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**UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA**

DAVID MORSE,

Plaintiff,

vs.

SAN FRANCISCO BAY AREA RAPID
TRANSIT DISTRICT (BART); and BART
Deputy Police Chief DAN HARTWIG, sued
in his official and individual capacities,

Defendants.

Case No. C12-5289 JSC (DMR)

**UNREDACTED DECLARATION OF
MICHAEL SIEGEL IN OPPOSITION
TO MOTION FOR SUMMARY
JUDGMENT**

Judge: Hon. Jacqueline Scott Corley

Case Filed: October 12, 2012
Trial Date: September 22, 2014

I, MICHAEL SIEGEL, declare:

1. I am an attorney admitted to practice before the courts of the State of California, as well as before the United States District Court for the District of Northern California. I am an associate with the law firm of Siegel & Yee, which represents plaintiff David Morse in this matter. This declaration is submitted in response to defendants' motion for summary judgment or summary adjudication.

1 2. A true and correct copy of the relevant portions of the deposition transcript of
2 Daniel Hartwig, taken in the above-captioned action on October 15, 2013, is attached
3 hereto as Exhibit A.

4 3. A true and correct copy of relevant portions of confidential exhibits utilized at
5 the deposition of Daniel Hartwig, taken in the above-captioned action on October 15,
6 2013, is attached hereto as Exhibit B.

7 4. A true and correct copy of the relevant portions of the deposition transcript of
8 Shane Coduti, taken in the above-captioned action on November 5, 2013, is attached
9 hereto as Exhibit C.

10 5. A true and correct copy of the confidential exhibit 25 utilized at the
11 deposition of Shane Coduti, taken in the above-captioned action on November 5, 2013,
12 is attached hereto as Exhibit D.

13 6. A true and correct copy of relevant portions of the deposition transcript of
14 Benson Fairow, taken in the above-captioned action on October 16, 2013, is attached
15 hereto as Exhibit E.

16 7. A true and correct copy of the confidential exhibit 2 utilized at the deposition
17 of Benson Fairow, taken in the above-captioned action on October 16, 2013, is attached
18 hereto as Exhibit F.

19 8. A true and correct copy of the relevant portions of the deposition transcript of
20 Steven Coontz, taken in the above-captioned action on December 2, 2013, is attached
21 hereto as Exhibit G.

22 9. A true and correct copy of the confidential exhibit 35 to the deposition of
23 Steven Coontz, taken in the above-captioned action on December 2, 2013, is attached
24 hereto as Exhibit H. Exhibit H consists of a single audio file, in .wav format, that is a
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1 copy of a Computer Assisted Dispatch (CAD) recording of Lieutenant Coontz speaking
2 over police radio during the protest in question.

3 10. A true and correct copy of the relevant portions of the deposition transcript of
4 Michael D. Hayes, taken in the above-captioned action on October 16, 2013, is attached
5 hereto as Exhibit I.
6

7 11. A true and correct copy of relevant portions of the confidential exhibit 24 to
8 the deposition of Michael D. Hayes, taken in the above-captioned action on October 16,
9 2013, is attached hereto as Exhibit J.
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11 12. A true and correct copy of relevant portions of the deposition transcript of
12 Ken Dam, taken in the above-captioned action on October 16, 2013, is attached hereto
13 as Exhibit K.

14 13. A true and correct copy of relevant portions of confidential exhibits utilized at
15 the deposition of Ken Dam, taken in the above-captioned action on October 16, 2013, is
16 attached hereto as Exhibit L.
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18 14. A true and correct copy of relevant portions of the deposition transcript of
19 Kenton Rainey, taken in the above-captioned action on November 6, 2013, is attached
20 hereto as Exhibit M.

21 15. A true and correct copy of relevant portions of the deposition transcript of
22 Edward Schlegel, taken in the above-captioned action on November 6, 2013, is attached
23 hereto as Exhibit "N."
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25 16. As part of the discovery in this matter, BART has provided to my client video
26 footage captured by BART closed circuit television (CCTV) cameras. I have attached as
27 Exhibit O a true and correct copy of relevant portions of BART CCTV footage as Exhibit
28 O. Exhibit O is a an .mpg file and has been provided as a file on a disk that has been

1 lodged with the Court and provided to defendants. The original title of this video file
2 was “BART CCTV 28-22-30-22 C_05 PPS-C-S PTZ 080911 _122-128.”

3 17. Exhibit O shows the role of David Morse during the protest in question. Mr.
4 Morse is visible towards the center of the frame. He can be located as being behind the
5 individual (Christopher Cantor) who is using a rolled-up piece of paper as a
6 megaphone. Mr. Morse is behind Mr. Cantor and to the right. He is a white man with a
7 beard and ponytail, and he is holding a camera.
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9 18. I have attached as Exhibit P another true and correct copy of relevant portions
10 of BART CCTV footage. Exhibit P is an .mpg file and has been provided as a file on a
11 disk that has been lodged with the Court and provided to defendants. The original title
12 of this video file was “BART CCTV 28-22-30-22 C_05 PPS-C-S PTZ 080911 _122-128.”
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14 19. Exhibit P shows the role of David Morse during the protest in question. At the
15 beginning of this clip, Mr. Morse is visible towards the center of the frame. He is a
16 white man with a beard and ponytail, and he is holding a camera.
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18 20. I have attached as Exhibit Q another true and correct copy of relevant
19 portions of BART CCTV footage Exhibit Q is an .mpg file and has been provided as a file
20 on a disk that has been lodged with the Court and provided to defendants. The original
21 title of this video file was “BART CCTV 28-22-30-22 C_05 PPS-C-S PTZ 080911 _122-
22 128.”
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24 21. Exhibit Q shows the role of David Morse during the protest in question. At the
25 beginning of this clip, Mr. Morse is visible towards the center of the frame. He is a
26 white man with a beard and ponytail, and he is holding a camera. In the frame he is
27 immediately above an individual wearing a red sweatshirt with a hood.
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22. BART has also produced audio files pursuant to discovery. I have attached as Exhibit R a true and correct copy of an audio file produced by BART, that was captured as part of BART’s computer assisted dispatch (CAD) system. The audio file reveals that an officer announced, via CAD, that the “dispersal order” had been given at 5:26 p.m. The original title of this audio file was “F1309090058199000011r.wav.”

I declare under penalty of perjury under the laws of the State of California that the above is true and correct to the best of my knowledge.

Dated: February 12, 2014

_____/s/_____

Michael Siegel