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7 **Superior Court of the State of California**
8 **County of San Francisco**

9 **San Francisco Police Officers’**
10 **Association,**

11 Plaintiff,

12 vs.

13 **City and County of San Francisco**
14 **et. al.,**

15 Defendants.
16

SCN: CGC-24-619424

**Amicus Brief in Support of
Defendant’s Demurrer**

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Introduction

1 The Office of the San Francisco Public Defender (“Public Defender”) requests
2 leave of the Court to submit filings and argument as amicus curiae in support of the
3 pending demurrer filed by Defendant, the City and County of San Francisco (“the City”).
4 In that capacity, the Public Defender submits this memorandum as amicus to urge this
5 Court to follow well-settled law and grant the Defendant’s demurrer.
6

I. Identification and Interest of Amicus Curiae

7 The Public Defender provides effective, competent legal representation to more
8 than 25,000 people annually arrested or charged with a crime and unable to afford an
9 attorney. The Public Defender has a stated commitment to ending mass incarceration,
10 pursuing racial justice, and reducing the racial disparities long present in the criminal
11 legal system.
12

13 In 2021, the Public Defender petitioned the San Francisco Police Department to
14 limit its use of pretext stops and, since 2022 has provided written support to urge the San
15 Francisco Police Commission to pass Department General Order 9.07 – Curbing the Use
16 of Pretext Stops (the Policy). The Public Defender participated in the Commission’s
17 policy-development process by presenting data, evidence, and research that pretext stops
18 are ineffective, waste City resources, and perpetuate harmful racial disparities the
19 Defendants have long sought to eliminate.

20 As such, the Public Defender has a strong stake in the outcome of this litigation
21 and has an express interest in this Court granting the City’s demurrer.

II. Summary of Argument in Support of Defendant’s Demurrer

22 The question this Court must decide is whether the Commission had the legal
23 authority to direct Department resources—officer time—to prioritize certain police
24 objectives. For the reasons set forth below, the Public Defender agrees with the City that
25 the Commission has the legal authority and thus, urges this Court to grant Defendant’s
26 demurrer.
27
28

1 **A. Commission Has Authority to Set Policy for the Department**

2 The San Francisco City Charter vests the power to set policy exclusively with the
3 Commission and Chief of Police. The Department routinely determines how it allocates
4 its limited resources, including officers’ time. The Department and officers have
5 discretion in how they enforce laws and by existing policies are physically and logically
6 unable to enforce every violation they observe.

7 **B. The Policy Addresses Department’s Persistent Racial Disparities in Traffic Stops
8 and Searches**

9 A pretext stop occurs when an officer conducts a traffic stop as an excuse to
10 investigate whether the person stopped is engaged in other, unrelated criminal activity.
11 Pretext stops have contributed to the Department’s longstanding racial disparities in
12 traffic stops and searches. In response, the Commission developed the Policy to address
13 those racial disparities and to redirect Department resources to other public safety
14 concerns. Specifically, the Policy concedes that pretext stops are “disproportionately
15 carried out against people of color and return negligible public safety benefits.”¹ By
16 restricting the use of pretext stops, the Policy continues, the Department can “redirect
17 resources and time to more effective public safety strategies, including prioritizing traffic
18 safety to reduce injuries and fatalities.”²

19 The Department’s data confirm the need to limit the practice because it
20 disproportionately targets people of color for traffic stops and searches. These disparities
21 are prevalent nationwide, but several jurisdictions that have limited the use of pretext
22 stops have seen racial disparities decline.

23 **C. The Commission Followed a Robust Input Process**

24 The Commission published an initial draft of the Policy in May 2022 and, in
25 August 2022, began a public discussion group to evaluate, solicit feedback, and amend
26 the policy. The group met four times, totaling more than six hours of discussion and
27 comment.

28 ¹ Department General Order 9.07.01 (Restricting the Use of Pretext Stops).

² *Id.*

1 Separately, and while the discussion group met, the San Francisco Human Rights
2 Commission held several public forums to engage interested residents about the Policy
3 and its impacts. Several Commission members also met separately with Plaintiff's
4 members to discuss the Policy.

5 For more than two and a half years, the Commission repeatedly discussed the
6 Policy in open meetings and received hundreds of letters from members of the public.
7 The Policy the Commission adopted reflects input from all stakeholders and includes
8 changes Plaintiff's members desired. The Policy became effective in July 2024 after
9 more than a year of labor negotiations with Plaintiff.

10 **III. Argument in Support of Defendant's Demurrer**

11 **A. Granting Defendant's Demurrer Blocks Plaintiff's Attempt to Limit** 12 **Implementation of a Properly Enacted Policy**

13 **(1) The Commission Has Legal Authority to Set Policy for the** 14 **Department**

15
16 The Commission derives its authority to set policy from the San Francisco City
17 Charter. The City can *make and enforce* all local police ordinances and regulations not in
18 conflict with state law.³ The City delegated that authority to the Commission in the San
19 Francisco Charter, vesting the Commission with the power "to prescribe and enforce *any*
20 *reasonable rules and regulations.*"⁴ The Charter carries the force of state law.⁵

21 Within that grant of authority, the Commission is empowered "to formulate, evaluate
22 and approve goals, objectives, plans and programs and set policies consistent with the
23 overall objectives of the City and County."⁶ Defendants have repeatedly sought to rectify
24 the Department's long-standing racial disparities in traffic stops without success. To

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26
27 ³ Cal. Const., art. XI § 7 (emphasis added).

28 ⁴ SF City Charter 4.109. (emphasis added).

⁵ Cal. Const., art. XI § 3, subd (a).

⁶ SF City Charter 4.102.

1 address this problem, the Policy here deprioritizes—but does not prevent Plaintiff’s
2 members from ever enforcing—the stops that contribute to the racial disparities.

3 **(2) Police Departments Must Allocate Scarce Resources**

4 Every police department must make decisions on how to allocate their scarce
5 resources, including officer time. Significant research and academic publications
6 reinforce this point. The U.S. Department of Justice (DOJ) has characterized policing as a
7 “highly discretionary”⁷ activity. Academics have recognized that “full enforcement” is
8 inherently impossible and departments must instead engage in “selective enforcement”
9 because of the inherent conflict⁸ between public perception that laws should be fully
10 enforced and the desire to provide departments with the resources required to do so.⁹
11 Moreover, scholars point out that officers, in fact, cannot enforce every law since state
12 law often conflicts with federal law.¹⁰ Traffic enforcement allows officers to exercise
13 extensive discretion, the pernicious side effect of which is that “explicit and implicit bias
14 may influence officers’ decisions to make a stop and their actions during the stop.”¹¹

15 Building on this framework, the Commission and the Department have repeatedly
16 limited officers’ discretion to enforce state laws by setting department policy. Department
17 policy prevents plainclothes officers from making arrests for non-violent misdemeanors
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21 ⁷ Klockars et. al. (2000) *The Measurement of Police Integrity: NIJ Research in Brief*. (NCJ
22 181465). Washington, DC: National Institute of Justice, available at,
23 <https://www.ojp.gov/pdffiles1/nij/181465.pdf>.

24 ⁸ See Davis, *Police Rulemaking on Selective Enforcement: A Reply* (1977) 125 U. Pa. L. Rev.
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26 ⁹ See generally, Davis, *Police Discretion* 166 (1975) ; Pinto, *The Public Interest and Private*
27 *Financing of Criminal Prosecutions* (1999) 77 Wash. U. L. Q. 1343, 1350; Natapoff,
28 *Underenforcement* (2006) 75 Fordham L. Rev. 1715, 1722.

¹⁰ See Davis, *An Approach to Legal Control of the Police*, (1974) 52 Tex. L. Rev. 703.

¹¹ RIPA Board Annual Report (2023), available at <https://oag.ca.gov/system/files/media/ripa-board-report-2023.pdf>.

1 or, with limited exceptions, from making a traffic stop.¹² Similarly, Department policy
2 covering the use of force explicitly acknowledges that it is “more restrictive than the
3 constitutional standard and state law,” informing officers they are prohibited from using
4 some forms of force allowed under state law.¹³ Since 2006 at the direction of the San
5 Francisco Board of Supervisors, the Department has made enforcement of marijuana
6 offenses by adults “their lowest enforcement priority.”¹⁴

7 Acting on its ability to create reasonable rules and regulations, the Commission
8 created this Policy limiting officers’ actions under certain circumstances in the same
9 manner as other validly promulgated policies.

10 **(3) Plaintiff’s Members Have No Obligation to Enforce Every**
11 **Ordinance and Law**

12 Officer discretion—the practice of selective enforcement—is deeply rooted in
13 policing. It is “common sense that all police officers must use some discretion in deciding
14 when and where to enforce” the law.¹⁵ It is well settled in California that officers are
15 under no obligation to enforce a law even when directly seeing a violation.¹⁶ Police
16 officers are empowered to, but are not required to, intervene when they observe a
17 violation of the law.¹⁷ Moreover, police officers do not have a specific duty to address
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19 _____
20 ¹² Department Bureau Order 23-02 (Plainclothes and Undercover Operations Policy), available at
21 [https://www.sanfranciscopolice.org/sites/default/files/2023-](https://www.sanfranciscopolice.org/sites/default/files/2023-07/SFPDIBBureauOrder_23_02_20230712.pdf)
22 [07/SFPDIBBureauOrder_23_02_20230712.pdf](https://www.sanfranciscopolice.org/sites/default/files/2023-07/SFPDIBBureauOrder_23_02_20230712.pdf) (stating that plainclothes officers “may make an
23 arrest with the approval of a supervisor...if exigent circumstances exist...the arrest is for a
24 felony or violent misdemeanor...and the use of a clearly identifiable arrest team is not available
25 or practical”).

24 ¹³ Department General Order 5.01 (Use of Force Policy and Proper Control of a Person).

25 ¹⁴ San Francisco Admin Code section 96B.5 (Lowest Law Enforcement Priority), available at
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26 ¹⁵ *Chicago v. Morales* (1999) 527 U.S. 41 at 62, n. 32.

27 ¹⁶ *Stout v. City of Porterville* (1983) 148 Cal.App.3d 937, 945.

28 ¹⁷ Pen. Code, § 697; *People v. Brown* (1998) 62 Cal.App.4th 493, 496 (noting that a “police
officer *may* legally stop a motorist he suspects of violating the Vehicle Code for the purpose of
issuing a citation.” [emphasis added]).

1 every offense because of their general duty to the public.¹⁸ Moreover, the United States
2 Supreme Court has acknowledged that officers are not under a duty to have perfect
3 knowledge of every law and so are categorically incapable of enforcing every violation.¹⁹

4 Courts have consistently forgiven officers for not enforcing the law, whether by
5 choice, lack of opportunity, or ignorance of the law. The Policy makes one choice for
6 officers that the Department previously empowered them to make—to deprioritize certain
7 stops in certain situations because the harm caused by these stops outweighs the benefits.

8 9 **B. The Policy Addresses the Department’s Persistent Racial Disparities in 10 Traffic Stops and Searches**

11 **(1) Racial Disparities in Policing Are a Well-documented, Ongoing 12 Nationwide Phenomenon**

13 Research shows that pretext stops have wrought significant, particularized harm to
14 people of color—especially Black people—that manifests as psychological trauma,²⁰
15 mistrust of police,²¹ and the weariness of living in a society where “driving while Black”
16 remains reason enough for a traffic stop.²² Even when controlling for location, time of
17 day, and other factors, Black drivers are still stopped and searched at higher rates than
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20 ¹⁸ *Warren v. District of Columbia* (D.C. 1981) 444 A.2d 1, 1.

21 ¹⁹ *Heien v. North Carolina* (2014) 574 U.S. 54.

22 ²⁰ Pazzanese, *How unjust police killings damage the mental health of Black Americans*, The
23 Harvard Gazette, (May 13, 2021), available at

24 [https://news.harvard.edu/gazette/story/2021/05/how-unjust-police-killings-damage-the-mental-
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25 ²¹ Ortiz, *Confidence in Police is at Record Low, Gallup Survey Finds*, The New York Times,
26 (Aug. 12, 2020), available at <https://www.nytimes.com/2020/08/12/us/gallup-poll-police.html>;
see also Epp, Maynard-Moody & Haider-Markel, *Pulled Over: How Police Stops Define Race
and Citizenship* 150 (John M. Conley & Lynn Mather eds., 2014).

27 ²² See, e.g., Rushin, et al., *An Empirical Assessment of Pretextual Stops and Racial Profiling*, 73
28 Stanford Law Rev. (Mar. 2021), available at [https://review.law.stanford.edu/wp-
content/uploads/sites/3/2021/03/Rushin-Edwards73-Stan.-L.-Rev.-637.pdf](https://review.law.stanford.edu/wp-content/uploads/sites/3/2021/03/Rushin-Edwards73-Stan.-L.-Rev.-637.pdf).

1 white drivers in the same area because officers use “visible cues to determine the
2 likelihood of criminality. . .that cause an overly great focus on young men of color.”²³

3 A 2019 analysis of nearly 100 million traffic stops found that disparities in stops
4 between Black and white drivers lessen at night precisely *because* officers are less able to
5 distinguish the race of the driver.²⁴ Other studies focused on cities—Los Angeles²⁵;
6 Washington, D.C.²⁶; Cincinnati²⁷; Austin²⁸; and Portland²⁹—found the same results:
7 police disproportionately stop and search Black people. The result is that traffic and
8 pedestrian stops are a “common gateway for funneling over-policed and marginalized”
9 people into the criminal legal system.³⁰ In 2022, the Committee on the Revision of the
10 Penal Code wrote that “pretext stops are ripe for racial profiling,” have “disturbing racial
11

12 ²³ Sides, *What data on 20 million traffic stops can tell us about ‘driving while black,’* The
13 Washington Post, (July 17, 2018), available at <https://www.washingtonpost.com/news/monkey-cage/wp/2018/07/17/what-data-on-20-million-traffic-stops-can-tell-us-about-driving-while-black/>.

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23 ²⁸ Cronk, *Analysis of the Austin Police Department’s Racial Profiling Report*, City of Austin,
24 <https://services.austintexas.gov/edims/pio/document.cfm?id=334984>.

25 ²⁹ Oregon Criminal Justice Commission, *Statistical Transparency of Policing Report Per House Bill 2355 (2017)* (Nov. 25, 2019),
26 https://www.oregon.gov/cjc/CJC%20Document%20Library/STOP_Report_Final.pdf.

27 ³⁰ Woods, *Traffic Without Police* (2021) 73 Stan. L.Rev. 1471, 1471.
28

1 disparities,” and recommended “prohibit[ing] police officers from conducting stops for
2 technical, non-safety traffic offenses.”³¹

3 In her blistering dissent in *Utah v. Strieff*³²—a case about an unconstitutional
4 investigatory stop that nonetheless led to a lawful arrest—United States Supreme Court
5 Justice Sonia Sotomayor gave voice to the racial disparities the data above details and the
6 lived experiences of people of color under United States policing:

7
8 For generations, black and brown parents have given their
9 children ‘the talk’—instructing them never to run down the
10 street; always keep your hands where they can be seen; do not
11 even think of talking back to a stranger—all out of fear of how
12 an officer with a gun will react to them... We must not pretend
13 that the countless people who are routinely targeted by police
14 are ‘isolated.’ They are the canaries in the coal mine whose
15 deaths, civil and literal, warn us that no one can breathe in this
16 atmosphere... Until their voices matter too, our justice system
17 will continue to be anything but.

18 The Policy recognizes this devastating reality and aims to address the Department’s
19 history of overpolicing people of color, specifically through traffic stops.

20 **(2) San Francisco Mirrors the Nation in Overpolicing People of Color**

21 Since the Department began reporting data in 2016, its officers have
22 disproportionately stopped and searched people of color, especially Black men. When the
23 Department began collecting data, it reported that it stopped Black people at nearly three
24 times the rate of white people;³³ nearly half of all searches after a traffic stop were of

25 ³¹ Committee on Revision of the Penal Code, Annual Report and Recommendations, at 32,
26 http://www.clrc.ca.gov/CRPC/Pub/Reports/CRPC_AR2022.pdf.

27 ³² *Utah v. Strieff* (2016) 579 U.S. 232, 254.

28 ³³ See The Science of Justice: San Francisco Police Department National Database City Report,
Center for Policing Equity, August 2020, estimating the Black driving percentage to be 6%,
https://www.sanfranciscopolice.org/sites/default/files/2021-03/SFPD.CPE_Report.20210304.pdf; 2017 Quarter 1 96a Report, San Francisco Police
Department, June 25, 2017, reporting that 16.8% of stops were Black drivers,

1 Black drivers;³⁴ and 46% of all uses of force were on Black people.³⁵ The report the DOJ
2 released at the start of the City’s Collaborative Reform Initiative—created to address
3 public uproar at a series of scandals and the killings of unarmed people of color—
4 identified the Department’s history of overpolicing people of color and noted that traffic
5 stops directly contribute to the racial disparities present in the San Francisco criminal
6 legal system.³⁶ The DOJ also found “numerous indicators of implicit and institutionalized
7 bias against minority groups.”³⁷

8 Understanding that this historical background required a tailored remedy, the
9 Commission asked Jacob Denney—a data scientist from the San Francisco Bay Area
10 Planning and Urban Research Association (SPUR)—to examine Department traffic stop
11 data to determine if limiting pretext stops can reduce racial disparities. In December
12 2022, Denney presented his analysis of more than 60,000 stops, revealing pronounced
13 racial disparities in the stops the Policy sought to deprioritize:³⁸

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20 [https://www.sanfranciscopolice.org/sites/default/files/2018-11/sfpd-1st-quarter-police-encounter-
21 data-report.pdf](https://www.sanfranciscopolice.org/sites/default/files/2018-11/sfpd-1st-quarter-police-encounter-
21 data-report.pdf).

22 ³⁴ 2017 Quarter 1 96a Report (*supra*).

23 ³⁵ 2016 Quarter 1 Use of Force Report, San Francisco Police Department, June 30, 2016,
24 [https://www.sanfranciscopolice.org/sites/default/files/2018-11/SFPD-Reform-
25 2016_06_30_Chapter-96A-Report-JanMar-2016-Data.pdf](https://www.sanfranciscopolice.org/sites/default/files/2018-11/SFPD-Reform-
25 2016_06_30_Chapter-96A-Report-JanMar-2016-Data.pdf).

26 ³⁶ Collaborative Reform Initiative: An Assessment of the San Francisco Police Department, U.S.
27 Department of Justice, Community Oriented Policing Services, October 2016, p. 25 (Finding
28 32), <https://portal.cops.usdoj.gov/resourcecenter/content.ashx/cops-w0818-pub.pdf>.

27 ³⁷ *Id.* at 3.

28 ³⁸ Denney, San Francisco Traffic Stops: Analysis of 2019 San Francisco Traffic Stop Data,
SPUR (Dec. 2022), available at [https://media.api.sf.gov/documents/PoliceCommission121422-
SPUR- Traffic Stops in SF Presentation.pdf](https://media.api.sf.gov/documents/PoliceCommission121422-
SPUR- Traffic Stops in SF Presentation.pdf).

ANALYSIS OF STOPS RESTRICTED BY THE POLICY

Stop by Violation	No. of Stops	Contraband Recovery %	% of Stops Leading to Arrest
Failure to Display Both License Plates	4,122	6.0%	1.0%
Expired Registration	4,086	5.0%	0.7%
Failure to Illuminate License Plate	105	1.0%	0.0%
Driving without Illuminated Tail Lights	379	4.0%	2.0%
Driving without Illuminated Brake Lights	714	1.0%	0.3%
Objects Affixed to Mirror	373	5.0%	1.0%
Failure to Signal	51	11.0%	0.0%

Denney’s analysis found that the Policy would reduce racial disparities in traffic stops by, in part, eliminating “the number one reason Black drivers are stopped”: displaying license plates incorrectly.³⁹ The findings supported the Policy’s other stated goal to more efficiently direct officer resources to other areas of concern.

The data from other jurisdictions shows that restricting the use of pretext stops reduces racial disparities in stops and searches.⁴⁰

³⁹ *Id.* at 14.

⁴⁰ Oliver, *Virginia’s Traffic Stops Decline, but Disparities Persist*, Axios (Oct. 12, 2022), <https://www.axios.com/local/richmond/2022/10/12/virginia-traffic-stops-disparities>; Raim, *Police are Stopping Fewer Drivers – And It’s Increasing Safety*, Vera (Jan. 11, 2024), <https://www.vera.org/news/police-are-stopping-fewer-drivers-and-its-increasing-safety>; Office of the Ramsey County Attorney News Release, *Ramsey County reduction of non-public-safety traffic stops and policy goals affirmed by independent research results; alternatives to stops deployed*, (Jun. 7, 2023), <https://www.ramseycounty.us/sites/default/files/County%20Attorney/RCAO%20Press%20Release%206.7.23.pdf>; Jany and Poston, *Minor police encounters plummet after LAPD put limits on stopping drivers and pedestrians*, Los Angeles Times (Nov 14, 2022), <https://www.latimes.com/california/story/2022-11-14/minor-traffic-stops-plummet-in-months-after-lapd-policy-change>.

1 **C. The Commission Conducted Robust Public Outreach**

2 The Commission created the most collaborative, inclusive policy discussion in recent
3 history. The Policy was introduced at the Commission in February 2022. In May 2022,
4 the Commission published the Policy for public comment and laid out a larger public
5 input process that included a discussion group. Formed in August 2022, the working
6 group included the Chief of Police William Scott, Plaintiff’s representative, 11 officers,⁴¹
7 a representative from the American Civil Liberties Union, the Bar Association of San
8 Francisco, a representative from the Public Defender, and members of the Coalition to
9 End Biased Stops, which represented more than 100 San Francisco community groups.
10 The discussion group met on four occasions to discuss different sections of the Policy.
11 Additionally, the San Francisco Human Rights Commission (HRC) held three public
12 “Community Listening Sessions” in August and September 2022.⁴² The HRC presented
13 its findings to the Commission in December 2022.⁴³ The Commission also held three
14 private listening sessions just with Department officers to discuss the Policy and answer
15 questions. Additionally, the Commission also held numerous meetings with community
16 organizations, business groups, and individuals to discuss the Policy.

17 In December 2022, the Commission published revised versions of the Policy based on
18 the feedback from the working group, public HRC listening sessions, and the officer-only
19 listening sessions.⁴⁴ Since the Policy was posted publicly, the Commission received
20

21 ⁴¹ Commission Working Group Meeting Minutes, August 2, 2022, available at
22 [https://www.sf.gov/sites/default/files/2022-11/Minutes%20-](https://www.sf.gov/sites/default/files/2022-11/Minutes%20-%20DGO%209.01%20WG%208.2.22.pdf)
23 [%20DGO%209.01%20WG%208.2.22.pdf](https://www.sf.gov/sites/default/files/2022-11/Minutes%20-%20DGO%209.01%20WG%208.2.22.pdf).

24 ⁴² Human Rights Commission calendar of Community Listening Sessions, available at
25 [https://web.archive.org/web/20241214234648/https://www.sf.gov/sites/default/files/2022-](https://web.archive.org/web/20241214234648/https://www.sf.gov/sites/default/files/2022-08/HRC%20-%20SFPD%20-%205x7%20postcard.pdf)
26 [08/HRC%20-%20SFPD%20-%205x7%20postcard.pdf](https://web.archive.org/web/20241214234648/https://www.sf.gov/sites/default/files/2022-08/HRC%20-%20SFPD%20-%205x7%20postcard.pdf).

27 ⁴³ Commission, Regular Meeting Minutes, Dec. 7, 2022, available at
28 <https://www.sf.gov/meeting--december-7-2022--december-7-2022-police-commission-meeting>.

⁴⁴ Department General Order 9.01 December 2, 2022 Draft, available at
[https://web.archive.org/web/20241211170025/https://www.sf.gov/sites/default/files/2023-](https://web.archive.org/web/20241211170025/https://www.sf.gov/sites/default/files/2023-01/Revised%20Draft%20DGO%209.01%20TRAFFIC%20ENFORCEMENT%20%26%20CURTAILING%20THE%20USE%20OF%20PRETEXT%20STOPS_2.pdf)
[01/Revised%20Draft%20DGO%209.01%20TRAFFIC%20ENFORCEMENT%20%26%20CURTAILING%20THE%20USE%20OF%20PRETEXT%20STOPS_2.pdf](https://web.archive.org/web/20241211170025/https://www.sf.gov/sites/default/files/2023-01/Revised%20Draft%20DGO%209.01%20TRAFFIC%20ENFORCEMENT%20%26%20CURTAILING%20THE%20USE%20OF%20PRETEXT%20STOPS_2.pdf).

1 hundreds of letters from community members.⁴⁵ On April 5, 2023, the Commission voted
2 unanimously to send the Policy to meet and confer.⁴⁶ The meet and confer process lasted
3 nearly a year with the Commission meeting with Plaintiff at least seven times in closed
4 session before the Commission voted to end the process in February 2024, allowing the
5 Policy to go into effect in July 2024.

6 At each turn, Plaintiff, individual officers, stakeholders, and members of the public
7 were well represented and provided their input on the Policy.

8 **IV. Conclusion**

9 The Commission has the authority to set policy for the Department and, consequently,
10 Plaintiff's members. The Commission validly exercised that authority to enact the Policy
11 through its established public discussion process to address persistent, unacceptable racial
12 disparities in who Plaintiff's members stop and search. While Plaintiff agrees that
13 discretion in *how and when* to enforce laws must continue to exist, Plaintiff rejects
14 Defendant's ability to limit that discretion as a matter of law.

15 Because Plaintiff's conclusion is wrong, we respectfully urge this Court to grant
16 Defendant's demurrer.

17 Dated: January 29, 2025

18 Respectfully submitted,
19 Manohar Raju
20 Public Defender
21 Matt Gonzalez
22 Chief Attorney

23 By: Brian Cox
24 Brian Cox
25 Deputy Public Defender

26 ⁴⁵ Department General Order 9.07 "Curtailing the Use of Pretext Stops" DGO 9.01/9.07 –
27 Working Group,
28 [https://web.archive.org/web/20241211165444/https://www.sf.gov/resource/2023/departmen-
general-order-907-curtailing-use-pretext-stops](https://web.archive.org/web/20241211165444/https://www.sf.gov/resource/2023/departmen-
general-order-907-curtailing-use-pretext-stops) (last visited 1/29/2025).

⁴⁶ See Commission, Regular Meeting Minutes, April 5, 2023, available at
https://media.api.sf.gov/documents/Apr_5_2023_in-person.pdf.