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14 **SUPERIOR COURT OF CALIFORNIA**
15 **IN AND FOR THE COUNTY OF SAN FRANCISCO**
16 **UNLIMITED JURISDICTION**
17

18 HOPE WILLIAMS, NATHAN SHEARD, and
19 NESTOR REYES,
20 Plaintiffs,
21 v.
22 CITY AND COUNTY OF SAN FRANCISCO,
23 Defendant.
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**ELECTRONICALLY
FILED**
*Superior Court of California,
County of San Francisco*
10/22/2021
Clerk of the Court
BY: SANDRA SCHIRO
Deputy Clerk

Case No.: CGC-20-587008

**PLAINTIFFS' SEPARATE
STATEMENT OF UNDISPUTED
MATERIAL FACTS IN
OPPOSITION TO DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT**

Hearing Date: December 17, 2021
Time: 9:30 a.m.
Department: 302

Action Filed: October 7, 2020
Trial Date: February 22, 2022

Pursuant to California Code of Civil Procedure § 437c(b)(3) and California Rules of Court 3.1350(e)–(f), Plaintiffs Hope Williams, Nathan Sheard, and Nestor Reyes, by and through their counsel, submit the following Separate Statement of Undisputed Material Facts in opposition to Defendant’s Motion for Summary Judgment. Plaintiffs respond to each of Defendant’s numbered paragraphs 1–9.

Following this response, and pursuant to California Rules of Court 3.1350(f)(3), Plaintiffs set forth, in paragraph 10–34, additional facts that are material to Defendant’s motion.

Defendant’s Undisputed Material Facts and Supporting Evidence	Plaintiffs’ Response and Supporting Evidence
<p>1. The Union Square Business Improvement District (“USBID”) is a California nonprofit corporation. It was formed by a majority of property owners within San Francisco’s Union Square area, and is a non-City entity.</p> <p>Supporting Evidence: Plaintiff’s Complaint (Exhibit D to Declaration of Wayne Snodgrass in Support of Defendant’s Motion for Summary Judgment (“Snodgrass Decl.”), at ¶¶ 23, 21; Joint Stipulations of Fact (“JSF”) 10, 11.</p>	<p>1. <u>Undisputed.</u></p>
<p>2. USBID operates a network of high-definition video surveillance cameras.</p> <p>Supporting Evidence: Plaintiff’s Complaint, at ¶ 23; JSF 12.</p>	<p>2. <u>Undisputed.</u></p>
<p>3. The 2019 San Francisco Pride celebration took place on June 29, 2019 and June 30, 2019.</p> <p>Supporting Evidence: Declaration of Oliver Lim in Support of Defendant’s Motion for Summary Judgment (“Lim Decl.”), at ¶ 3.</p>	<p>3. <u>Undisputed.</u></p>
<p>4. Shortly before the start of the 2019 Pride celebration, San Francisco Police Department (“SFPD”) Officer Oliver Lim, at the direction of his commanding officer, contacted Chris Boss, a representative of USBID, and requested that USBID allow the SFPD to have access to cameras in USBID’s surveillance camera network during the 2019 Pride celebration.</p>	<p>4. <u>Disputed.</u> As stated, this fact is accurate but incomplete. It omits that Officer Lim requested that the SFPD be allowed to access only the cameras within USBID’s camera network that viewed the Market Street area.</p> <p>Supporting Evidence:</p>

<p>1 Supporting Evidence: Lim Decl., at ¶ 4.</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p>	<ul style="list-style-type: none"> • Lim Decl., at ¶ 4 • Joint Stip. of Authenticity of Emails at Exh. 1 (email of June 19, 2019 from Lim to Boss) [Plaintiffs’ Compendium of Evidence in Opposition to Defendant’s Motion for Summary Judgment (“Pl. Opp. Compendium”), Exhibit DD] • Joint Stip. of Authenticity of Emails ¶ 1 (admitting the email is genuine) [Pl. Opp. Compendium, Exhibit DD]
<p>8 5. USBID agreed to give SFPD access to</p> <p>9 cameras in USBID’s surveillance camera network</p> <p>10 during the 2019 Pride celebration.</p> <p>11 Supporting Evidence: Lim Decl., at ¶ 5.</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p>	<p>5. <u>Disputed</u>. As stated, this fact is accurate but incomplete. It omits that the USBID agreed to give the SFPD access only to the cameras within USBID’s camera network that viewed the Market Street area.</p> <p>Supporting Evidence:</p> <ul style="list-style-type: none"> • Lim Decl., at ¶ 5 • Joint Stip. of Authenticity of Emails at Exh. 2 (email of June 27, 2019 from Boss to Lim) [Pl. Opp. Compendium, Exhibit DD] • Joint Stip. of Authenticity of Emails ¶ 2 (admitting the email is genuine) [Pl. Opp. Compendium, Exhibit DD]
<p>17 6. USBID provided SFPD with log-in</p> <p>18 credentials to commercial software which SFPD</p> <p>19 used to access cameras in USBID’s surveillance</p> <p>20 camera network for a period of up to 24 hours</p> <p>21 during the 2019 Pride celebration.</p> <p>22 Supporting Evidence: Lim Decl., at ¶ 5.</p> <p>23</p> <p>24</p> <p>25</p>	<p>6. <u>Disputed</u>. As stated, this fact is accurate but incomplete. It omits that the USBID provided the SFPD with log-in credentials to access only the Market Street cameras.</p> <p>Supporting Evidence:</p> <ul style="list-style-type: none"> • Lim Decl., at ¶ 5 • Joint Stip. of Authenticity of Emails at Exh. 2 (email of June 27, 2019 from Boss to Lim) [Pl. Opp. Compendium, Exhibit DD] • Joint Stip. of Authenticity of Emails ¶ 2 (admitting the email is genuine) [Pl. Opp. Compendium, Exhibit DD]
<p>26 7. The City’s Acquisition of Surveillance</p> <p>27 Technology Ordinance (Administrative Code</p> <p>28 Chapter 19B), the ordinance that plaintiffs allege the City violated through SFPD’s conduct in May-</p>	<p>7. <u>Disputed</u>. The quoted excerpt from Section 19B.5, the Ordinance’s grace period, is accurate but incomplete. The missing portions provide:</p>

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June 2020, states at Section 19B.5(d) that “[e]ach Department possessing or using Surveillance Technology before the effective date of this Chapter 19B may continue its use of the Surveillance Technology and the sharing of data from the Surveillance Technology until such time as the Board enacts an ordinance regarding the Department’s Surveillance Technology Policy and such ordinance becomes effective under Charter Section 2.105.”

Supporting Evidence: Snodgrass Decl., Ex. A, at p. 5.

(a) Each Department possessing or using Surveillance Technology before the effective date of this Chapter 19B shall submit an inventory of its Surveillance Technology to COIT, within 60 days of the effective date of this Chapter. COIT shall publicly post the inventory on COIT’s website.

(b) Each Department possessing or using Surveillance Technology before the effective date of this Chapter 19B shall submit a proposed Surveillance Technology Policy ordinance to the Board of Supervisors, in accordance with the procedures set forth in subsection 19B.2(b), for each particular Surveillance Technology no later than 180 days following the effective date of this Chapter, for review and approval by the Board by ordinance. A Department may submit a Surveillance Technology Policy ordinance that includes multiple, separate policies for each particular Surveillance Technology possessed or used before the effective date of this Chapter 19B.

(c) If a Department is unable to meet this 180-day timeline, the Department may notify the COIT in writing of the Department’s request to extend this period and the reasons for that request. COIT may for good cause grant a Department extensions of up to 90 days per extension, beyond the 180-day timeline to submit a proposed Surveillance Technology Policy.

Supporting Evidence:

- Snodgrass Decl., Ex. A, at p. 5.

8. The City’s Acquisition of Surveillance Technology Ordinance (Administrative Code Chapter 19B), the ordinance that plaintiffs allege the City violated through SFPD’s conduct in May-June 2020, took effect in July 2019.

Supporting Evidence: JSF 6; Plaintiff’s Complaint, ¶ 18.

8. Undisputed.

9. To date, the City’s Board of Supervisors has not enacted any ordinance regarding SFPD’s

9. Undisputed.

1	surveillance technology policies with respect to surveillance cameras owned by non-City entities, such as USBID.	
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3	Supporting Evidence: Declaration of Asja Steeves in Support of Defendant’s Motion for Summary Judgment (“Steeves Decl.”), at ¶ 5.	
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**PLAINTIFFS’ STATEMENT OF ADDITIONAL MATERIAL FACTS
PERTINENT TO THE DISPOSITION OF DEFENDANTS’ MOTION**

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8	Plaintiffs’ Undisputed Material Facts and Supporting Evidence	Defendant’s Response and Supporting Evidence
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I. Legislative Discussion on the Ordinance

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11	10. On May 14, 2019, the Board of Supervisors (“Board”) amended subsection 19B.5(d) of the proposed Acquisition of Surveillance Technology Ordinance (“the Ordinance”) to allow city departments “possessing and using” an existing surveillance technology to continue their use “until such time as the Board enacts an ordinance regarding the Department’s Surveillance Technology Policy” Prior to this amendment, section 19B.5 of the proposed Ordinance had stated: “If the Board has not approved a Surveillance Technology Policy for Surveillance Technology in use before the effective date of this Chapter 19B, within 180 days of its submission to the Board, the Department shall cease its use of the Surveillance Technology”	
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20	Supporting Evidence:	
21	<ul style="list-style-type: none"> • Draft of Acquisition of Surveillance Technology Ordinance, File No. 190110, at 14 (May 14, 2019) [Pl. Opp. Compendium, Exhibit BB] 	
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24	11. On May 14, 2019, Ordinance author Supervisor Aaron Peskin stated that the amended section 19B.5 “allows departments to continue use of surveillance technology pending Board of Supervisors’ consideration of a Surveillance Technology Policy.”	
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27	Supporting Evidence:	
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<p>1 • Declaration of Saira Hussain in Opposition 2 to Defendant’s Motion for Summary 3 Judgment (“Hussain Opp. Decl.”) at ¶ 5, at 25:48–26:03¹ [Pl. Opp. Compendium, Exhibit AA]</p>	
<p>4 12. On May 14, 2019, during a discussion about 5 the amendment to section 19B.5, Deputy City 6 Attorney Jon Givner stated: “If a department is 7 currently using technology, they have to draft a 8 policy . . . that has to go to COIT and come up to the Board If the Board does not act on the proposed surveillance policy, the department can continue to use their surveillance technology.”</p> <p>9 Supporting Evidence:</p> <p>10 • Hussain Opp. Decl. at ¶ 5, at 32:29–32:55, [Pl. Opp. Compendium, Exhibit AA]</p>	
<p>11 13. On May 14, 2019, the Board also amended 12 section 19B.5 of the proposed Ordinance to extend 13 the deadline for city departments to submit a 14 Surveillance Technology Policy ordinance for an existing surveillance technology to 180 days from 120 days.</p> <p>15 Supporting Evidence:</p> <p>16 • Draft of Acquisition of Surveillance 17 Technology Ordinance, File No. 190110, at 14 (May 14, 2019) [Pl. Opp. Compendium, Exhibit BB]</p>	
<p>18 14. On May 14, 2019, Supervisor Peskin stated 19 that SFPD Chief Bill Scott and another Supervisor 20 requested the amendment to extend the deadline to 21 submit a Surveillance Technology Policy ordinance for existing surveillance technology to 180 days from 120 days.</p> <p>22 Supporting Evidence:</p> <p>23 • Hussain Opp. Decl. at ¶ 5, at 25:32–25:48, [Pl. Opp. Compendium, Exhibit AA]</p>	
<p>24 15. On May 14, 2019, Supervisor Peskin, in 25 response to a question about how many 26 departments are currently using surveillance technology, stated: “[T]hat is precisely why this legislation is important . . . this will require every</p>	

¹ The video recording of the May 14, 2019, San Francisco Board of Supervisors Meeting is available at <http://sanfrancisco.granicus.com/player/clip/33135?&redirect=true>.

<p>1 department to tell us and the public what they've got.”</p> <p>2</p> <p>3 Supporting Evidence:</p> <ul style="list-style-type: none"> 4 • Hussain Opp. Decl. at ¶ 5, at 31:35–32:09, [Pl. Opp. Compendium, Exhibit AA] 	
<p>5 16. On May 14, 2019, Supervisor Peskin stated: “The thrust of this legislation . . . is about 6 knowing, and departments knowing, and the public knowing how that technology is used.”</p> <p>7 Supporting Evidence:</p> <ul style="list-style-type: none"> 8 • Hussain Opp. Decl. at ¶ 5, at 36:20–36:33, [Pl. Opp. Compendium, Exhibit AA] 	
<p>9 17. On May 14, 2019, during a discussion about 10 amendments to section 19B.5, Supervisors and a city department witness spoke about four specific 11 examples of departments possessing and using technologies: ShotSpotter, police body worn 12 cameras, automated license plate readers, and city bus cameras.</p> <p>13 Supporting Evidence:</p> <ul style="list-style-type: none"> 14 • Hussain Opp. Decl. at ¶ 5, at 37:43–38:00 15 (Supervisor Peskin); 28:39–28:55 & 32:11– 32:19 (Supervisor Stefani); 35:53–36:04 16 (San Francisco Municipal Transit Authority’s Chief Security Officer) [Pl. 17 Opp. Compendium, Exhibit AA] 	
<p>18 II. Compliance with Section 19B.5</p>	
<p>19 18. COIT’s website does not contain any 20 publicly available records regarding discussion of the SFPD’s creation of a policy for non-city entity 21 surveillance cameras or time extension requests for the same.</p> <p>22 Supporting Evidence:</p> <ul style="list-style-type: none"> 23 • Hussain Opp. Decl. at ¶ 7 [Pl. Opp. 24 Compendium, Exhibit AA] 	
<p>25 III. Permissions and Credentials: SFPD’s Surveillance of the 2019 Pride Parade</p>	
<p>26 19. On June 19, 2019, SFPD Officer Oliver Lim 27 sent an email to USBID Director of Services Chris Boss, seeking remote live access to the USBID</p>	

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cameras that showed Market Street during the 2019 Pride Parade on June 30, 2019.

Supporting Evidence:

- Joint Stip. of Authenticity of Emails at Exh. 1 (email of June 19, 2019 from Lim to Boss) [Pl. Opp. Compendium, Exhibit DD]
- Joint Stip. of Authenticity of Emails ¶ 1 (admitting the email is genuine) [Pl. Opp. Compendium, Exhibit DD]
- Lim Decl. at ¶ 4
- Defendant’s Supplemental Responses to Plaintiffs’ Special Interrogatories 4 & 5 at No. 4 [Compendium of Evidence in Support of Plaintiffs’ Motion for Summary Judgment (“Pl. Compendium”), Exhibit L]

20. On June 27, 2019, Boss sent an email to Officer Lim granting remote live access to the USBID cameras that showed Market Street for 24 hours on June 30, 2019, the day of the Pride Parade.

Supporting Evidence:

- Joint Stip. of Authenticity of Emails at Exh. 2 (email of June 27, 2019 from Boss to Lim) [Pl. Opp. Compendium, Exhibit DD]
- Joint Stip. of Authenticity of Emails ¶ 2 (admitting the email is genuine) [Pl. Opp. Compendium, Exhibit DD]
- Lim Decl. at ¶ 5
- Defendant’s Supplemental Responses to Plaintiffs’ Special Interrogatories 4 & 5 at No. 4 [Pl. Compendium, Exhibit L]

21. In Boss’s June 27, 2019 email to Officer Lim, Boss stated that the USBID’s technician, Dmitri Shimolin, would provide the SFPD with a “user account credential for accessing the cameras.”

Supporting Evidence:

- Joint Stip. of Authenticity of Emails at Exh. 2 (email of June 27, 2019 from Boss to Lim) [Pl. Opp. Compendium, Exhibit DD]
- Joint Stip. of Authenticity of Emails ¶ 2 (admitting the email is genuine) [Pl. Opp. Compendium, Exhibit DD]

1 22. The USBID provided the SFPD with log-in
2 credentials to Avigilon for the SFPD to access the
3 USBID's Market Street cameras from a laptop in
4 the SFPD's Department Operations Center during
5 the on June 30, 2019, the day of the Pride Parade.

6 Supporting Evidence:

- 7 • Lim Decl. at ¶ 5

8 23. Officer Lim only viewed the USBID camera
9 network to verify that the remote, real-time link
10 was operational at the time he entered the log-in
11 credentials.

12 Supporting Evidence:

- 13 • Lim Decl. at ¶ 5
- 14 • Defendant's Supplemental Responses to
15 Plaintiffs' Special Interrogatories 4 & 5 at
16 Nos. 4 & 5 [Pl. Compendium, Exhibit L]

17 24. At the time of the 2019 Pride Parade, the
18 SFPD was aware of the newly-passed Acquisition
19 of Surveillance Technology Ordinance, and aware
20 that the Ordinance's scope included the SFPD's
21 use of the USBID camera network.

22 Supporting Evidence:

- 23 • Joint Stip. of Authenticity of Emails at
24 Exh. 2 (email of June 27, 2019 from Lim to
25 Boss) [Pl. Opp. Compendium, Exhibit DD]
- 26 • Joint Stip. of Authenticity of Emails ¶ 2
27 (admitting the email is genuine) [Pl. Opp.
28 Compendium, Exhibit DD]

29 **IV. Permission and Credentials: SFPD's Surveillance of 2020 Super Bowl**
30 **Celebrations**

31 25. On January 23, 2020, Officer Lim sent an
32 email to Boss seeking remote live access to the
33 USBID cameras that showed Market Street during
34 the Super Bowl victory parade on February 5,
35 2020 (if the 49ers won).

36 Supporting Evidence:

- 37 • Joint Stip. of Authenticity of Emails at
38 Exh. 3 (email of Jan. 23, 2020 at 11:53
a.m. from Lim to Boss) [Pl. Opp.
Compendium, Exhibit DD]

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<ul style="list-style-type: none">• Joint Stip. of Authenticity of Emails ¶ 3 (admitting the email is genuine) [Pl. Opp. Compendium, Exhibit DD]	
<p>26. Later in the day on January 23, 2020, Officer Lim sent another email to Boss, seeking remote live access to the USBID’s Union Square area cameras during the Super Bowl on February 2, 2020.</p> <p>Supporting Evidence:</p> <ul style="list-style-type: none">• Joint Stip. of Authenticity of Emails at Exh. 3 (email of Jan. 23, 2020 at 2:43 p.m. from Lim to Boss) [Pl. Opp. Compendium, Exhibit DD]• Joint Stip. of Authenticity of Emails ¶ 3 (admitting the email is genuine) [Pl. Opp. Compendium, Exhibit DD]	
<p>27. On January 24, 2020, Boss sent two emails to Officer Lim. These emails: (1) denied the SFPD’s request for remote live access to the USBID’s Union Square area cameras during the Super Bowl on February 2, 2020; and (2) granted the SFPD’s request for remote live access to the USBID cameras that showed Market Street during the Super Bowl victory parade on February 5, 2020 (if the 49ers won).</p> <p>Supporting Evidence:</p> <ul style="list-style-type: none">• Joint Stip. of Authenticity of Emails at Exh. 4 (emails of Jan. 24, 2020 at 4:14 p.m from Boss to Lim, 4:50 p.m. from Lim to Boss, and 5:01 p.m. from Boss to Lim) [Pl. Opp. Compendium, Exhibit DD]• Joint Stip. of Authenticity of Emails ¶ 4 (admitting the emails are genuine) [Pl. Opp. Compendium, Exhibit DD]	
<p>28. The email from Boss to Officer Lim on January 24, 2020 denying remote live access to the USBID’s Union Square area cameras during the Super Bowl stated: “We will not grant remote access for all of our cameras in this instance. However, we will allow anyone of the officers assigned to this event to come to our video control center and monitor with our staff from our office.”</p> <p>Supporting Evidence:</p>	

1	<ul style="list-style-type: none"> • Joint Stip. of Authenticity of Emails at Exh. 4 (email of Jan. 24, 2020 at 5:01 p.m. from Boss to Lim) [Pl. Opp. Compendium, Exhibit DD] 	
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4	<ul style="list-style-type: none"> • Joint Stip. of Authenticity of Emails ¶ 4 (admitting the emails are genuine) [Pl. Opp. Compendium, Exhibit DD] 	

5	<p>29. The USBID provided the SFPD with log-in credentials to Avigilon for the SFPD to use for Super Bowl celebrations, to access the USBID’s Market Street cameras from the SFPD’s laptop in the SFPD’s Department Operations Center.</p>	
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8	Supporting Evidence:	
9	<ul style="list-style-type: none"> • Defendant’s Responses to Plaintiffs’ First Set of Special Interrogatories at No. 4 [Pl. Compendium, Exhibit K] 	
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11	<ul style="list-style-type: none"> • Defendant’s Supplemental Responses to Plaintiffs’ Special Interrogatories 4 & 5 at Nos. 4 & 5 [Pl. Compendium, Exhibit L] 	
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V. Permissions and Credentials: SFPD’s Surveillance of May and June 2020 Protests

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15	30. SFPD Officer Lim worked with the USBID’s technician, Dmitri Shimolin, to input information on a laptop located in the SFPD’s Department Operations Center. Shimolin gave Officer Lim a specific username and password to access the cameras.	
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18	Supporting Evidence:	
19	<ul style="list-style-type: none"> • Transcript of Deposition of Officer Tiffany Gunter at 32:7-23 [Pl. Compendium, Exhibit B] 	
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VI. Permissions and Credentials: SFPD’s Surveillance of 2020 Fourth of July Celebrations

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23	31. Officer Lim, at the direction of SFPD Captain Chris Pedrini, asked Boss for the ability to access the USBID camera network to monitor the 2020 Fourth of July celebrations.	
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26	Supporting Evidence:	
27	<ul style="list-style-type: none"> • Defendant’s Responses to Plaintiffs’ First Set of Special Interrogatories at No. 4 [Pl. Compendium, Exhibit K] 	
28		

1 • Defendant’s Supplemental Responses to
2 Plaintiffs’ Special Interrogatories 4 & 5 at
No. 4 [Pl. Compendium, Exhibit L]

3 32. The USBID gave the SFPD log-in credentials
4 to access Avigilon, which allowed the SFPD
5 remote access to the USBID camera network from
12:00 on July 4, 2020, through 6:00 a.m. on July 5,
2020.

6 Supporting Evidence:

- 7 • Defendant’s Responses to Plaintiffs’ First
Set of Special Interrogatories at No. 4 [Pl.
8 Compendium, Exhibit K]
- 9 • Defendant’s Supplemental Responses to
Plaintiffs’ Special Interrogatories 4 & 5 at
10 No. 4 [Pl. Compendium, Exhibit L]

11 **VII. CCSF’s Production**

12 33. During discovery in this case, Plaintiffs
13 asked CCSF to produce all documents related to
14 the SFPD’s access to the USBID camera network
for the 2019 Pride Parade and 2020 Super Bowl
celebrations.

15 Supporting Evidence:

- 16 • Plaintiffs’ First Set of Special
Interrogatories at Nos. 4 & 5 [Pl.
17 Compendium, Exhibit I]
- 18 • Plaintiffs’ Request for the Production of
Documents and Things, Set One, at No. 4
19 [Pl. Opp. Compendium, Exhibit CC]

20 34. CCSF never produced the emails between
21 Officer Lim and Boss regarding SFPD’s access to
the USBID camera network for the 2019 Pride
Parade or the 2020 Super Bowl celebrations.

22 Supporting Evidence:

- 23 • Hussain Opp. Decl. at ¶ 6 [Pl. Opp.
Compendium, Exhibit AA]
- 24 • Joint Stip. of Authenticity of Emails at
25 Exh. 1–4 [Pl. Opp. Compendium, Exhibit
DD]
- 26 • Joint Stip. of Authenticity of Emails ¶¶ 1–4
27 (admitting the emails are genuine) [Pl.
Opp. Compendium, Exhibit DD]

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Dated: October 22, 2021

By: /s/ Saira Hussain
SAIRA HUSSAIN

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