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

18 HOPE WILLIAMS, NATHAN SHEARD, and
19 NESTOR REYES,
20 Plaintiffs,
21 v.
22 CITY AND COUNTY OF SAN FRANCISCO,
23 Defendant.

Case No.: CGC-20-587008

**PLAINTIFFS' REPLY TO
DEFENDANT'S RESPONSE TO
PLAINTIFFS' SEPARATE
STATEMENT OF UNDISPUTED
MATERIAL FACTS IN SUPPORT OF
MOTION FOR SUMMARY
JUDGEMENT AND RESPONSE TO
DEFENDANT'S ADDITIONAL FACTS**

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

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

ELECTRONICALLY
FILED

Superior Court of California,
County of San Francisco

11/19/2021
Clerk of the Court

BY: ERNALYN BURA
Deputy Clerk

1 Plaintiffs submit the following Reply to Defendant’s Response to Plaintiffs’ Separate
2 Statement of Undisputed Material Facts in Support of their Motion for Summary Judgment:

3 **I. PRELIMINARY STATEMENT**

4 The California Rules of Court require Defendant to establish that material facts are in dispute
5 by describing the evidence that supports the position that the fact is controverted. Cal. Rules of
6 Court, rule 3.1350. That evidence must be supported by citation to exhibit, title, page, and line
7 numbers in the evidence submitted. *Id.* Here, Defendant has attempted to create disputes of fact by
8 rephrasing facts with less precise language and attributing additional meaning to facts proffered by
9 Plaintiffs, all while failing to dispute the fact at issue. Instead of establishing that disputed issues of
10 material fact exist, Defendant’s responses confirm that core facts are not in dispute and summary
11 judgment should be granted in favor of Plaintiffs.

12 **II. PLAINTIFFS’ REPLY TO DEFENDANT’S RESPONSE TO PLAINTIFFS’
13 STATEMENT OF UNDISPUTED MATERIAL FACTS**

Plaintiffs’ Undisputed Material Facts and Supporting Evidence	Defendant’s Response and Supporting Evidence
14 1. The City and County of San Francisco (“CCSF”) is a charter city and county, existing 15 pursuant to the California Constitution and state laws and its own municipal charter. 16 CCSF can be sued in its own name. 17 18 Supporting Evidence: 19 • Joint Stip. ¶ 1 [Compendium of Evidence in Support of Plaintiffs’ 20 Motion for Summary Judgment (“Compendium”), Exhibit N]	Undisputed.
21 2. The San Francisco Police Department (“SFPD”) is a department of CCSF. CCSF 22 operates, governs, and is responsible for the SFPD pursuant to the laws of the State of 23 California and San Francisco. 24 25 Supporting Evidence: 26 • Joint Stip. ¶ 2 [Compendium, Exhibit N]	Undisputed.
27 3. The SFPD employs 19 different surveillance technologies involving software	Undisputed.

<p>1 2 3 4 5 6 7</p>	<p>for which the SFPD pays third-party vendors for use licenses and maintenance, and the vendor owns the source code.</p> <p>Supporting Evidence:</p> <ul style="list-style-type: none"> • Defendant’s Responses to Plaintiffs’ First Set of Special Interrogatories at No. 7 [Compendium, Exhibit K] • Defendant’s Responses to Plaintiffs’ Second Set of Special Interrogatories at No. 18 [Compendium, Exhibit M] 	
<p>8 9 10 11 12</p>	<p>4. San Francisco’s Acquisition of Surveillance Technology Ordinance (“the Ordinance”) went into effect in July 2019.</p> <p>Supporting Evidence:</p> <ul style="list-style-type: none"> • Joint Stip. ¶ 6 [Compendium, Exhibit N] • Acquisition of Surveillance Technology Ordinance [Compendium, Exhibit V] 	<p>Undisputed.</p>
<p>13 14 15 16 17 18 19 20 21 22 23 24 25 26 27</p>	<p>5. Findings contained in the Ordinance include:</p> <p>(a) “It is essential to have an informed public debate as early as possible about decisions related to surveillance technology.”</p> <p>(c) “While surveillance technology may threaten the privacy of all of us, surveillance efforts have historically been used to intimidate and oppress certain communities and groups more than others, including those that are defined by a common race, ethnicity, religion, national origin, income level, sexual orientation, or political perspective.”</p> <p>(e) “Whenever possible, decisions regarding if and how surveillance technologies should be funded, acquired, or used . . . should be made only after meaningful public input has been solicited and given significant weight.”</p> <p>(f) “Legally enforceable safeguards, including robust transparency, oversight, and accountability measures, must be in place to</p>	<p>Undisputed.</p>

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<p>protect civil rights and civil liberties before any surveillance technology is deployed.”</p> <p>Supporting Evidence:</p> <ul style="list-style-type: none">Acquisition of Surveillance Technology Ordinance [Compendium, Exhibit V]	
<p>6. Supervisor Aaron Peskin made the following statement during the April 15, 2019 Board of Supervisors Rules Committee meeting, one of the meetings that led up to the Ordinance’s approval: “If you take even a cursory look at some historical uses of surveillance technologies it is often times these marginalized groups, artists, and political dissidents who are disproportionately subject to the abuses of this technology.”</p> <p>Supporting Evidence:</p> <ul style="list-style-type: none">Joint Stip. ¶ 7 [Compendium, Exhibit N]	Undisputed.
<p>7. Supervisor Aaron Peskin, during the May 6, 2019 Board of Supervisors Rules Committee meeting, one of the meetings that led up to the Ordinance’s approval, emphasized the need for “oversight into a category of technology that historically has often been used in abusive ways against marginalized communities.” He continued: “I could regale you with some of the things that have happened in this city in the late 60s, early 70s, again with surveillance of Act Up during the AIDS crisis, with surveillance of the Black Lives Matter movement.”</p> <p>Supporting Evidence:</p> <ul style="list-style-type: none">Joint Stip. ¶ 8 [Compendium, Exhibit N]	Undisputed.
<p>8. At the May 14, 2019 Board of Supervisors meeting, Supervisor Aaron Peskin referred to the Black Lives Matter protests when describing the need for the Ordinance.</p> <p>Supporting Evidence:</p> <ul style="list-style-type: none">Joint Stip. ¶ 9 [Compendium, Exhibit N]	Undisputed.

<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p>	<p>9. Business improvement districts (“BIDs”)—also called community benefit districts—are non-city entities formed by a majority of property owners within a certain geographic area, with approval from the Board of Supervisors and in accordance with state and local law.</p> <p>Supporting Evidence:</p> <ul style="list-style-type: none"> • Joint Stip. ¶ 10 [Compendium, Exhibit N] 	<p>Undisputed.</p>
<p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p>	<p>10. The Union Square Business Improvement District (“USBID”) is a business improvement district in San Francisco. It is a California nonprofit corporation. It is bound on the north by Bush Street, on the east by Kearny Street, on the south by Market Street, and on the west by Taylor and Mason Streets.</p> <p>Supporting Evidence:</p> <ul style="list-style-type: none"> • Joint Stip. ¶ 11 [Compendium, Exhibit N] 	<p>Undisputed.</p>
<p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p>	<p>11. The USBID operates a network of video surveillance cameras. These cameras are high definition, allow remote control of zoom and focus capabilities, and are linked to a software system that can automatically analyze content, including distinguishing between when a car or a person passes within the frame.</p> <p>Supporting Evidence:</p> <ul style="list-style-type: none"> • Joint Stip. ¶ 12 [Compendium, Exhibit N] 	<p>Undisputed.</p>
<p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p>	<p>12. Paragraph 23 of Plaintiffs’ Complaint includes the map of the USBID’s camera network.</p> <p>Supporting Evidence:</p> <ul style="list-style-type: none"> • Joint Stip. ¶ 12 [Compendium, Exhibit N] • Compl. at ¶ 23 [Compendium, Exhibit F] 	<p>Undisputed.</p>

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1	13. “Surveillance technology,” as that term	Undisputed.
2	is used in the Ordinance, includes surveillance	
3	cameras.	
4	Supporting Evidence:	Undisputed.
5	• Joint Stip. ¶ 6 [Compendium, Exhibit	
6	N]	
7	14. The USBID had over 300 video cameras	Undisputed.
8	in their network of video surveillance cameras	
9	in May and June 2020.	
10	Supporting Evidence:	Undisputed.
11	• Exhibits 1 and 2 to Request for Judicial	
12	Notice [Compendium, Exhibit W]	
13	15. Following the police killing of George	Undisputed.
14	Floyd on May 25, 2020, in Minneapolis,	
15	Minnesota, protests against police violence	
16	spread throughout the country, including in	Undisputed.
17	San Francisco. Thousands of people	
18	participated in protests in San Francisco	
19	during the end of May and early June 2020.	Undisputed.
20	Supporting Evidence:	
21	• Joint Stip. ¶ 13 [Compendium, Exhibit	
22	N]	Undisputed.
23	16. On May 31, 2020, the SFPD activated	
24	its Department Operations Center activation	
25	room.	Undisputed.
26	Supporting Evidence:	
27	• Gunter Deposition at 33:17-20	
28	[Compendium, Exhibit B]	Undisputed.
29	17. The SFPD obtained and accessed a	
30	remote, real-time link to the USBID camera	
31	network between May 31 and June 7, 2020.	Undisputed.
32	Supporting Evidence:	
33	• Defendant’s Responses to Plaintiffs’	
34	Second Request for Admissions at No.	
35	12 [Compendium, Exhibit O]	
36	• Defendant’s Responses to Plaintiffs’	
37	First Request for Admissions at No. 1	
38	[Compendium, Exhibit J]	Undisputed.
39	18. On the morning of May 31, 2020, an	
40	officer from the SFPD’s Homeland Security	

<p>1 2 3 4 5 6 7 8 9 10</p>	<p>Unit, Officer Oliver Lim, sent an email to the USBID Director of Services, Chris Boss, requesting live access to the USBID’s surveillance cameras.</p> <p>Supporting Evidence:</p> <ul style="list-style-type: none"> • CCSF 000013 (email of May 31, 2020, from Lim to Boss) [Compendium, Exhibit P] • Plaintiffs’ First Request for Admissions at Exh. 2 (this email) [Compendium, Exhibit H] • Defendant’s Responses to Plaintiffs’ First Request for Admissions at No. 6 (admitting the genuineness of this email) [Compendium, Exhibit J] 	
<p>11 12 13 14 15</p>	<p>19. Officer Lim sent the May 31 email at the direction of a commanding officer.</p> <p>Supporting Evidence:</p> <ul style="list-style-type: none"> • CCSF 000013 (email of May 31, 2020, from Lim to Boss) [Compendium, Exhibit P] • Gunter Deposition at 38:24-39:1, 27:20-28:5 [Compendium, Exhibit B] 	<p>Undisputed.</p>
<p>16 17 18 19 20 21 22 23 24</p>	<p>20. In an email response that same morning, Mr. Boss granted the SFPD 48-hour remote access to the USBID’s cameras.</p> <p>Supporting Evidence:</p> <ul style="list-style-type: none"> • CCSF 000013 (email of May 31, 2020, from Boss to Shimolin) [Compendium, Exhibit P] • Plaintiffs’ First Request for Admissions at Exh. 3 (this email) [Compendium, Exhibit H] • Defendant’s Responses to Plaintiffs’ First Request for Admissions at No. 7 (admitting the genuineness of this email) [Compendium, Exhibit J] 	<p>Undisputed.</p>
<p>25 26 27</p>	<p>21. Later on May 31, 2020, the USBID set up a remote, real-time link on a laptop at the SFPD’s Department Operations Center through which the SFPD could access the USBID camera network.</p>	<p>Undisputed.</p>

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<p>Supporting Evidence:</p> <ul style="list-style-type: none">• Gunter Deposition at 45:11-46:3 [Compendium, Exhibit B]• Defendant’s Responses to Plaintiffs’ First Set of Special Interrogatories at No. 2 [Compendium, Exhibit K]• Defendant’s Responses to Plaintiffs’ Second Set of Special Interrogatories at No. 14 [Compendium, Exhibit M]	
<p>22. To access the remote, real-time link, the SFPD installed a software program called Avigilon onto a laptop located in the Department Operations Center activation room.</p> <p>Supporting evidence:</p> <ul style="list-style-type: none">• Defendant’s Responses to Plaintiff’s First Set of Special Interrogatories at No. 2 [Compendium, Exhibit K]• Gunter Deposition at 32:7-33:6 [Compendium, Exhibit B]	Undisputed.
<p>23. The remote, real-time link included access to the entire USBID camera network.</p> <p>Supporting Evidence:</p> <ul style="list-style-type: none">• CCSF 000013 (email of May 31, 2020, from Boss to Shimolin) [Compendium, Exhibit P]• CCSF 000204 (May 31 email from Shimolin to Gunter) [Compendium, Exhibit T]• Gunter Deposition at 40:15-22 (admitting genuineness of email) [Compendium, Exhibit B]	Undisputed.
<p>24. On May 31, 2020, after the remote, real-time link was set up, an officer from the SFPD’s Homeland Security Unit, Officer Tiffany Gunter, viewed the camera feed twice.</p> <p>Supporting Evidence:</p> <ul style="list-style-type: none">• Gunter Deposition at 51:24-52:1, 52:14-16, 60:7-8 [Compendium, Exhibit B]	Undisputed.

1 2 3 4 5 6 7 8 9 10	<p>25. On June 2, 2020, Officer Gunter sent an email to Mr. Boss requesting an extension for remote live access of the USBID’s cameras for five more days, through June 7, 2020.</p> <p>Supporting Evidence:</p> <ul style="list-style-type: none"> • CCSF 0000250 (email of June 2, 2020, from Gunter to Boss) [Compendium, Exhibit U] • Plaintiffs’ First Request for Admissions at Exh. 4 (this email) [Compendium, Exhibit H] • Defendant’s Responses to Plaintiffs’ First Request for Admissions at No. 8 (admitting the genuineness of this email) [Compendium, Exhibit J] 	Undisputed.
11 12 13	<p>26. The USBID provided this extension of remote live access to its camera network.</p> <p>Supporting Evidence:</p> <ul style="list-style-type: none"> • Gunter Deposition at 64:22-25 [Compendium, Exhibit B] 	Undisputed.
14 15 16 17	<p>27. Officer Gunter admitted that she viewed the USBID’s camera feed “intermittently” during the week that SFPD had access.</p> <p>Supporting Evidence:</p> <ul style="list-style-type: none"> • Gunter Deposition at 65:18-22 [Compendium, Exhibit B] 	Undisputed.
18 19 20 21 22 23	<p>28. For the week that the SFPD had access to the remote, real-time link, the camera feed was running continuously on the SFPD laptop where the USBID set up access.</p> <p>Supporting Evidence:</p> <ul style="list-style-type: none"> • Gunter Deposition at 50:21-51:4 [Compendium, Exhibit B] 	<p>Undisputed that the Avigilon program was running on the laptop continuously. Disputed that the camera feed was running continuously on the laptop, because the program “was minimized on the screen,” and was not open on the screen.</p> <p>Supporting Evidence: Gunter Deposition at 50:25-51:4 [Compendium, Exhibit B]</p>

24 **Plaintiffs’ Reply:** Fact established. Defendant’s response and supporting evidence does not create a
25 dispute regarding the material fact at issue, which is that the camera feed was running continuously
26 on the SFPD laptop where the USBID set up access for eight days. The cited testimony explicitly
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1 states that the program was running even when it was minimized on the screen. Put another way,
 2 Defendant’s response that the program was minimized on the laptop screen is irrelevant to the fact
 3 that the program was running continuously and thus that the camera feed was running continuously.

<p>4 29. The SFPD does not require officers to document when they look at a camera feed from a BID camera network.</p> <p>5</p> <p>6</p> <p>7 Supporting Evidence:</p> <ul style="list-style-type: none"> 8 • Gunter Deposition at 79:16-80:1 [Compendium, Exhibit B] 9 • Plaintiffs’ First Set of Special Interrogatories at Definitions ¶ 2 [Compendium, Exhibit I] 10 • Defendant’s Responses to Plaintiffs’ First Set of Special Interrogatories at No. 6 [Compendium, Exhibit K] 	<p>Undisputed.</p>
<p>12 30. Officer Gunter testified that because the SFPD does not require officers to document when they look at a camera feed from a BID camera network, it is possible that other SFPD officers viewed the USBID camera feed during the week that the SFPD had access to it.</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17 Supporting Evidence:</p> <ul style="list-style-type: none"> 18 • Gunter Deposition at 79:20-80:1 [Compendium, Exhibit B] 	<p>Undisputed.</p>
<p>19 31. On June 10, 2020, Officer Gunter sent an email to Mr. Boss thanking him “for the use of your cameras,” and stating that the cameras “were extremely helpful in giving us situational awareness and ensuring public safety during the multiple demos that came through the area.”</p> <p>20</p> <p>21</p> <p>22</p> <p>23 Supporting Evidence:</p> <ul style="list-style-type: none"> 24 • CCSF 000045 (email of June 10, 2020, from Gunter to Boss) [Compendium, Exhibit S] 25 • Plaintiffs’ First Request for Admissions at Exh. 6 (this email) [Compendium, Exhibit H] 	<p>Undisputed.</p>

<p>1 • Defendant’s Responses to Plaintiffs’ 2 First Request for Admissions at No. 10 3 (admitting the genuineness of this 4 email) [Compendium, Exhibit J]</p>	
<p>4 32. The SFPD did not seek, nor did they 5 receive, approval from the Board of 6 Supervisors, pursuant to the Ordinance, prior 7 to obtaining a remote, real-time link to the 8 USBID camera network from May 31 to June 9 7, 2020.</p> <p>Supporting Evidence:</p> <ul style="list-style-type: none"> • Defendant’s Responses to Plaintiffs’ First Request for Admissions at No. 2 [Compendium, Exhibit J] 	<p>Undisputed.</p>
<p>10 33. Property damage occurred in the Union 11 Square area on May 30, 2020.</p> <p>Supporting Evidence:</p> <ul style="list-style-type: none"> • CCSF 000018, 000035–000036 [Compendium, Exhibits Q & R] • Defendant’s Responses to Plaintiffs’ 14 First Set of Special Interrogatories at 15 Nos. 10, 11, & 12 [Compendium, 16 Exhibit K] 	<p>Undisputed that there was extensive looting, vandalism, and rioting in the Union Square area on the night of May 30, 2020, which included acts of violence which resulted in injuries to multiple persons such as store employees. Disputed to the extent that it is implied that “property damage” captures the civil unrest that occurred in the Union Square area on May 30, 2020.</p> <p>Supporting Evidence: Defendant’s Responses to Plaintiffs’ First Set of Special Interrogatories at Nos. 10, 11, & 12 [Compendium, Exhibit K]</p>

20 **Plaintiffs’ Reply:** Fact established. Defendant’s response does not dispute the material fact at issue,
21 which is that property damage occurred in the Union Square area on May 30, 2020.

<p>22 34. There was no property damage in Union 23 Square after the early morning hours of May 24 31, 2020.</p> <p>Supporting Evidence:</p> <ul style="list-style-type: none"> • Defendant’s Responses to Plaintiffs’ First 25 Set of Special Interrogatories at No. 11 & 12 26 [Compendium, Exhibit K] • Gunter Deposition at 60:14-23 27 [Compendium, Exhibit B] 	<p>Undisputed.</p>
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<p>1 35. In his email request on May 31, 2020 2 for access to the USBID camera network, 3 Officer Lim did not state any specific facts 4 referring to or describing an imminent danger 5 of death or serious physical injury to any 6 person.</p> <p>Supporting Evidence:</p> <ul style="list-style-type: none"> • CCSF 000013 [Compendium, Exhibit P] • Defendant’s Responses to Plaintiffs’ 7 First Request for Admissions at No. 6 8 (admitting the email is genuine) 9 [Compendium, Exhibit J] 	<p>Undisputed that Officer Lim’s May 31, 2020 email request referred to “the potential violence today” in Union Square without further elaboration.</p>
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10 **Plaintiffs’ Reply:** Fact established. Defendant’s response does not create a dispute regarding the
11 material fact at issue, which is that Officer Lim did not state any specific facts referring to or
12 describing an imminent danger of death or serious physical injury to any person in his May 31, 2020
13 email request. Defendant concedes this fact, and Defendant’s response merely quotes the email’s
14 unspecific and speculative language, further underscoring the lack of specific facts in the email.

<p>16 36. In her email request on June 2, 2020, for 17 access to the USBID camera network, Officer 18 Gunter did not state any specific facts 19 referring to or describing an imminent danger 20 of death or serious physical injury to any 21 person.</p> <p>Supporting evidence:</p> <ul style="list-style-type: none"> • CCSF 000250 [Compendium, Exhibit U] • Defendant’s Responses to Plaintiffs’ 22 First Request for Admissions at No. 8 23 (admitting the email is genuine) 24 [Compendium, Exhibit J] 	<p>Undisputed that Officer Gunter’s June 2, 2020 email request referred to “several planned demos all week and we anticipate several more over the weekend which are the ones we worry will turn violent again” without further elaboration.</p>
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25 **Plaintiffs’ Reply:** Fact established. Defendant’s response does not create a dispute regarding the
26 material fact at issue, which is that Officer Gunter did not state any specific facts referring to or
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1 describing an imminent danger of death or serious physical injury to any person in her June 2, 2020
 2 email request. Defendant concedes this fact, and Defendant’s response merely quotes the email’s
 3 unspecific and speculative language, further underscoring the lack of specific facts in the email.

<p>4 37. Officer Gunter testified that she did not 5 remember there being any civil unrest in 6 Union Square beyond Saturday, May 30, 7 2020.</p> <p>8 Supporting Evidence: • Gunter Deposition at 60:14-23 [Compendium, Exhibit B]</p>	<p>Undisputed.</p>
<p>9 38. There were no deaths relating to protest 10 activity in San Francisco between May 25 and 11 June 7, 2020.</p> <p>12 Supporting evidence: • Defendant’s Responses to Plaintiffs’ 13 Second Set of Special Interrogatories at 14 No. 15 [Compendium, Exhibit M]</p>	<p>Undisputed that the City is unaware of any such deaths during that time period.</p>

15 **Plaintiffs’ Reply:** Fact established.

<p>16 39. Plaintiffs Hope Williams, Nathan 17 Sheard, and Nestor Reyes are activists.</p> <p>18 Supporting Evidence: 19 • Williams Decl. ¶ 1 [Compendium, 20 Exhibit C] 21 • Sheard Decl. ¶ 1 [Compendium, Exhibit 22 D] • Reyes Decl. ¶ 1 [Compendium, Exhibit E]</p>	<p>Undisputed.</p>
<p>23 40. Plaintiffs Williams and Sheard are 24 Black, and Plaintiff Reyes is Latinx.</p> <p>25 Supporting Evidence: 26 • Williams Decl. ¶ 1 [Compendium, 27 Exhibit C]</p>	<p>Undisputed.</p>

<p>1</p> <ul style="list-style-type: none"> • Sheard Decl. ¶ 1 [Compendium, Exhibit D] • Reyes Decl. ¶ 1 [Compendium, Exhibit E] <p>2</p> <p>3</p>	
<p>4</p> <p>41. All three Plaintiffs helped organize, and participated in, the protest movement against police violence and racism in San Francisco in May and June 2020.</p> <p>5</p> <p>6</p> <p>Supporting Evidence:</p> <ul style="list-style-type: none"> • Williams Decl. ¶ 4 [Compendium, Exhibit C] • Sheard Decl. ¶ 5 [Compendium, Exhibit D] • Reyes Decl. ¶ 3 [Compendium, Exhibit E] <p>7</p> <p>8</p> <p>9</p> <p>10</p>	<p>Undisputed.</p>
<p>11</p> <p>42. The SFPD’s actions in obtaining and using a remote, real-time link to the USBID camera network, and the risk these actions may recur, make Plaintiffs afraid to participate in future protests and chill their free expression.</p> <p>12</p> <p>13</p> <p>14</p> <p>Supporting Evidence:</p> <ul style="list-style-type: none"> • Williams Decl. ¶ 11 [Compendium, Exhibit C] • Sheard Decl. ¶ 9 [Compendium, Exhibit D] • Reyes Decl. ¶ 7 [Compendium, Exhibit E] <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p>	<p>Undisputed that each plaintiff declares that learning about SFPD’s actions with respect to the USBID camera network in May and June 2020 makes him or her “worried about my privacy and freedom from police surveillance if I attend or organize future protests.” Disputed that any plaintiff declares that his or her free expression is chilled.</p> <p>Supporting Evidence:</p> <ul style="list-style-type: none"> • Williams Decl. ¶ 9 [Compendium, Exhibit C] • Sheard Decl. ¶ 9 [Compendium, Exhibit D] • Reyes Decl. ¶ 9 [Compendium, Exhibit E]

21 **Plaintiffs’ Reply:** Fact established. Defendant does not dispute the material fact at issue, which is

22 that Defendant’s actions made Plaintiffs afraid to participate in future protests. As Defendant

23 concedes, each Plaintiff has stated they are “worried about my privacy and freedom from police

24 surveillance if I attend or organize future protests.” Each Plaintiff has also stated that surveillance

25 affects their ability to organize protests and other events where they may be heard. Williams Decl. ¶¶

26 8, 10 [Compendium, Exhibit C]; Sheard Decl. ¶ 11 [Compendium, Exhibit D]; Reyes Decl. ¶¶ 8, 10

1 [Compendium, Exhibit E]. Although Plaintiffs have not specifically used the word “chill,” it is an
 2 accurate conclusion that is drawn from their statements.

<p>3 4 5 6 7 8 9 10</p> <p>43. The SFPD actions challenged in this suit, and the risk they may recur, makes it harder for Plaintiffs to organize and recruit people to participate in future protests.</p> <p>Supporting Evidence:</p> <ul style="list-style-type: none"> • Williams Decl. ¶ 11 [Compendium, Exhibit C] • Sheard Decl. ¶ 10 [Compendium, Exhibit D] • Reyes Decl. ¶ 8 [Compendium, Exhibit E] 	<p>Undisputed.</p>
<p>11 12 13 14 15 16</p> <p>44. On May 31, 2020, Plaintiff Reyes walked east on Market Street in the vicinity of Union Square, later walked in and around Union Square, and subsequently walked west on Market Street in the vicinity of Union Square.</p> <p>Supporting Evidence:</p> <ul style="list-style-type: none"> • Reyes Decl. ¶ 4 [Compendium, Exhibit E] 	<p>Undisputed.</p>
<p>17 18 19 20 21</p> <p>45. In 2019, Plaintiff Sheard advocated in support of the Ordinance, including providing public comment several times before the Rules Committee of the Board of Supervisors.</p> <p>Supporting Evidence:</p> <ul style="list-style-type: none"> • Sheard Decl. ¶ 3 [Compendium, Exhibit D] 	<p>Undisputed.</p>
<p>22 23 24 25 26</p> <p>46. In 2018, 2019, and 2020, Plaintiff Sheard provided public comment on similar ordinances in Oakland and Berkeley that require public input before acquisition or use of surveillance technologies.</p> <p>Supporting Evidence:</p>	<p>Undisputed.</p>

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<p>1 • Sheard Decl. ¶ 4 [Compendium, Exhibit D]</p>	
<p>2 47. In 2020, Plaintiff Williams participated 3 in debates in San Francisco over surveillance 4 technology, advocating against the installation 5 of security cameras in the Castro/Upper 6 Market Community 7 Benefit District.</p> <p>8 Supporting Evidence:</p> <p>9 • Williams Decl. ¶ 11 [Compendium, 10 Exhibit C]</p>	<p>Undisputed.</p>
<p>11 48. Plaintiffs Williams and Sheard would 12 like to participate in the implementation of the 13 Ordinance by providing public comment 14 before the San Francisco Committee on 15 Information Technology about city 16 departments' requests to acquire or use new 17 surveillance technologies, including requests 18 made by the SFPD.</p> <p>Supporting Evidence:</p> <p>• Williams Decl. ¶ 12 [Compendium, Exhibit C]</p> <p>• Sheard Decl. ¶ 11 [Compendium, Exhibit D]</p>	<p>Undisputed that plaintiffs Williams and Sheard would like to participate in the implementation of the Ordinance by providing public comment before the San Francisco Committee on Information Technology about city departments' requests to acquire or use new surveillance technologies, <i>presumably</i> including requests made by the SFPD (although neither plaintiff so declares specifically).</p> <p>Supporting Evidence:</p> <p>• Williams Decl. ¶ 12 [Compendium, Exhibit C]</p> <p>• Sheard Decl. ¶ 12 [Compendium, Exhibit D]</p>

19 **Plaintiffs' Reply:** Fact established. It is undisputed that the SFPD is a city department. Joint Stip. ¶
20 2 [Compendium, Exhibit N]. Defendant's response does not dispute the material fact at issue, which
21 is that Plaintiffs Williams and Sheard would like to participate in the implementation of the
22 Ordinance by providing public comment before the San Francisco Committee on Information
23 Technology about city departments' requests to acquire or use new surveillance technologies.
24 Moreover, Plaintiffs Williams and Sheard both specifically declare that the SFPD's failure to seek
25 Board approval under the Ordinance for its acquisition or use of the USBID camera network

1 deprived them of the opportunity to provide public comment. Williams Decl. ¶ 13 [Compendium,
2 Exhibit C]; Sheard Decl. ¶ 13 [Compendium, Exhibit D].

<p>3 4 49. The SFPD obtained a remote, real-time 5 link to the USBID camera network on three 6 occasions other than during the George Floyd 7 protests in May and June 2020: (1) for the 8 2019 Pride Parade, (2) for anticipated 2020 9 Super Bowl celebrations on Market Street, 10 and (3) for the 2020 Fourth of July 11 celebrations.</p> <p>Supporting Evidence:</p> <ul style="list-style-type: none">12 • Defendant’s Supplemental Responses to Plaintiffs’ Special Interrogatories 4 & 5 at No. 4 [Compendium, Exhibit L]	<p>Undisputed that SFPD obtained such a link on the three referenced occasions. Disputed to the extent it is implied that SFPD accessed or used that link during the 2020 Super Bowl celebrations on Market Street or during the 2020 Fourth of July celebrations, beyond simply looking at the screen to verify that the link worked.</p> <p>Supporting Evidence:</p> <ul style="list-style-type: none">• Defendant’s Supplemental Responses to Plaintiffs’ Special Interrogatories 4 & 5 at No. 4 [Compendium, Exhibit L]
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13 **Plaintiffs’ Reply:** Fact established. Defendant’s response does not dispute the material fact at issue,
14 which is that the SFPD obtained a remote, real-time link to the USBID camera network for the (1)
15 2019 Pride Parade, (2) anticipated 2020 Super Bowl celebrations on Market Street, and (3) the 2020
16 Fourth of July celebrations.

<p>17 50. The SFPD obtained the remote, real-time 18 link for anticipated 2020 Super Bowl 19 celebrations and the 2020 Fourth of July 20 celebrations after the enactment of the 21 Ordinance. The SFPD did not receive 22 approval from the Board of Supervisors prior 23 to obtaining the link on either of those 24 occasions.</p> <p>Supporting Evidence:</p> <ul style="list-style-type: none">25 • Defendant’s Supplemental Responses to Plaintiffs’ Special Interrogatories 4 & 5 at No. 4 [Compendium, Exhibit L]26 • Defendant’s Responses to Plaintiffs’ Second Set of Special Interrogatories at No. 16 [Compendium, Exhibit M]	<p>Undisputed that SFPD obtained such a link on the two referenced occasions after the enactment of the Ordinance, and did not receive approval from the Board of Supervisors prior to doing so. Disputed to the extent it is implied that SFPD accessed or used that link on either of the two referenced occasions, beyond simply looking at the screen to verify that the link worked.</p> <p>Supporting Evidence:</p> <ul style="list-style-type: none">• Defendant’s Supplemental Responses to Plaintiffs’ Special Interrogatories 4 & 5 at No. 4 [Compendium, Exhibit L]
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1 **Plaintiffs’ Reply:** Fact established. Defendant’s response does not dispute the material fact at issue,
 2 which is that the SFPD obtained the remote, real-time link to the USBID camera network for
 3 anticipated 2020 Super Bowl celebrations and the 2020 Fourth of July celebrations after the
 4 enactment of the Ordinance and without prior approval from the Board of Supervisors.

<p>5 51. The SFPD did not know of any exigent 6 circumstances that existed at the time it 7 requested access to the USBID camera 8 network during the 2019 Pride Parade, 2020 9 Super Bowl celebrations, and the 2020 Fourth 10 of July celebrations.</p> <p>Supporting Evidence:</p> <ul style="list-style-type: none"> • Defendant’s Responses to Plaintiffs’ 11 Second Set of Special Interrogatories at 12 No. 16 [Compendium, Exhibit M] 	<p>Undisputed.</p>
<p>13 52. An SFPD officer can only initiate a 14 request to access a BID camera network upon 15 the order of an SFPD captain or lieutenant.</p> <p>Supporting Evidence:</p> <ul style="list-style-type: none"> • Gunter Deposition at 27:20-28:1 16 [Compendium, Exhibit B] 	<p>Undisputed.</p>
<p>17 53. During the course of the SFPD’s 18 response to the protests in May and June of 19 2020, Officer Gunter never heard any of her 20 colleagues discuss the Ordinance.</p> <p>Supporting Evidence:</p> <ul style="list-style-type: none"> • Gunter Deposition at 81:12-19 [Compendium, Exhibit B] 	<p>Undisputed.</p>

21 **III. PLAINTIFFS’ RESPONSE TO DEFENDANT’S ADDITIONAL FACTS AND**
 22 **SUPPORTING EVIDENCE**

23 Plaintiffs submit the following responses to Defendant’s additional facts submitted in their
 24 Separate Statement of Undisputed Material Facts in Opposition to Plaintiffs’ Motion for Summary
 25 Judgment.

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1 Defendant’s Undisputed Material Facts and Supporting Evidence	Plaintiffs’ Response and Supporting Evidence
2 54. The 2019 San Francisco Pride 3 celebration took place on June 29, 2019 and 4 June 30, 2019. 5 Supporting Evidence: Declaration of Oliver 6 Lim in Support of Defendant’s Motion for 7 Summary Judgment, filed on September 16, 8 2021 (“Lim Decl.”), at ¶ 3.	Undisputed.
9 55. Shortly before the start of the 2019 10 Pride celebration, San Francisco Police 11 Department (“SFPD”) Officer Oliver Lim, at 12 the direction of his commanding officer, 13 contacted Chris Boss, a representative of 14 USBID, and requested that USBID allow the 15 SFPD to have access to cameras in USBID’s 16 surveillance camera network 17 during the 2019 Pride celebration. 18 Supporting Evidence: Lim Decl., at ¶ 4.	Disputed. 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. Supporting Evidence: <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]
19 56. USBID agreed to give SFPD access to 20 cameras in USBID’s surveillance camera 21 network during the 2019 Pride celebration. 22 Supporting Evidence: Lim Decl., at ¶ 5.	Disputed. 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. Supporting Evidence: <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]
23 57. USBID provided SFPD with log-in 24 credentials to commercial software which	Disputed. As stated, this fact is accurate but incomplete. It omits that the USBID provided

<p>1 SFPD used to access cameras in USBID’s surveillance camera network for a period of 2 up to 24 hours during the 2019 Pride celebration. 3 4 Supporting Evidence: Lim Decl., at ¶ 5. 5 6 7</p>	<p>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>8 58. The City’s Acquisition of Surveillance Technology Ordinance (Administrative Code 9 Chapter 19B), the ordinance that plaintiffs allege the City violated through SFPD’s 10 conduct in May-June 2020, states at Section 19B.5(d) that “[e]ach Department possessing 11 or using Surveillance Technology before the effective date of this Chapter 19B may 12 continue its use of the Surveillance Technology and the sharing of data from the 13 Surveillance Technology until such time as the Board enacts an ordinance regarding the 14 Department’s Surveillance Technology Policy and such ordinance becomes effective 15 under Charter Section 2.105.” 16 17 Supporting Evidence: Declaration of Wayne Snodgrass in Support of Defendant’s Motion 18 for Summary Judgment, filed on September 16, 2021 19 (“Snodgrass Decl.”), Ex. A, at p. 5. 20 21 22 23 24 25 26 27</p>	<p><u>Disputed.</u> The quoted excerpt from Section 19B.5, the Ordinance’s grace period, is accurate but incomplete. The missing portions provide:</p> <p>(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.</p> <p>(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.</p> <p>(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</p>

<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p>	<p>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.</p> <p>Supporting Evidence:</p> <ul style="list-style-type: none"> • Snodgrass Decl., Ex. A, at p. 5.
<p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p>	<p>Undisputed.</p>
<p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p>	<p>Undisputed.</p>

20 Dated: November 19, 2021

By: /s/ Saira Hussain
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