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7
 8 UNITED STATES DISTRICT COURT
 9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 10

11 COREY JAMES

12 Plaintiff,

13 vs.

14 CITY AND COUNTY OF SAN FRANCISCO,
 15 a municipal corporation; and, San Francisco
 16 police officers DOES 1-25, inclusive,

17 Defendants.

Case No. C 11 01303 PJH

**STIPULATION AND [~~PROPOSED~~] ORDER
 18 RELEASING CELLULAR PHONE DATA
 19 IN POSSESSION OF SAN FRANCISCO
 20 POLICE DEPARTMENT.**

21 **STIPULATION**

22 1. Plaintiff COREY JAMES was arrested by San Francisco Police Department officers
23 on February 11, 2010 and this lawsuit arises out of that incident.

24 2. The San Francisco Police Department also arrested Amir Hussayn during the subject-
25 incident. The arrests of Plaintiff and Mr. Hussayn are referenced in the same incident report as San
26 Francisco Police Department Incident No. 100140861.

27 3. San Francisco Police Department Officers recovered a cellular phone with video
28 recording capacity from Amir Hussayn following his arrest. It is the understanding of Plaintiff and
the San Francisco Police Department that Mr. Hussayn may have videotaped some of the incident on
his phone.

1 4. The San Francisco Police Department placed the cellular phone seized from Amir
2 Hussayn in evidence storage following the subject-incident.

3 6. If Mr. Hussayn's phone contains video footage of the subject-incident, such is relevant
4 discovery in the instant litigation.

5 7. Defendant City and County of San Francisco believes that Mr. Hussayn may have
6 privacy rights with regard to the contents of his phone.

7 8. Plaintiff's counsel has attempted to locate Mr. Hussayn, but has been unsuccessful thus
8 far.

9 9. Plaintiff seeks an order from this court allowing the parties to copy and view the video
10 footage, if any, on Mr. Hussayn's phone. Plaintiff has previously requested through a Request for
11 Production of Documents served on Defendant CITY the video footage of the incident on Mr.
12 Hussayn's cellular phone, to which Defendants objected and refused to produce on the basis that it
13 called for documents protected by the right of privacy of third parties, and documents not within the
14 control of the City and County of San Francisco. Plaintiff seeks this order of the court allowing
15 release of the cellular phone data. Plaintiff's position is that the California Supreme Court recently
16 ruled in *People v. Gray*, 51 Cal.4th 84, 244 P.3d 501, 502, Cal., January, 2011, that warrantless data
17 searches of a suspect's cellular phone seized from the suspect incident to a lawful custodial arrest,
18 such as the cellular phone seized from Mr. Hussayn, are valid. The cellular phone in question has
19 been in the possession of Defendant CITY since Mr. Hussayn's arrest. Plaintiff believes that *Gray*
20 supports an order from the court permitting release of the phone.

21 10. The City does not oppose Plaintiff's request for release of the cellular phone data, but
22 does not stipulate to the order, as it does not believe that its stipulation is pertinent to any
23 determination that the Court must make to issue an order of release. However, the City requests that
24 if the Court orders release, the Court shall authorize release of the phone to a third party mutually
25 agreed upon by the plaintiff and defendant, who has the knowledge and expertise to extract and copy
26 video from the phone. The third party shall then provide copies of the video to all counsel and the
27 court. Per the Court's discussion at the Case Management, the parties can coordinate with the Court
28 a time for joint viewing of the video footage.

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Respectfully Submitted,

THE LAW OFFICES OF JOHN L. BURRIS

Dated: September 27, 2011

/s/ Benjamin Nisenbaum

Benjamin Nisenbaum
Attorney for Plaintiff

DENNIS J. HERRERA, City Attorney
JOANNE HOEPER, Chief Trial Deputy
MARGARET M. BAUMGARTNER,
Deputy City Attorney

Dated: September 27, 2011

/s/ Margaret W. Baumgartner

Margaret W. Baumgartner, Deputy City Attorney
Attorney for Defendants

1 **[PROPOSED] ORDER**

2 For good cause appearing, the Court hereby orders the San Francisco Police Department to
3 release the phone seized from Amir Hussayn on February 11, 2010, referenced in San Francisco
4 Police Department Incident No. 100140861, to a third party mutually agreed upon by plaintiff and
5 defendant, who shall have expertise in copying video from such phone. The third party shall make
6 three copies of the video from the phone, and provide one copy each to counsel for plaintiff, counsel
7 for defendant, and to the Court. The third party shall then return the phone to the San Francisco
8 Police Department, who shall return it to the evidence room. The parties shall contact the Court to
9 arrange a mutually agreeable time and date for viewing of the video footage.
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12 DATED: 9/29/11

