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9 Attorneys for Defendant  
 BRANDI L. ORTH,  
 10 Fresno County Clerk/Registrar of Voters

11 **UNITED STATES DISTRICT COURT**  
 12 **FOR THE EASTERN DISTRICT OF CALIFORNIA**  
 13 **FRESNO DIVISION**  
 14

15 THE UNITARIAN UNIVERSALIST  
 16 CHURCH OF FRESNO

Case No. 1:19-CV-00808-NONE-BAM

17 Plaintiff,

**DEFENDANT FRESNO COUNTY  
 CLERK/REGISTRAR OF VOTERS  
 BRANDI L. ORTH'S NOTICE OF  
 MOTION AND MOTION TO DISMISS  
 FIRST AMENDED COMPLAINT OR, IN  
 THE ALTERNATIVE, MOTION FOR A  
 MORE DEFINITE STATEMENT**

18 v.

19 BRANDI L. ORTH, Fresno County  
 20 Clerk/Registrar of Voters

21 Defendants.

**[FRCP 12(b)(6); FRCP 12(e)]**

Hearing Date: March 11, 2020  
 Time: 8:30 A.M.  
 Dept.: 4  
 Judge: NONE

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 27 TO PLAINTIFF AND ITS ATTORNEYS OF RECORD:  
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1 PLEASE TAKE NOTICE that on Wednesday, March 11, 2020 at 8:30 a.m., or as  
2 soon thereafter as the matter may be heard in the above-entitled Court, located at 2500  
3 Tulare Street, Fresno, California, 93721,

4 Defendant Fresno County Clerk/Registrar of Voters Brandi L. Orth will move the  
5 Court to dismiss the action pursuant to FRCP 12(b)(6) on the grounds set forth below.  
6 This motion is made in compliance with the Court's Order for Filing of First Amended  
7 Complaint entered by the Court on January 22, 2020. (Docket No. 24).

8 1. Plaintiff's First Claim for Relief – Violation of the First Amendment, 42  
9 U.S.C. §1983; Content Discrimination fails to state a claim upon which relief can be  
10 granted, because the facts alleged establish that the complained of actions involve a  
11 matter of government speech allowing greater control of said speech by Defendant and  
12 Defendants alleged actions represent a narrowly crafted, minor interference with any  
13 free speech rights and are closely related to the furtherance of a substantial state  
14 interest, namely the efficient and neutral operation of polling locations.

15 2. Plaintiff's Second Claim for Relief – Violation of the First Amendment, 42  
16 U.S.C. §1983; Viewpoint Discrimination fails to state a claim upon which relief can be  
17 granted, because the facts alleged establish that the complained of actions involve a  
18 matter of government speech allowing greater control of said speech by Defendant and  
19 Defendants alleged actions represent a narrowly crafted, minor interference with any  
20 free speech rights and are closely related to the furtherance of a substantial state  
21 interest, namely the efficient and neutral operation of polling locations.

22 3. Plaintiff's Third Claim for Relief – Violation of the First Amendment, 42  
23 U.S.C. §1983; First Amendment Retaliation fails to state a claim upon which relief can  
24 be granted, because the facts alleged show no retaliation for the content of Plaintiff's  
25 alleged speech and the facts alleged establish that the complained of actions involve a  
26 matter of government speech allowing greater control of said speech by Defendant and  
27 Defendants alleged actions represent a narrowly crafted, minor interference with any  
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1 free speech rights and are closely related to the furtherance of a substantial state  
2 interest, namely the efficient and neutral operation of polling locations.

3 4. Plaintiff's Fourth Claim for Relief – Violation of the First Amendment, 42  
4 U.S.C. §1983; Overbreadth, Vagueness, Unbridled Discretion fails to state a claim upon  
5 which relief can be granted, because the facts alleged establish that the complained of  
6 actions involve a matter of government speech allowing greater control of said speech  
7 by Defendant and Defendants alleged actions represent a narrowly crafted, minor  
8 interference with any free speech rights and are closely related to the furtherance of a  
9 substantial state interest, namely the efficient and neutral operation of polling locations.

10 5. Plaintiff's Fifth Claim for Relief – Violation of the Fourteenth Amendment,  
11 42 U.S.C. §1983; Due Process fails to state a claim upon which relief can be granted,  
12 because the facts alleged establish that the complained of actions involve a matter of  
13 government speech allowing greater control of said speech by Defendant and  
14 Defendants alleged actions represent a narrowly crafted, minor interference with any  
15 free speech rights and are closely related to the furtherance of a substantial state  
16 interest, namely the efficient and neutral operation of polling locations. Further the  
17 allegations of the First Amended Complaint fail to show actions by Defendant sufficient  
18 to "shock the conscience" and thus fails to meet the high burden for pleading a due  
19 process cause of action.

20 In the alternative, Defendant moves the Court for an order directing Plaintiff to file a  
21 more definite statement pursuant to FRCP 12(e) on the following matters:

22 1. Plaintiff's First Cause of Action – Content Discrimination.  
23 Defendant desires Plaintiff to furnish the following details: the specific language, signs,  
24 symbols or other communications that Defendant is alleged to have favored over the  
25 allegedly discriminated against speech of the Plaintiff.

26 2. Plaintiff's Second Cause of Action – Viewpoint Discrimination.  
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1 Defendant desires Plaintiff to furnish the following details: the specific language, signs,  
2 symbols or other communications that Defendant is alleged to have favored over the  
3 allegedly discriminated against speech of the Plaintiff.

4 3. Plaintiff's Third Cause of Action – First Amendment Retaliation.

5 Defendant desires Plaintiff to furnish the following details: the specific language, signs,  
6 symbols or other communications that Defendant is alleged to have favored over the  
7 allegedly discriminated against speech of the Plaintiff. Plaintiff must also furnish  
8 specific factual allegations concerning the exact message with which Defendant is  
9 alleged to have disagreed, facts demonstrating that disagreement, facts demonstrating  
10 a retaliatory motive or intent by Defendant, and facts specifying the exact action or  
11 actions of Defendant that constitute retaliation.

12 The motion will be based on this Notice of Motion and Motion, the Memorandum of  
13 Points and Authorities and Request for Judicial Notice filed herewith and the pleadings  
14 and papers filed herein.

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16 Dated: February 12, 2020

Respectfully Submitted,

DANIEL C. CEDERBORG  
County Counsel

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19 By: /s/ Daniel C. Cederborg  
20 Attorneys for Defendant  
21 BRANDI L. ORTH, County  
22 Clerk/Registrar of Voters for the County  
23 of Fresno  
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