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6 **UNITED STATES DISTRICT COURT**
7 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

8 JAIRO CERVANTES, *et al.*,

9 Plaintiffs,

10 v.

11 SAN DIEGO POLICE CHIEF
12 SHELLEY ZIMMERMAN, *et al.*,

13 Defendants.

14 BRYAN PEASE,

15 Plaintiff,

16 v.

17 SAN DIEGO COUNTY SHERIFF
18 WILLIAM GORE, *et al.*,

19 Defendants.

CONSOLIDATED ACTIONS:

Case No. 17-cv-1230-BAS-AHG
Case No. 18-cv-1062-BAS-AHG

**ORDER GRANTING PLAINTIFFS’
MOTION TO SUPPLEMENT
RECORD FOR SUMMARY
JUDGMENT MOTIONS**

[ECF No. 163]

20 Before the Court is Plaintiffs’ Motion to Supplement the Record on Summary
21 Judgment (“Motion”) with the bodyworn camera (BWC) footage of three officers—totaling
22 18 videos and nine hours of footage—that “show the entire three-hour span from the time
23 the unlawful assembly was declared . . . to the final arrests . . . from three different angles.”
24 (Mot. at 4, ECF No. 163.) Plaintiffs seek to belatedly supplement the record because, they
25 allege, the City “repeatedly and steadfastly refused to provide the videos in a form that
26 could be lodged with the Court[.]” requiring Plaintiffs’ counsel to review the footage
27 himself and to purchase special software to record the videos in order to provide them to
28 the Court on summary judgment. (Mot. at 3–4.) The City maintains that although it

1 “offered to download specific videos upon request[,]” Plaintiffs’ counsel never made such
2 requests. (Opp’n to Mot. at 3, ECF No. 164.)

3 Upon review of the Motion briefings, the summary judgment motions previously
4 submitted by the parties, and the evidentiary record, the Court finds this supplemental
5 evidence necessary to resolve the issues on summary judgment. As best can be understood
6 by the Court, a key dispute on summary judgment is whether the circumstances after the
7 declaration of the unlawful assembly on May 27, 2016 created a lawful justification for
8 Defendants’ dispersal efforts and ultimate arrests of Plaintiffs, which underlie most, if not
9 all, causes of action remaining in this case.¹ Where there is video footage of disputed facts,
10 the Court is obligated to review it. *Scott v. Harris*, 550 U.S. 372, 380–81 (2007) (holding
11 that courts, when faced with a “version of events . . . so utterly discredited by the record,”
12 the Supreme Court instructs lower courts to not rely on “such visible fiction” and “view[]
13 the facts in the light depicted by the videotape”); *see also Duclos v. Tillman*, No. 14-CV-
14 149-BAS (KSC), 2016 WL 8672917, at *2 (S.D. Cal. Mar. 11, 2016) (“[T]he existence of
15 unambiguous video footage can alter how the district court assesses the facts of the case.”)
16 (citing *Scott*).

17 Defendants object to the admissibility of the BWC videos on the basis that “[t]here
18 is no authentication provided and no foundation laid for the videos by the officers who took
19 the videos.” (Opp’n to Mot. at 5, ECF No. 164.) However, because Defendants provided
20 this footage to Plaintiff in response to discovery requests, the footage is self-authenticating.
21 *See Barefield v. Bd. of Trustees of Cal. State Univ., Bakersfield*, 500 F. Supp. 2d 1244,
22 1257–58 (E.D. Cal. 2007) (“[A] party may authenticate a document by virtue of the fact the
23 document was produced in discovery ‘when the party identifies who produced the
24 document, or if the party opponent admits to having produced it.’”) (quoting *Orr v. Bank*
25 *of America, NT & SA*, 285 F.3d 764, 777–78 (9th Cir. 2002)); *see also Gogue v. City of Los*

27 ¹ Defendants also identify the period from the declaration of the unlawful assembly to Plaintiffs’ arrests
28 as the relevant time period during which the claims in this case purportedly accrued. (*See Mem. of P. &*
A. in supp. of City’s Mot. for Summ. J. at 2–4, ECF No. 126-1.)


1 Angeles, No. CV 09-02610 DMG (EX), 2010 WL 11549706, at *6 (C.D. Cal. June 15,
2 2010). Defendants do not contest the authenticity of the footage, just Plaintiffs' failure to
3 authenticate it properly. This is insufficient to exclude the footage from consideration on
4 summary judgment. See *Maljack Prods., Inc. v. GoodTimes Home Video Corp.*, 81 F.3d
5 881, 889 n.12 (9th Cir. 1996) (affirming lower court's consideration of documents, over
6 authentication objection of defendant, where defendant produced the documents and did
7 not challenge their authenticity); see also *Salkin v. United Servs. Auto. Ass'n*, 835 F. Supp.
8 2d 825, 828 (C.D. Cal. 2011), *aff'd sub nom. Salkin v. USAA Life Ins. Co.*, 544 F. App'x
9 713 (9th Cir. 2013).

10 Accordingly, the Court **GRANTS** Plaintiffs' Motion (ECF No. 163). The Court will
11 also allow Defendants to lodge additional footage in response.² However, the Court will
12 not review exorbitant amounts of footage. It is the parties' obligation to identify the
13 particular parts of the evidentiary to support their motions for summary judgment. It is not
14 a district court's responsibility to scour voluminous records to find evidentiary support for
15 either parties' position. See *Keenan v. Allen*, 91 F.3d 1275, 1279 (9th Cir. 1996) (the court
16 is not obligated "to scour the record in search of a genuine issue of triable fact").

17 Thus, both parties are **ORDERED**, by **July 8, 2020**, to submit BWC footage and
18 identify the precise intervals of time in each video that supports specific arguments in their
19 briefs. There is little doubt that some or a substantial portion of the BWC footage is
20 needlessly cumulative. Thus, the intervals cited by the parties **shall not exceed two hours**
21 **each**. The parties shall describe of the events reflected in each video clip, and the relevance
22 of those events to specific claims. If a party does not sufficiently explain the relevance of
23 a clip to a cause of action, the Court will not consider it on summary judgment.

24 **IT IS SO ORDERED.**

25 **DATED: June 23, 2020**


26 **Hon. Cynthia Bashant**
United States District Judge

27 ² Defendants request to lodge additional footage, arguing that Plaintiffs' counsel "cherry-picked" 18 out of
28 600 BWC videos to submit to the Court. In the interest of fairness, and again recognizing the Supreme
Court's mandate in *Scott v. Harris*, 550 U.S. 372 (2007), the Court grants Defendants' request.