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14 **SUPERIOR COURT OF CALIFORNIA**

15 **IN AND FOR THE COUNTY OF SAN FRANCISCO**

16
17 HOPE WILLIAMS, NATHAN SHEARD, and
18 NESTOR REYES,
19 Plaintiffs,
20 v.
21 CITY AND COUNTY OF SAN FRANCISCO,
22 Defendant.

Case No. **CGC-20-587008**

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

**ENDORSED
FILED**
San Francisco County Superior Court

OCT 07 2020

CLERK OF THE COURT
BY: KALENE APOLONIO
Deputy Clerk

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INTRODUCTION

1. From May 31 through June 7, 2020, as thousands of people took to the streets in San Francisco to exercise their First Amendment rights and participate in Black-led protests against police violence, the San Francisco Police Department (“SFPD”) acquired, borrowed, and used a private network of more than 400 surveillance cameras to spy on protestors in real time. In doing so, the SFPD violated the City’s Acquisition of Surveillance Technology Ordinance (“the Ordinance”).

2. Plaintiffs are Black and Latinx protestors who participated in and organized several protests against police violence that have taken place in San Francisco since May 2020, including during the period of SFPD’s acquisition, borrowing, and use of the camera network. SFPD’s sweeping surveillance of these protests has invaded Plaintiffs’ privacy, chills them from participating in and organizing future protests, and undermines their ability to recruit activists and organize protests, a cornerstone of our democracy.

3. Plaintiffs seek a declaratory judgment that the City and County of San Francisco (“the City”) violated the Ordinance when the SFPD acquired, borrowed, and used a private camera network without prior approval from the City’s Board of Supervisors (“Board”). In addition, Plaintiffs seek an injunction requiring the City to ensure that the SFPD does not acquire, borrow, or use any private camera network without prior Board approval.

JURISDICTION AND VENUE

4. This Court has jurisdiction under article VI, section 10 of the California Constitution and California Code of Civil Procedure §§ 410.10, 525–26, and 1060.

5. Venue in this court is proper because Plaintiffs’ claims arose in and around the City and County of San Francisco, and because this is an action against the City and County of San Francisco. Code Civ. Proc. § 394.

PARTIES

6. Plaintiff Hope Williams is a Black woman who resides in San Francisco, California. Williams is an activist who both organized and participated in several protests against police violence in San Francisco in May and June of 2020.

1 7. Plaintiff Nathan Sheard is a Black man who resides in San Francisco, California.
2 Sheard is an activist and in his personal capacity, he participated in one protest and helped connect
3 protestors with legal support in San Francisco in May and June of 2020. In his professional
4 capacity, Sheard is an employee of the Electronic Frontier Foundation.

5 8. Plaintiff Nestor Reyes is a Latinx person and native San Franciscan who resides in
6 Berkeley, California. Reyes is an activist who participated and organized several protests against
7 police violence in San Francisco in May and June of 2020.

8 9. Defendant City and County of San Francisco is a political subdivision of the State of
9 California that can be sued in its own name. The San Francisco Police Department is a City
10 department. Defendant operates, governs, and is responsible for the SFPD pursuant to the laws of
11 the State of California and San Francisco.

12 **STATEMENT OF FACTS**

13 **SFPD's History of Unlawful Surveillance**

14 10. The SFPD has a long and troubling history of targeting individuals for unlawful
15 surveillance based on, among other attributes, their race, ethnicity, religion, socioeconomic status,
16 sexuality, gender identity, and political activism.

17 11. Throughout the 20th century, the SFPD surveilled and conducted raids on
18 establishments frequented by the LGBTQ+ community, including bars and bathhouses. By the
19 1970s, the SFPD Intelligence Unit had amassed files on more than 100,000 San Franciscans dating
20 back decades, including civil rights demonstrators, anti-war activists, labor union members, and
21 student protestors from San Francisco State University. In the 1980s, the SFPD spied on
22 organizations during the 1984 Democratic National Convention, and maintained files on at least 100
23 civil rights, labor, and special interest groups. It also conducted undercover surveillance of political
24 groups challenging U.S. intervention in Central America.

25 12. Public outcry about this decades-long pattern of SFPD surveillance abuses led the
26 Police Commission to adopt Department General Order 8.10 in 1990, which requires "articulable
27 and reasonable suspicion" before SFPD officers may conduct a criminal investigation that involves
28 the First Amendment activities of any individual, group, or organization.

1 13. Despite this policy, there have been prominent examples of the SFPD’s continued
2 surveillance of First Amendment activities. For example, in 1993, an SFPD inspector was caught
3 selling to a third-party organization intelligence information obtained through surveillance of Arab
4 American groups and opponents of South African apartheid.

5 **Black Lives Matter Protests and San Francisco’s Surveillance Technology Ordinance**

6 14. Since 2014, Black-led protests against police violence, often known as Black Lives
7 Matter protests, have been similarly monitored and baselessly treated as a potential threat by federal
8 and local law enforcement agencies across the nation.

9 15. The growth of this movement has coincided with the proliferation of modern
10 surveillance technologies that give the government unprecedented power to identify, track, and
11 target activists.

12 16. In the past several years, SFPD has acquired an arsenal of sophisticated surveillance
13 technologies, including automated license plate readers; Cellebrite, a mobile system that enables
14 police to conduct forensic searches of smartphones; and ShotSpotter, a microphone-equipped
15 technology designed to detect gunshots.

16 17. SFPD’s history of targeting activists and marginalized groups for surveillance,
17 coupled with the unprecedented surveillance powers made possible by modern technology,
18 prompted the San Francisco Board of Supervisors to pass an ordinance limiting government use of
19 surveillance technologies.

20 18. In June 2019, the San Francisco Board of Supervisors passed the Acquisition of
21 Surveillance Technology Ordinance (codified in San Francisco Administrative Code, Chapter 19B
22 *et seq.*), which, among other things, prohibits any City department from acquiring, borrowing,
23 sharing, or using surveillance technology¹ without first obtaining approval from the Board via a
24 separate ordinance and specific use policy. The Ordinance went into effect on July 15, 2019.

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28 ¹ The Ordinance’s definition of “surveillance technology” includes surveillance cameras. S.F.
Admin. Code. § 19B.1.

1 19. Section 19B.2(a) of the Ordinance states, in relevant part, that a City department
2 must obtain Board of Supervisors approval of a separate ordinance and specific use policy prior to
3 engaging in any of the following actions:

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

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

10 (4) Entering into agreement with a non-City entity to acquire, share, or
11 otherwise use Surveillance Technology[.]”

12 20. Leading up to the passage of the Ordinance, the author of the legislation, Supervisor
13 Aaron Peskin, repeatedly emphasized that one of the Ordinance’s goals was to protect marginalized
14 communities and political dissidents from high-tech police surveillance.

15 a. On April 15, 2019, during a Board of Supervisors Rules Committee meeting,
16 Supervisor Peskin stated: “If you take even a cursory look at some historical uses of surveillance
17 technologies it is often times these marginalized groups, artists, and political dissidents who are
18 disproportionately subject to the abuses of this technology.”

19 b. On May 6, 2019, during another Rules Committee meeting, Supervisor Peskin
20 emphasized the need for “oversight into a category of technology that historically has often been
21 used in abusive ways against marginalized communities.” He continued: “I could regale you with
22 some of the things that have happened in this city in the late 60s, early 70s, again with surveillance
23 of Act Up during the AIDS crisis, with surveillance of the Black Lives Matter movement.”

24 c. On May 14, 2019, during a Board of Supervisors meeting, Supervisor Peskin again
25 pointed to inappropriate use of surveillance technology against Black Lives Matter protesters as an
26 example of the need for the Ordinance. After these remarks and at that same meeting, the Board of
27 Supervisors voted to approve the Ordinance.

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1 **Business Improvement Districts**

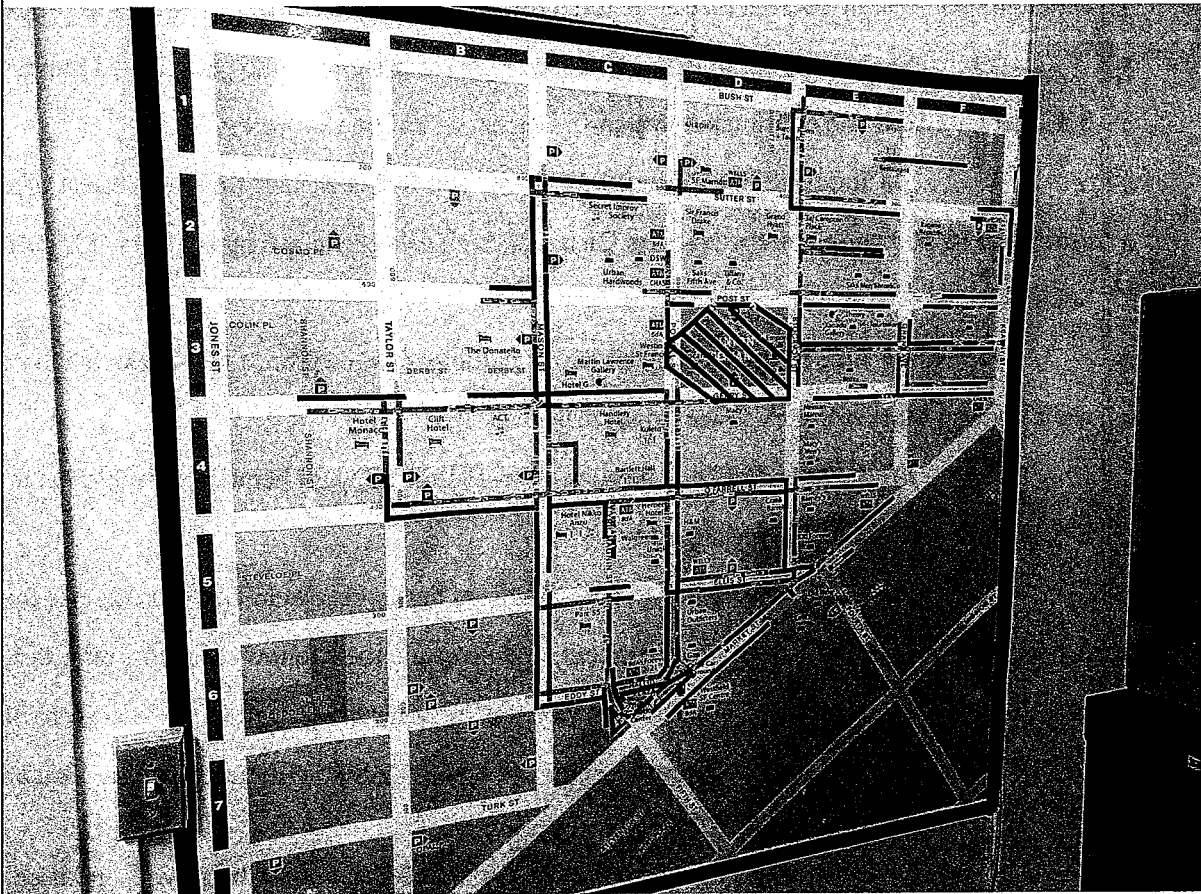
2 21. Business improvement districts—also called community benefit districts—are non-
3 city entities formed by a majority of property owners within a certain geographic area, with
4 approval from the Board of Supervisors and in accordance with state and local law. The property
5 owners pay a special assessment and those funds are used to make agreed-upon improvements that
6 supplement services that the city provides. There are currently 18 business improvement districts
7 and community benefit districts in San Francisco.

8 22. Several of San Francisco’s business improvement districts have surveillance camera
9 networks that consist of hundreds of cameras streamed to a control room within the district.

10 23. The Union Square Business Improvement District (“USBID”) is a business
11 improvement district in San Francisco. It is a California nonprofit corporation. It is bound on the
12 north by Bush Street, on the east by Kearny Street, on the south by Market Street, and on the west
13 by Taylor and Mason Streets. The USBID operates a network of more than 400 video surveillance
14 cameras. These cameras are high definition, allow remote control of zoom and focus capabilities,
15 and are linked to a software system that can automatically analyze content, including distinguishing
16 between when a car or a person passes within the frame. Below is a map of the USBID’s camera
17 network.

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San Francisco Protests Against Police Violence in Summer 2020

24. Following the police killing of George Floyd on May 25, 2020, in Minneapolis, Minnesota, protests against police violence spread throughout the country, including in San Francisco. Thousands of people participated in protests in San Francisco during the end of May and early June.

25. During this time period, the protests were overwhelmingly peaceful. A small number of people engaged in property destruction, which primarily affected commercial properties.

26. Plaintiffs participated in and organized peaceful protests against police violence in San Francisco during this time.

27. On May 30, 2020, Plaintiff Nathan Sheard participated in a protest that began at City Hall and went east up Market Street, including past areas where USBID's cameras are located.

1 28. On May 31, 2020, Plaintiff Nestor Reyes participated in a protest that began at City
2 Hall and went east up Market Street, including past areas where USBID's cameras are located.

3 29. On June 2, 2020, Plaintiff Hope Williams organized and participated in a protest that
4 began at City Hall and culminated in a sit-in in front of 850 Bryant Street.

5 30. On June 3, 2020, Plaintiffs Williams and Reyes participated in a protest of an
6 estimated 10,000 people in the Mission District, which was organized by students at Mission High
7 School.

8 31. On June 5, 2020, Plaintiff Reyes participated in a protest that began at City Hall and
9 went west up Market Street, toward the Castro District.

10 32. From the end of May through June, Plaintiff Sheard helped staff a hotline to connect
11 Bay Area protestors with legal support.

12 33. Plaintiffs participated in and organized these protests in order to exercise their First
13 Amendment right to petition the government, and persuade their fellow residents, regarding the
14 need for concrete action to end racism and violence by police and other law enforcement officers.

15 **SFPD's Acquisition, Borrowing, and Use of the USBID's Surveillance Cameras During**
16 **Protests**

17 34. Between May 31 and June 7, 2020, the SFPD acquired, borrowed, and used the
18 USBID's camera network for real-time surveillance of protests against police violence in the Union
19 Square area.

20 35. On the morning of May 31, 2020, an officer from SFPD's Homeland Security Unit,
21 Officer Oliver Lim, emailed the USBID's Director of Services, Chris Boss, requesting real-time use
22 of the USBID's cameras on Market Street "to monitor the potential violence today for situational
23 awareness and enhanced response."

24 36. In an email response that same morning, Mr. Boss provided the SFPD with 48-hour
25 remote use of the cameras.

26 37. On June 2, 2020, another officer from SFPD's Homeland Security Unit, Officer
27 Tiffany Gunter, emailed Mr. Boss requesting an extension for real-time use of the cameras for five
28

1 more days, through June 7, stating, “We have several planned demos all week and we anticipate
2 several more over the weekend[.]”

3 38. The USBID provided the SFPD with this extension of remote, real-time use of the
4 USBID’s camera network.

5 39. On June 10, 2020, Officer Gunter sent an email to Mr. Boss thanking him for “the
6 use of your cameras,” and stating that the cameras “were extremely helpful in giving us situational
7 awareness and ensuring public safety during the multiple demos that came through the area.”²

8 40. The SFPD acquired, borrowed, and used the USBID’s private network of
9 surveillance cameras without prior approval from the Board of Supervisors.

10 **No Exigency Justified the SFPD’s Violation of the Ordinance**

11 41. The Ordinance exempts the temporary acquisition or use of surveillance technology
12 in exigent circumstances, which are narrowly defined as “an emergency involving imminent danger
13 of death or serious physical injury to any person that requires the immediate use of Surveillance
14 Technology or the information it provides.” S.F. Admin. Code §§ 19B.1 & 19B.7.

15 42. Here, no exigent circumstances existed within the meaning of the Ordinance that
16 permitted SFPD to acquire and use the USBID’s camera network, absent prior approval from the
17 Board of Supervisors. There was no emergency involving imminent danger of death or serious
18 physical injury to a person that required SFPD’s immediate use of the USBID’s camera network.

19 **Plaintiffs Are Affected by SFPD’s Violation of the Ordinance**

20 43. The Ordinance provides a private right of action to “any person affected” by “any
21 alleged violation” of the Ordinance. S.F. Admin. Code § 19B.8(a).

22 44. Plaintiffs are affected by the SFPD’s violation of the Ordinance. First, their privacy
23 and free speech rights were violated when the SFPD subjected their protest activity to unlawful

24 _____
25 ² Nearly a month later, in an August 5 report to the Board of Supervisors, the SFPD Chief took the
26 position that, while the SFPD obtained a remote real-time link to the USBID’s network of
27 surveillance cameras, the SFPD did not monitor this network. In fact, the June 10 email from SFPD
28 sent at the time of the surveillance shows the SFPD monitored the camera network. Even if SFPD
did not visually monitor the cameras feeds, the SFPD acquired, borrowed, and used the network by,
among other things, establishing a remote real-time link without prior Board approval.

1 surveillance. Second, the risk of further unlawful SFPD surveillance makes them afraid to
2 participate in future protests and chills the exercise of their First Amendment rights. Third, the risk
3 of further unlawful SFPD surveillance makes it harder for them to recruit activists and organize
4 future protests.

5 **CAUSE OF ACTION**

6 **SFPD's Acquisition, Borrowing, and Use of the USBID's Surveillance Camera Network**
7 **in Violation of San Francisco Administrative Code §§ 19B.2(a)(2), (3), and (4)**

8 45. Plaintiffs incorporate by reference the allegations of the above paragraphs as though
9 fully set forth herein.

10 46. The Ordinance prohibits City departments from acquiring, borrowing, or using
11 surveillance technology prior to obtaining express approval from the Board of Supervisors of a
12 surveillance technology policy. S.F. Admin. Code §§ 19B.2(a)(2), (3), & (4).

13 47. The SFPD acquired, borrowed, and used the USBID's network of more than 400
14 cameras, by means of a remote real-time link, without obtaining prior Board approval.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiffs request that this Court:

17 A. Enter a declaratory judgment stating that the City violated the Ordinance because the
18 SFPD, without prior Board approval, acquired, borrowed, and used the USBID's camera network.

19 B. Enter an order enjoining the City, its agents, employees, successors, and all others
20 acting in concert with it, to ensure that the SFPD does not, without prior Board approval, acquire,
21 borrow, or use any private camera network.

22 C. Enter an order requiring the City to pay Plaintiffs' attorneys' fees and costs under
23 San Francisco Administrative Code § 19B.8(e), Code of Civil Procedure § 1021.5, and any other
24 applicable statutes.

25 D. Grant Plaintiffs any further relief the Court deems just and proper.

26 Dated: October 7, 2020

Respectfully Submitted,

27 By: Saira Hussain
28 Saira Hussain

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