking to win by litigation what was not won by legislation – a GBI broadened to sweep essentially all uses of force into disclosability.

Not only does this case present a pure legal issue appropriate for decision by this Court, if immediate relief is not granted, Defendant will be required to disclose records that are otherwise protected from disclosure under the CPRA while facing an even greater avalanche of CPRA requests delving into all manner of police investigatory records in any way related to any use of force. Immediate review would thus promote increased clarity on the issue of what constitutes a GBI under the CPRA throughout the state as a whole when considering CPRA requests for information under Penal Code § 832.7, and to sorting whether in seeking to "limit" the 2019+ CPRA revisions to only the most "serious" complaints, the Legislature intended to drown its police agencies statewide in a flood of CPRA disclosures.

PETITION

Petitioner City of Fresno ("Defendant" or "City of Fresno") respectfully petitions this Court for a writ of mandate, or other

appropriate relief, directed to respondent court, and by this verified petition alleges:

A. Parties.

1. City of Fresno is a defendant in an action pending before the Superior Court of the State of California, Fresno County, entitled *American Civil Liberties Union of Southern California v. City of Fresno*, Case Number 24CECG01635. [6 App., Exh. 21, p. 1639.]

2. Respondent, the Superior Court of the State of California, for the County of Fresno, is now, and at all times mentioned herein has been, exercising judicial functions in connection with this action. [1 App., Exh. 2, pp. 29, 31.]

3. The underlying action was brought by real party in interest, plaintiff, American Civil Liberties Union of Southern California ("ACLU"). [1 App., Exh. 1, p. 16.]

B. ACLU Serves a Public Records Request on City of Fresno and City of Fresno Responds, Including Production of Responsive Documents, Which ACLU Deems Insufficient.

4. On March 27, 2023, ACLU submitted a CPRA request to City of Fresno seeking public records regarding the City of Fresno Police Department's use of police dogs ("K-9s"). [1 App., Exh. 4, pp. 70-72.] As relevant to this petition, the CPRA request sought the following types of police records: (1) any completed use of force forms or use of force reports concerning use of a K-9; (2) use of force reports documenting K-9 bite(s)

and/or injur(ies); (3) records, including reports, concerning accidental K-9 bite(s) and/or injur(ies); and (4) all records relating to the report, investigation, or findings of a K-9 incident involving use of force resulting in death or great bodily injury, unreasonable or excessive force, failure to intervene against another officer using unreasonable or excessive force, dishonesty about a K-9 incident, or discriminatory use or threat of K-9 force. [*Id.* at pp. 70-71.]

5. On April 7, 2023, pursuant to Government Code § 7922.535(b), City of Fresno provided an initial response to ACLU's CPRA Request, stating that City of Fresno needed additional time to respond. [1 App., Exh. 4, pp. 74-75.]

6. On June 2, 2023, City of Fresno provided a substantive response to ACLU's March 27, 2023 CPRA request, including that City of Fresno had located records responsive to ACLU's requests for civilian complaints and use of force reports, was currently reviewing those records, and would provide a supplemental response by June 30, 2023. [2 App., Exh. 8, pp. 313-314.]

7. On June 30, 2023, City of Fresno provided the supplemental response and additional disclosure/production, stating that it provided a response to the entirety of the March 27, 2023 request, but also stating which responsive records (if any) had been redacted and/or withheld based on applicable exemptions under the Government Code, Penal Code, Evidence Code, and applicable case law. [1 App., Exh. 4, pp. 149-151.] In

total, City of Fresno produced/disclosed 991 pages of police records in response to ACLU's CPRA request, including 788 pages of Use of Force Reports related to use of K-9s and 12 pages of Accidental Bite Reports, which were appropriately redacted pursuant to applicable exemptions. [2-5 App., Exh. 8, pp. 310, 315-1257.] Such records included a summary of complaints with K-9 related allegations closed from January 1, 2019 to May 19, 2023, the date, location, and certain factual details as to accidental K-9 bites, and the date, case number, incident location, and use of force details regarding K-9 uses of force, *i.e.* reason for using force, whether the citizen was injured, and locations of injury sustained by the citizen. [*Id.* at pp. 315-1257.] In essence, the undisclosed records were police use of force records from 2019 to 2023 that, upon review by the City, did *not* involve K-9 force causing death or, applying the City's narrow definition thereof, causing GBI. [2 App., Exh. 8, pp. 310-311; 5 App., Exh. 13, pp. 1387-1388.]

8. On November 17, 2023, ACLU sent correspondence to City of Fresno alleging that City of Fresno improperly withheld and/or redacted records in response to ACLU's March 27, 2023 CPRA request. [1 App., Exh. 4, pp. 155-160.]

9. On December 12, 2023, City of Fresno responded to this correspondence and stated that City of Fresno's redaction and/or withholding of responsive documents was appropriate under the CPRA, and City of Fresno stood by its response that the records requested by ACLU were exempt/not disclosable and

not subject to any exception[1] to nondisclosure because incidents involving K-9 uses of force – *i.e.*, bites – do not involve the use of force against a person by a peace officer or custodial officer that resulted in death or great bodily injury that would render such

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[1] Since, to a casual reader, the CPRA contains many provisions that can be quite confusing (or even seem contradictory), the following terms are used herein to clarify the operation of disclosability under the CPRA.

All public records are disclosable under the CPRA unless a statutory *exemption* applies. For example, the CPRA exempts all police investigatory records from disclosure. (Gov. Code, § 7923.600, subd. (a).)

However, both before 2019 and certainly since 2019, there are some narrow *exceptions* to those exemptions that restore the disclosability of otherwise exempt records (the term "exceptions," though found nowhere in the CPRA, being less confusing than describing such as exemptions from the exemptions). For example, certain arrest report information is excepted from the police investigatory records exemption under certain conditions, and often dependent upon the identity of the requester, so as to restore such information to disclosability. (Gov. Code, §§ 7923.605, 7923.610.) Similarly, SB 1421 created new exceptions to the police investigatory records exemption: such as making records of an officer-involved shooting ("OIS") of or at a person disclosable under the CPRA, regardless of whether such OIS caused any injury. (Pen. Code, § 832.7, subd. (b)(1)(A)(i).)

Furthermore, both before 2019 and certainly since 2019, there are also some even narrower *caveats* to those exceptions which restore otherwise excepted/disclosable records back to non-disclosability – often on a temporary or conditional basis. For example, after 2019, even otherwise-excepted/disclosable OIS records would become temporarily non-disclosable, for up to 180 days, if an associated administrative investigation remained incomplete. (Pen. Code, § 832.7, subd. (b)(8)(C).)

records disclosable under the CPRA pursuant to Penal Code § 832.7(b)(1)(A)(ii). [1 App., Exh. 4, pp. 164-166.]

C. ACLU Files a Writ Petition to Enforce Disclosure-Production Pursuant to its CPRA Request.

10. On April 22, 2024, ACLU filed its Verified Petition for Writ of Mandate and Complaint for Injunctive and Declaratory Relief. [1 App., Exh. 1, pp. 16-23.]

11. In this Verified Petition, ACLU alleged that City of Fresno had disregarded its legal obligation under the CPRA and article I, section 3 of the California Constitution to disclose public records by withholding certain responsive records and redacting information from responsive records that were produced/disclosed. [1 App., Exh. 1, pp. 16-23.] ACLU further alleged that City of Fresno could not demonstrate that the purportedly outstanding responsive records are exempt under the express provisions of the CPRA, or any authority, or that on the facts of this particular case, the public interest served by nondisclosure of records was clearly outweighed by the public interest served by the disclosure. [*Ibid*.]

12. The ACLU's request for relief included the following: (1) issuance of a peremptory writ of mandate directing City of Fresno to immediately disclose all non-exempt, requested public records, or parts thereof, in its possession; (2) an injunction requiring City of Fresno to produce all disclosable records and to re-produce records absent improper redactions, forthwith; (3) a declaration that City of Fresno's conduct violates the CPRA in

failing to timely disclose all non-exempt, requested public records in its possession, and in improperly redacting information from the records it did produce; (4) reasonable attorneys' fees pursuant to Code of Civil Procedure § 1021.5 and Government Code § 7923.115(a); (5) costs of the suit pursuant to Government Code § 7923.115(a); and (6) such other and further relief as the Court deemed just and proper. [1 App., Exh. 1, p. 26.]

13. On June 3, 2024, City of Fresno filed its Answer to ACLU's Verified Petition. [1 App., Exh. 2, pp. 29-40.]

D. ACLU's Motion for Judgment and the Court's Request for Supplemental Briefing.

14. On July 15, 2024, ACLU filed its Motion for Judgment on Verified Petition for Writ of Mandate and Complaint for Injunctive and Declaratory Relief, arguing that City of Fresno was required to disclose/produce all records responsive to ACLU's March 27, 2023 CPRA Request for two reasons. [1 App., Exh. 3, pp. 41-61.] First, the records did not fall under the CPRA's "catch-all" exemption because the public's interest weighs heavily in favor of disclosure. [*Ibid*.] Second, the records were not exempt from disclosure under federal or state law. [*Ibid*.]

15. On September 5, 2024, City of Fresno timely filed its Opposition to ACLU's Motion for Judgment, arguing that the requested records were subject to the law enforcement/police investigatory records exemption under Government Code §§ 7923.600(a) and 7923.605(b) and that the withheld K-9 force

records were not disclosable because they did not involve a use of force that resulted in great bodily injury ("GBI") or death; so the Penal Code § 832.7(b)(1)(a)(ii) exception to the law enforcement/police investigatory exemption did not apply. [1 App., Exh. 5, pp. 167-191.]

16. City of Fresno's Opposition included a detailed argument regarding the fact that Penal Code § 832.7(b)(1)(a)(ii) does not explicitly define GBI and that Petitioner's definition of GBI was flawed and overly broad: as it would encompass injuries causing some physical pain or damages, such as lacerations, bruises, or abrasions. [1 App., Exh. 5, pp. 167-191.] City of Fresno asserted that, based on the legislative history of the statute and case law associated *with police use of force* (*not* sentencing enhancement), GBI *only* includes life-threatening and potentially permanent, disabling injuries. [*Ibid*.]

17. On September 11, 2024, ACLU filed its Reply, rebutting that the responsive records were not law enforcement/police investigatory records because they were created as part of routine operational procedures to document an officer's use of reportable force; and that, even if the records were law enforcement/police investigatory records, City of Fresno was required to produce/disclose responsive records because they involved infliction of GBI as defined by Penal Code § 12022.7: "a significant or substantial physical injury," which ACLU alleged K-9 uses of force frequently cause. [1 App., Exh. 9, pp. 1260-1270.]

18. On January 8, 2025, the Parties appeared for hearing on ACLU's Motion for Judgment. [5 App., Exh. 10, p. 1271] The Court provided its initial thoughts on the briefing, but requested the Parties provide supplemental briefing on the following issues: (1) whether or not K-9 use of force reports and accidental bite reports are law enforcement/police investigatory records; (2) whether the exception for disclosure of certain incident-arrestee and limited arrestee information applied; (3) whether the law enforcement/police investigatory records exemption has an end date; and (4) why the legislative intent/history must be reviewed in order to determine the proper definition of GBI. [5 App., Exh. 12, pp. 1304-1384.] The Court ordered the Parties to simultaneously file their supplemental briefs on March 7, 2025 and scheduled a further hearing on March 21, 2025. [5 App., Exh. 10, pp. 1272-1273.]

19. On March 7, 2025, the Parties timely filed their Supplemental Briefs. [5 App., Exh. 11, pp. 1276-1301; 5 App., Exh. 14, pp. 1391-1402.]

20. In its Supplemental Brief, ACLU again argued that the responsive records were administrative, not investigatory, so the law enforcement/police investigatory records exemption did not apply. [5 App., Exh. 14, pp. 1391-1402.] The ACLU further argued that City of Fresno could not claim entire categories of records are exempt without an individualized inquiry into whether the record was investigatory and/or describes an incident involving GBI and that City of Fresno's blanket

redactions were improper. [*Ibid.*] Finally, ACLU argued that, because K-9 uses of force often cause GBI – which (according to ACLU) would include lacerations, bruises, deep punctures, muscle and bone damages, disfigurement, and permanent nerve damage – as defined by Penal Code § 12022.7 and applicable case law, City of Fresno was required to assess each record to determine if it described GBI and, if it did, produce/disclose that record. [*Ibid.*]

21. City of Fresno argued in its Supplemental Brief that (1) consistent with precedent, police use of force reports, including K-9 reports and accidental bite reports, are law enforcement investigatory records because incidents occur as part of police investigations; (2) there is no applicable exception to the law enforcement/police investigatory records exemption as to ACLU's CPRA request, and such exemption does not have an end date; and (3) the legislative history of SB 1421 demonstrated that GBI is to be narrowly construed to mean serious injuries only, which does not include the kinds of punctures, lacerations, and bruises typically associated with dog bites – so the requested records remained exempt from disclosure under the CPRA. [5 App., Exh. 11, pp. 1276-1301.] The City had also submitted evidence that, in withholding certain police records, it had conducted a *particularized* review of its police records to determine whether any specific records of incidents involving a

K-9 use of force had actually resulted in[2] death or GBI: thus confirming that the City's determination of the scope of disclosable records was *not* generalized. [*Ibid.*]

E. Respondent Court Issues Judgment Granting Peremptory Writ of Mandate and Statement of Decision, Ordering City of Fresno to Provide the ACLU with the Requested Records.

22. After hearing oral argument on March 21, 2025, the court took the matter under submission. [6 App., Exh. 16, p. 1576.]

23. On May 19, 2025, the Court issued its Judgment Granting Peremptory Writ of Mandate and Statement of Decision. [6 App., Exh. 18, pp. 1616-1625.] In its Statement of Decision[3], the Court focused on the Parties' disagreement on whether the requested records were investigatory reports exempt from disclosure by Government Code § 7923.600 and, if so, whether some or all of those records are nevertheless required to be produced pursuant to Penal Code § 832.7(b)(1)(A)(ii). [*Ibid.*]

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[2] Notably, although the term "resulted in" remains undefined in the CPRA, all parties and the Respondent Court treated that term to equate to causation. [6 App., Exh. 18, p. 1624.]

[3] Significantly, the Respondent Court presumed that the police records sought by ACLU were police investigatory records otherwise subject to the associated exemption: and that the issue was whether the GBI exception applied. [6 App., Exh. 18, pp. 1618-1624.] The Respondent Court also presumed that the City had conducted a particularized review of records in its possession: rather than asserting a generalized exemption based on incident or force type. [*Id.* at p. 1622.]

The Respondent Court found that the language of Penal Code § 832.7 was "unambiguous" because GBI had a well-accepted meaning under the Penal Code – a "significant or substantial physical injury" as defined by Penal Code § 12022.7 – yet the Respondent Court then proceeded to look to *case law* that further defined GBI under Penal Code § 12022.7 so as to demonstrate that GBI, according to that Court, included some physical pain or damage: such as lacerations, bruises, abrasions, or physical pain. [*Ibid*.]

24. Moreover, despite stating that the Legislature's intent in using GBI was clear, and the plain language of the statute controls, the Court then discussed the legislative history of SB 1421, finding that there was no intention of the legislature to *narrow* the circumstances in which Penal Code § 832.7 requires disclosure of reports evidencing injury, and that a subsequent bill attempting to expand the disclosure had no bearing on the legislature's intent in passing SB 1421 in its final form. [6 App., Exh. 18, pp. 1627-1638.]

25. Based on this, the Court found that City of Fresno had a duty to produce every responsive record that evidenced a K-9 deployment that caused its version of great bodily injury, as defined in Penal Code § 12022.7(f) and reported court cases interpreting the term, as well as records reflecting a sustained finding involving a complaint that alleges unreasonable or excessive force by means of a canine deployment. [6 App., Exh. 18, pp. 1627-1638.] The Respondent Court thus ordered a

peremptory writ of mandate issue directing City of Fresno to promptly provide ACLU with responsive records and granting ACLU's request to recover costs; however, significantly, the Respondent Court nevertheless denied ACLU's request for attorney's fees. [*Ibid.*]

F. Timeliness of This Petition.

26. This petition challenges respondent court's May 19, 2025 judgment granting peremptory writ of mandate. Under Government Code § 7923.500, "[a]n order of the court, . . . directing disclosure by a public official . . . is not a final judgment or order . . . from which an appeal may be taken, but shall be immediately reviewable by petition to the appellate court for the issuance of an extraordinary writ." A party's petition after such order must be filed "within 20 days after service upon the party of a written notice of entry of the order," which is increased by five days if mailed. (Gov. Code § 7923.50, subd. (b), (c).)

27. On May 19, 2025, the clerk served by mail the court's judgment granting peremptory writ of mandate and statement of decision. [6 App., Exh. 19, p. 1626.] Thus, under Government Code § 7923.500, this writ petition seeking review of the judgment must be filed by June 13, 2025.

G. Reporter's Transcript.

28. The reporter's transcript of the hearings on ACLU's Motion for Judgment held on January 8, 2025 and on March 21, 2025 are included in the appendix of exhibits filed with this

petition. [5 App., Exh. 12, pp. 1305-1363; 6 App., Exh. 17, pp. 1578-1615.]

H. This Petition is Authorized by Statute and Extraordinary Relief is Necessary.

29. As stated above, "[a]n order of the court . . . directing disclosure by a public official . . . is not a final judgment or order . . . from which an appeal may be taken, but shall be immediately reviewable by petition to the appellate court for the issuance of an extraordinary writ." (Gov. Code § 7923.500(a).)

30. If immediate relief is not granted, Defendant will be required to produce/disclose records that are exempt from production/disclosure under the CPRA – further burdening the City and forcing additional diversion of its resources from other public safety needs. Immediate review would thus serve the purpose of clarifying, throughout the state as a whole, the issue of what constitutes a GBI under the CPRA when considering requests for information under Penal Code § 832.7. Thus, this is an appropriate matter to be considered on petition for writ of mandate. (*Fisherman's Wharf Bay Cruise Corp. v. Superior Court of San Franscico* (2003) 114 Cal.App.4th 309, 319-320.)

PRAYER

Defendant and petitioner, City of Fresno, pray this Court:

1. Issue a peremptory writ in the first instance and/or an alternative writ directing Respondent Court to vacate its order

of May 19, 2025 judgment granting peremptory writ of mandate and to enter a new order denying such peremptory writ;

2. Award petitioners their costs in this proceeding; and

3. Grant any other relief that is just and proper.

DATED: June 13, 2025

LEWIS BRISBOIS BISGAARD & SMITH LLP

By: */s/ Abigail J.R. McLaughlin*
Tony M. Sain
Abigail J.R. McLaughlin
Attorneys for Defendant and Petitioner
CITY OF FRESNO

VERIFICATION

I, Abigail J.R. McLaughlin, declare as follows:

I am an attorney duly licensed to practice in all courts of the State of California and am a partner of Lewis Brisbois Bisgaard & Smith LLP, attorneys of record for defendant and petitioner herein. I have read the foregoing petition and know its contents. The facts alleged in the petition are true of my own knowledge.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct, and that I executed this declaration on June 13, 2025, in Los Angeles, California.

/s/ Abigail J.R. McLaughlin
Abigail J.R. McLaughlin

MEMORANDUM OF POINTS AND AUTHORITIES

I. Writ Relief Is a Proper Remedy to Review an Order Erroneously Directing Disclosure Under the CPRA.

A writ of mandate is an appropriate method by which a party can obtain judicial review of an order directing CPRA disclosure by a public official. (Gov. Code, § 7923.500, subd. (a).) Writ relief is authorized when there is no other plain, speedy, or adequate remedy. (Code Civ. Proc., § 1086.) Here, because an order of a court directing disclosure by a public official is not a final judgment or order, Defendant's only method of obtaining relief – and avoiding the floodgates of burden the Respondent Court's error is likely to unleash – is through a petition for the issuance of an extraordinary writ. (Gov. Code, § 7923.500, subd. (a).)

II. Respondent Court Erred as a Matter of Law in Directing Defendant to Disclose Certain Records Under the CPRA.

A. Standard of Review.

The appellate court independently reviews the trial court's ruling on a petition filed pursuant to the CPRA. (*Fairley v. Superior Court* (1998) 66 Cal.App.4th 1414, 1422; *Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325, 1336.) The trial court's factual findings will be upheld only if they are based on substantial evidence. (*Fairley, supra,* at p. 1422.)

B. Respondent Court Did Not Properly Conduct a Plain Text Reading of Penal Code § 832.7 and Erred in Defining GBI Based on Penal Code § 12022.7.

In answering questions of statutory interpretation, a court's "primary task is to determine the lawmakers' intent": which is a process that may involve three steps. (*MacIsaac v. Waste Management Collection & Recycling, Inc.* (2005) 134 Cal.App.4th 1076, 1082.)

First, courts look to the words of the statute itself, as chosen language is the most reliable indicator of its intent. (*Environmental Health Advocates, Inc. v. Sream, Inc.* (2022) 83 Cal.App.5th 721, 729.) "If the statutory language is clear and unambiguous, [the court's] task is at an end, for there is no need for judicial construction." (*Id.* [quoting *MacIsaac*, *supra*, at p. 1083].)

Here, Respondent Court found that the language of Penal Code § 832.7 was unambiguous, as GBI "has a well-accepted meaning in the law – a significant or substantial physical injury," citing Penal Code § 12022.7. However, it was improper for Respondent Court to rely on Penal Code § 12022.7 to define GBI in the context of the CPRA.

1. A Proper Plain Text Reading Supports Defendant's Definition of GBI Because Such Would Rely Upon That Term's Ordinary Meaning Under The CPRA Statutory Scheme.

It is undisputed that the term "great bodily injury" is not defined in Penal Code § 832.7 or anywhere else in the CPRA: and Penal Code § 12022.7 is not part of the CPRA and, by its own language, has nothing to do with when or how public agencies must disclose public records. "When a term goes undefined in a statute [at issue], we give the term its *ordinary* meaning." (*Taniguchi v. Kan Pacific Saipan, Ltd.* (2012) 566 U.S. 560, 566 (emphasis added).) However, in doing so, a plain text reading looks only to the language *of statute at issue* and/or to its *statutory scheme*: *not* to unrelated statutes. (*See, e.g.*, *Meza v. Portfolio Recovery Associates, LLC* (2019) 6 Cal.5th 844, 856-57 ["[W]e consider portions of a statute in the context of the entire statute *and the statutory scheme of which it is part*, giving significance to every word, phrase, sentence, and part of an act in pursuance of the legislative purpose."] (cleaned up).)

Along similar lines, the application of case law definitions of challenged terms exceeds the scope of a "plain text" reading: because such necessarily shows that the statutory term at issue was *not* unambiguous enough to permit a plain text reading. (*See Morrical v. Rogers* (2013) 220 Cal.App.4th 438, 442, 450-458 [analyzing plain language of statute, *then* context of statutory scheme, legislative history, and case law]; *People v. Gomez* (2025)

110 Cal.App.5th 419, 429 ("*If* the statutory language permits more than one reasonable interpretation, courts may consider other aids[.]"] (emphasis added).)

Thus, when applying a proper plain text reading, "[i]n divining a term's 'ordinary meaning,' court's regularly turn to general and legal dictionaries." (*De Vries v. Regents of University of California* (2016) 6 Cal.App.5th 574, 591.)

Here, however, that is *not* what Respondent Court did. If it had, Respondent Court would have found that the "ordinary meaning" of GBI can be found in the dictionary: specifically, Merriam-Webster defines "great bodily injury" as a "physical injury suffered by the victim of a violent crime that causes a substantial risk of death, extended loss or impairment of a body part or function, or permanent disfigurement"; "physical injury that is more serious than that ordinarily suffered in a battery." (Merriam-Webster Legal Dict. Online, "great bodily injury" <http://www.merriam-webster.com/legal/great%20bodily%20injury> [as of June 5, 2025].) Significantly, this is largely identical to Defendant's proffered definition of GBI. [1 App., Exh. 5, p. 187; 5 App., Exh. 11, p. 1294 ("GBI should and must be defined as force [resulting in an injury] that involves a substantial risk of death, unconsciousness, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member or organ.").]

2. Respondent Court Improperly Based its Plain Text Reading on a Statute Wholly Unrelated to the CPRA Statutory Scheme.

Furthermore, rather than conducting a proper plain text reading of Penal Code § *832.7*, Respondent Court improperly looked to another statute: Penal Code § *12022.7*, which provides for a sentencing enhancement for certain felony crimes where a person inflicted GBI – defined as "a significant or substantial physical injury" (without any statutory definition beyond such term) – to any person, other than an accomplice, in commission of such felony. Clearly, this statute has *nothing* to do with the CPRA or any disclosure of any public records, and thus the Respondent Court should *not* have used it to define GBI in the context of the CPRA statutory scheme. (*See Becerra v. Superior Court* (2020) 44 Cal.App.5th 897, 917-18 [interpreting Penal Code § 832.7 on its own and in conjunction with the CPRA, *not* unrelated statutes]; *People v. Plumlee* (2008) 166 Cal.App.4th 935, 940 ["To the extent the language in the statute may be unclear, we look to legislative history and the statutory scheme of which the statute is part. We look to the entire statutory scheme in interpreting particular provisions so that the whole may be harmonized and retain effectiveness."] (cleaned up); *Meza*, *supra*, 6 Cal.5th at 856-57.)

Moreover, in allegedly conducting its "plain text" interpretation of GBI under the CPRA, the honorable Respondent Court then even went a step further in its error by relying on *case law* interpretations of Penal Code § 12022.7 to further define GBI

all the way down to physical pain. [6 App., Exh. 18, p. 1620.] For example, Respondent Court relied on *People v. Washington*, which explicitly defined "great bodily injury" as "'significant or substantial physical injury' *beyond that which is inherent in the underlying offense*'" upon which the conviction was obtained. (*People v. Washington* (2012) 210 Cal.App.4th 1042, 1047; *accord People v. Wallace* (1993) 14 Cal.App.4th 651 [finding that certain injuries qualified as GBI because they were not the type of injury routinely associated with sexual assault].)

However, under Penal Code § 832.7, when it comes to what is and what is not disclosable under the CPRA, *there is no requirement of conviction for underlying criminal offense* to determine records disclosability: only the question of whether an incident involved "the use of force against a person by a peace officer or custodial officer that resulted in death or in great bodily injury." (Pen. Code, § 832.7, subd. (b)(1)(A)(ii).) Indeed, under the CPRA, there could be *no* underlying offense conviction, and police record disclosure might still be required. (*See* Gov. Code, § 7923.800 [discussing disclosure of firearm licenses and related records]; *see generally* Pen. Code, § 832.7.)

Moreover, once one must rely upon extensive case law to cobble together a definition of a term that otherwise lacks clear definition in its own statutory scheme, then such term can no longer be described as "clear and unambiguous": because, at that point, such term patently required "judicial construction" for definition – negating the suitability of a plain text reading. (*See*

Conservatorship of T.B. (2024) 99 Cal.App.5th 1361, 1379 ["First, we look to the words of the statute itself, as the chosen language is the most reliable indicator of its intent. If the statutory language is clear and unambiguous, our task is at an end, for there is no need for judicial construction."] (cleaned up); *Smart Corner Owners Association v. CJUF* (2021) 64 Cal.App.5th 439, 460 ["When the statutory text is ambiguous . . . we proceed to the second step, and look to the statute's legislative history and the historical circumstances behind its enactment."] (cleaned up).)

Despite the fact that Penal Code § 832.7 and the CPRA do *not* define GBI, Respondent Court failed to turn to the ordinary meaning of that term – *i.e.* the dictionary's definition – and it instead erroneously chose to declare that an utterly unrelated statute's language was clear and applicable to the CPRA. This is far from viewing Penal Code § 832.7 in the required statutory context. (*Poole v. Orange Cty. Fire Auth.* (2015) 61 Cal.4th 1378, 1384 [noting importance of reading statutory language in context of statutory scheme and analyzing neighboring provisions of the at-issue Firefighters Procedural Bill or Rights Act].)

Accordingly, because Respondent Court erred by failing to conduct a proper plain text reading of Penal Code § 832.7's exception to CPRA's police investigatory records exemption, this Court should properly conduct a plain text reading – the result of which will find that the appropriate definition of GBI is the *narrow* definition proffered by Defendants: force that involves a substantial likelihood of death, unconsciousness, protracted and

obvious disfigurement, or protracted loss or permanent impairment of the function of a bodily member or organ.

3. Respondent Court Failed to Recognize That There Are Other Legal Definitions of GBI in the Proper Context of Police Use of Force That Support City of Fresno's Narrow Definition of GBI.

Unfortunately, the honorable Respondent Court attempts to justify its error by stating that there was simply no other legal definition of the term "great bodily injury": which is a demonstrably inaccurate statement of the law. [6 App., Exh. 18, p. 1619.] As an initial matter, as noted above, the Merriam-Webster Legal Dictionary defines GBI as City of Fresno does.

However, more importantly, City of Fresno provided Respondent Court with a myriad of cases underscoring how the term GBI is defined *in the context of police uses of force – not* sentencing enhancements: and police uses of force, and their associated injuries, are at the centerpiece of the disputed portion of the CPRA. Specifically, in the case law associated with police uses of force, particularly in those cases distinguishing deadly force from non-deadly force, GBI is defined to include *only* life-threatening and potentially permanent, disabling injuries. [1 App., Exh. 5, pp. 177-182.] Specifically, in cases centered on police uses of force, GBI is used interchangeably with the term serious bodily injury ("SBI"): so as to refer to a kind of force likely to result in injuries *far more severe* than mere abrasions,

contusions, lacerations, punctures, minor burns, or physical pain. (*See, e.g.*, *People v. Arnett* (2006) 129 Cal.App.4th 1609, 1613 [when it comes to police use of force standards, GBI and SBI have "substantially the same meaning."; *People v Knoller* (2007) 41 Cal.4th 139, 143 n.2 [stating that the "the two terms are 'essentially equivalent'"]; *see also* Pen. Code, § 835a (amend. 2019) [an officer is "justified in using deadly force . . . when an officer reasonably believes, based on the totality of circumstances, that such force is necessary . . . to defend against an imminent threat of death or serious bodily injury . . . "].) This is because, in the context of police use of force, which is the subject of the records ACLU was seeking through its CPRA request, GBI is typically paired with death as the type of result that, in order to be avoided, deadly force is authorized for use by police officers.

Moreover, in statutes relating to police use of force, such as those requiring annual reporting on officer-involved shootings and "incident[s] in which the use of force by a peace officer against a civilian results in serious bodily injury or death," SBI is defined as "a bodily injury that involves a substantial risk of death, unconsciousness, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member or organ." (Gov. Code, § 12525.2, subd. (d)(4).)

Additionally, aside from making OIS force directed at people CPRA-discoverable, Penal Code § 832.7 also expressly makes two more types of force disclosable: any police use of force that results in death, *and* any police use of force that results in

GBI. (Pen. Code, § 832.7, subd. (b)(1)(A)(ii).) This pairing of GBI with death suggests that GBI is meant to be the kind of injury serious enough to be *comparable* to death. This would thus place the CPRA definition of GBI in line with those authorities defining police-related "deadly force" as being "force that creates a substantial risk of causing death or serious bodily injury." (Pen. Code, § 835a, subd. (2)(1); *Tennessee v. Garner* (1985) 471 U.S. 1, 9 n. 8; *Smith v. City of Hemet* (9th Cir. 2005) 394 F.3d 689, 706 ["deadly force" is "force employed [that] 'creates a substantial risk of causing death or serious bodily injury'"]; *accord Koussaya v. City of Stockton* (2020) 54 Cal.App.5th 902, 932-934 [explaining the 2020 amendments to Penal Code § 835a]; *Long Beach Police Officers Assn. v. City of Long Beach* (1976) 61 Cal.App.3d 364, 368, 375.)

Notably, in terms of severity of injury, case authorities on deadly force always pair "death" and a definition of SBI/GBI that is more consistent with the dictionary and Government Code § 12525.2 SBI definition: namely, in such authorities, SBI/GBI does not include less serious injuries like abrasions, bruises, punctures, physical pain, and the like – but, rather SBI/GBI only includes life-threatening and potentially permanent, disabling injuries. (*See id.*; *see also Thompson v. Cty. of Los Angeles* (2006) 142 Cal.App.4th 154, 165-166 [use of a police dog – whose bite injuries typically result in punctures, lacerations, contusions, and physical pain – does *not* constitute deadly force under California law]; *Bryan v. Macpherson* (9th Cir. 2009) 630 F.3d 805, 825-826 [use of TASER darts – which typically cause puncture injuries,

burn-like abrasions, temporary/localized immobility, and debilitating physical pain – does *not* constitute deadly force]; *Young v. Cty. of Los Angeles* (9th Cir. 2011) 655 F.3d 1156, 1161-62 [use of pepper spray chemical agents – which typically cause some irritation, burning sensations, very brief/temporary blindness, and physical pain – does *not* constitute deadly force].)

Moreover, the statutory scheme of the CPRA is also housed in California's *Government* Code, where the narrower definition of SBI/GBI consistent with case law definitions of police-related SBI/GBI can be found; *unlike* the Penal Code definition relied upon by Respondent Court.

Thus, in the context of a statutory scheme relating to police uses of force, GBI has a meaning akin to "a bodily injury that involves a substantial risk [or likelihood] of death, unconsciousness, protracted and obvious disfigurement, or protracted loss or [permanent] impairment of a bodily member or organ." [1 App., Exh. 5, p. 187.] (*See* Gov. Code, § 12525.2, subd. (d)(4).)

Notwithstanding the foregoing, the Respondent Court found that, "[t]he substitution of the words 'great bodily injury' in place of 'serious bodily injury,' *with a specific reference to the code section defining that term*, can only be interpreted as an intent to expand the exemption and increase the public's right of access." [6 App., Exh. 18, pp. 1622-1623.]

Yet, there is no specific reference to Penal Code § 12022.7 in the legislative history of Penal Code § 832.7 or within the statute itself. Indeed, why would there be when Penal Code § 832.7 deals with the disclosure of law enforcement records under the CPRA, where Penal Code § 12022.7 deals with sentencing enhancements?

Accordingly, here, the improper basis for Respondent Court's plain text reading clearly led to an erroneous interpretation of legislative intent when everything is viewed in the context of an inapplicable sentencing enhancement statute – particularly in light of the legislative history (as explained in more detail in another section below).

C. Respondent Court's Erroneous Definition of GBI Creates Absurd Results.

One of the canons of statutory construction that the honorable Respondent Court erroneously disregarded was that, particularly when confronted with an otherwise vague statutory term, a statutory construction that would lead to absurd results must be disfavored in comparison to a construction that does not lead to absurd results. (*See People v. O'Bannon* (2024) 105 Cal.App.5th 974, 980 ["We reject any interpretation that would lead to absurd consequences."]; *see also In re Williamson* (1954) 43 Cal.2d 651, 654 ["It is the general rule [of statutory construction] that where the general statute standing alone would include the same matter [conduct] as the special [specific] act, and thus conflict with it, the special act will be considered as

an exception to the general statute whether it was passed before or after such general enactment."].)

1. One Absurd Result Of The Broad GBI Would Be To Authorize Police Deadly Force On Danger Of Only Pain.

However, the Respondent Court's definition of GBI – as encompassing even physical pain or temporary damage, like lacerations, bruises, and abrasions –would essentially devour the privileged exemption afforded by the CPRA under Government Code § 7923.600. This is because, in such an event, virtually any and all police uses of force would fall into the CPRA-discoverable category of officer uses of force resulting in death or GBI. In other words, the Respondent Court's broad GBI definition would effectively void the Government Code § 7923.600 exemptions from disclosure for uses of force that resulted in nothing more than minor scrapes, bruises, abrasions, burns, lacerations, or even physical pain.[4]

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[4] It is worth noting that all uses of physical "force" involve *some* physical pain: otherwise such would *not* be *physical* force. An officer placing a loose escort grip on a cooperative subject might technically, under police/civil rights case law, be considered a "use of force": but such would *not* result in injury in any reasonably foreseeable scenario. (*See Graham v. Connor* (1989) 490 U.S. 386, 396-397 [recognizing "that the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it"].) By contrast, where the subject resists, the officer would be required to tighten her grip to overcome that resistance, which it

As discussed above, "deadly force" is force which, from the perspective of the force-wielding officer, under the totality of the circumstances known to that officer at the time it is used, creates a foreseeable and substantial likelihood of death or great bodily injury. (*See Smith*, *supra*, 394 F.3d at p. 693; Pen. Code, § 835a.) Significantly then, applying ACLU's broad definition of GBI to police use of force in the CPRA context would also have the bizarre side effect of lowering the threshold for when officers could use deadly force.

This is because, under both California[5] and federal law, law enforcement officers are authorized to use deadly force when, from the perspective of a reasonable officer under the totality of the circumstances known to the force-wielding officer at the time, it is objectively reasonable for the force-wielding officer to reasonably believe that he or she faces an immediate threat of

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is reasonably foreseeable could result in at least *some* physical pain to the subject.

ACLU's broad definition would make every single such non-injurious-but-painful firm grip escort hold into a CPRA disclosable use of force.

[5] Penal Code § 835a uses the SBI term in authorizing deadly force, *not* GBI. However, although California law also has a statutory definition for SBI – "a bodily injury that involves a substantial risk of death, unconsciousness, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member or organ" (Gov. Code, § 12525.2, subd. (d)(4)) – *California* law further holds that, in the police use of force context, SBI and GBI are fungible. (*Arnett*, *supra*, 129 Cal.App.4th at p. 1613.) Thus, ACLU's broad definition of GBI would also necessarily impact *California's* standard for use of deadly force.

death or GBI. (*People v. Morales* (2021) 69 Cal.App.5th 978, 994 [holding that self-defense by deadly force is lawful when the person is facing "imminent attack that might result in death or great bodily injury"]; *Munoz v. City of Union City* (2004) 120 Cal.App.4th 1077, 1105-1106 [concluding that officers' deadly force is authorized to prevent GBI]; *Edson v. City of Anaheim* (1998) 63 Cal.App.4th 1269, 1272 [approving jury instruction that officer deadly force is reasonable where the officer "reasonably believed" a suspect "posed an immediate threat of great bodily injury or death"]; *Acosta v. City & Cnty. of San Francisco* (9th Cir. 1996) 83 F.3d 1143, 1145 fn.3 [observing that deadly force is lawful to protect against GBI]; *see also Graham*, *supra*, 490 U.S. at pp. 396-397; *cf.* Pen. Code, § 835a (using SBI for same rule); *Arnett*, *supra*, 129 Cal.App.4th at p. 1613. [holding that, in the police use of force context, SBI and GBI are interchangeable.)

Thus, if Respondent Court's/ACLU's broad GBI definition applied to police use of force and CPRA disclosures thereof, logically, this would also mean that officers would be authorized to shoot/kill for nothing more than a reasonable belief that they were about to face a painful bruise. (*Compare Washington*, *supra*, 210 Cal.App.4th at pp. 1047-1048 ["some physical pain or damage, such as lacerations, bruises, or abrasions" constitutes great bodily injury] *with Munoz*, *supra*, 120 Cal.App.4th at pp. 1105-1106 [concluding that officers' deadly force is authorized to prevent "great bodily injury"].) Thus, Respondent Court's proffered broad definition of GBI creates a legal absurdity – that

officers can start killing civilians just because they face a threat of pain – that should not be perpetuated by this Court.

2. Another Absurd Result Of The Broad GBI Construction Is That Precedent Defining K-9s, TASER Darts, and Impact Weapons To The Body As Non-Deadly Uses Of Force Would Now Effectively Raise Such To Deadly Force.

Significantly, as to K-9 uses of force (*i.e.* dog bites, in particular), it is well known in the case law and otherwise that K-9 bites typically cause punctures and lacerations. (*See*, *e.g.*, *Hernandez v. Town of Gilbert* (D. Ariz. 2019) 2019 U.S. Dist. LEXIS 61480, *28-29 [police K-9 dog bites caused lacerations and fractures to suspect's foot]; *Vargas v. Whatcom Cty. Sheriff's Office* (W.D. Wash. 2021) 2021 U.S. Dist. LEXIS 29770, *9 [police K-9 dog bites caused punctures to foot, nerve damage, and chronic pain]; *Martus v. Terry* (D. Nev. 2011) 2011 U.S. Dist. LEXIS 36296, *4-5, 8-14 [police K-9 dog bites caused punctures to hip and loss of the tip of the suspect's index finger, but force still analyzed as non-deadly].) Thus, many courts have determined that the use of a police K-9 does *not* constitute a substantial risk of causing death or GBI. (*See, e.g.*, *Lowry v. City of San Diego* (9th Cir. 2017) 858 F.3d 1248, 1254, 1257 [deployment of a police K-9 amounted to moderate force where canine bit suspect's upper hip, causing her to receive three stitches]; *Vera Cruz v. City of Escondido* (9th Cir. 1998) 139 F.3d 659, 664 [defining "deadly force" as "that force which is reasonably likely to cause death" and finding the possibility of death from a properly trained police

dog too remote to constitute deadly force]; *Robinette v. Barnes* (6th Cir. 1988) 854 F.2d 909, 912 [holding that "the use of a properly trained police dog to apprehend a felony suspect does not carry with it a 'substantial risk of causing death or serious bodily harm'"]; *Kuha v. City of Minnetonka* (8th Cir. 2003) 365 F.3d 590, 598 ["We find the likelihood of death from the use of a properly trained police dog to apprehend a suspect sufficiently remote as to preclude its characterization as deadly force."].)

It is further well known in the case law and otherwise that electronic control weapons (TASERs) typically cause punctures in their probe or dart stun mode, and they cause burn-like dots or abrasions in their drive-stun mode. (*See*, *e.g.*, *Carroll v. Ellington* (5th Cir. 2015) 800 F.3d 154, 166 (acknowledging that puncture wounds on the chest and flank could be consistent with TASER probe deployments); *see also Mattos v. Agarano* (9th Cir. 2011) 661 F.3d 433, 443 (distinguishing the neuromuscular full body incapacitation of TASERs in dart mode versus the pain-only effects of TASERs in drive stun to contact mode).) It is also well known in the case law and otherwise that impact weapons, like police batons and flashlights, typically cause contusions and possibly fractures. (*See*, *e.g.*, *People v. Odom* (2016) 244 Cal.App.4th 237, 241 (observing that parallel contusions could be consistent with being struck by a police baton); *Ervin v. Merced Police Dept*. (E.D. Cal. 2015) 2015 U.S. Dist. LEXIS 136655, *26-30 (police baton use that fractured teeth evaluated by court as non-deadly force); *Valiavacharska v. Celaya* (N.D. Cal. 2011)

2011 U.S. Dist. LEXIS 109164, *1-2 (police baton fractured fingers).)

Yet, under prevailing case law, none of these uses of force are considered to be deadly force: rather police K-9 dog bites, impact weapons (like police batons) to the body, pepper spray, and a TASER in dart mode are all considered to be non-deadly/intermediate force under prevailing police use of force case law. (*See Brewer v. City of Napa* (9th Cir. 2000) 210 F.3d 1093, 1098 [police K-9 dogs' bites are non-deadly intermediate force]; *Thomson v. Salt Lake County* (10th Cir. 2009) 584 F.3d 1304, 1316 [potential for greater harm does not transform use of a police dog into deadly force]; *Bryan*, *supra*, 630 F.3d at pp. 825-826 [TASERs are non-lethal force, but when used in dart mode, they are non-lethal intermediate force requiring the presence of a threat of harm to be justified; also noting that pepper spray and impact weapons are non-deadly force]; *Young v. Cty. of Los Angeles*, *supra*, 655 F.3d at pp. 1161-62 [pepper spray and baton strikes are non-deadly intermediate force]; *Forrester v. City of San Diego* (9th Cir. 1994) 25 F.3d 804, 806-808 [pain compliance techniques such as firm grip restraint, pressure holds, and arm/wrist twisting are non-deadly force]; *Deorle v. Rutherford* (9th Cir. 2001) 272 F.3d 1272, 1279-1280 [impact weapon, including cloth-cased shot akin to a rubber bullet, was non-deadly force as a matter of law]; *Jackson v. Cty. of San Bernardino* (C.D. Cal. 2016) 191 F.Supp.3d 1100, 1114-1115 [noting that TASERs are not lethal force unless used on a person in danger of falling to their death, *i.e.*, a known substantial risk of death].)

However, if Respondent Court's overly broad definition of GBI is applied, because all of these force options are all likely to cause physical pain, all non-deadly force options – police K-9s, batons, pepper spray, TASERs – would automatically be considered force that causes death or GBI under California law – contrary to controlling case law: and such would thus be elevated to deadly force.

D. Another Absurd Result Would Be That, In Revising SB 1421 To Limit CPRA-Disclosable Force Incidents Only To The Most "Serious" Complaints, The Legislature Instead Broadened Disclosability To All Police Uses Of Force.

In claiming to rely upon the legislative intent for the drafting of SB 1421, the honorable Respondent Court noted that, at one point in the drafting process, the Legislature swapped the term SBI for the GBI term. [6 App., Exh. 18, pp. 1622-1623.] However, the Respondent Court's overreliance on this revision ignores other amendments more revealing of the legislative intent here.

In other words, although the Respondent Court claimed to conduct a plain text reading of the statute to come to its decision, Respondent Court also considered the legislative history of Penal Code § 832.7. Though such is not wholly improper, the Respondent Court's interpretation of the legislative history is contrary to the substantial evidence: which makes the Respondent Court's analysis improper and erroneous. (*See Hughes v. Pair* (2009) 46 Cal. 4th 1035, 1046 ["[W]e also look to

legislative history to confirm our plain-meaning construction of statutory language."]; *People v. Superior Court of Riverside Cty.* (2022) 81 Cal.App.5th 851, 862 ["We may also consider the wider historical circumstances of a statute's enactment in ascertaining legislative intent."].)

Here, the legislative history of SB 1421 reveals that Respondent Court's broad definition of GBI cannot be consistent with the definition of GBI used for the purposes of determining which uses of force by police are disclosable under the CPRA.

Specifically, in adopting the broad definition of GBI championed by the ACLU, the Respondent Court ignored the substantial evidence provided by the City: including comments outlining the legislative intent by the Senate committee that make it clear that the revisions and amendments to SB 1421, including substituting GBI for "serious bodily injury", were meant to *reduce* its scope down to only the most "serious" complaints, *not to expand* its scope.

The pre-SB 1421 legislative history is instructive in understanding that a broader scope of disclosability was rejected by the Legislature. Specifically, a precursor to SB 1421 was Senate Bill 1286 ("SB 1286"). Introduced on February 19, 2016, SB 1286 desired to "require . . . certain peace officer…personnel records and records relating to complaints against peace officers and custodial officers to be available for public inspection pursuant to the [CPRA], including: [¶] [any] record related to the investigation or assessment of any use of force by a peace officer

that is likely to or does cause death or serious bodily injury, including but not limited to, the discharge of a firearm, use of an electronic control weapon or conducted energy device [TASER], and any strike with an impact weapon to a person's head." [1 App., Exh. 7, p. 205.] Notably, SB 1286 died in committee.

Like SB 1286, the substantial evidence submitted by the City shows that the originally-introduced version of SB 1421 that amended Penal Code section 832.7 mandated CPRA disclosure of records related to: (1) incidents involving the discharge of a firearm at a person by an officer; (2) incidents involving the discharge of an electronic control weapon or conduct energy device at a person by an officer; (3) incidents involving a strike with an impact weapon or projectile to the head or neck of a person by an officer; and (4) incidents involving use of force by an officer which results in death or serious bodily injury, as specifically defined in Penal Code § 243(f). [6 App., Exh. 7, pp. 218-219.]

Thus, this early version of SB 1421 also defined the type of injury that rendered investigative reports disclosable under the CPRA more narrowly than Respondent Court did: especially considering that, under the Penal Code section cited by that version of SB 1421 (Section 243(f)), "'[s]erious bodily injury' means a serious impairment of physical condition, including, but not limited to, the following: loss of consciousness; concussion; bone fracture; protracted loss or impairment of function of any

bodily member or organ; a wound requiring extensive suturing; and serious disfigurement." (Pen. Code, § 243, subd. (f)(4).)

As is evident, this language explicitly including incidents involving non-deadly/intermediate force (TASERs, impact weapons) along with incidents involving discharge of a firearm *and* incidents that result in death and *serious* bodily injury (as opposed to *great* bodily injury) does *not* appear in the final statute. (*See* Pen. Code § 832.7; *accord* AB 748 [amended on August 17, 2018 to include incidents involving TASERs and impact weapons, but final language of Gov. Code § 6354(f) (2019) removed such language].)

Significantly, however, under this new range of excepted records than what was ultimately adopted, the Senate Floor Analysis explicitly stated that "SB 1421 opens police officer personnel records in *very limited* cases, allowing local law enforcement agencies and law enforcement oversight agencies to provide greater transparency around *only* the *most serious* police complaints." [1 App., Exh. 7, p. 247 (emphasis added).]

It would be absurd to interpret the legislative intent as extending "the most serious police complaints" to those that, according to the broad GBI definition, do no more than cause physical pain or abrasions (scrapes) or contusions (bruises) or punctures. Yet, that is exactly what Respondent Court did.

Furthermore, embracing the precept that the incidents where disclosures are permitted should be "very limited," the bill

was then *further* amended by the Legislature to *remove* from the list of CPRA-disclosable force, use of an electronic control weapons (TASERs), as well as removing from the list of disclosable force strikes with impact weapons or projectiles to the head or neck of a person. [1 App., Exh. 7, pp. 255, 263.]

While Respondent Court attempted to argue that, because the original version of SB 1421 used SBI and then subsequently changed it to GBI, the Legislature consciously considered and rejected SBI and instead adopted GBI. [6 App., Exh. 18, pp. 1622-1623.] Yet, SBI also was not specifically defined in these earlier drafts *and* it was used *prior* to the removal of batons from the language: which, in turn, demonstrates that the Legislature did not consider the use of non-lethal, intermediate force to result in GBI. [1 App., Exh. 7, pp. 218-219, 255-256, 263.]

By narrowing the scope of CPRA-disclosable force to exclude TASERs and batons from the excepted/disclosable list, and by stating that the definitions of disclosable force were intended to be "very limited" to "only" the "most serious" uses of force, the Legislature showed that its intent here was more consistent with *narrowing*, *not* broadening, the scope of CPRA disclosable force: and, as a result, that the narrower construction of GBI that is used in evaluating police uses of force is more consistent with the legislative intent here.

More importantly, if – in its revision of the CPRA – the Legislature intended the broader Penal Code definition of GBI to apply to police force, then the legislative history would *not*

indicate (as it does) that the Legislature intended to *narrow* the scope of disclosable uses of force away from weapons that merely cause contusions, abrasions, lacerations, and punctures – as TASER, impact weapons, and police K-9s do.

In other words, to recap, the original version of SB 1421 would have made TASER uses of force and impact weapon uses of force CPRA disclosable: *as well as* OIS force at persons and force resulting in death or SBI. [1 App., Exh. 7, pp. 218-219.] As an initial matter, the author of SB 1421 would not have considered the inclusion of TASERs and impact weapons to be necessary to the disclosable list if death or SBI already covered such uses of force: rather, the logical, non-absurd construction is that the author did *not* believe that TASERs and impact weapons constituted force causing death or SBI. [*Ibid*.] (As noted above, TASERs can cause punctures, abrasions, bruising, and pain. (*Bryan*, *supra*, 630 F.3d at pp. 825-826) Similarly, impact weapons can cause fractures, contusions, and pain. (*Odom*, *supra*, 244 Cal.App.4th at p. 241).)

However, thereafter, to broaden the bill's support, both TASERs and impact weapons were dropped from the disclosable force incidents *and* the term SBI was replaced with GBI. [6 App., Exh. 7, pp. 255-256, 262-263.] But, in explaining this revision, the Senate committee specifically stated that the goal of the revisions was to reduce the scope of disclosures "only" in "very limited cases" involving the "most serious police" uses of force. [1 App., Exh. 7, p. 247.]

Thus, as noted above, given the patent limiting language used by the Legislature to describe *why* it was shifting to GBI, it is absurd to construe such limiting language as broadening rather than *narrowing* the scope of CPRA-disclosable force under the then-proposed SB 1421.

Moreover, that the revisions (including adoption of the GBI term) were intended to *narrow*, *not* broaden, the scope of CPRA disclosable force is further underscored by the fact that, before that revision – removing TASERs and impact weapons from the disclosable list – law enforcement public interest groups such as California Peace Officers Association were opposed to SB 1421; however, after those revisions, California Police Chiefs Association rescinded its opposition [1 App., Exh. 7, pp. 200-201, 225, 252, 290.] It would be an absurd result to construe the law enforcement community as opposing SB 1421's earlier, pre-revision burdens on their agencies for not being broad/burdensome enough.

Furthermore, as noted above, under the doctrine of statutory construction, when vague language in a statutory scheme conflicts with specific language in that same scheme, the specific language is deemed to control over the vague language. (*Arbuckle-College City Fire Protection Dist. v. Cty. of Colusa* (2003) 105 Cal.App.4th 1155, 1166 ["It is a general rule of statutory interpretation that, in the event of statutory conflict, a specific provision will control over a general provision."].)

Here, since GBI is undefined in the CPRA statutory scheme, and thus vague, the Court must ask itself if the proposed construction of the vague term conflicts with other specific language revealing the Legislature's intent. As noted above, the Respondent Court's/ACLU's broad GBI construction would have the (absurd) result of making *all* uses of force (or *all* pain-causing uses of force) CPRA disclosable.

But, if that was the Legislature's intent in passing SB 1421, then it would never have re-embraced the *Pitchess* personnel file information CPRA exemption (codified in both Penal Code § 832.7(a) *and* Government Code § 7923.600. If, as SB 1421's backers at the time claimed, the *Pitchess* privilege was an obstacle to the public's right to know about *all* uses of force (as opposed to "only" the most "serious" "complaints"), then why have any *Pitchess*-related limitation on disclosure?

If the Legislature intended such a radical change – making all police uses of force disclosable – where is the *specific* language authorizing such a revolution? The obvious answer is that there is *no* such specific overriding language because that was not the Legislature's intent here.

In sum, it would be inconsistent with the canons of statutory construction to believe that, in its attempt to *narrow* the scope of CPRA disclosure under the Penal Code § 832.7 exception, the Legislature adopted a term, GBI, that instead *broadened* the scope of disclosure to include, effectively, *all* uses of force.

Moreover, the legislative history *after* SB 1421's (and AB 748's) adoption likewise underscores that SB 1421 (and its similarly-worded sibling) were construed to be narrow, even by SB 1421's principal author. Specifically, the year after SB 1421 took effect, in 2020, Senator Skinner (who introduced SB 1421) introduced SB 776 in another attempt to broaden the Penal Code § 832.7 exception to *all* uses of force: *but that bill was rejected by the Legislature*. [1 App., Exh. 7, pp. 274, 277-278.]

If, as Respondent Court found, GBI was already meant to be broadly construed in SB 1421 (enacted in 2018, effective in 2019), the new 2020 bill would have been unnecessary, even in its sponsor's eyes.[6] It would be an absurd result to believe that SB 1421's own author believed that its scope needed to be broadened to all uses of force if, as the Respondent Court claims, SB 1421 already embraced all uses of force through the broad definition of GBI. That the substantial evidence shows that the contrary is

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[6] It is worth noting that the ACLU was one of SB 1421's supporters; and that it likewise supported SB 776. (ACLU Southern California, "California Passes Landmark Police Transparency and Accountability Legislation" (Aug. 31, 2018) <https://www.aclusocal.org/en/press-releases/california-passes-landmark-police-transparency-and-accountability-legislation> [as of June 5, 2025].) Moreover, when SB 1421 passed, ACLU's press statement described SB 1421 as making public "information about officers who shoot, kill, or engage in serious misconduct like falsifying evidence or committing sexual assault on the job." (*Id.*) Such is much more akin to the proper, narrow definition, rather than the one now proffered by ACLU. There is thus much truth to the notion that ACLU is now attempting to achieve by litigation what it was unable to achieve by legislation.

true likewise shows that the ACLU-championed broad definition cannot be consistent with the substantial evidence of the legislative history showing that the legislative intent for GBI's definition was meant to be *narrow*, not broad.

As a result, because Respondent Court's broad definition of GBI is both inconsistent with how GBI is defined in the context of police uses of force and it leads to absurd results that contradict the legislative intent revealed by the law's legislative history, the broad version of GBI cannot be the legally correct definition of GBI under CPRA provisions regarding police use of force.

E. There is also a Conflict Amongst Trial Courts as to What Constitutes Great Bodily Injury that Necessitates Review by Extraordinary Writ.

While Respondent Court embraced an improperly broad GBI definition that even included punctures, contusions, abarasions, and physical pain from K-9s, another department in the Fresno County Superior Court has interpreted GBI to *exclude* burns, abrasions, punctures, or lacerations from TASERs. (*Howey v. City of Fresno, et al.* (Nov. 1, 2023) Case No. 23CECG01468, Decision Denying Petitioner's Request for Writ of Mandate.) Both definitions cannot be correct: and only one is consistent with the legislative intent of SB 1421 to "open[] police officer personnel records in very limited cases, allowing local law enforcement agencies and law enforcement oversight agencies to provide greater transparency around only the most serious police complaints." (*See Becerra*, *supra*, at pp. 920-921.)

In *Howey*, the "only dispute [was] whether . . . multiple Taser applications . . . resulted in great bodily injury triggering a disclosure" of records under the CPRA pursuant to Penal Code § 832.7. (*Howey*, Case No. 23CECG01468.) That court found that "[n]o matter which definition [of Penal Code § 832.7] propounded by this court would choose [the narrow police-case version proposed by the City or the broad Section 12022.7 version proposed by plaintiff], neither would cause the disclosure of the documents . . . . The world is not so upside down a non-lethal device used to prevent injury to a suspect actively resisting detention would now be identified as a weapon which causes great bodily injury." (*Howey*, Case No. 23CECG01468.)

Yet, under Respondent Court's broad definition of GBI, the world would indeed be upside down: as such definition included "burns from being flex-tied and a burning sensation from an insecticide-like substance." (*Howey*, Case No. 23CECG01468 (citing *Wallace*, *supra*, at pp. 655-66).) TASERs can leave burns; so, based on Respondent Court's definition, a TASER *would* now be identified as a weapon which causes GBI, and thus a deadly-force weapon, which (heretofore) it has not been. (*See Matta-Ballesteros v. Henman* (1990) 896 F.3d 255, 256 n. 2 [describing a TASER as "a non-lethal device commonly used to subdue individuals resisting arrest"].)

Further, the *Howey* court determined that, "even if the court was to adopt the California Penal Code § 12022.7(f) definition . . . the injury suffered by Mr. Sanders at the hands of

these officers was not 'significant or substantial'. The puncture wounds were only 1/16 of an inch wide and did not result in any injury of significance to Mr. Sanders. The only effective use of the Taser was in drive stun mode, however its use was localized and only resulted in a small burn in one spot of that localized area." (*Howey*, Case No. 23CECG01468.) Particularly since this version of the Howey Court's opinion would disregard the case law definition of GBI, this opinion directly contradicts Respondent Court's broad GBI definition: which includes puncture wounds and lacerations.

Accordingly, if we were to accept Respondent Court's contention that GBI has a "well-accepted meaning in the law" in that it means "a significant or substantial physical injury," such meaning is *not* unambiguous where, as here, courts' definitions can and do differ. (*See Davis Boat Manufacturing-Nordic, Inc. v. Smith* (2023) 95 Cal.App.5th 660, 673 ["Only if two candidates of meaning each plausibly account for the statutory language can it be said that the statute is ambiguous."] (cleaned up).)

However, where, as here, both a *proper* plain text reading and a substantial evidence analysis of legislative intent demonstrates that GBI is meant to be *narrowly* construed – along the lines of "a bodily injury that involves a substantial risk [or likelihood] of death, unconsciousness, protracted and obvious disfigurement, or protracted loss or impairment of a bodily member or organ" – the honorable Respondent Court's broad GBI definition must be seen for what it is: prejudicial error.

1. Broader Disclosability Necessarily Increases The Burden Upon Law Enforcement Agencies, Forcing Them To Divert Resources From Protecting Public Safety To The Arduous Task Of Combing Through Voluminous Records.

Under the precepts of Government Code § 7922.000, the catch-all provision, where the public interests of non-disclosure outweigh the public interests in disclosure, the records at issue are exempt from disclosure. This precept likewise supports the notion that the narrow construction of GBI is more consistent with the legislative intent here.

It is an indisputable fact that law enforcement entities have finite resources. The more records through which they have to comb, the more byzantine legalese they have to decipher, and the more voluminous the amount of documents they have to collect and disclose/produce, the more resources such finite-resource agencies must divert from other priorities – like protecting public safety – to responding to CPRA requests.

Even an unscientific poll of virtually any metropolitan police agency in California is all but certain to reveal that, since 2019, the volume and complexity of responses to CPRA requests has increased dramatically. The broad GBI definition would increase that burden even more: draining resources from other areas of those agencies' priorities. The more that public safety must suffer because of an overbroad scope of CPRA disclosability,

as here, the more the public interest in non-disclosure necessarily outweighs the public interest in disclosure.

Thus, reading the precepts of the catch-all provision, which was completely undisturbed by the provisions of SB 1421 or its siblings, in conjunction with an analysis of SB 1421 likewise supports the narrow construction of SB 1421's use of GBI: to construe such term to be used as it is in the context of the records for which disclosure is sought – police uses of force.

CONCLUSION

For all of the above reasons, pending this Court's ruling on this petition, the Court should issue a peremptory writ of mandate in the first instance and/or an alternative writ directing respondent court to vacate its judgment granting peremptory writ of mandate and to enter a new order denying such peremptory writ.

Respectfully Submitted,

LEWIS BRISBOIS BISGAARD & SMITH LLP

Tony M. Sain

Abigail J.R. McLaughlin

Attorneys for Defendant and Petitioner
CITY OF FRESNO

CERTIFICATE OF COMPLIANCE WITH RULE 8.204

I, the undersigned, Abigail J.R. McLaughlin, declare that:

1. I am a partner of the firm of Lewis, Brisbois, Bisgaard & Smith LLP, counsel of record for defendant and petitioner City of Fresno.

2. This certificate of compliance is submitted in accordance with rule 8.204 of the California Rules of Court.

3. This petition for writ of mandate was produced with a computer. It is proportionately spaced in 13-point Century Schoolbook typeface. The petition contains 12,120 words, including footnotes.

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

Executed at Los Angeles, California, on June 13, 2025.

/s/ Abigail J.R. McLaughlin
Abigail J.R. McLaughlin

PROOF OF SERVICE

City of Fresno v. Superior Court of the State of California, County of Fresno

Fifth Civil Number _____

Superior Court Number: 24CECG01635

I, Corinne Taylor, state:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 633 West 5th Street, Suite 4000, Los Angeles, California 90071.

On June 13, 2025, I served the following document described as **PETITION FOR WRIT OF MANDATE OR OTHER APPROPRIATE RELIEF; CERTIFICATE OF INTERESTED PARTIES; 6-VOLUME APPENDIX OF EXHIBITS; WRIT INFORMATION SHEET; AND PROOF OF SERVICE** on all interested parties in this action through TrueFiling, addressed to all parties appearing on the electronic service list for the above-titled case. The service transmission was reported as complete and a copy of the TrueFiling Receipt/Confirmation will be filed, deposited or maintained with the original document in this office.

On June 13, 2025, I served the following document described as **PETITION FOR WRIT OF MANDATE OR OTHER APPROPRIATE RELIEF; CERTIFICATE OF INTERESTED PARTIES; 6-VOLUME APPENDIX OF EXHIBITS; WRIT INFORMATION SHEET; AND PROOF OF SERVICE** by placing a true copy enclosed in a sealed

envelope addressed as stated on the attached service list. I am readily familiar with the firm's practice for collection and processing correspondence for regular and overnight mailing. Under that practice, this document will be deposited with the Overnight Mail provider and/or U.S. Postal Service on this date with postage thereon fully prepaid at Los Angeles, California to addresses listed below in the ordinary course of business.

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

Executed on June 13, 2025, at Los Angeles, California.

/s/ Corinne Taylor
Corinne Taylor

SERVICE LIST

City of Fresno v. Superior Court of the State of California, County of Fresno.

Fifth Civil Number _____

Superior Court Number: 24CECG01635

Stephanie Padilla, Esq. (SBN 321568)
American Civil Liberties Union Foundation of Southern California, Inc.
1313 W. Eighth Street
Los Angeles, CA 90017
Telephone: (213) 977-9500
Facsimile: (213) 201-7878
Email: spadilla@aclusocal.org

Nicolas Hidalgo, Esq. (SBN 339177)
Angelica Salceda, Esq. (SBN 296152)
American Civil Liberties Union Foundation of Northern California, Inc.
39 Drumm Street
San Francisco, CA 94111
Telephone: (415) 621-2493
Facsimile: (415)255-1478
Email: nhidalgo@aclunc.org
asalceda@aclunc.org

Attorneys for Plaintiff and Real Party in Interest,
AMERICAN CIVIL LIBERTIES UNION OF SOUTHERN CALIFORNIA
(*Via TrueFiling*)

Superior Court of California, County of Fresno
B.F. Sisk Courthouse
The Honorable W. Kent Hamlin
1130 O Street
Fresno, CA 93721
(*Via Overnight Mail*)

California Supreme Court
Attn: Clerk of Court
350 McAlister Street, Room 1295
San Francisco, CA 94102
(*Via Electronic*)