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11 Attorneys for Plaintiff Cuc Kim Le

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
13 **COUNTY OF SAN DIEGO, CENTRAL DIVISION**

14 CUC KIM LE,

15 Plaintiff,

16 v.

17  
18 SF SAN DIEGO, INC. dba SF  
19 SUPERMARKET and DOES 1 TO 50,

20 Defendants.

) Case No.: 37-2019-00019958-CU-PO-CTL

) Assigned for all Purposes to  
) Hon. Katherine Bacal, Dept C-69

) **PLAINTIFF CUC LE'S OBJECTIONS TO**  
) **DEFENDANT SF SAN DIEGO INC.'S**  
) **EVIDENCE IN SUPPORT OF ITS**  
) **OPPOSITION TO PLAINTIFF'S**  
) **MOTION TO COMPEL SURVEILLANCE**  
) **VIDEOS**

) Date: March 20, 2020  
) Time: 11:00 a.m.  
) Dept. C-69

) Complaint Filed: April 17, 2019  
) Trial Date: April 24, 2020  
) Judge: Hon. Katherine Bacal

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 Plaintiff Cuc Le hereby objects to SF San Diego, Inc.'s evidence in support of its  
3 opposition to Cuc Le's motion to compel surveillance videos. In brief, declarant Scott Hoy lacks  
4 personal knowledge of the facts which preceded his filing of Notice of Change of Filing  
5 Attorney; Scott Hoy served his Notice on December 5, 2019. Scott Hoy was neither the sender  
6 nor the recipient of the email letters he authenticated in his declaration. Additionally, Margie  
7 Wong's declared, "The information discussed at my deposition is being presented through this  
8 declaration rather than through deposition excerpts for ease of reading and comprehension."  
9 (Margie Wong's declaration para. 1) Therefore, Wong's entire declaration is hearsay and violates  
10 the best evidence rule.  
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14 <b>Objections to Scott Hoy's Declaration</b>		
15	16 <b>Materials Objected to:</b>	16 <b>Grounds for Objections:</b>
17 18 19 20 21 22 23 24 25 26 27 28	<b>1</b> Hoy's declaration ¶ 4:  "On October 23, 2019, Mr. Nakase notified defense counsel he was substituting in as Plaintiffs counsel and sent an initial meet and confer correspondence regarding discovery. Plaintiff addressed SF San Diego's production of two surveillance videos from the date of the incident and claimed they were deficient because the 1st clip ends at 12:43pm and the	<ul style="list-style-type: none"><li>- Lacks Foundation (Evid. Code §403)</li><li>- Lacks Personal Knowledge (Evid. Code §702)</li><li>- Hearsay (Evid Code. §1200-1205)</li><li>- Improper argument (Evid. Code §803)</li><li>- Scott Hoy was not the handling attorney until served a Notice of Change of Handling Attorney on December 5, 2019. (Request for Judicial Notice No. 1)</li></ul>

<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15</p>	<p>second clip beings at 12:52pm, and the “area where the plaintiff fell has at least four surveillance cameras.” This correspondence was sent over two (2) years after the alleged incident, and never addressed any preservation request being sent to SF San Diego. Notably, the meritless motion <u>does not address</u> where these other video cameras were pointed or if they were even working. Attached hereto as Exhibit 1 is a true and correct copy of the email dated October 23, 2019 to defense counsel from Mr. Nakase.”</p>	
<p>16 17 18 19 20 21 22 23 24 25 26 27 28</p>	<p><b>2</b> Hoy’s declaration ¶ 5:  “On October 28, 2019, Plaintiff sent a formal meet and confer correspondence discussing SF San Diego’s discovery responses. Plaintiff indicated that SF San Diego has more than three (3) surveillance cameras in the produce room where Plaintiff fell and over a dozen surveillance cameras in the main room. Plaintiff requested all surveillance video from May 2, 2017 be produced. Again, Plaintiff’s counsel</p>	<ul style="list-style-type: none"> <li>- Lacks Foundation (Evid. Code §403)</li> <li>- Lacks Personal Knowledge (Evid. Code §702)</li> <li>- Hearsay (Evid Code. §1200-1205)</li> <li>- Improper argument (Evid. Code §803)</li> <li>- Scott Hoy was not the handling attorney until served a Notice of Change of Handling Attorney on December 5, 2019. (Request for Judicial Notice No. 1)</li> </ul>

1 2 3 4 5 6	<p><u>never addressed</u> any preservation request being sent to SF San Diego. Attached hereto as Exhibit 2 is a true and correct copy of the email dated October 28, 2019 to Mr. Nakase.”</p>	<ul style="list-style-type: none"> <li>- Scott Hoy was not the writer nor recipient of any of the correspondence.</li> </ul>
7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	<p><b>3</b> Hoy’s declaration ¶ 6:</p> <p>“On November 4, 2019, counsel met and conferred via telephone and discussed the issue regarding surveillance footage. Plaintiff’s counsel was again requested for a copy of any notice of preservation sent to SF San Diego, and he was informed that no other videos exist other than what was produced in SF San Diego’s responses to written discovery. During this conversation, Plaintiff’s counsel was told that the surveillance footage system does not save videos indefinitely, and that the system automatically wipes the footage after a certain period of time if not specifically saved. This conversation was followed up by an email confirming there were no other videos and no preservation letter received by SF San Diego. Plaintiff’s counsel <u>conveniently omits</u> this</p>	<ul style="list-style-type: none"> <li>- Lacks Foundation (Evid. Code §403)</li> <li>- Lacks Personal Knowledge (Evid. Code §702)</li> <li>- Hearsay (Evid Code. §1200-1205)</li> <li>- Improper argument (Evid. Code §803)</li> <li>- Scott Hoy was not the handling attorney until served a Notice of Change of Handling Attorney on December 5, 2019. (Request for Judicial Notice No. 1)</li> <li>- Scott Hoy was not a person who took part in the purported conversation.</li> <li>- Scott Hoy was not the writer nor recipient of any of the correspondence.</li> </ul>

1 2 3 4 5 6 7	<p>email communication from his baseless motion. Attached hereto as Exhibit 3 is a true and correct copy of the email dated November 4, 2019 to Mr. Nakase and Mr. Nakase’s email to defense counsel.”</p>	
8 9 10 11 12 13 14 15 16	<p><b>4</b> Hoy’s declaration ¶ 7: “Three days later, on November 7, 2020, Plaintiff filed the present motion.”</p>	<ul style="list-style-type: none"> <li>- Lacks Foundation (Evid. Code §403)</li> <li>- Lacks Personal Knowledge (Evid. Code §702)</li> <li>- Hearsay (Evid Code. §1200-1205)</li> <li>- Scott Hoy was not the handling attorney until served a Notice of Change of Handling Attorney on December 5, 2019. (Request for Judicial Notice No. 1)</li> </ul>
17 18 19 20 21 22 23 24 25 26 27 28	<p><b>5</b> Hoy’s declaration ¶ 8: “On November 13, 2019, Plaintiff’s counsel was sent a formal, multi-page letter detailing the baseless nature of his motion. Plaintiff’s counsel was again reminded that no preservation notice was ever given to SF Supermarket, that there were no other videos, that the video surveillance system does not keep recordings indefinitely, and that all videos have been produced. Defense counsel demanded that the motion to compel be</p>	<ul style="list-style-type: none"> <li>- Lacks Foundation (Evid. Code §403)</li> <li>- Lacks Personal Knowledge (Evid. Code §702)</li> <li>- Hearsay (Evid Code. §1200-1205)</li> <li>- Improper argument (Evid. Code §803)</li> <li>- Scott Hoy was not the handling attorney until served a Notice of Change of Handling Attorney on December 5, 2019. (Request for Judicial Notice No. 1)</li> </ul>

1 2 3 4 5 6 7 8 9	<p>withdrawn or sanctions would be sought when opposing it. Plaintiff’s counsel ignored the letter. Plaintiff’s counsel <u>conveniently omits</u> this formal correspondence from his baseless motion. The motion stayed on calendar. Attached hereto as Exhibit 4 is a true and correct copy of the letter dated November 13, 2019 to Mr. Nakase.”</p>	<ul style="list-style-type: none"> <li>- Scott Hoy was not a writer nor recipient of the email letters.</li> </ul>
10 11 12 13 14 15 16 17 18 19 20 21 22 23	<p><b>6</b> Hoy’s declaration ¶ 9:</p> <p>“On November 14, 2019, Mr. Nakase was explicitly told that no one from the defense was claiming there were not more than one surveillance camera at the store. This had to be pointed out to Mr. Nakase because he was twisting words that were previously made by defense counsel in the context of what Mr. Nakase claimed to have been captured by other video cameras. Attached hereto as Exhibit 5 is a true and correct copy of the email dated November 14, 2019 to Mr. Nakase.”</p>	<ul style="list-style-type: none"> <li>- Lacks Foundation (Evid. Code §403)</li> <li>- Lacks Personal Knowledge (Evid. Code §702)</li> <li>- Hearsay (Evid Code. §1200-1205)</li> <li>- Improper argument (Evid. Code §803)</li> <li>- Scott Hoy was not the handling attorney until served a Notice of Change of Handling Attorney on December 5, 2019. (Request for Judicial Notice No. 1)</li> <li>- Scott Hoy was not a sender nor recipient of the email letters.</li> </ul>
24 25 26 27 28	<p><b>7</b> Hoy’s declaration ¶ 10:</p> <p>“On November 19, 2019, the subject of the surveillance video issue was again</p>	<ul style="list-style-type: none"> <li>- Lacks Foundation (Evid. Code §403)</li> <li>- Lacks Personal Knowledge (Evid. Code §702)</li> <li>- Hearsay (Evid Code. §1200-1205)</li> </ul>

<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20</p>	<p>memorialized in writing to Plaintiff’s counsel after an <i>ex parte</i> hearing. Specifically, Plaintiff’s counsel was again informed there were no other videos and that SF San Diego never received a preservation of evidence letter. Mr, Nakase stayed silent and avoided answering any questions about the lack of such a letter. However, Mr. Nakase did mention that the purpose of the motion was <u>solely for the purpose of setting this case up to go to trial</u>. This confirms that Mr. Nakase had <u>no intention</u> of meeting and conferring in good faith to resolve the video issue raised in his motion to compel. Plaintiff’s counsel <u>conveniently omits</u> this correspondence from his baseless motion. The motion stayed on calendar. Attached hereto as Exhibit 6 is a true and correct copy of the email dated November 19, 2019 to Mr. Nakase.”</p>	<ul style="list-style-type: none"> <li>- Improper argument (Evid. Code §803)</li> <li>- Scott Hoy was not the handling attorney until served a Notice of Change of Handling Attorney on December 5, 2019. (Request for Judicial Notice No. 1)</li> <li>- Improper argument (Evid. Code §803)</li> </ul>
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<p>21 22 23 24 25 26 27 28</p>	<p><b>8</b> Hoy’s declaration ¶ 11:  “That same day, in response to the powerful admonition he had just received from defense counsel, Mr. Nakase simply responded that he had already stated his position in the moving papers. He also inexplicably characterized the issue as one that included a false assertion that</p>	<ul style="list-style-type: none"> <li>- Lacks Foundation (Evid. Code §403)</li> <li>- Lacks Personal Knowledge (Evid. Code §702)</li> <li>- Hearsay (Evid Code. §1200-1205)</li> <li>- Improper argument (Evid. Code §803)</li> <li>- Scott Hoy was not the handling attorney until served a Notice of</li> </ul>
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<p>1 2 3 4 5 6 7 8 9 10 11 12</p>	<p>the defense was somehow denying there were other video cameras in the store. He added that if the defense “has something new (law or facts) to add, I invite it.” Again, Plaintiff’s counsel <u>never addressed</u> the preservation of evidence issue in his response and he <u>never denied</u> saying his purpose of the motion was for tactical reasons. Attached hereto as Exhibit 7 is a true and correct copy of the email Mr. Nakase sent to defense counsel dated November 19, 2019.”</p>	<p>Change of Handling Attorney on December 5, 2019. (Request for Judicial Notice No. 1)</p> <ul style="list-style-type: none"> <li>- Improper argument (Evid. Code §803)</li> <li>- Scott Hoy was not a sender nor recipient of the email letters.</li> </ul>
<p>13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28</p>	<p><b>9</b> Hoy’s declaration ¶ 12:</p> <p>“On January 8, 2020, Plaintiff’s counsel deposed Margie Wong in my presence. Ms. Wong is SF San Diego’s store manager as well as the person who saved and downloaded the video produced to Plaintiff in this case. In her testimony, Ms. Wong described in detail the process that led her to download two segments from a single video (both of which have been produced). Mr. Nakase listened to her testify that the video surveillance system only maintains its recordings for about 2 weeks before it records over whatever was previously there. Ms. Wong told Mr. Nakase she</p>	<ul style="list-style-type: none"> <li>- Hearsay (Evid Code. §1200-1205)</li> <li>- Improper argument (Evid. Code §803)</li> <li>- Best evidence rule (Evid. Code §1520)</li> <li>- No relevant (Evid. Code §350)</li> </ul>



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	<p>downloaded and preserved video from the camera pointed in the direction of Plaintiff s fall. She explained why there is a so-called “gap” between the video segments she saved, and how there were no other videos relating to Plaintiffs fall. Mr. Nakase also learned that several cameras in the store are old and do not work, but they are kept as a deterrent to possible shoplifters. As for any other operative cameras in the produce area, they were not pointing in the right direction to capture Plaintiff s fall. Still, Mr. Nakase kept his motion on calendar.”</p>	
<p><b>10</b></p>	<p>Hoy’s declaration ¶ 13:</p> <p>“On March 5, 2020, in anticipation of opposing this baseless motion, another email was sent to Mr. Nakase imploring him to withdraw this motion. Mr. Nakase was reminded of Ms. Wong’s testimony, and he was cautioned that letting this baseless motion linger for over 4-months was sanctionable conduct. He was warned that if defense counsel had to go through the effort to oppose his motion, sanctions would be requested. Mr. Nakase completely ignored the email, and he</p>	<ul style="list-style-type: none"><li>- Hearsay (Evid Code. §1200-1205)</li><li>- Improper argument (Evid. Code §803)</li><li>- No relevant (Evid. Code §350)</li></ul>

1	did not withdraw the motion. Mr. Nakase	
2	ignored my communication. Attached hereto	
3	as Exhibit 8 is a true and correct copy of the	
4	email dated March 5, 2020 to Mr. Nakase.”	
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6	<b>11</b> Hoy’s declaration ¶ 14:	- Improper argument (Evid. Code
7		§803)
8	“Mr. Nakase has requested \$9,355.00 in	- No relevant (Evid. Code §350)
9	sanctions against SF San Diego. Mr. Nakase	- Lacks foundation (Evid. Code §403)
10	supports this figure through an inflated and	- Speculation (Evid. Code §§ 702, 800
11	unreasonable hourly rate of \$650.00 per hour,	and 801(b))
12	to say nothing of the exorbitant time he	
13	allocates for a basic cut-and-paste job from	
14	other documents.”	
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17	<b>12</b> Hoy’s declaration ¶ 15:	- Improper argument (Evid. Code
18		§803)
19	“Mr. Nakase speculates what other video	- Lacks Foundation (Evid. Code §403)
20	recordings from May 2, 2017 may have	- Hearsay (Evid Code. §1200-1205)
21	shown, but never directly addresses why such	- No relevant (Evid. Code §350)
22	things as the paramedics’ departure from the	
23	scene have any relevance to this action at all.”	
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25	<b>13</b> Hoy’s declaration ¶ 16:	- Improper argument (Evid. Code
26		§803)
27		- No relevant (Evid. Code §350)
28		- Lacks Foundation (Evid. Code §403)

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“It has probably been over 15 years since I requested sanctions against an attorney. However, this is a case where I feel justified in seeking sanctions. The facts and evidence demonstrates that (1) Mr. Nakase has never addressed or mentioned to the Court anything about a preservation of evidence notification, or lack thereof; (2) Mr. Nakase was aware that there were no other videos and the reasons why (i.e., overwritten by the system) before he filed his motion; (3) Mr. Nakase deliberately omitted meet and confer communications from defense counsel that appear to be designed to deflect attention away from his client not notifying SF San Diego to preserve other videos before they were routinely overwritten by the surveillance system; (4) Mr. Nakase repeatedly ignored communications from defense counsel informing him why his motion was baseless; (5) Mr. Nakase obtained additional sworn testimony from store manager Margie Wong in January 2020 that detailed and explained why there were no other videos and how the videos that were produced were downloaded saved; (6) Mr. Nakase completely ignored my final attempt to get the motion withdrawn just days before this opposition pleading was drafted; and perhaps

- Hearsay (Evid Code. §1200-1205)

1	most telling (7) Mr. Nakase has had 4-months	
2	since the time he filed his motion to consider	
3	all of the above and yet he did nothing—a	
4	clear indication that his actions have been	
5	deliberate and designed to push this motion	
6	forward at all costs and regardless of merit.”	
7		
8	<b>14</b> Hoy’s declaration ¶ 17:	- Not relevant (Evid. Code §350) (SF
9		San Diego, Inc.’s did not move for
10	“My hourly billing rate on this file is \$190.00	money sanctions)
11	per hour. It has conservatively taken me 5	
12	hours to draft this opposition and related	
13	pleadings, including my declaration and	
14	working with Margie Wong to complete her	
15	declaration. Accordingly, this Court is	
16	respectfully requested to impose monetary	
17	sanctions against Mr. Nakase in the amount of	
18	\$950.00.”	
19		
20	<b>Objections to Margie Wong’s Declaration</b>	
21	<b>Materials Objected to:</b>	<b>Objections</b>
22	<b>15</b> Wong’s declaration ¶ 2	- Hearsay (Evid Code. §1200-1205)
23		
24	“On January 8, 2020, I was deposed by	
25	Plaintiff’s attorney, Brad Nakase. During that	
26	examination, I testified under oath and	
27	informed Mr. Nakase of the information	
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<p>1 2 3 4 5 6 7 8 9 10</p>	<p>contained in this declaration. The information discussed at my deposition is being presented through this declaration rather than through deposition excerpts for ease of reading and comprehension.</p> <p>Although I may provide minor elaboration to specific issues discussed at my deposition, Mr. Nakase was informed of every key point discussed in this declaration.”</p>	
<p>11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p><b>16</b> Wong’s declaration ¶ 3</p> <p>“The video cameras at SF Supermarket operate and record all day long. Nothing is done to the system at the end of each day or week. Nothing is done to ensure recording. However, the system only maintains its recordings for about two weeks before the system records over what was previously recorded. In other words, everything recorded by the system will be recorded over after two weeks. It is a cycle that repeats constantly.”</p>	<p>- Hearsay (Evid Code. §1200-1205) (Wong’s declaration ¶ 1 states, “The information discussed at my deposition is being presented through this declaration rather than through deposition excerpts for ease of reading and comprehension.”)</p>
<p>26 27 28</p>	<p><b>17</b> Wong’s declaration ¶ 4</p> <p>“If there is a particular need, such as the</p>	<p>Hearsay (Evid Code. §1200-1205) (Wong’s declaration ¶ 1 states, “The information discussed at my deposition</p>

<p>1 2 3 4 5 6 7 8 9 10 11 12</p>	<p>incident with Plaintiff, it is possible to access and save video that the system recorded. To do that, I need to isolate a specific recording from a specific camera and then manually download the video to another storage location, such as a thumb drive. In other words, I cannot simply choose and instantly download a complete or partial portion of the surveillance video recording. Rather, I need to follow specific steps.”</p>	<p>is being presented through this declaration rather than through deposition excerpts for ease of reading and comprehension.”)</p>
<p>13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28</p>	<p><b>18</b> Wong’s declaration ¶ 5      “In order to manually download a selected video from the store’s surveillance system to a thumb drive, I undertake the following steps:      a. I find the selected video I want to transfer to a thumb drive.      The recordings can be accessed by date and time;      b. I then decide where on the surveillance system recording I want to start the download ;      c. As the surveillance system recording plays back the selected video on the computer monitor, I “Cut” the video, which actually just marks the point in the recording where the</p>	<p>Hearsay (Evid Code. §1200-1205)      (Wong’s declaration ¶ 1 states, “The information discussed at my deposition is being presented through this declaration rather than through deposition excerpts for ease of reading and comprehension.”)</p>

<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21</p>	<p>download process to the thumb drive will begin;</p> <p>d. I then wait as the video surveillance system plays its recording, minute by minute, until I click the a “Stop” button. For example, if I want to download and save 10 minutes of video to the thumb drive, I need to stand by or wait for 10 minutes as the surveillance system plays the selected recording. After clicking the “Stop” button, the computer then prompts me if I want to save the recording to a thumb drive;</p> <p>e. After I click “Yes” to save the recoding, there is a period of time where the system actually extracts or imports the data to the thumb drive. The longer the saved video will be, the longer the extraction process will take. When there is a notification that the process is complete, the selected video is then saved to the thumb drive.”</p>	
<p>22 23 24 25 26 27 28</p>	<p><b>19</b> Wong’s declaration ¶ 6</p> <p>“On May 2,2017, I decided that video should be preserved of Plaintiffs fall. I looked at the recordings from produce area to find which camera may have captured her fall. I cannot</p>	<p>Hearsay (Evid Code. §1200-1205)</p> <p>(Wong’s declaration ¶ 1 states, “The information discussed at my deposition is being presented through this declaration rather than through</p>

1 2 3 4 5 6 7	specifically remember how many camera recordings from the produce area I looked at, but I do know the recording I chose to save came from the camera that was positioned at the best angle to capture Plaintiffs fall.”	deposition excerpts for ease of reading and comprehension.”)
8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	<b>20</b> Wong’s declaration ¶ 7  “After deciding which video from the surveillance system I wanted to preserve, I began the download process. I thought it was important to begin at a point in time before Plaintiff fell, so I rewound the recording to what turned out to be 9 minutes before Plaintiffs fall. With the surveillance system recording playing, I marked (or cut) the recording at the place in time where the download to the thumb drive would ultimately begin. I then monitored the video recording until it included Plaintiff’s fall.”	Hearsay (Evid Code. §1200-1205)  (Wong’s declaration ¶ 1 states, “The information discussed at my deposition is being presented through this declaration rather than through deposition excerpts for ease of reading and comprehension.”)
24 25 26 27 28	<b>21</b> Wong’s declaration ¶ 8  “After letting the original video recording continue for another couple of minutes after capturing the fall, I clicked the “Stop” feature	Hearsay (Evid Code. §1200-1205)  (Wong’s declaration ¶ 1 states, “The information discussed at my deposition is being presented through this declaration rather than through



1 2 3 4 5 6 7 8 9 10	<p>on the computer. I stopped at this point because I wanted to make sure the thumb drive contained enough space to hold what I had chosen to save, and I was not sure if the file would be too large to fit on the thumb drive. At that point, there was already about 10 minutes of video to be saved, including the Plaintiff’s fall, which I thought was the most important thing to preserve.”</p>	<p>deposition excerpts for ease of reading and comprehension.”)</p>
11 12 13 14 15 16 17 18 19 20 21	<p><b>22</b> Wong’s declaration ¶ 9</p> <p>“After stopping the recording, there was a period of time where the video segment I had chosen needed to “extract,” which I believe is when the chosen video segment actually gets saved or imported onto the thumb drive. In any event, during this time, I had to wait for the extraction process to be completed.”</p>	<p>Hearsay (Evid Code. §1200-1205) (Wong’s declaration ¶ 1 states, “The information discussed at my deposition is being presented through this declaration rather than through deposition excerpts for ease of reading and comprehension.”)</p>
22 23 24 25 26 27 28	<p><b>23</b> Wong’s declaration ¶ 10</p> <p>“After the extraction process for the saved video segment was complete, I then decided to save more of the original recording. I repeated the process described above by activating the</p>	<p>Hearsay (Evid Code. §1200-1205) (Wong’s declaration ¶ 1 states, “The information discussed at my deposition is being presented through this declaration rather than through deposition excerpts for ease of reading and comprehension.”)</p>

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	<p>cut button which again marked the beginning of where the next download would begin. However, the original recording on the surveillance system had continued to play during the “extraction” process of the first saved video segment. This meant that when I clicked the button to mark the new download point, it started from a point in time several minutes after I had ended the first saved segment of video. It did not occur to me that the original system recording would not pick up from where the first video segment left off. This resulted in a gap of about 9 minutes between the video segments that I saved.”</p>	
<p><b>24</b></p>	<p>Wong’s declaration ¶ 11</p> <p>“As with the first video segment I saved, I recorded around 10 minutes of post-fall video before I clicked the “Stop” feature to let the extraction process to the thumb drive begin again. After the process was complete, I had around 20 minutes of video saved to the thumb drive and thought that W’ould be enough to adequately document what happened,</p>	<p>Hearsay (Evid Code. §1200-1205)</p> <p>(Wong’s declaration ¶ 1 states, “The information discussed at my deposition is being presented through this declaration rather than through deposition excerpts for ease of reading and comprehension.”)</p>

1 2 3 4	<p>especially since I saved the part that showed Plaintiffs fall. Accordingly, I did not download or save any other video segment or recording.”</p>	
5 6 7 8 9 10 11 12 13 14 15	<p><b>25</b> Wong’s declaration ¶ 12</p> <p>“Plaintiff has made reference to other video cameras in the produce area. Several cameras are old and do not work, but they are kept as a deterrent to possible shoplifters. Although there were other operative cameras in the produce area, they were not pointing in the right direction to capture Plaintiffs fall.”</p>	<p>Hearsay (Evid Code. §1200-1205)</p> <p>(Wong’s declaration ¶ 1 states, “The information discussed at my deposition is being presented through this declaration rather than through deposition excerpts for ease of reading and comprehension.”)</p>
16 17 18 19 20 21 22 23 24 25 26 27	<p><b>26</b> Wong’s declaration ¶ 13</p> <p>“If my store had been requested by Plaintiff or her attorneys to preserve additional videos, I would have. However, we did not receive any such request. My purpose in saving the video I downloaded was to preserve what happened for our own records, and I thought I did a good job of doing so.”</p>	<p>Hearsay (Evid Code. §1200-1205)</p> <p>(Wong’s declaration ¶ 1 states, “The information discussed at my deposition is being presented through this declaration rather than through deposition excerpts for ease of reading and comprehension.”)</p>

<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18</p>	<p><b>27</b> Wong’s declaration ¶ 14</p> <p>“I did not alter or do anything to the video I saved, and the video that was produced to Plaintiff is exactly the way it was downloaded. I saved two segments of video to the thumb drive, and although the segments are not perfectly contiguous, it was not due to anything malicious on my part, I did not even watch the segments after I saved them so I did not even know one segment did not immediately follow the other. We have produced every video of Plaintiff’s incident that we have, or that is capable of being made, since all other recordings from May 2, 2017 have long since been wiped out through new recordings made of the surveillance system.”</p>	<p>Hearsay (Evid Code. §1200-1205) (Wong’s declaration ¶ 1 states, “The information discussed at my deposition is being presented through this declaration rather than through deposition excerpts for ease of reading and comprehension.”)</p>
<p>19 20 21 22 23 24 25 26 27 28</p>	<p><b>28</b> Wong’s declaration ¶ 15</p> <p>“Although I only thought to save the two video segments already discussed above, the fact that all other videos taken on May 2,2017 were taped over by the surveillance system was the result of the routine, good faith operation of the electronic information system. In other words, the video surveillance system continued</p>	<p>Hearsay (Evid Code. §1200-1205) (Wong’s declaration ¶ 1 states, “The information discussed at my deposition is being presented through this declaration rather than through deposition excerpts for ease of reading and comprehension.”)</p>

1 to operate normally after May 2,2017, so that  
2 all age expiring videos are being constantly  
3 recorded over with newer video/recordings.”  
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9 Dated: March 11, 2020

Respectfully submitted,

10 **NAKASE LAW FIRM, INC.**  
11 **RIST LAW OFFICE, LC**

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14 By: \_\_\_\_\_

15 Brad Nakase, Attorney for  
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