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15 **SUPERIOR COURT OF CALIFORNIA**
16 **IN AND FOR THE COUNTY OF SAN FRANCISCO**
17 **UNLIMITED JURISDICTION**
18

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

Case No.: CGC-20-587008

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT**

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1 the acquisition and use of surveillance technology are generally subject to public input and debate
2 prior to such actions being taken. SUMF ¶ 5. Among other things, the Ordinance generally prohibits
3 any city department from acquiring, borrowing, sharing, or using surveillance technology without
4 first obtaining approval of a usage policy from the Board via a separate ordinance. S.F. Admin. Code
5 § 19B.2(a)(2)–(4).

6 During legislative debate, Ordinance author Supervisor Aaron Peskin repeatedly declared
7 that the Ordinance was designed to address the government’s historical misuse of surveillance
8 technology against marginalized communities, including the Black Lives Matter movement. SUMF
9 ¶¶ 6–8. Indeed, the SFPD has a long and well-documented history of spying on marginalized groups
10 and political dissidents.²

11 **II. Union Square Business Improvement District**

12 Business improvement districts (“BIDs”)—also called community benefit districts—are non-
13 city entities formed by a majority of property owners within a certain geographic area, with approval
14 from the Board of Supervisors and in accordance with state and local law. SUMF ¶ 9. The Union
15 Square Business Improvement District (“USBID”), located in downtown San Francisco, operates a
16 network of surveillance cameras that are high definition, allow remote control of zoom and focus
17 capabilities, and are linked to a software system that can automatically analyze content. SUMF ¶¶
18 10–12. In May and June 2020, the USBID had over 300 video cameras in their network of
19 surveillance cameras. SUMF ¶ 14.

22
23 ² See, e.g., Carol Pogash, *Getting rid of ‘garbage,’ S.F. Examiner*, Apr. 23, 1975 (describing files the
24 SFPD amassed on over 100,000 civil rights demonstrators, union members, and anti-war activists
25 during the Civil Rights era); William N. Eskridge, Jr., *Challenging the Apartheid of the Closet:
26 Establishing Conditions for Lesbian and Gay Intimacy, Nomos, and Citizenship*,
27 1961-1981, 25 Hofstra L. Rev. 817, 836 (1997) (discussing the SFPD’s surveillance of the LGBTQ
28 community in the 1960s); Veena Dubal, *The Demise of Community Policing? The Impact of Post-
9/11 Federal Surveillance Programs on Local Law Enforcement*, 19 Asian Am. L. J. 35, 40-42
(2012) (identifying the SFPD spying on groups challenging U.S. intervention in Central American
and South African apartheid in the 1980s, and on South Asian, Muslim, and Arab communities post-
9/11).

1 **III. The SFPD’s response to May and June 2020 protests, and violations of the Ordinance**

2 After the police murder of George Floyd in Minneapolis, Minnesota on May 25, 2020,
3 protests quickly spread across the country. SUMF ¶ 15. Thousands of people participated in protests
4 in San Francisco during late May and early June 2020. *Id.*

5 On May 31, 2020, the SFPD activated its Department Operations Center activation room.
6 SUMF ¶ 16. That day, on the order of a supervisor, SFPD Officer Oliver Lim emailed the USBID
7 Director of Services, Chris Boss, requesting live access to the USBID’s surveillance cameras for 48
8 hours. SUMF ¶¶ 18–19. Later that day, the USBID granted the SFPD access to their entire camera
9 network for 48 hours via a remote, real-time link. SUMF ¶¶ 20–21, 23. SFPD Officer Tiffany Gunter
10 viewed the USBID camera feed twice that day. SUMF ¶ 24.

11 On June 2, 2020, Officer Gunter emailed Mr. Boss to extend access for five more days,
12 through June 7. SUMF ¶ 25. The USBID granted that extension. SUMF ¶ 26. Officer Gunter
13 admitted that she viewed the USBID camera feed “intermittently” over the week. SUMF ¶ 27. On
14 June 10, 2020, Officer Gunter sent Mr. Boss an email thanking him for the use of the camera
15 network, stating it was “extremely helpful in giving us situational awareness and ensuring public
16 safety during the multiple demos that came through the area.” SUMF ¶ 31.

17 The SFPD did not seek, nor did it receive, approval from the Board before obtaining and
18 using the link to the USBID camera network. SUMF ¶ 32.

19 **IV. Lack of exigent circumstances**

20 In the aftermath of George Floyd’s murder, there was property damage in the Union Square
21 area on May 30, 2020. SUMF ¶ 33. However, there was no property damage there after the early
22 morning hours of May 31, 2020. SUMF ¶ 34. When Officer Lim emailed Mr. Boss requesting access
23 to the USBID camera network on May 31, he did not include any specific facts describing an
24 imminent danger of death or serious physical injury to any person. SUMF ¶ 35. Two days later,
25 Officer Gunter’s email seeking to extend access to the USBID camera network likewise did not
26 include any specific facts describing such imminent danger. SUMF ¶ 36. Indeed, Officer Gunter
27 later admitted that she could not recall any civil unrest in Union Square after May 30, 2020. SUMF ¶
28

1 37. There were no deaths related to protest activity in San Francisco between May 25 and June 7,
2 2020. SUMF ¶ 38.

3 **V. Plaintiffs' standing**

4 Plaintiffs Hope Williams, Nathan Sheard, and Nestor Reyes are activists. SUMF ¶ 39.
5 Williams and Sheard are Black, and Reyes is Latinx. SUMF ¶ 40. All three helped organize and
6 participated in the protest movement against police violence and racism in San Francisco in May and
7 June 2020. SUMF ¶ 41.

8 The SFPD's violations of the Ordinance, which subjected protesters to live video camera
9 surveillance, affected Plaintiffs in several ways. First, the surveillance makes Plaintiffs afraid to
10 participate in future protests. SUMF ¶ 42. Second, Plaintiffs will have more difficulty recruiting
11 other people to join future protests. SUMF ¶ 43. Third, the surveillance of fellow protesters is
12 personal for Plaintiffs, who helped organize the protests. SUMF ¶¶ 40–41, 43. Fourth, the SFPD
13 subjected Plaintiff Reyes to video surveillance on May 31, 2020, when Reyes protested in and
14 around Union Square and twice marched on a segment of Market Street containing surveillance
15 cameras. SUMF ¶ 44. Fifth, the SFPD deprived Plaintiffs Sheard and Williams of their opportunity
16 to provide public comment about the privacy and civil rights concerns with this technology. SUMF
17 ¶¶ 45–48.

18 **VI. Procedural history**

19 On October 7, 2020, Plaintiffs filed their Complaint against CCSF alleging the SFPD
20 violated the Ordinance and seeking declaratory and injunctive relief. Exh. F. On January 29, 2021,
21 CCSF filed its First Amended Answer to the Complaint. Exh. G. Since that time, the parties engaged
22 in focused discovery, which closed on August 17, 2021. Discovery consisted of requests for
23 production, requests for admission, form and special interrogatories, and the deposition of an SFPD
24 officer. Nearly all of the undisputed material facts that Plaintiffs rely on are admissions, deposition
25 testimony, interrogatory answers, and the parties' joint stipulations of fact. The remainder rely on
26 CCSF's documents or Plaintiffs' declarations.
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28

1 **LEGAL STANDARD**

2 Summary judgment “provide[s] courts with a mechanism to cut through the parties’
3 pleadings in order to determine whether . . . trial is in fact necessary to resolve their dispute.”
4 *Aguilar v. Atl. Richfield Co.*, 25 Cal. 4th 826, 843 (2001). A motion for summary judgment “shall be
5 granted if all the papers submitted show that there is no triable issue as to any material fact and that
6 the moving party is entitled to judgment as a matter of law.” Code Civ. Proc. § 437c(c). A plaintiff
7 must “prove[] each element of the cause of action entitling him to judgment on that cause of action.”
8 *Aguilar*, 25 Cal. 4th at 849 (citation omitted); Code Civ. Proc. § 437c(p)(1). Then “the burden shifts
9 to the defendant . . . to show that a triable issue of one or more material facts exists as to that cause
10 of action or a defense thereto.” *Aguilar*, 25 Cal. at 849 (citation omitted); Code Civ. Proc. §
11 437c(p)(1). “An issue of fact can only be created by a conflict of evidence. It is not created by
12 speculation, conjecture, imagination or guess work.” *Lyons v. Security Pacific Nat. Bank*, 40 Cal.
13 App. 4th 1001, 1014 (1955) (citation omitted).

14 A plaintiff moving for summary judgment is not required to “disprove any defense asserted
15 by the defendant.” *Aguilar*, 25 Cal. 4th at 853. Rather, the defendant has the initial burden of
16 persuasion to show that the undisputed facts establish an affirmative defense. *Filosa v. Alagappan*,
17 59 Cal. App. 5th 772, 778 (2020). To meet this burden, a defendant “shall set forth . . . specific
18 facts.” Code Civ. Proc. § 437c(p)(2).

19 **ARGUMENT**

20 **I. The SFPD violated the Ordinance when it acquired, borrowed, and used the USBID**
21 **camera network without Board approval.**

22 The text and the purpose of the Ordinance ensure that decisions about obtaining or deploying
23 surveillance technologies are not made in secret by city departments, but rather by the Board of
24 Supervisors after a transparent process that includes the public. The “General Findings” of the
25 Ordinance state that “[w]henever possible, decisions regarding if and how surveillance technologies
26 should be funded, acquired, or used . . . should be made only after meaningful public input has been
27 solicited and given significant weight.” SUMF ¶ 5.

28 The pertinent text of the Ordinance limits how city departments may obtain or deploy

1 surveillance technologies by enumerating distinct actions for which they generally must receive
2 Board approval via a separate ordinance:

3 (a) [A] Department must obtain Board of Supervisors approval by ordinance of a
4 Surveillance Technology Policy under which the Department will acquire and use
5 Surveillance Technology, prior to engaging in *any of the following*: [. . .]

6 (2) Acquiring or borrowing new Surveillance Technology, including but not
7 limited to acquiring Surveillance Technology without the exchange of monies
8 or other consideration;

9 (3) Using new or existing Surveillance Technology for a purpose, in a
10 manner, or in a location not specified in a Surveillance Technology Policy
11 ordinance approved by the Board in accordance with this Chapter 19B; [or]

12 (4) Entering into an agreement with a non-City entity to acquire, share, or otherwise
13 use Surveillance Technology

14 S.F. Admin. Code § 19B.2(a)(2)–(4) (emphasis added). Thus, to allege a claim of an
15 Ordinance violation under these provisions, a plaintiff must prove: (1) a City Department; (2)
16 acquired, borrowed, or used, or entered into an agreement to acquire or use; (3) a covered
17 surveillance technology; (4) without approval from the Board of Supervisors. Here, the undisputed
18 summary judgment record establishes all four of these elements.

19 **A. The SFPD is a City Department.**

20 The SFPD is subject to the Ordinance. The Ordinance generally defines a covered “City
21 Department” or “Department” as “any City official, department, board, commission, or other entity
22 in the City.” S.F. Admin. Code § 19B.1. CCSF admits that the SFPD is a City Department. SUMF ¶¶
23 1–2.

24 **B. The USBID camera network and software to access it are surveillance
25 technologies.**

26 The USBID camera network and the software used to access that network are covered
27 surveillance technologies. The Ordinance’s definition of “surveillance technology” includes “video
28 and audio monitoring and/or recording technology, such as surveillance cameras” and “any software
29 . . . used, designed, or primarily intended to collect, retain, process, or share . . . visual . . .
30 information specifically associated with, or capable of being associated with, any individual or

1 group.” S.F. Admin. Code § 19B.1. *See also* SUMF ¶ 13. As CCSF admits, the USBID operates a
2 network of surveillance cameras. SUMF ¶ 11. Moreover, CCSF admits that the SFPD installed
3 software on a laptop to access the USBID camera network. SUMF ¶ 22.

4 **C. The SFPD acquired, borrowed, and used the USBID camera network, and**
5 **entered an agreement to do so.**

6 The SFPD violated three separate provisions of the Ordinance, by (i) “acquiring” and
7 “borrowing” the USBID camera network and associated software, (ii) “using” the camera network,
8 and (iii) “entering into an agreement” with the USBID to “acquire” and “use” its camera network.
9 *See* S.F. Admin. Code § 19B.2(a)(2)-(4). As explained below, the SFPD lacked Board approval to
10 take any of these actions.

11 The Ordinance does not define “acquire,” “borrow,” “use,” or “agreement.” Thus, this Court
12 should turn to general and legal dictionaries to give these terms their “ordinary meaning.” *Upshaw v.*
13 *Superior Court*, 22 Cal. App. 5th 489, 504 (2018) (citation omitted).

14 ***Acquire and borrow.*** The SFPD acquired and borrowed the USBID camera network and
15 associated software. *Merriam-Webster* defines “acquire” as “to come into possession or control of
16 often by unspecified means.” Similarly, *Black’s Law Dictionary* defines “acquire” as “to gain
17 possession or control of; to get or obtain.” In addition, *Merriam-Webster* defines “borrow” as “to
18 appropriate for one’s own use,” and *Black’s Law Dictionary* defines “borrow” as “to take something
19 for temporary use.”

20 The Ordinance accords with these dictionary definitions. First, just as the above definitions
21 of “acquire” do not require monies or consideration, the Ordinance regulates the acquisition of
22 surveillance technology “without the exchange of monies or other consideration.” S.F. Admin. Code
23 § 19B.2(a)(2). This indicates that surveillance technology that is donated or gifted, or temporarily
24 provided without compensation, is still “acquired.” Second, just as the above definitions of “acquire”
25 do not require ownership or *exclusive* possession, the Ordinance regulates the acquisition of many
26 technologies that Departments do not own or possess to the exclusion of others. CCSF admits that
27 the SFPD employs 19 surveillance technologies involving software that are maintained by a third-
28 party vendor, but that the SFPD does not own. SUMF ¶ 3.

1 The SFPD “acquired” the USBID camera network when they requested and obtained a
2 remote, real-time link to it. SUMF ¶ 17. The link allowed the SFPD to obtain and possess camera
3 feeds that were also in the possession of the USBID. *See* SUMF ¶¶ 17, 21–23. The SFPD also
4 “borrowed” the network, as shown by the same facts, in addition to the temporary duration:
5 possession was initially granted for 48 hours and then expanded to one week. SUMF ¶¶ 18, 20, 25–
6 26.

7 Finally, the SFPD acquired the USBID camera network by taking “possession” and “control”
8 of computer software that enabled viewing of the protests. *See Merriam-Webster* and *Black’s Law*
9 *Dictionary*. Here, the SFPD installed software on a laptop, which allowed Officer Gunter to monitor
10 protesters through the USBID camera network. SUMF ¶¶ 21–22, 27, 31.

11 *Use*. The SFPD also used the USBID camera network on multiple occasions and in at least
12 two distinct manners. According to *Merriam-Webster*, “use” means “to put into action or service.”
13 *Black’s Law Dictionary* similarly defines “use” as “to employ for the accomplishment of a purpose.”

14 Subsequent legislation implementing the Ordinance demonstrates that “live monitoring” is a
15 “use” of surveillance cameras. The Board’s approval of a subset of city-owned surveillance cameras
16 authorizes Departments to “use security cameras for . . . live monitoring . . .” S.F. Ordinance No.
17 116-21 at § 5(b)(2).³ Likewise, the Board-approved Surveillance Technology Policy’s “authorized
18 use cases” for these city-owned cameras includes “live monitoring.” Security Camera Policy at p. 1.⁴

19 Here, the SFPD used the USBID camera network in at least two ways. First, at least one
20 SFPD officer monitored the USBID live camera feed. In her deposition, Officer Gunter admitted
21 viewing the camera feed twice on May 31, 2020, the day it was set up. SUMF ¶ 24. Viewing a feed
22 is the prototypical manner by which a person can “employ” or “put into action” a camera network.
23 *See Merriam-Webster*. Officer Gunter also testified that she viewed the camera feed “intermittently”
24 during the week that the SFPD had access to it. SUMF ¶ 27. She admitted that others may have

25 _____
26 ³ Available at <https://sf.gov.legistar.com/View.ashx?M=F&ID=9703161&GUID=C8C71FC6-C683-4D2B-94E5-6CC48BEA131E>.

27 ⁴ Available at <https://sf.gov/sites/default/files/%5Bdate%3Acustom%3AY%5D-%5Bdate%3Acustom%3Am%5D/Security%20Cameras%20Citywide%20Surveillance%20Technology%20Policy.pdf>.

1 viewed the camera feed, too, because the SFPD does not require documentation of such viewing.
2 SUMF ¶¶ 29–30. Given that another CCSF ordinance identifies “live monitoring” as a “use” of a
3 camera system, *supra* S.F. Ordinance No. 116-21, the SFPD officer’s repeated viewing of the
4 USBID camera feed here undoubtedly constitutes “use” under the Ordinance.

5 Second, in addition to viewing the camera feed, the SFPD used the USBID camera network
6 by establishing and running the live camera feed. As Officer Gunter testified, an SFPD laptop was
7 continuously running the camera feed for a week. SUMF ¶ 28. Afterward, she thanked the USBID
8 for helping with the SFPD’s “use of your cameras.” SUMF ¶ 31. Thus, after the SFPD acquired and
9 borrowed the camera network, they used it by operating that link.

10 **Agreement.** An “agreement” between two parties need not be a contract with bilateral
11 consideration. *Black’s Law Dictionary* defines “agreement” as “a mutual understanding between two
12 or more persons about their relative rights and duties regarding past or future performances; a
13 manifestation of mutual assent by two or more persons.” Legal treatises further show that
14 “agreement” and “contract” are not coextensive. “The term ‘agreement,’ although frequently used as
15 synonymous with the word ‘contract,’ is really an expression of greater breadth of meaning and less
16 technicality. Every contract is an agreement; but not every agreement is a contract.” 2 *Stephen’s*
17 *Commentaries on the Laws of England* 5 (L. Crispin Warmington ed., 21st ed. 1950). *See also* 1
18 Samuel Williston, *A Treatise on the Law of Contracts* § 2, at 6 (Walter H.E. Jaeger ed., 3d ed. 1957)
19 (“Agreement is in some respects a broader term than contract, or even than bargain or promise.”).
20 Because the Ordinance lacks any mention of “contract,” “agreement” should be read more broadly.

21 Here, the SFPD entered into an agreement to acquire and use the USBID’s network of
22 surveillance cameras. Officer Lim initially requested access to the network, and in response, the
23 USBID set up the remote, real-time link for the SFPD to access, initially for 48 hours. SUMF ¶¶ 18–
24 22. Officer Gunter sent the USBID an email requesting access for five more days, which they
25 provided. SUMF ¶¶ 25–26. The SFPD’s requests for network access followed by the USBID’s
26 fulfillment of those requests constitute a “manifestation of mutual assent,” *supra Black’s Law*
27 *Dictionary*, or an agreement.
28

1 **D. The SFPD failed to obtain approval from the Board of Supervisors.**

2 The Ordinance requires a City Department to obtain approval from the Board via a separate
3 ordinance and specific use policy before engaging in any of the actions outlined in the above
4 sections. S.F. Admin. Code § 19B.2(a)(2)–(4). The SFPD admits that it did not seek, nor did it
5 receive, approval from the Board pursuant to the Ordinance prior to obtaining a remote, real-time
6 link to the USBID camera network from May 31 through June 7, 2020. SUMF ¶ 32. Thus, the SFPD
7 violated the Ordinance.

8 **II. There were no exigent circumstances.**

9 CCSF cannot meet its burden of proving there were exigent circumstances present at the time
10 that the SFPD acquired and used the USBID camera network without prior Board approval. “Exigent
11 circumstances” is an affirmative defense under the Ordinance that a City Department must establish
12 to excuse its act of “temporarily acquir[ing] or temporarily us[ing] Surveillance Technology”
13 without prior Board approval. S.F. Admin Code § 19B.7(a). The Ordinance narrowly defines
14 “exigent circumstances” as “an emergency involving imminent danger of death or serious physical
15 injury to any person that requires the immediate use of Surveillance Technology or the information it
16 provides.” *Id.* at § 19B.1. If a City Department can establish exigent circumstances, the Ordinance
17 separately obligates the Department to take steps to limit the breadth and duration of the surveillance
18 and the information collected as a result, in addition to other specified requirements. *Id.* at §§
19 19B.7(a)(1)–(6), (b).

20 CCSF bears the burden of proving that exigent circumstances existed. The Ordinance’s
21 structure separates the plaintiff’s case in chief (i.e., violation of the rule that Departments must
22 obtain prior Board approval for enumerated actions) from the defendant’s affirmative defense (i.e.,
23 exigent circumstances). *Compare id.* at § 19B.2, with § 19B.7. California’s civil jury instructions
24 also place this burden on governmental defendants. CA. Civ. Inst. No. 3026 (instructions for
25 “affirmative defense – exigent circumstances” requiring that the government bear the evidentiary
26 burden).

27 Moreover, the case law demonstrates that the government bears “a heavy burden” to prove
28

1 that exigent circumstances existed in order to justify their otherwise unlawful conduct. *People v.*
2 *Ovieda*, 7 Cal. 5th 1034, 1052 (Cal. 2019) (quoting *Welsh v. Wisconsin*, 466 U.S. 750, 749-50
3 (1984). *See also People v. Rogers*, 46 Cal. 4th 1136, 1156 (2009) (“the government bears the burden
4 of establishing . . . exigent circumstances”); *Conway v. Pasadena Humane Society*, 45 Cal. App. 4th
5 163, 172 (1996) (government “bear[s] a heavy burden” to demonstrate exigency in civil action under
6 § 1983); *Bonivert v. City of Clarkston*, 883 F.3d 865, 876–77 (9th Cir. 2018) (same).

7 The government “must be able to point to specific and articulable facts from which [the
8 government] concluded that [its] action was necessary.” *Ovieda*, 7 Cal. 5th at 1043 (citation
9 omitted). *See also People v. Seminoff*, 159 Cal. App. 4th 518, 529 (2008) (“speculation . . . will not
10 suffice . . . for the simple reason the police are not allowed to conjure up their own emergency.”);
11 *U.S. v. Reid*, 226 F.3d 1020, 1028 (9th Cir. 2000) (“[m]ere speculation is not sufficient to show
12 exigent circumstances.”). Importantly, the government’s claim of exigent circumstances “must be
13 measured by the facts known to the officers . . . at the moment” when action was taken. *Rogers*, 46
14 Cal. 4th at 1157. These facts are all within the government’s possession, which is one more reason
15 the government bears the burden of proving exigency.

16 CCSF cannot meet its “heavy burden” to establish that exigent circumstances existed
17 necessary to excuse the SFPD’s violations of the Ordinance. The SFPD does not have specific facts
18 contemporaneous with its two separate requests to the USBID that demonstrate they knew of an
19 emergency involving an imminent threat of serious physical injury or death to any person.

20 First, the SFPD cannot demonstrate exigent circumstances existed on May 31, 2020, when
21 they first requested access to the USBID camera network. The SFPD had evidence of property
22 damage that occurred in the Union Square area on May 30, SUMF ¶ 33, but property damage cannot
23 serve as the basis for exigent circumstances under the Ordinance. S.F. Admin. Code § 19B.1
24 (exigent circumstances requires a “danger of death or serious physical injury to any *person*”)
25 (emphasis added). Moreover, the SFPD’s contemporaneous record of its request for access—a May
26 31 email from Officer Lim to the USBID—did not refer to or describe any such specific facts.
27 SUMF ¶ 35.

28 Second, the SFPD cannot demonstrate that exigent circumstances existed on June 2, 2020,

1 when it requested access to the USBID camera network for five additional days. Indeed, the SFPD’s
2 extension request did not refer to or describe specific facts establishing exigent circumstances.
3 SUMF ¶ 36. Further, Officer Gunter admitted that she could not recall any civil unrest in Union
4 Square after May 30. SUMF ¶ 37. *See also* SUMF ¶ 34. Moreover, there were no deaths related to
5 protest activity in San Francisco between May 25 and June 7, 2020. SUMF ¶ 38.

6 Furthermore, the SFPD has a pattern and practice of acquiring and using the USBID camera
7 network without any consideration of exigent circumstances. The SFPD admits to using the network
8 without knowledge of exigent circumstances on three other occasions: the 2019 Pride Parade, the
9 anticipated 2020 Super Bowl celebrations, and the 2020 Fourth of July celebrations. SUMF ¶¶ 49,
10 51. Importantly, the latter two uses occurred after enactment of the Ordinance. SUMF ¶ 50. In
11 addition, Officer Gunter testified she could not recall a single discussion of the Ordinance when the
12 SFPD used the USBID camera network during the events at issue in this case. SUMF ¶ 53.

13 Even if the SFPD could demonstrate the existence of exigent circumstances on either May 31
14 or June 2, the two occasions they initiated access to the USBID camera network, their week-long use
15 of the network still violated the Ordinance because they cannot demonstrate there was an ongoing
16 exigency. When there are exigent circumstances, the Ordinance requires the government to “[c]ease
17 using the Surveillance Technology within seven days, *or when the exigent circumstances end,*
18 *whichever is sooner.*” S.F. Admin Code § 19B.7(a)(2) (emphasis added). *See also Conway*, 45 Cal.
19 App. 4th at 173 (government action must be “strictly circumscribed by the exigencies which justify
20 its initiation”). The SFPD cannot show that an emergency involving imminent danger of death or
21 serious physical injury existed on the five additional days during which at least one SFPD officer
22 “intermittently” viewed the USBID camera feed, on June 3, 4, 5, 6, and 7. *See* SUMF ¶¶ 27, 29–30,
23 34. The SFPD’s ongoing access to and use of the USBID network in the absence of exigent
24 circumstances was unlawful.

25 **III. Plaintiffs have standing because they are activists against police violence “affected” by**
26 **unlawful SFPD surveillance.**

27 In California courts, the scope of standing to enforce a statute turns on the statute’s text,
28 history, and purpose. Here, “any person affected” by a violation can enforce the Ordinance, and the

1 legislative history and findings express a particular concern for surveillance of people, such as
2 Plaintiffs, protesting in support of Black lives. The three Plaintiffs are activists affected by the
3 SFPD’s violations of the Ordinance.

4 **A. California laws may create broad standing.**

5 The California Constitution does not impose a case or controversy requirement to limit
6 standing for cases brought in California courts. *Weatherford v. City of San Rafael*, 2 Cal. 5th 1241,
7 1247–48 (2017). Neither does the U.S. Constitution. *Bilafer v. Bilafer*, 161 Cal. App. 4th 363, 370
8 (2008). Rather, when California litigants bring state or local statutory claims, as here, standing turns
9 on “prudential and separation of powers considerations elucidating how and when parties should be
10 entitled to seek relief under particular statutes.” *Weatherford*, 2 Cal. 5th at 1248. Many California
11 laws create expansive standing. *See, e.g., id.* (taxpayer standing under Cal. Code Civ. Proc. § 526a).
12 The scope of a statutory private right of action depends on its text, history, and purpose.
13 *Midpeninsula Citizens v. Westwood Investors*, 221 Cal. App. 3d 1377, 1385 (1990); *Blumhorst v.*
14 *Jewish Family Services*, 126 Cal. App. 4th 993, 1002 (2010).

15 Standing analysis also considers whether the parties have “a sufficient interest in the subject
16 matter of the dispute to press their case with vigor.” *Bilafer*, 161 Cal. App. 4th at 370 (citation
17 omitted). Pecuniary interest is not required. *Id.*

18 **B. The Ordinance’s text, history, and purpose create broad standing.**

19 *The Ordinance’s text.* The Ordinance provides in relevant part: “Any alleged violation of
20 this Chapter . . . constitutes a legally cognizable basis for relief, and *any person affected* thereby may
21 institute proceedings for injunctive relief, declaratory relief, or writ of mandate to remedy the
22 violation” S.F. Admin Code § 19B.8(b) (emphasis added). The phrase “any person affected” is
23 broad on its face. The Ordinance does not define it, so dictionaries are instructive. *Upshaw*, 22 Cal.
24 App. 5th at 504. According to *Merriam-Webster*, to “affect” means “to act on and cause a change
25 in.” Likewise, according to *Black’s Law Dictionary*, to “affect” means “to produce an effect on” or
26 “to influence in some way.” Thus, the Ordinance broadly provides standing to “any person” who is
27 changed or influenced by a violation.
28

1 This phrase’s breadth is also shown by its usage in other CCSF ordinances. For example, the
2 Entertainment Commission may mediate disputes between event organizers and “persons affected.”
3 S.F. Admin. Code § 90.4(g). This would broadly include anyone displeased by an event. Likewise,
4 when the Recreation and Park Commission grants permits for expressive gatherings, it cannot limit
5 the expression of “persons affected” by the permit. S.F. Park Code § 7.06(a). This would broadly
6 include participants, counter-protesters, and even passersby.

7 Moreover, the Board of Supervisors eschewed terms which, in some laws, restrict standing to
8 persons “adversely affected,”⁵ “aggrieved,”⁶ or “injured.”⁷ This speaks to the Ordinance’s breadth.

9 ***The Ordinance’s legislative history.*** The Board was unequivocal in its intent to protect the
10 public in general, and protesters against police violence in particular, from unapproved surveillance
11 technologies. Thus, Plaintiffs must have standing to enforce the Ordinance when police unlawfully
12 surveil or otherwise “affect” them with these technologies.

13 On several occasions in the lead-up to the Board’s near unanimous passage of the Ordinance
14 in June 2019, Supervisor Aaron Peskin, the Ordinance’s author, discussed police surveillance of
15 marginalized populations. At an April 15 Rules Committee meeting, he explained: “If you take even
16 a cursory look at some historical uses of surveillance technologies it is often times these
17 marginalized groups, artists, and political dissidents who are disproportionately subject to the abuses
18 of this technology.” SUMF ¶ 6. At a May 6 Rules Committee meeting, he explained that surveillance
19 technologies have “often been used in abusive ways against marginalized communities,” and
20 continued: “I could regale you with some of the things that have happened in this city in the late 60s,
21 early 70s, again with surveillance of Act Up during the AIDS crisis, with surveillance of the Black
22 Lives Matter movement.” SUMF ¶ 7. And at a May 14 meeting of the full Board, he referred to

23 _____
24 ⁵ See, e.g., Cal. Bus. Code § 18897.8(a) (suit against athletic agents); Cal. Bus. Code § 22948.3(a)
25 (suit against phishing); Cal. Civil Code § 731.5 (suit against trail closure); Cal. Health Code §
52080(k) (suit against residential landlords).

26 ⁶ See, e.g., Cal. Civil Code § 52(c) (injunctive suit against discrimination); Cal. Gov. Code § 27203
27 (suit against improper recording of instrument); Cal. Labor Code § 2699(a) (suit against violations of
labor law); Cal. Pub. Resources Code § 30801 (suit against decision of agency).

28 ⁷ See, e.g., Cal. Bus. Code § 17204 (suit against unfair trade practices); Cal. Bus. Code § 25602.1
(suit against alcohol sale to intoxicated minor).

1 Black Lives Matter protests when describing the need for the ordinance. SUMF ¶ 8.

2 ***The Ordinance’s purpose.*** The Ordinance’s purposes are set forth in its General Findings.
3 SUMF ¶ 5. A core purpose is enforceability: “*Legally enforceable safeguards*, including robust
4 transparency, oversight, and accountability measures, must be in place to protect civil rights and
5 civil liberties before any surveillance technology is deployed.” *Id.* (emphasis added). Broad standing
6 is a necessary way to ensure enforcement. Another core purpose is protecting marginalized
7 communities: “While surveillance technology may threaten the privacy of all of us, surveillance
8 efforts have historically been used to intimidate and oppress certain communities and groups more
9 than others, including those that are defined by a common race, ethnicity, religion, national origin,
10 income level, sexual orientation, or political perspective.” *Id.* As with Supervisor Peskin’s concern
11 with spying on protests for Black lives, *see* SUMF ¶¶ 7–8, this Finding shows the need for broad
12 standing by “any person affected” especially those in historically marginalized groups, to enforce the
13 Ordinance. *See* S.F. Admin Code § 19B.8(b).

14 **C. Plaintiffs have standing.**

15 As explained above, the SFPD violated the Ordinance multiple times when it acquired and
16 used the USBID camera network. The SFPD surveilled a protest movement for Black lives, which
17 Plaintiffs participated in and helped organize. This affected them in several ways.

18 First, Plaintiffs are each fearful about attending future protests. SUMF ¶ 42. The SFPD on
19 three occasions has failed to get Board approval to acquire or use the USBID camera network,
20 SUMF ¶¶ 32, 50, suggesting it will do so again.

21 Second, Plaintiffs will find it more difficult to organize successful protests in the future.
22 SUMF ¶ 43. Courts have long recognized that police and government surveillance of First
23 Amendment activity imposes a “chill” and has a “deterrent effect.” *See, e.g., White v. Davis*, 13
24 Cal.3d 757, 761, 767 (1975); *Lamont v. Postmaster*, 381 U.S. 301, 307 (1965). Research confirms
25 this.⁸

26
27
28 ⁸ *See, e.g.,* Elizabeth Stoycheff, *Under surveillance: Examining Facebook’s spiral of silence effects in the wake of NSA internet monitoring*, Journalism & Mass Communications Quarterly (2016),

1 Third, the SFPD spied on the protest movement that Plaintiffs participated in and helped
2 organize. This movement is personal for Plaintiffs, who are members of the “marginalized
3 communities” that the Ordinance seeks to protect. SUMF ¶¶ 40–41, 5, 7. As Plaintiff Williams put it,
4 after the murder of George Floyd, it “was important for me to take to the streets” and “contribute to
5 the movement to end police violence and racism against Black Communities.” Exh. C at ¶ 3. She
6 explains that it was “an affront to our movement for equity and justice that the SFPD responded . . .
7 by secretly spying on us.” Exh. C at ¶ 8.

8 Fourth, the SFPD subjected Plaintiff Reyes to video surveillance on May 31, 2020. That day,
9 the SFPD had a remote, real-time link to the entire USBID camera network, SUMF ¶¶ 21–23, which
10 covers not just Union Square, but also surrounding areas including a segment of Market Street.
11 SUMF ¶¶ 10–12. That day, Reyes marched with other protesters in and around Union Square and
12 twice on the segment of Market Street covered by the cameras. SUMF ¶ 44.

13 Fifth, the SFPD’s acquisition and use of the USBID camera network without Board approval
14 deprived Plaintiffs of the opportunity to participate in the democratic process mandated by the
15 Ordinance. *See* SUMF ¶ 5 (a core purpose of the Ordinance is “informed public debate” after
16 “meaningful public input” about proposed surveillance technologies). Plaintiffs Williams and Sheard
17 have both participated in public debates concerning surveillance technology in San Francisco and
18 would like to continue doing so, particularly before such a technology is deployed. SUMF ¶¶ 45–48.

19 **IV. Plaintiffs are entitled to a permanent injunction.**

20 The Ordinance authorizes suit “for injunctive relief . . . to remedy the violation” S.F.
21 Admin Code § 19B.8(b). Here, Plaintiffs seek a permanent injunction prohibiting CCSF, including
22 the SFPD, from acquiring, borrowing, or using any non-city camera network without prior Board
23 approval. Exh. F at 10.⁹

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<https://journals.sagepub.com/doi/pdf/10.1177/1077699016630255>; Jon Penney, *Chilling effects:*
27 *Online surveillance and Wikipedia use*, Berkeley Tech. L. J. (2016),
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2769645.

28 ⁹ Plaintiffs also seek declaratory relief, as authorized by the Ordinance. *Id.* While this Court need not
resolve Plaintiffs’ entitlement to a permanent injunction at the same time it decides the summary

1 To obtain a permanent injunction, a plaintiff must show that (1) they succeeded on the merits
2 and (2) equitable relief is appropriate because damages would be inadequate as a remedy. Cal. Civil
3 Code § 3420; *Salazar v. Matejcek*, 245 Cal. App. 4th 634, 647 (2016). Here, Plaintiffs have proven
4 the elements of their cause of action, *see supra*, and can also show multiple grounds for equitable
5 relief. Most importantly, damages are not an available remedy under the Ordinance. S.F. Admin
6 Code § 19B.8(b).

7 Moreover, if an injunction is not granted, Plaintiffs will remain fearful about attending future
8 protests, they will have a more difficult time organizing protests, their movement will be exposed to
9 surveillance, and they will be deprived of their opportunity to comment on surveillance technology
10 as authorized by the Ordinance. SUMF ¶¶ 42–43, 45–48. This is because there is a strong likelihood
11 the SFPD will continue to violate the Ordinance absent a court order. The SFPD on three occasions
12 has obtained a remote, real-time link to the USBID camera network without Board approval. SUMF
13 ¶¶ 32, 50. The SFPD’s non-compliance was not due to the actions of a rogue officer, but rather
14 required the orders of a captain or a lieutenant. SUMF ¶¶ 19, 52. Further, when Officer Gunter used
15 and renewed the remote, real-time link during the George Floyd protests, she never heard anyone
16 within the SFPD talk about the Ordinance, SUMF ¶ 53, suggesting it does not factor into the SFPD’s
17 surveillance decisions. In short, the SFPD has a systemic problem that requires a systemic solution.

18 The strong public interest in enforcement of the Ordinance also supports a permanent
19 injunction. *See Loma Portal Civic Club v. American Airlines, Inc.* 61 Cal. 2d 582, 588 (1964). The
20 Board passed the Ordinance to protect communities that the government has long targeted for
21 surveillance, including protesters for Black lives. SUMF ¶¶ 5–8. San Francisco has historically been
22 and will likely continue to be a center of political and social activism, including mass protests. There
23 is a strong public interest in safeguarding protesters, including Plaintiffs, from further government
24 surveillance.

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28 judgment merits, *People v. Superior Court*, 234 Cal. App. 4th 1360 (2015), Plaintiffs, in the interest
of completeness, argue herein their entitlement to a permanent injunction.

1 **CONCLUSION**

2 For the foregoing reasons, this Court should grant Plaintiffs’ Motion for Summary Judgment.

3
4 Dated: September 16, 2021

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