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7 CITY AND COUNTY OF SAN FRANCISCO

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO
11 UNLIMITED JURISDICTION

12 HOPE WILLIAMS, NATHAN SHEARD, and
NESTOR REYES,

13 Plaintiff,

14 vs.

15 CITY AND COUNTY OF SAN
16 FRANCISCO,

17 Defendant.

Case No. CGC-20-587008

**DEFENDANT CITY AND COUNTY OF SAN
FRANCISCO'S FIRST AMENDED ANSWER
TO COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF**

Date Action Filed: October 7, 2020
Trial Date: None set.

ANSWER

On behalf of itself and no other persons or entities, Defendant the CITY AND COUNTY OF SAN FRANCISCO (“San Francisco” or “Defendant”) hereby submits its First Amended Answer to Plaintiffs HOPE WILLIAMS, NATHAN SHEARD, and NESTOR REYES’ (collectively “Plaintiffs” or individually “Williams,” Sheard,” or “Reyes”) Complaint For Declaratory and Injunctive Relief filed on or about October 7, 2020 (“Complaint”) as follows:

1. Answering the allegations of Paragraph 1, Defendant admits that a large number of people engaged in protest activity in San Francisco during the date range identified in this paragraph. Further answering, Defendant states that the San Francisco Police Department (SFPD) worked to facilitate peaceful protests across the City. Defendant lacks information and belief sufficient to form a belief as to the truth of the paragraph’s allegation regarding the number of people engaged in protest activity during this time frame, and denies the same on that basis. Except as expressly admitted, Defendant denies the remaining allegations of this paragraph.

2. Answering the allegations of Paragraph 2, Defendant denies that it engaged in surveillance that was unlawful. Defendant lacks information sufficient to form a belief as to the truth of the paragraph’s remaining allegations, and denies the same on that basis.

3. Answering the allegations of Paragraph 3, Defendant admits that Plaintiffs seek a declaratory judgment and an injunction pursuant to the San Francisco Acquisition of Surveillance Technology Ordinance (“the Ordinance”). Defendant further answers that the paragraph states legal conclusions to which no response is required. Except as expressly admitted, Defendant denies the remaining allegations of this paragraph.

4. Answering the allegations of Paragraph 4, Defendant admits the allegations in this paragraph.

5. Answering the allegations of Paragraph 5, Defendant admits the allegations in this paragraph.

6. Answering the allegations of Paragraph 6, Defendant lacks information sufficient to form a belief as to the truth of the paragraph’s allegations, and denies the same on that basis.

1 7. Answering the allegations of Paragraph 7, Defendant lacks information sufficient to
2 form a belief as to the truth of the paragraph’s allegations, and denies the same on that basis.

3 8. Answering the allegations of Paragraph 8, Defendant lacks information and belief
4 sufficient to form a belief as to the truth of the paragraph’s allegations, and denies the same on that
5 basis.

6 9. Answering the allegations of Paragraph 9, Defendant admits that it is a charter city and
7 county, existing pursuant to the California Constitution and state laws and its own municipal charter.
8 Defendant admits that it can be sued in its own name, and further admits the allegations of said
9 paragraph’s second and third sentences. Defendant denies any remaining allegations in said
10 paragraph.

11 10. Answering the allegations of Paragraph 10, Defendant denies the allegations in this
12 paragraph.

13 11. Answering the allegations of Paragraph 11, Defendant lacks information sufficient to
14 form a belief as to the truth of the paragraph’s allegations, and denies the same on that basis.

15 12. Answering the allegations of Paragraph 12, Defendant admits that the terms of San
16 Francisco Police Department General Order 8.10 speak for themselves. Defendant lacks information
17 sufficient to form a belief as to the truth of the paragraph’s remaining allegations, and denies the same
18 on that basis.

19 13. Answering the allegations of Paragraph 13, Defendant admits that the San Francisco
20 Police Department monitors conduct at protests and similar gatherings to protect public safety.
21 Defendant also admits the allegations of the paragraph’s second sentence. Defendant lacks
22 information sufficient to form a belief as to the truth of the remaining allegations contained in this
23 paragraph, and denies the same on that basis.

24 14. Answering the allegations of Paragraph 14, Defendant states that it lacks information
25 sufficient to form a belief as to the truth of the allegations contained in this paragraph.

1 15. Answering the allegations of Paragraph 15, Defendant states that it lacks information
2 sufficient to form a belief as to the truth of this paragraph’s allegations, and denies the same on that
3 basis.

4 16. Answering the allegations of Paragraph 16, Defendant admits that the San Francisco
5 Police Department uses surveillance technology that includes automatic license plate reader
6 technology; Cellebrite; and ShotSpotter. Defendant further admits that Cellebrite is a mobile system
7 that enables police to conduct forensic searches of smartphones; and that ShotSpotter is a microphone-
8 based technology designed to detect gunshots. Except as expressly admitted herein, Defendant denies
9 the remaining allegations of this paragraph.

10 17. Answering the allegations of Paragraph 17, Defendant admits that the contents of the
11 Ordinance speak for themselves. Except as expressly admitted herein, Defendant denies the remaining
12 allegations of this paragraph.

13 18. Answering the allegations of Paragraph 18, Defendant admits that the contents of the
14 Ordinance speak for themselves. San Francisco further admits that the Ordinance went into effect in
15 July 2019. Defendant further admits that “surveillance technology,” as that term is used in the
16 Ordinance, includes surveillance cameras. Except as expressly admitted herein, Defendant denies the
17 remaining allegations of this paragraph.

18 19. Answering the allegations of Paragraph 19, Defendant admits that the contents of the
19 Ordinance speak for themselves. Defendant lacks information sufficient to form a belief as to the truth
20 of any remaining allegations contained in this paragraph, and denies the same on that basis.

21 20. Answering the allegations of Paragraph 20, Defendant admits that Supervisor Aaron
22 Peskin made the following alleged statements during the hearings that led up to the Ordinance’s
23 approval. Except as expressly admitted herein and in the following subparagraphs, Defendant denies
24 the allegations in this paragraph:

25 a. Answering the allegations of Paragraph 20(a), Defendant admits that Supervisor Aaron
26 Peskin made the quoted statement during the April 15, 2019 Board of Supervisors Rules Committee
27 meeting. Further answering, Defendant admits that the Board of Supervisors Rules Committee
28

1 hearing from that date is available at

2 http://sanfrancisco.granicus.com/MediaPlayer.php?view_id=10&clip_id=32890&meta_id=701009
3 (last viewed Jan. 5, 2021).

4 b. Answering the allegations of Paragraph 20(b), Defendant admits that Supervisor Aaron
5 Peskin made the quoted statement during the May 6, 2019 Board of Supervisors Rules Committee
6 meeting. Further answering, Defendant admits that the Board of Supervisors Rules Committee

7 hearing from that date is available at

8 http://sanfrancisco.granicus.com/MediaPlayer.php?view_id=10&clip_id=33045&meta_id=708893
9 (last viewed Jan. 5, 2021).

10 c. Answering the allegations of Paragraph 20(c), Defendant admits that Supervisor Peskin
11 referred to the Black Lives Matter protests at the May 14, 2019 Board of Supervisors meeting, when
12 describing the need for the Ordinance. Defendant further admits that the Board of Supervisors voted
13 to approve the Ordinance upon first reading at this meeting. Further answering, Defendant admits that
14 the Board of Supervisors meeting from that date is available at

15 http://sanfrancisco.granicus.com/MediaPlayer.php?view_id=10&clip_id=33135&meta_id=712484
16 (last visited Jan. 5, 2021). Except as expressly admitted herein, Defendant denies the remaining
17 allegations of this paragraph.

18 21. Answering the allegations of Paragraph 21, Defendant admits the allegations of this
19 paragraph.

20 22. Answering the allegations of Paragraph 22, Defendant lacks information sufficient to
21 form a belief as to the truth of the paragraph's allegations, and denies the same on that basis.

22 23. Answering the allegations of Paragraph 23, Defendant admits the allegations contained
23 in this paragraph's first, second, third, fifth, and sixth sentences. Defendant further admits that USBID
24 operates a network of video surveillance cameras. Defendant lacks information sufficient to form a
25 belief as to the truth of the remaining allegations contained in said paragraph, and denies the same on
26 that basis.

1 24. Answering the allegations of Paragraph 24, Defendant admits the allegations contained
2 in said paragraph.

3 25. Answering the allegations of Paragraph 25, Defendant admits that property destruction
4 occurred during these protests in San Francisco. Defendant lacks information sufficient to form a
5 belief as to the truth of the remaining allegations contained in said paragraph, and denies the same on
6 that basis.

7 26. Answering the allegations of Paragraph 26, Defendant lacks information sufficient to
8 form a belief as to the truth of the paragraph's allegations, and denies the same on this basis.

9 27. Answering the allegations of Paragraph 27, Defendant admits that protest activity
10 occurred in the area around San Francisco City Hall and east up Market Street on May 30, 2020.
11 Defendant further admits that USBID cameras are located in this area. Defendant lacks information
12 sufficient to form a belief as to the truth of the remaining allegations contained in said paragraph, and
13 denies the same on that basis.

14 28. Answering the allegations of Paragraph 28, Defendant admits that protest activity
15 occurred in the area around San Francisco City Hall and east up Market Street on May 31, 2020.
16 Defendant further admits that USBID cameras are located in this area. Defendant lacks information
17 sufficient to form a belief as to the truth of the remaining allegations contained in said paragraph, and
18 denies the same on that basis.

19 29. Answering the allegations of Paragraph 29, Defendant admits that protest activity
20 occurred in the area around City Hall and the Hall of Justice (located at 850 Bryant Street) on June 2,
21 2020. Defendant lacks information sufficient to form a belief as to the truth of the remaining
22 allegations contained in said paragraph, and denies the same on that basis.

23 30. Answering the allegations of Paragraph 30, Defendant admits that protest activity
24 occurred in the Mission District neighborhood on June 3, 2020, and that approximately 10,000 people
25 attended this protest. Defendant lacks information sufficient to form a belief as to the truth of the
26 remaining allegations contained in said paragraph, and denies the same on that basis.

1 31. Answering the allegations of Paragraph 31, Defendant admits that protest activity
2 occurred in the City Hall area and in the nearby Market Street vicinity on June 5, 2020. Defendant
3 lacks information sufficient to form a belief as to the truth of the remaining allegations contained in
4 said paragraph, and denies the same on that basis.

5 32. Answering the allegations of Paragraph 32, Defendant lacks information sufficient to
6 form a belief as to the truth of the paragraph’s allegations, and denies the same on this basis.

7 33. Answering the allegations of Paragraph 33, Defendant lacks information sufficient to
8 form a belief as to the truth of the paragraph’s allegations, and denies the same on this basis.

9 34. Answering the allegations of Paragraph 34, Defendant admits that the San Francisco
10 Police Department obtained a remote, real-time link to access the Union Square BID’s camera
11 network, if needed, between May 31 and June 7, 2020. Further answering, Defendant states that no
12 member of SFPD monitored the camera network during this time frame to assess for potential violence
13 and situational awareness. Defendant denies that obtaining a remote, real-time link without
14 monitoring the camera network constitutes acquisition, borrowing, or use under the Ordinance.
15 Except as expressly admitted herein, Defendant denies the remaining allegations of this paragraph.

16 35. Answering the allegations of Paragraph 35, Defendant admits that the contents of the
17 May 31, 2020 email between SFPD officer Oliver Lim and Union Square BID Director of Services,
18 Chris Boss, speak for themselves. Further answering, Defendant admits that the email requested
19 access to the cameras “on Market St to monitor the potential violence today for situational awareness
20 and enhanced response.” Except as expressly admitted herein, Defendant denies the remaining
21 allegations of this paragraph.

22 36. Answering the allegations of Paragraph 36, Defendant admits that the contents of the
23 May 31, 2020 email from Chris Boss, Union Square BID Director of Services to SFPD officer Oliver
24 Lim speak for themselves. Further answering, Defendant admits that the email asked Dmitri Shimolin
25 provide “48 hour remote access to Oliver.” Except as expressly admitted herein, Defendant denies the
26 remaining allegations of this paragraph.

1 37. Answering the allegations of Paragraph 37, Defendant admits that the contents of the
2 June 2, 2020 email from SFPD officer Tiffany Gunter to Union Square BID Director of Services Chris
3 Boss speak for themselves. Further answering, Defendant admits that the email stated, in part: “We
4 greatly appreciate you guys allowing us access for the past 2 days but we are hoping to extend our
5 access through the weekend. We have several planned demos all week and we anticipate several more
6 over the weekend which are the ones we worry will turn violent again.” Except as expressly admitted
7 herein, Defendant denies the remaining allegations of this paragraph.

8 38. Answering the allegations of Paragraph 38, Defendant admits that the contents of the
9 June 2, 2020 email from Union Square BID Director of Services Chris Boss to SFPD officer Tiffany
10 Gunter speak for themselves. Further answering, Defendant admits that the email said, in relevant
11 part: “Thank you for reaching out. I have received the request and am reviewing with our Executive
12 Director for approval. If approved I will notify AVS to provide the access and will also follow up
13 with you.” Except as expressly admitted herein, Defendant denies the remaining allegations of this
14 paragraph.

15 39. Answering the allegations of Paragraph 39, Defendant admits that the contents of the
16 June 10, 2020 email from SFPD officer Tiffany Gunter to US BID Director of Services Chris Boss
17 speak for themselves. Further answering, Defendant admits that the email states, in relevant part: “I
18 just wanted to follow up and say thank you for assisting us with our request for the use of your
19 cameras during this period of civil unrest and rioting. They were extremely helpful in giving us
20 situational awareness and ensuring public safety during the multiple demos that came through the
21 area.” Except as expressly admitted herein, Defendant denies the remaining allegations of this
22 paragraph.

23 Answering the allegations in footnote 2 to Paragraph 39, Defendant admits that the contents of
24 the August 5, 2020 letter from SFPD Chief William Scott to President Yee and the Members of the
25 San Francisco Board of Supervisors speak for themselves. Further answering, Defendant states that
26 the letter states, in relevant part: “On May 31st, BID provided a remote link which allowed SFPD
27 members to access live feed, if needed. As looting, vandalism and rioting did not continue in the areas
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1 covered by BID, SFPD did not monitor BID’s network of security cameras.” Further answering, the
2 letter also states that it provided an “exigency report” to “confirm” the existence of “exigent
3 circumstances” during the May 31 to June 7, 2020 time frame. In relevant part, the letter provided that
4 “civil unrest following peaceful protests on May 30 and into the morning of May 31 resulted in 33
5 arrests relating to looting and injury of one officer and numerous structure fires putting protesters and
6 first responders in peril. Demonstration activities occurring on May 31 resulted in 80 arrests and
7 seizure of several weapons and contraband.” Except as expressly admitted herein, Defendant denies
8 the remaining allegations of this paragraph.

9 40. Answering the allegations of Paragraph 40, the paragraph states legal conclusions to
10 which no response is required. To the extent a response is necessary, Defendant denies the allegations
11 of this paragraph.

12 41. Answering the allegations of Paragraph 41, Defendant admits that the contents of the
13 cited portions of the Ordinance, S.F. Admin. Code §§ 19B.2 & 19B.7, speak for themselves. Further
14 answering, the paragraph states legal conclusions to which no response is required. Except as
15 expressly admitted herein, Defendant denies the remaining allegations of this paragraph.

16 42. Answering the allegations of Paragraph 42, Defendant states that it did not acquire or
17 use the USBID’s camera network. Defendant states that it lacks information sufficient to form a belief
18 as to the truth of the remaining allegations in said paragraph, and denies the same on that basis.

19 43. Answering the allegations of Paragraph 43, Defendant admits that the contents of the
20 cited portion of the Ordinance, S.F. Admin. Code § 19B.8(a), speak for themselves. Except as
21 expressly admitted herein, Defendant denies the remaining allegations of this paragraph.

22 44. Answering the allegations of Paragraph 44, Defendant denies the allegations of this
23 paragraph, and denies that the SFPD engaged in unlawful surveillance or violated the Ordinance.

24 45. Answering the allegations of Paragraph 45, Defendant incorporates by references its
25 answers to the above paragraphs as if set forth fully herein.

26 46. Answering the allegations of Paragraph 46, Defendant admits that the contents of the
27 Ordinance, as set forth in S.F. Admin Code §§ 19B.2(a)(2), (3), and (4) speak for themselves. Further
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1 answering, the paragraph states legal conclusions to which no response is required. Except as
2 expressly admitted herein, the allegations of this paragraph are denied.

3 47. Answering the allegations of Paragraph 47, the paragraph states legal conclusions to
4 which no response is required. To the extent a response is necessary, Defendant denies the allegations
5 of this paragraph.

6 ANSWER TO PRAYER FOR RELIEF

7 Defendant denies each and every legal conclusion and factual assertion in the Prayer for Relief,
8 and further denies that Plaintiffs Hope Williams, Nathan Sheard, and Nestor Reyes are entitled to any
9 of the relief they seek.

10 AFFIRMATIVE DEFENSES

11 Without conceding that it has the burden of proof as to any of these matters, San Francisco
12 alleges on information and belief the following affirmative defenses. By setting forth these affirmative
13 defenses, San Francisco does not assume the burden of proving any fact, issue, or element of a cause
14 of action where such burden properly belongs with Plaintiffs. Moreover, nothing stated in any of these
15 affirmative defenses is intended or shall be construed as an acknowledgment that any particular issue
16 or subject matter is relevant to the Complaint's allegations.

17 1. The Complaint, and every purported cause of action therein against San Francisco, fails
18 to state facts sufficient to constitute a cause of action.

19 2. Plaintiffs are barred from recovery under the doctrine of mootness.

20 3. Plaintiffs' claims are barred, in whole or in part, because Plaintiffs lack standing to
21 bring some or all of the claims alleged.

22 4. Plaintiffs are not entitled to any relief, insofar as San Francisco substantially complied
23 with all applicable laws, and to the extent that San Francisco made any error, such error was not
24 prejudicial.

25 5. The relief that Plaintiffs seek, if granted, would not confer a public benefit.

26 6. The relief Plaintiffs seek, if granted, would compel San Francisco to act in a manner
27 contrary to public policy.

1 7. Plaintiffs cannot obtain a restraining order, preliminary injunction, or other form of
2 interim relief based on the contentions set forth in the Complaint.

3 8. San Francisco has not knowingly or intentionally waived any applicable affirmative
4 defense. San Francisco reserves the right to assert and to rely upon such other defenses as may
5 become available or apparent during discovery proceedings, and to amend its answer and/or
6 affirmative defenses accordingly. San Francisco further reserves the right to amend its answer to
7 delete affirmative defenses that it determines are not applicable after subsequent discovery.

8 **SAN FRANCISCO'S PRAYER FOR RELIEF**

9 WHEREFORE, San Francisco prays for relief as follows:

- 10 1. That Plaintiffs take nothing by their Complaint.
- 11 2. That the Complaint be dismissed with prejudice and judgment entered in favor of San
12 Francisco.
- 13 3. That San Francisco be awarded its costs, including reasonable attorney's fees, incurred
14 in the defense of this action.
- 15 4. For such other and further relief as the Court may deem just.

16 Dated: January 29, 2021

17 DENNIS J. HERRERA
18 City Attorney
19 WAYNE K. SNODGRASS
20 Deputy City Attorney

21 By: s/Wayne K. Snodgrass
22 WAYNE K. SNODGRASS

23 Attorneys for Defendant
24 CITY AND COUNTY OF SAN FRANCISCO

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PROOF OF SERVICE

I, Pamela Cheeseborough, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the above-entitled action. I am employed at the City Attorney’s Office of San Francisco, City Hall, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

On January 29, 2021, I served the following document(s):

DEFENDANT CITY AND COUNTY OF SAN FRANCISCO’S FIRST AMENDED ANSWER TO COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

on the following persons at the locations specified:

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[Co-Counsel for Plaintiffs HOPE WILLIAMS, NATHAN SHEARD, and NESTOR REYES]

[Co-Counsel for Plaintiffs HOPE WILLIAMS, NATHAN SHEARD, and NESTOR REYES]

[VIA E-SERVICE & E-MAIL]

[VIA E-MAIL]

in the manner indicated below:

BY ELECTRONIC MAIL: Based on a court order or an agreement of the parties to accept electronic service, I caused the documents to be sent to the person(s) at the electronic service address(es) listed above. Such document(s) were transmitted *via* electronic mail from the electronic address: pamela.cheeseborough@sfcityatty.org in portable document format ("PDF") Adobe Acrobat or in Word document format. OR

BY ELECTRONIC-SERVICE: Based on a court order or an agreement of the parties to accept electronic service, I caused the documents to be served electronically through **File & ServeExpress** in portable document format ("PDF") Adobe Acrobat.

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct.

Executed January 29, 2021, at San Francisco, California.



Pamela Cheeseborough