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

17 HOPE WILLIAMS, NATHAN SHEARD, and  
18 NESTOR REYES,  
19 Plaintiffs,

20 v.

21 CITY AND COUNTY OF SAN FRANCISCO,  
22 Defendant.  
23

Case No.: CGC-20-587008

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

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Superior Court of California,  
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1 **INTRODUCTION AND SUMMARY OF ARGUMENT**

2 The San Francisco Police Department (“SFPD”) obtained access to the Union Square  
3 Business Improvement District’s (“USBID”) network of over 300 surveillance cameras for eight  
4 days at the height of protests against police violence in May and June 2020. An SFPD officer viewed  
5 the camera feed twice the day it was established, and “intermittently” over the course of the eight  
6 days that the SFPD had access. The SFPD acted without prior approval from the Board of  
7 Supervisors (“Board”). These actions affected Plaintiffs by making them fearful of attending future  
8 protests and making it harder for them to organize other people to do so. Defendant City and County  
9 of San Francisco (“CCSF”) does not dispute any of these material facts.

10 CCSF thus has waived any arguments based on the Acquisition of Surveillance Technology  
11 Ordinance’s (“the Ordinance”) central statutory provisions in subsection 19B.2(a), on its exigency  
12 provision in section 19B.7, or on Plaintiffs’ standing to bring an action under section 19B.8. Instead,  
13 CCSF has put all of its eggs in one basket: the grace period provision in subsection 19B.5(d). But the  
14 grace period does not encompass the SFPD’s use of the USBID camera network to spy on the May  
15 and June 2020 protests because the SFPD was not “possessing or using” that network on an ongoing  
16 basis before the Ordinance’s effective date. The SFPD’s day-long, temporary use of that network  
17 during the 2019 Pride Parade does not trigger the grace period provision and it does not excuse the  
18 SFPD’s unlawful surveillance. See Pl. Opp. Br. at 6–11.<sup>1</sup>

19 Thus, the undisputed record shows that the SFPD violated the Ordinance by unlawfully  
20 acquiring and using the USBID camera network to spy on protests for Black lives in May and June  
21 2020. This Court should grant Plaintiffs’ motion for summary judgment and deny Defendant’s  
22 motion for summary judgment.

23  
24  
25 \_\_\_\_\_  
26 <sup>1</sup> As used herein, “Pl. Br.” means Plaintiffs’ memorandum of September 16 in support of their  
27 motion for summary judgment; “Pl. Opp. Br.” and “Def. Opp Br.” mean the parties’ respective  
28 memoranda of October 22 in opposition to each others’ motions; and “SUMF” means Plaintiffs’  
factual reply of November 19 concerning their separate statement of undisputed material facts in  
support of their motion.

1 **ARGUMENT**

2 **I. The grace period provision does not excuse the SFPD’s May and June 2020**  
3 **surveillance.**

4 CCSF does not directly contend with the SFPD’s violations of the Ordinance’s central  
5 statutory provisions in May and June 2020. Instead, CCSF’s opposition brief repeats, and relies  
6 solely on, its grace period defense from its opening brief. But again, CCSF’s editorializing with  
7 phrases like “grandfathered in,” Def. Opp. Br. at 6, 9, cannot expand this limited provision into an  
8 indefinite pass for all future uses of a surveillance technology simply because a department  
9 temporarily used the technology once before the Ordinance’s effective date. Pl. Opp. Br. at 6–11.  
10 And again, CCSF entirely ignores the compliance obligations in section 19B.5, which the SFPD  
11 failed to meet. Pl. Opp. Br. at 12–14.

12 The text, structure, and history of the Ordinance show that the SFPD’s day-long use of the  
13 USBID camera network during Pride 2019 does not trigger the grace period provision. By its text,  
14 subsection 19B.5(d) covers only a surveillance technology that a department was “possessing or  
15 using” on an ongoing basis—not a single, temporary use—before the Ordinance’s effective date. *See*  
16 Pl. Opp. Br. at 6–7. As such, the legislative debate on section 19B.5 focused on departments that had  
17 already incorporated surveillance technologies, like automated license plate readers (“ALPRs”) and  
18 bus cameras, into their operations on an ongoing basis over a period of years. *See id.* at 7–8. Indeed,  
19 CCSF concedes that the grace period’s purpose is to “avoid . . . disruption to departmental  
20 operations,” Def. Opp. Br. at 5, which might plausibly be an issue for departments that had  
21 incorporated technologies like ALPRs and bus cameras, but not for a department that briefly  
22 borrowed a technology on just one occasion. Here, the SFPD had not incorporated the USBID  
23 camera network into its operations at the time of the Ordinance’s effective date. Rather, they needed  
24 new permission from the USBID for each subsequent use after the 2019 Pride Parade, which the  
25 USBID in fact denied on one occasion. *See* Pl. Opp. Br. at 8–9. Moreover, the grace period provision  
26 authorizes a department only to “continue its use” of an “existing” surveillance technology, S.F.  
27 Admin. Code §§ 19B.5 & (d)—not to use it in a new or more expansive way, as the SFPD did with  
28 the USBID camera network in May and June 2020. *See* Pl. Opp. Br. at 10–11.

1 Finally, CCSF has not shown that the SFPD complied with the obligations a department must  
2 satisfy in order to assert the grace period. Namely, CCSF failed to show that the SFPD timely  
3 submitted to the city’s Committee on Information Technology (“COIT”) the required inventory list  
4 and use policy within the Ordinance’s explicit deadlines, or obtained from COIT an extension of  
5 time to do so. *See* Pl. Opp. Br. at 12–14. For this reason alone, CCSF’s grace period defense fails.

6 **II. CCSF waived all defenses based on the Ordinance’s central statutory provisions,**  
7 **exigency, or standing, which leaves an undisputed record that the SFPD violated the**  
8 **law in May and June 2020.**

9 The Ordinance ensures that decisions about obtaining or deploying surveillance technologies  
10 are not unilaterally and secretly made by city departments, but rather by the Board of Supervisors  
11 after a transparent process that includes input from the public. *See generally* S.F. Admin. Code Ch.  
12 19B *et seq.* The SFPD’s secret, unapproved use of the USBID camera network to surveil the May  
13 and June 2020 protests for eight days when there was no exigency violated the Ordinance’s central  
14 statutory provisions and “affected” Plaintiffs. *See id.* at §§ 19B.2(a), 19B.7, 19B.8.

15 CCSF ignored all of this in its opening and opposition briefs, and thus has waived any  
16 argument on these points. *See Sunset Drive Corp. v. City of Redlands*, 73 Cal. App. 4th 215, 226  
17 (1999) (“Absent a sufficient showing of justification for the failure to raise an issue in a timely  
18 fashion, we need not consider any issue which . . . was not adequately raised in the briefs.”); *Balboa*  
19 *Ins. Co. v. Aguirre*, 149 Cal. App. 3d 1002, 1010 (1983) (“By waiting until its reply brief to raise this  
20 contention, [the party] has waived it.”); *Tyler v. Children’s Home Soc’y*, 29 Cal. App. 4th 511, 526  
21 n.8 (1994) (“[I]t is unfair to raise new arguments for the first time in a reply brief; we therefore need  
22 not consider the contention.”).

23 **A. The SFPD violated the Ordinance when they acquired, borrowed, and used the**  
24 **USBID camera network without prior Board approval.**

25 Plaintiffs proved that the Ordinance’s central statutory provisions in subsection 19B.2(a)  
26 were violated because: (1) a City Department; (2) acquired, borrowed, or used, or entered into an  
27 agreement to acquire or use; (3) a covered surveillance technology; (4) without prior approval from  
28 the Board of Supervisors. *See* Pl. Br. at 9–10. CCSF admitted or waived any objection to each of  
these points, and does not dispute any material facts about them.

1 CCSF admits that the SFPD is a City Department. SUMF ¶¶ 1–2. The Ordinance specifically  
2 includes “surveillance cameras” as an example in its definition of “surveillance technology,” S.F.  
3 Admin. Code § 19B.1, and CCSF admits the USBID operates a network of surveillance cameras,  
4 SUMF ¶ 11. The SFPD admits that they did not seek, nor did they receive, Board approval pursuant  
5 to the Ordinance prior to obtaining a remote, real-time link to the USBID camera network from May  
6 31 through June 7, 2020. SUMF ¶ 32.

7 The SFPD acquired, borrowed, and used the USBID camera network, and entered into an  
8 agreement to do so. *See* Pl. Br. at 11–13. First, the SFPD “acquired” and “borrowed” the network  
9 when they requested and obtained a remote, real-time link to it. SUMF ¶ 17. The link allowed the  
10 SFPD to obtain and possess camera feeds that were also in the possession of the USBID. *See* SUMF  
11 ¶¶ 17, 21–23. Second, the SFPD “used” the network when Officer Gunter viewed the camera feed  
12 twice on May 31, 2020, the day it was set up, SUMF ¶ 24, and then viewed it “intermittently” over  
13 the course of the following seven days, SUMF ¶ 27. Third, the SFPD entered into an agreement to  
14 acquire and use the network when Officer Lim requested and the USBID granted access to the  
15 network on May 31, 2020 for 48 hours, and Officer Gunter requested and the USBID granted an  
16 extension for five additional days on June 2, 2020. SUMF ¶¶ 18–22, 25–26.

17 CCSF did not in its opening or opposition briefs offer any contrary argument concerning the  
18 Ordinance’s central statutory provisions, Def. Opp. Br. at 5, and thus has waived any argument that  
19 this Court should adopt a different interpretation.

20 **B. There were no exigent circumstances.**

21 CCSF has not attempted to prove that the SFPD had specific facts, contemporaneous with  
22 their two separate requests to the USBID for access to the camera network, that demonstrated they  
23 knew of “an emergency involving an imminent threat of serious physical injury or death to any  
24 person.” *See* S.F. Admin. Code § 19B.1. The Ordinance separates exigency as an affirmative defense  
25 from the plaintiff’s case in chief, Pl. Br. at 14, and CCSF waived this defense by not raising it in its  
26 opening brief. CCSF further waived it by not raising it in its opposition brief. While CCSF’s  
27 response to Plaintiffs’ SUMF characterizes the events of May 30, SUMF ¶ 33, this cannot put  
28 exigent circumstances at issue, especially because CCSF’s opposition brief is devoid of any

1 argument that exigency existed. See Pl. Br. at 15. *See also Distefano v. Forester*, 85 Cal. App. 4th  
2 1249, 1264 (2001) (“To create a triable issue of material fact, the opposition evidence must be  
3 directed to issues raised by the pleadings.”).

4 Further, CCSF failed to dispute that no property damage occurred after the early morning  
5 hours of May 31, 2020, SUMF ¶ 34; that the requests from SFPD officers to the USBID for camera  
6 access did not state any specific facts referring to imminent danger of death or serious physical  
7 injury to any person, SUMF ¶¶ 35–36; and that the SFPD is unaware of any deaths relating to  
8 protest activity between May 25 and June 7, SUMF ¶ 38. Similarly, CCSF does not dispute that  
9 Officer Gunter admitted that she could not recall any civil unrest in Union Square after May 30.  
10 SUMF ¶ 37. In sum, CCSF has waived any argument that exigent circumstances justified the  
11 SFPD’s use of the USBID camera network in May and June 2020, and even absent such waiver, the  
12 undisputed material facts show there was no exigency.

13 **C. Plaintiffs have standing.**

14 The Ordinance broadly confers standing to “any person affected” by a violation. *See* S.F.  
15 Admin Code § 19B.8(b). This broad standing is allowed by the U.S. and California Constitutions,  
16 which do not impose a case or controversy requirement on cases brought in California courts. Pl.  
17 Br. at 16–17 (citing *Weatherford v. City of San Rafael*, 2 Cal. 5th 1241, 1247–48 (2017) and *Bilafer*  
18 *v. Bilafer*, 161 Cal. App. 4th 363, 370 (2008)). Supervisor Aaron Peskin, the Ordinance’s author,  
19 repeatedly stressed the legislation’s role in protecting marginalized people and protesters from  
20 police surveillance and enshrined that protection in the Ordinance’s explicit purposes, alongside the  
21 need for enforceability. *See* Pl. Br. at 18–19.

22 The SFPD’s violations of the Ordinance “affected” Plaintiffs in several ways. *See* Pl. Br. at  
23 19–20. The SFPD made Plaintiffs fearful about attending future protests, SUMF ¶ 42; made it more  
24 difficult for them to organize successful protests in the future, SUMF ¶ 43; spied on the protest  
25 movement Plaintiffs helped organize, SUMF ¶ 41; subjected Plaintiff Reyes to video surveillance,  
26 SUMF ¶¶ 10–12, 21–23, 44; and deprived Plaintiffs of the opportunity to participate in the  
27 Ordinance’s democratic oversight process, SUMF ¶¶ 45–48.

28



1 CCSF did not dispute any of these facts, or contest any of this legal analysis of the  
2 Ordinance’s standing provision, in its opening or opposition briefs. It thus has waived any argument  
3 that Plaintiffs were not “affected” by the SFPD’s surveillance or otherwise lack standing. *See*  
4 *Distefano v. Forester*, 85 Cal. App. 4th at 1264.

5 **III. Plaintiffs are entitled to a permanent injunction.**

6 Plaintiffs’ opening brief shows they are entitled to a permanent injunction prohibiting CCSF,  
7 including the SFPD, from acquiring, borrowing, or using any non-city camera network without prior  
8 Board approval. Plaintiffs have proven the merits of their claim, as set forth above. Plaintiffs also  
9 have shown multiple grounds for equitable relief, including the absence of a damages remedy under  
10 the Ordinance, S.F. Admin. Code § 19B.8(b); the ongoing harms to Plaintiffs in the absence of an  
11 injunction; the SFPD’s pattern of ignoring the Ordinance; and the public interest in support of  
12 enforcing the Ordinance. Pl. Br. at 20–21. CCSF’s opposition brief waived their response.

13 **CONCLUSION**

14 For the foregoing reasons, this Court should grant Plaintiffs’ Motion for Summary Judgment  
15 and deny Defendant’s Motion for Summary Judgment.

16 Dated: November 19, 2021

By: /s/ Saira Hussain  
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