NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RAYMOND NICHOLS; DANIEL NICHOLS, Plaintiffs-Appellees. v. CITY OF RIVERSIDE; DANIEL MACIAS; MICHAEL FOSTER, Defendants-Appellants, and STEPHANIE WYSINGER; COMMUNITY CARE RAHAB [sic] CENTER, LLC, a California Limited Liability Company, Defendants.	No. 18-55135 D.C. No. 5:14-cv-00364-JGB-SP MEMORANDUM* (Filed Aug. 22, 2019)

Appeal from the United States District Court
for the Central District of California
Jesus G. Bernal, District Judge, Presiding

Argued and Submitted August 15, 2019
Pasadena, California

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Before: SCHROEDER and GRABER, Circuit Judges, and LEFKOW,** District Judge.

Defendants, City of Riverside police officers Daniel Macias and Michael Foster, appeal the district court's order denying summary judgment on qualified immunity. Plaintiffs Raymond and Daniel Nichols were arrested for allegedly stealing an air mattress that they had rented on behalf of their mother. They were released from jail the following day, and no charges were filed. We previously held that these officers lacked probable cause to arrest the brothers. *Nichols v. Macias*, 695 F. App'x 291, 292-93 (9th Cir. 2017) (unpublished decision). The only issue here is whether it was reasonable for Defendants to believe that there was probable cause so as to receive immunity from Plaintiffs' claims. *Rosenbaum v. Washoe Cty.*, 663 F.3d 1071, 1078 (9th Cir. 2011) (per curiam).

We have held that the existence of a dispute over the amount of a bill or the right to possess are civil in nature and ordinarily do not give rise to probable cause to arrest. *Stevens v. Rose*, 298 F.3d 880, 883-84 (9th Cir. 2002); *Allen v. City of Portland*, 73 F.3d 232, 237 (9th Cir. 1996); *Kennedy v. L.A. Police Dep't*, 901 F.2d 702, 706 (9th Cir.1990), *overruled on other grounds by Act Up!/Portland v. Bagley*, 988 F.2d 868, 872-73 (9th Cir.1993). This was such a dispute. As noted, the officers lacked probable cause. Raymond and Daniel told the police officers that they had rented the mattress,

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** The Honorable Joan H. Lefkow, United States District Judge for the Northern District of Illinois, sitting by designation.

and they produced the rental receipt and agreement for the officers' review. The only dispute was whether the brothers could move that mattress before delivery of a new one. The district court therefore properly held that Defendants were not entitled to immunity because the law was clearly established at the time of Plaintiffs' arrest in 2013.

AFFIRMED.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES – GENERAL

Case No. **EDCV 14-0364 JGB (SPx)** Date January 26, 2018
Title ***Raymond Nichols, et al. v. City of Riverside, et al.***

Present: The Honorable JESUS G. BERNAL, UNITED STATES DISTRICT JUDGE

MAYNOR GALVEZ	Not Reported
Deputy Clerk	Court Reporter
Attorney(s) Present for Plaintiff(s):	Attorney(s) Present for Defendant(s):
None Present	None Present

Proceedings: Order (1) DENYING Summary Judgment to Defendants on Qualified Immunity; and (2) EXERCISING Supplemental Jurisdiction over the State Law Claim (IN CHAMBERS)

Plaintiffs Raymond Nichols and Daniel Nichols[1] brought a claim under 42 U.S.C. § 1983, among others, against the City of Riverside and Riverside police officers Daniel Macias and Michael Foster[2] alleging violations of their Fourth Amendment rights stemming from a March 2013 arrest. Defendants moved for summary judgment on April 9, 2015. (Dkt. No. 74.) The

[1] To distinguish between Plaintiffs, the Court will refer to them by their first names, "Daniel" and "Raymond."

[2] The Court will refer to officers Macias and Foster collectively as "Officer Defendants."

magistrate judge granted summary judgment in favor of the officers on May 18, 2015. (Dkt. No. 106.) Plaintiffs appealed, and on August 15, 2017, the Ninth Circuit vacated the judgment and remanded for further consideration on the issue of qualified immunity. (Dkt. Nos. 110, 119, 120.) On December 18, 2017, the Court held a hearing on the matter and took it under submission. After considering oral argument and the submitted briefs, the Court concludes the Defendants are not entitled to qualified immunity and DENIES summary judgment. The Court also exercises supplemental jurisdiction over the pendent state law claim.

I. FACTUAL AND PROCEDURAL BACKGROUND

The parties submitted an excerpted record for the Court. ("ER," Dkt. No. 132.) The following material facts are sufficiently supported by admissible evidence and are uncontroverted. They are "admitted to exist without controversy" for purposes of the Motion. See Fed. R. Civ. P. 56(e)(2); L.R. 56-3.

On January 17, 2013, Waly Nichols ("Ms. Nichols") was attacked by two pit bulls, resulting in her admission to Community Care Rehabilitation Center ("CCRC"). (ER at 45.) Ms. Nichols required a low air loss mattress at CCRC. (Id.) On February 11, 2013, Daniel Nichols, Ms. Nichols' son, entered into a rental agreement with Supercare Medical Supply ("SuperCare") for a low air loss mattress. (ER at 52-59.) Daniel signed the rental agreement as his mother's patient

representative. (ER at 53-55.) SuperCare delivered the mattress, along with the air pump, directly to CCRC. (ER at 84.)

In March 2013, Ms. Nichols was discharged from CCRC. (ER at 100.) Her discharge plan notes she should continue sleeping on the low air loss mattress. (Id.) Prior to his mother being discharged, Raymond claims he called SuperCare to ask whether his mother's mattress would be ready for her at home prior to her release from CCRC. (ER at 85.) Raymond received a voicemail from Daniel Sands of SuperCare informing him the mattress his mother was using at CCRC would be the mattress she would have at her home. (ER at 86.) Raymond also spoke with Peter Meyers from SCAN, Ms. Nichols's insurance provider, who told him to take the mattress to her home when she leaves CCRC. (Id.) Raymond claims he had written notes from his conversations with SuperCare and SCAN and the contact information for the representatives. (ER at 88.)

On the day of Ms. Nichols's discharge, Daniel and Raymond went to CCRC to take the mattress. (ER at 86.) Raymond spoke with a CCRC nurse, Stephanie Wysinger, about taking the mattress to his mother's home. (ER at 86-87.) Wysinger told Raymond he could not take the mattress and she would call the police if they did. (ER at 87.) Raymond told Wysinger that SuperCare and SCAN had authorized him to take the mattress to his mother's home. (Id.) Daniel and Raymond then deflated the mattress and put it onto Daniel's truck. (Id.) Afterwards, Daniel left with the

mattress to deliver it to their mother's home. (ER at 87-88.)

While the Nichols brothers were deflating and loading the mattress, a CCRC employee called SuperCare. (ER at 74.) The CCRC employee advised Wysinger that SuperCare confirmed another mattress would be delivered to Ms. Nichols's house and CCRC should retain the original mattress for SuperCare to pick up another day. (ER at 74.) When Daniel drove away with the mattress, Wysinger called 911 to report the theft of the mattress. (ER at 75.)

Raymond remained at CCRC and went to the nurses' station to speak again with Wysinger. (ER at 88.) While Raymond waited for Wysinger to get off the phone, Officer Macias ("Macias") arrived. (ER at 89.) Raymond claims Macias ignored his offer to show Macias the lease agreement for the mattress and his notes of his conversation with SuperCare. (ER at 89-90.) After Raymond refused to leave his backpack at the nurses' station, as Macias requested, Macias handcuffed him. (ER at 90.) Macias then searched Raymond and the backpack and took him outside to his police vehicle. (Id.)

Around that time, Officer Foster ("Foster") arrived. Foster spoke with Wysinger who told him that SuperCare had told her the mattress was not to be taken from CCRC and a new mattress would be provided to Ms. Nichols. (ER at 124.) She also repeated to Foster that she had told the Nichols brothers they were not authorized to take the mattress and she would call the

police if they did. (Id.) Foster then spoke with Raymond. (ER at 161.) Raymond told Foster he had spoken to SCAN who had informed him he should take the mattress upon Ms. Nichols's discharge, and a man from SuperCare said the same. (ER at 125.) Raymond also told Foster he had the documentation verifying his conversations with SCAN and SuperCare in his backpack. (ER at 91.) Foster then put Raymond in the patrol vehicle. (ER at 91.)

Daniel returned to CCRC with the mattress in his truck. (ER at 161.) Daniel showed Foster the receipt for the mattress. (ER at 92.) Foster looked at the receipt and lease agreement and then placed Daniel in handcuffs. (Id.; ER at 47.) Daniel and Raymond were taken to jail and released the following day. (ER at 92; ER at 47.) Ultimately, no charges were filed against the Nichols brothers. (ER at 106.)

Defendants moved for summary judgment on April 9, 2015. (Dkt. No. 74.) The magistrate judge granted summary judgment in favor of Defendants on May 18, 2015. (Dkt. No. 106.) Plaintiffs appealed, and on August 15, 2017, the Ninth Circuit vacated the judgment. (Dkt. Nos. 110, 119, 120.) The Ninth Circuit held the undisputed facts did not establish probable cause to believe Plaintiffs had the requisite intent to commit grand theft. (Dkt. No. 119.) The Ninth Circuit remanded for further consideration on qualified immunity's "clearly established prong" for whether "the officers reasonably believed there was probable cause for the arrests." (Id.)

For this Court, the parties submitted briefs on the qualified immunity on November 24, 2017. (Dkt. Nos. 128, 129.) They filed responses on December 1, 2017. (Dkt. Nos. 131, 133.)

II. LEGAL STANDARD

"The doctrine of qualified immunity protects government officials 'from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" Pearson v. Callahan, 555 U.S. 223, 231 (2009) (quoting Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982)). An officer will be denied qualified immunity if (1) taking the alleged facts in the light most favorable to the party asserting injury, the officer committed a constitutional violation, and (2) the officer's specific conduct violated "clearly established" federal law at the time of the alleged misconduct such that a reasonable officer would have understood the conduct to be unlawful. Torres v. City of Madera, 648 F.3d 1119, 1123 (9th Cir. 2011) (citing Saucier v. Katz, 533 U.S. 194, 201-02 (2001)).

In the context of unlawful arrest, the two prongs of qualified immunity are "(1) whether there was probable cause for the arrest; and (2) whether it is *reasonably arguable* that there was probable cause for arrest – that is, whether reasonable officers could disagree as to the legality of the arrest such that the arresting officer is entitled to qualified immunity." Rosenbaum v.

Washoe Cty., 663 F.3d 1071, 1076 (9th Cir. 2011) (italics in original).

The Ninth Circuit reversed the magistrate judge's holding that there was probable cause for the arrest of the Nichols brothers. Thus, the only issue before the Court is whether Foster and Macias are entitled to qualified immunity based on an objectively reasonable belief they had probable cause.

III. DISCUSSION

Even if the arrest was made without a warrant and without probable cause, the officer may be immune from suit if it was objectively reasonable to believe that he had probable cause. Rosenbaum, 663 F.3d at 1078. In determining whether Officer Defendants are entitled to qualified immunity, the question is whether all reasonable officers would agree there was no probable cause based on the facts at hand. Id. The "linchpin" of the analysis is the reasonableness of the officer's conduct. Id. The law must be clearly established that it would "be clear to a reasonable officer that his conduct was unlawful in the situation he confronted." Saucier, 533 U.S. at 202. Defendants argue their conduct was objectively reasonable given the totality of circumstances and Plaintiffs have not identified any case that clearly establishes a lack of probable cause. (Def. Brief at 13-18.)

The Court therefore considers whether there was arguable probable cause to believe Plaintiffs had committed theft at the time of arrest. In California, grand

theft requires the specific intent to permanently deprive the owner of the use of property, Castillo-Cruz v. Holder, 581 F.3d 1154, 1160 (9th Cir. 2009), or an intent to take the property for so extended a period as to deprive the owner of a major portion of its value or enjoyment, People v. Avery, 38 P.3d 1, 4 (Cal. 2002). (Dkt. No. 119.)

By the time Raymond was handcuffed, Macias had been called to CCRC in response to Wysinger's report of a mattress theft. Macias had also ignored Raymond's offer to show the paperwork for the mattress and his conversation notes with SuperCare. Later, when Foster arrived, he spoke with Wysinger and Raymond, receiving conflicting information about SuperCare's instructions. Raymond also said he had documents to verify his conversations with SCAN and SuperCare. When Daniel returned, he showed Foster the lease agreement for the mattress, and then was placed in handcuffs. The mattress receipt states "customer shall not, in any way attempt to transfer equipment to a location other than the customer's address or residence . . . without explicit approval of SuperCare," and the only address on the invoice was CCRC. (ER at 59.) In light of all these facts, Defendants argue it was not unreasonable for the officers to believe Raymond lied about having permission to move the mattress. (Def. Brief at 13.) However, the rental agreement provides an exception to the prohibition on moving the mattress if the customer receives "explicit approval" from SuperCare, which Raymond claimed to have. Moreover, the rental

agreement and receipt are signed by Daniel in several places. (ER at 53-55.)

In sum, prior to being taken to jail, both Daniel and Raymond had informed and offered proof to Macias and Foster that SuperCare authorized their removal of the mattress, whereas Wysinger had denied SuperCare's approval. While Defendants argue police officers are entitled to assess and decide whether to believe the brothers or Wysinger, (Def. Brief at 13), Daniel showed them the rental agreement with his own signature establishing the rental contract was between Ms. Nichols, Daniel as her representative, and SuperCare. Neither CCRC nor Wysinger was a party to the contract. The Nichols brothers' potential authorization to remove the mattress stemmed from the SuperCare rental agreement. Thus, as the Ninth Circuit found, "at most there was a dispute about what the rental contract allowed." (Dkt. No. 119.)

The Ninth Circuit has held that "by definition, probable cause can only exist in relation to criminal conduct," therefore, "[i]t follows that civil disputes cannot give rise to probable cause." Allen v. City of Portland, 73 F.3d 232, 237 (1995). While Defendants assert the Allen statement is overbroad, by pointing to an Eighth Circuit case, Defendants did not provide, and the Court could not find, a Ninth Circuit case similarly curbing Allen. Accordingly, the controlling authority in this Circuit remains Allen. In Allen, the officer arrested a restaurant patron for theft after her family disputed the restaurant bill. 73 F.3d at 234. After the patron and her family ate a meal at the restaurant,

they attempted to pay with a half-price coupon. Id. The restaurant disputed the validity of the coupon, but the family left $15 to pay for the $25 meal. Id. The family then left the restaurant and the restaurant manager called 911 to report a theft. Id. The Ninth Circuit found this was "insufficient information to lead a reasonable person to believe that [the plaintiff] had committed a crime." Id. at 238. The court found the officer "lacked any information" to support the plaintiff had criminal intent, stating, "This dispute over the validity of a discount coupon was a contract dispute." Id.

The present facts fall squarely within the authority established by Allen. By the time Officer Defendants arrested the Nichols brothers, there was essentially a disagreement about whether Raymond and Daniel were authorized to move the mattress to their mother's home. The Nichols brothers attempted to show officers Macias and Foster the lease agreement and explain SuperCare had given them authorization to take the mattress. They believed SuperCare had granted them the permission to do so, while Wysinger asserted SuperCare had not. Allen instructs this "contract dispute" refutes the criminal intent element of theft. 73 F.3d at 238. Even in Allen, where the restaurant manager disputed the validity of his restaurant's coupon and consequently, the family's bill, the court found there was no reasonable probable cause. Here, Wysinger, a non-party to the contract, was the individual challenging the Nichols brothers' assertions of their arrangement with SuperCare. This extra attenuation from the

disputed contract cannot provide more reasonable probable cause to arrest than was found in Allen.

Another factor weighing against a finding of reasonable probable cause for criminal intent is Daniel's return to CCRC with the mattress. Daniel bringing the mattress back directly rebuts that the Nichols brothers had the necessary intent to "permanently deprive the owner" or "take the [mattress] for so extended a period as to deprive the owner" of the mattress. Castillo-Cruz v. Holder, 581 F.3d at 1160; People v. Avery, 38 P.3d at 4. In addition, once Daniel returned with the mattress, the Officer Defendants no longer had reasonable probable cause that the crime had already been completed. Thus, upon the information at the time of the Nichols brothers' arrest, there was no reasonable basis to believe that either of the Nichols brothers had any criminal intent of theft.

Additionally, Defendants' attempt to analogize the present facts to Conner v. Heiman, 672 F.3d 1126 (9th Cir. 2012) is unavailing. In Conner, a casino patron was arrested for theft after refusing to return $950 the casino had overpayed [sic] him. 672 F.3d at 1133. The patron was told by multiple casino employees he had been overpaid, yet refused to return the overpayment. Id. at 1129. The police officers opened an investigation into the overpayment, reviewing the surveillance video of the overpayment and statements by the casino employees. Id. More than a week after the overpayment, the officers arrested the patron. Id. at 1130. The Ninth Circuit reversed the district court, holding the officers could reasonably have concluded they had probable

cause to believe the patron knowingly controlled the casino's property and intended to deprive the casino of that property. Id. at 1113. The property in question in Conner was indisputably the casino's money that accidently ended up in the patron's hands. There was no contract between the casino and the patron that contemplated the $950, nor did the patron have a colorable claim to that amount. By contrast, Plaintiffs showed Foster the lease agreement that identified Daniel and Ms. Nichols as the lessees of the mattress. The existence of the mattress receipt changed the nature of the dispute from one solely about credibility to a civil dispute regarding contract performance and interpretation. Police officers need not necessarily accept a suspect's "innocent explanation," Ramirez v. City of Buena Park, 560 F.3d, 1012, 1024 (9th Cir. 2009), but here ignoring and discounting the rental agreement was unreasonable.

Taking the facts in the light most favorable to Plaintiffs, Defendants cannot prevail at the summary judgment state [sic]. The facts show that Macias and Foster violated Plaintiffs' right not to be arrested in the absence of probable cause that they had committed theft, and that the lack of arguable probable cause in the face of a civil dispute was clearly established and would be known to a reasonable officer in the circumstances.

IV. SUPPLEMENTAL JURISDICTION

The parties also filed briefs on whether CCRC and Wysinger remained parties to the action before this

Court. CCRC and Wysinger filed their brief on November 21, 2017. ("CCRC Brief," Dkt. No. 127.) Plaintiffs addressed the issue in their response brief on December 1, 2017. (Dkt. No. 133.)

When Judge Bristow granted summary judgment on the federal claims, he declined to exercise supplemental jurisdiction over the state law claims. Accordingly, on June 16, 2015, the Plaintiffs filed the state law claims in Riverside Superior Court. Currently, the false arrest claim against CCRC and Wysinger is the sole cause of action pending in the state court. The state court heard a motion for summary judgment, but the ruling has yet to be issued. CCRC and Wysinger argue the claim should remain in state court in the interests of economy and fairness, and the Plaintiffs' act of maintaining the state court action after dismissing the claim against the Riverside Defendants is akin to a Rule 21 severance. (CCRC Brief at 8-9.)

The Supreme Court has instructed that "district courts should deal with cases involving pendent claims in the manner that best serves the principles of economy, convenience, fairness, and comity which underlie the pendent jurisdiction doctrine." City of Chicago v. Int'l Coll. of Surgeons, 522 U.S. 156, 172-73 (1997) (quoting Carnegie-Mellon Univ. v. Cohill, 484 U.S. 343, 357 (1988)). However, when a claim is severed, it becomes an "entirely new and independent case." Herklotz v. Parkinson, 848 F.3d 894, 898 (9th Cir. 2017). A severed action must have an independent jurisdictional basis. Id. (citing Honeywell Int'l, Inc. v. Phillips Petroleum Co., 415 F.3d 429, 431-32 (5th Cir. 2005).

In Herklotz, the district court granted summary judgment on the claims within its original jurisdiction, prompting the plaintiff to move to sever the crossclaim. Id. The court held the district court could not subsequently exercise jurisdiction over the plaintiff's severed crossclaim that included only state law claims against non-diverse parties, because the crossclaim lacked an independent jurisdictional basis. Id. at 897. Here, neither party moved for severance under Rule 21, nor will the court assume Plaintiffs' actions in state court amount to a federal Rule 21 severance. Thus, the pendent state law claim remains part of the original action. A court may exercise supplemental jurisdiction over pendent claims arising out of a case and controversy properly within the court's original jurisdiction. 28 U.S.C. § 1367(a). As the Court denies Defendants' motion for summary judgment, the Court has original jurisdiction over Plaintiffs' § 1983 claim, to which the state law claim is related. Therefore, the Court exercises supplemental jurisdiction over the state law claim.

V. CONCLUSION

The Court concludes Defendants are not entitled to qualified immunity and DENIES summary judgment. The Court also exercises supplemental jurisdiction over the pendent state law claim against CCRC and Wysinger.

IT IS SO ORDERED.

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RAYMOND NICHOLS; DANIEL NICHOLS, Plaintiffs-Appellants. v. DANIEL MACIAS; MICHAEL FOSTER, Defendants-Appellees.	No. 15-55938 D.C. No. 5:14-cv-00364-DTB MEMORANDUM* (Filed Aug. 15, 2017)

Appeal from the United States District Court
for the District of Arizona
David T. Bristow, Magistrate Judge, Presiding

Argued and Submitted June 8, 2017
Pasadena, California

Before: BEA and HURWITZ, Circuit Judges, and KOBAYASHI,** District Judge.

On March 9, 2013, Raymond and Daniel Nichols were arrested for allegedly stealing an air mattress prescribed to their mother, Waly Nichols. The brothers were released from jail the following day, and no charges were filed. This 42 U.S.C. § 1983 action alleges

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable Leslie E. Kobayashi, United States District Judge for the District of Hawaii, sitting by designation.

that the arrest by City of Riverside police officers Daniel Macias and Michael Foster violated the Fourth Amendment. The district court granted summary judgment to the officers. We have jurisdiction over the brothers' appeal under 28 U.S.C. § 1291. We vacate the summary judgment and remand for further proceedings on the issue of qualified immunity.

1. We review the summary judgment on the brothers' Fourth Amendment claim for unlawful arrest de novo.[1] *Torres v. City of Madera*, 648 F.3d 1119, 1123 (9th Cir. 2011). "An officer has probable cause to make a warrantless arrest when the facts and circumstances within his knowledge are sufficient for a reasonably prudent person to believe that the suspect has committed a crime." *Rosenbaum v. Washoe Cty.*, 663 F.3d 1071, 1076 (9th Cir. 2011). "The analysis involves both facts and law. The facts are those that were known to the officer at the time of the arrest. The law is the criminal statute to which those facts apply." *Id.* While "probable cause does not require the same type of specific evidence of each element of the offense as would be needed to support a conviction," if "specific intent is a required element of the offense, the arresting officer must have probable cause for that element in order to reasonably believe that a crime has occurred." *Rodis v. City & Cty. of San Francisco*, 558 F.3d 964, 969 (9th

[1] Raymond and Daniel alleged both an unlawful arrest and an unlawful search, but their brief on appeal only challenges the district court's summary judgment on their unlawful arrest claim. "[W]e will not consider any claims that were not actually argued in appellant's opening brief." *Indep. Towers of Wash. v. Washington*, 350 F.3d 925, 929 (9th Cir. 2003).

Cir. 2009) (citations and internal quotation marks omitted, alteration incorporated).

In California, grand theft requires the specific intent to permanently deprive the owner of the use of property, *Castillo-Cruz v. Holder*, 581 F.3d 1154, 1160 (9th Cir. 2009), or "an intent to take the property for so extended a period as to deprive the owner of a major portion of its value or enjoyment," *People v. Avery*, 38 P.3d 1, 4 (Cal. 2002). In light of this legal standard, the undisputed facts do not establish probable cause to believe that Raymond and Daniel had the requisite intent to commit grand theft. At most, the record shows some confusion about whether the brothers were entitled to move the rented mattress to Ms. Nichols's house after her discharge from the rehabilitation center, or whether the rental company instead intended to deliver a substitute mattress to the residence. Although a rehabilitation center nurse stated that the rental company intended to deliver a new mattress to the home and the brothers were not authorized to remove the mattress from the center, Daniel returned to the rehabilitation center with the mattress and the rental agreement, and explained that they had the rental company's permission to remove the mattress. There was not sufficient evidence to conclude that the officers had probable cause to arrest Raymond and Daniel. *See, e.g.*, *Reed v. Lieurance*, No. 15-35018, 2017 WL 3122770, at *7 (9th Cir. July 24, 2017) ("The district court improperly weighed evidence favorable to [the plaintiff] against other evidence presented and failed to draw all reasonable inferences in [the plaintiff's]

favor. Construing the facts in [the plaintiff's] favor, we cannot conclude that as a matter of law, a reasonably prudent officer in [the same] situation would have had probable cause to believe [the plaintiff] committed [grand theft]." (citation and internal quotation marks omitted, alterations incorporated)). At most, there was a dispute about what the rental contract allowed. *See Allen v. City of Portland*, 73 F.3d 232, 237-38 (9th Cir. 1995).[2]

2. "In determining whether an officer is entitled to qualified immunity, we consider (1) whether there has been a violation of a constitutional right; and (2) whether that right was clearly established at the time of the officer's alleged misconduct." *C.V. ex rel. Villegas v. City of Anaheim*, 823 F.3d 1252, 1255 (9th Cir. 2016) (internal quotation marks omitted). The district court premised its finding of qualified immunity on its conclusion that the officers had probable cause to arrest Raymond and Daniel, and did not consider the second prong of the required analysis. We therefore vacate the grant of summary judgment on qualified immunity grounds and remand for further proceedings on whether, under the facts of this case, the officers reasonably believed

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[2] The rental agreement states that equipment may not be removed "to a location other than the customer's address or residence as noted on this invoice" without the rental company's "explicit approval." This language does not make plain that the brothers were not permitted to transport the mattress to their mother's home. Moreover, Raymond claimed he had approval to do so.

there was probable cause for the arrests. *Rosenbaum*, 663 F.3d at 1076.

VACATED AND REMANDED.

BEA, Circuit Judge, dissenting:

In my view, the officers had probable cause to believe that Raymond and Daniel intended to steal the mattress. A nurse told the officers that the brothers had taken the mattress without waiting for her to confirm that they had the rental company's permission to do so. Moreover, the rental agreement—which Daniel declared he showed to the officers—stated that "[the] customer shall not, in any way, attempt to transfer [the] equipment to a location other than the customer's address or residence as noted on this invoice without [the] explicit approval of [the rental company]." The address noted on the invoice for Waly Nichols was the address of the rehabilitation center where she had been staying; thus, the terms of the rental agreement prohibited removing the mattress from that location. Taken together, these facts were "sufficient for a reasonably prudent person to believe that [the brothers] ha[d] committed a crime," *Reed v. Lieurance*, ___ F.3d ___, No. 15-35018, 2017 WL 3122770, at *5 (9th Cir. July 24, 2017) (citation omitted), to wit: taking the $2,000 mattress without the required "explicit approval" of the owner, in violation of the written lease agreement, and not taking any steps to prove such "explicit approval."

True, Raymond and Daniel told the officers that they had the rental company's permission to take the mattress. But given that the nurse had told the officers that she hadn't yet got that approval and that a second mattress was being delivered to Waly's house that day, the officers reasonably could have found the brothers' story to be not credible. Likewise, the fact that Daniel returned with the mattress after he learned that Raymond had been arrested has no bearing on whether the brothers had the specific intent to steal the mattress at the time of the alleged theft. A thief's decision to return stolen property does not negate his prior intent to steal.

I would affirm the district court's grant of summary judgment for the officers.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES--GENERAL

Case No. **EDCV 14-00364-DTB** Date **May 18, 2015**

Title: **Raymond Nichols, et al. v. City of Riverside, et al.**

DOCKET ENTRY

PRESENT:

HON. DAVID T. BRISTOW,
UNITED STATES MAGISTRATE JUDGE

D. Castellanos	N/A
Deputy Clerk	Court Reporter/Recorder
ATTORNEYS PRESENT FOR PLAINTIFFS:	ATTORNEYS PRESENT FOR DEFENDANTS:
None Present	None Present

PROCEEDINGS: CITY DEFENDANTS' MOTION FOR SUMMARY JUDGMENT [DKT. # 74]

Currently pending before the Court is City of Riverside (the "City"), Daniel Macias ("Macias"), and Michael Foster's ("Foster") Motion for Summary Judgment or, in the Alternative, Partial Summary Judgment ("Motion") filed on April 9, 2015.[1] Plaintiffs, Raymond Nichols and Daniel Nichols,[2] filed an Opposition ("Opp.") to

[1] The City, Macias, and Foster shall be referred to herein collectively as the "City defendants."

[2] To easily distinguish them, the Court shall refer to plaintiffs by their first names when necessary.

the Motion on April 28, 2015.[3] The City defendants filed a Reply on May 4, 2015. On May 12, 2015, the Court heard argument on the Motion from and the matter was taken under submission.

BACKGROUND

The Court recites the factual background, in substantial part, as previously outlined in the Court's April 8, 2015 Order.

Two pit bulls mauled 84-year-old Waly Nichols when she went to check her mail. After being treated for her wounds at Riverside Community Hospital, Ms. Nichols went to Community Care and Rehab Center, LLC ("CCRC") to recover further. Her treating physicians prescribed a low air loss mattress. Her insurer paid for its rental from a company called SuperCare, which delivered it – tardily – to CCRC.

Though CCRC was to discharge Ms. Nichols on March 9, 2013, her injuries would require her to continue to use a low air loss mattress at home. While the rental agreement for the mattress Ms. Nichols used at CCRC indicated it was not to be removed from the facility, Raymond claims he was told by an employee of

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[3] The Court notes that the Opposition was filed one day late. Pursuant to stipulation and Court order, plaintiffs' response was due on April 27, 2015. (See Dkt. # 82.) Although plaintiffs' Statement of Genuine Material Facts in Dispute was filed on April 27, 2015, the remaining documents filed in opposition to the Motion, including the Memorandum of Points and Authorities, were not filed until April 28, 2015.

SuperCare that his mother would use the same mattress at home, and by an employee of his mother's insurer that he should take the mattress from CCRC when his mother was discharged.

When Raymond attempted to remove the mattress, however, Stephanie Wysinger ("Wysinger"), a registered nurse at the facility, forbade him from doing so – and threatened to call the police if he persisted. Wysinger had spoken to representatives of SuperCare, who told her it would deliver another mattress to Ms. Nichols's house later that day, and that the Nichols were not to take the mattress from CCRC, and in any event, it was unusual for a person to take such medical equipment with them at discharge. Nonetheless, Raymond persisted, and Wysinger called the police. Meanwhile, the Nichols brothers loaded the mattress into the back of Daniel's pick-up truck, and Daniel left with it.

After Daniel drove off, Macias arrived, encountering Raymond at the nurses' station. Raymond contends he offered to show Macias a receipt for the mattress, but Macias refused to allow Raymond to retrieve it from his backpack, and in fact, demanded Raymond leave his backpack at the nurses' station while accompanying Macias elsewhere in the facility. When Raymond refused to leave his backpack, Macias placed him in handcuffs and escorted him outside. Macias searched Raymond's backpack. A white notebook that was in the backpack subsequently went missing.

Shortly thereafter, Foster joined Macias and Raymond in the parking lot. Then, Daniel returned to CCRC, with the mattress. The Nichols brothers contend that they attempted to explain to Macias and Foster that they had a right to take the mattress, but were told they were being placed under citizen's arrest: Wysinger executed forms to arrest both for violating California Penal Code sections 487 (grand theft) and 182 (conspiracy; here, to commit the theft). The Nichols brothers were taken to jail, where they spent the night and most of the next day (they were released at around seven o'clock in the evening). Ultimately, no charges were filed against the Nichols brothers, as the detective investigating the charges concluded they were unfounded. This lawsuit followed.

The Nichols brothers named the City, Macias, Foster, Wysinger, and CCRC in a Complaint filed on February 26, 2014. The Complaint contains: (1) A claim, pursuant to 42 U.S.C. § 1983, that the City, Macias, Foster, Wysinger and CCRC violated the Nichols brothers' Fourth Amendment rights by arresting them; (2) a claim under Cal. Civil Code § 52.1 (the state analog to section 1983) that the City, Macias, and Foster violated Raymond's rights under the federal and state constitutions by threatening him with arrest; (3) a claim under California law that the City, Macias, Foster, Wysinger, and CCRC falsely arrested the Nichols brothers; (4) a claim that the City, Macias, Foster, Wysinger, and CCRC inflicted emotional distress on the Nichols brothers intentionally; (5) a claim that the City, Macias, Foster, Wysinger, and CCRC damaged the Nichols brothers by

their negligence; (6) a claim under section 1983 that the Nichols brothers were unlawfully searched – and Raymond's personal property was unlawfully searched and seized – by the City, Macias, Foster, Wysinger, and CCRC, and; (7) a claim that the City, Macias, and Foster converted Raymond's personal property.[4]

On January 9, 2015, Wysinger and CCRC filed Motions for Summary Judgment, which were granted in part and denied in part on April 8, 2015. The Court granted Wysinger and CCRC summary judgment as to Claims 1, and 4-6 and denied summary judgment as to Claim 3. Thereafter, the City defendants filed the instant Motion, in which they argue that defendants Macias and Foster are entitled to judgment as a matter of law on plaintiff's claims under 42 U.S.C. § 1983 because they had probable cause to place plaintiffs under arrest and to take appropriate action with respect to detaining and searching plaintiffs. The City defendants further contend that they are entitled to qualified immunity. The City defendants also argue that if the federal claims are dismissed, the Court should exercise its discretion to dismiss the state claims. They go on to argue, in the alternative, that they are entitled to summary judgment on plaintiffs' state law claims for wrongful arrest because they are immune from liability under Cal. Penal Code § 847, probable cause existed to justify the arrest of plaintiffs, and with respect to the claims for trespass of chattels, conversion, and related torts, there is no evidence that any defendant

[4] Pursuant to Stipulation, plaintiffs' claims under 42 U.S.C. § 1983 against the City were dismissed on May 12, 2015.

acted improperly with respect to plaintiffs' personal property.

LEGAL STANDARD

The Court must render summary judgment if the papers "show[] that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). An issue is "genuine" only if there is a sufficient evidentiary basis on which a reasonable jury could find for the nonmoving party. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). A factual dispute is "material" only if it might affect the outcome of the suit under governing law. Id. at 248. Inferences to be drawn from the underlying facts must be viewed in the light most favorable to the nonmoving party. See Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986). At the summary judgment stage, a judge's function is not to weigh the evidence or determine the truth of the matter but, rather, to determine whether there is any genuine issue for trial. See Anderson, 477 U.S. at 249; Balint v. Carson City, 180 F.3d 1047, 1054 (9th Cir. 1999) (en banc).

Summary judgment is appropriate if the nonmoving party "fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp. v. Catrett, 477 U.S. 317, 322, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986).

Moreover, summary judgment cannot be avoided by relying solely on conclusory allegations unsupported by factual data. See Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989). In order to demonstrate the existence of a genuine issue, the opposing party "must do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita Elec. Indus. Co., 475 U.S. at 586.

DISCUSSION

For the reasons that follow, the Court agrees with the City defendants that they are entitled to judgment as a matter of law, and there are no disputed issues of material fact to the contrary. Further, because the City defendants are entitled to summary judgment on their federal claims, the Court declines to exercise supplemental jurisdiction over plaintiffs' remaining state law claims.

A. Claims 1 and 6: Violation of Fourth Amendment Rights – Unlawful/Unreasonable Search and Seizure of Persons and Property

Plaintiffs allege that Macias and Foster did not have probable cause to arrest them on March 9, 2013, search their persons, or search Raymond's backpack in violation of their Fourth Amendment rights. The Fourth Amendment protects the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures. U.S. Const. amend. IV. Warrantless searches are per se unreasonable, unless

the search falls within an exception to the warrant rule. See Katz v. United States, 389 U.S. 347, 357, 88 S. Ct. 507, 19 L. Ed. 2d 576 (1967).

1. Claim 1: Fourth Amendment unlawful arrest

"To establish § 1983 liability, a plaintiff must show both (1) deprivation of a right secured by the Constitution and law of the United States, and (2) that the deprivation was committed by a person acting under color of state law." Chudacoff v. Univ. Med. Ctr. of S. Nev., 649 F.3d 1143, 1149 (9th Cir. 2011). In Claim 1, plaintiffs contend that "the defendants in this action had neither a warrant for plaintiffs' arrest, nor probable cause (or even reasonable suspicion) to believe that plaintiff[s] had committed a crime, nor reasonable suspicion that plaintiffs were a danger to anyone or anything, nor even a reasonable suspicion of criminality afoot by plaintiffs; or that justified any seizure of either of the plaintiffs by defendants . . . and the taking of plaintiffs into police custody. . . ." (Complaint at ¶49.) It is undisputed that Wysinger effectuated a citizens arrest for violation of Cal. Penal Code § 487 (grand theft) and Cal. Penal Code § 182 (conspiracy to commit any crime) and that plaintiffs were taken into custody. Theft requires its perpetrator to take another's property without consent, and with the intent to keep the property either permanently or "for so extended a period of time as to deprive the owner of a major portion of its value or enjoyment." People v. Avery, 27 Cal. 4th 49, 52, 115 Cal. Rptr. 2d 403 (2002); see also Cal. Penal Code § 484; People v. Goodman, 159 Cal. App. 2d 54, 61 (1958).

In order to satisfy the requirements of the Fourth Amendment, an arrest "must be supported by probable cause to believe that the arrestee has committed a crime." Allen v. City of Portland, 73 F.3d 232, 236 (9th Cir. 1995). "'[P]robable cause exists when, under the totality of the circumstances known to the arresting officers, a prudent person would have concluded that there was a fair probability that [the suspect] had committed a crime.'" Peng v. Mei Chin Penghu, 335 F.3d 970, 976 (9th Cir. 2003) (citation omitted); see also Allen, 73 F.3d at 237 ("Probable cause exists when, at the time of arrest, the agents know reasonably trustworthy information sufficient to warrant a prudent person in believing that the accused had committed or was committing an offense." (quotation marks and citation omitted)). "In establishing probable cause, officers may not solely rely on the claim of a citizen witness that he was a victim of a crime, but must independently investigate the basis of the witness' knowledge or interview other witnesses." Arpin v. Santa Clara Valley Transp. Agency, 261 F.3d 912, 925 (9th Cir. 2001) (citing Fuller v. M.G. Jewelry, 950 F.2d 1437, 1444 (9th Cir.1991)); see also Hopkins v. Bonvicino, 573 F.3d 752, 774 (9th Cir. 2009). "A sufficient basis of knowledge is established if the [citizen] provides 'facts sufficiently detailed to cause a reasonable person to believe a crime had been committed and the named suspect was the perpetrator.'" Peng, 335 F.3d at 978 (quoting Fuller, 950 F.2d at 1444).[5]

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[5] "Where a citizen's arrest is at issue . . . the federal and state requirements for probable cause, and therefore reasonableness,

Here, it is undisputed that Macias and Foster were dispatched to CCRC after receiving a call from the police department dispatch that two men were reported stealing items from that location. (Macias Decl. at ¶2; Foster Decl. at 2.) Upon arriving at CCRC, Macias spoke with Wysinger, who identified Raymond and Daniel as having stolen an air mattress and pump valued at "a couple thousand dollars." (Macias Decl. at ¶2.) Wysinger further advised Macias that she had spoken to representatives of SuperCare, who told her the mattress was not to leave the facility, and that a new mattress was going to be delivered to Ms. Waly's home that day. (Macias Decl. at ¶3.) Wysinger similarly advised Foster and told him that she had advised both the Nichols brothers that they could not take the mattress. (Foster Decl. at ¶¶3-5.) Wysinger executed two private citizen's arrest forms for plaintiffs. (Plaintiffs' Separately Filed Exhibits, Exhibit ["Exh."] C.) Wysinger provided sufficiently detailed facts regarding the incident to support a finding that probable cause to arrest existed. Peng, 335 F.3d at 978.

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diverge." Bolbol v. City of Daly City, 754 F. Supp. 2d 1095, 1115 (N.D. Cal. 2010). "[T]he federal Constitution requires police officers to have independent probable cause when effectuating a citizen's arrest." Hopkins, 573 F.3d at 774. Under state law, however, "[a] peace officer who accepts custody of a person following a citizen's arrest is not required to correctly determine whether the arrest was justified . . . and cannot be held liable for the arrest if it was improper." Hamburg v. Wal-Mart Stores, Inc., 116 Cal. App. 4th 497, 503, 10 Cal. Rptr. 3d 568 (2004) (as modified) (internal citation omitted); see also Bolbol, 754 F. Supp. 2d at 1115.

Further, it is undisputed that the mattress was loaded into Daniel's truck and taken from the premises. (Smith Decl., Exh. A at 11; Daniel Decl. at ¶¶12-14; Raymond Decl. at ¶¶33-35.) Both defendant officers attempted to talk to Raymond, and Foster talked to Raymond about the delivery of another mattress to Ms. Waly's house. (Macias Decl. at ¶2; Foster Decl. at ¶5; Raymond Decl. at ¶¶42-48, 54.) Foster also attempted to call SuperCare, but only heard a recorded message stating that they were closed (Foster Decl. at ¶7), and Macias took photographs of the property at issue. (Macias Decl. at ¶2.) Based on the foregoing, the undisputed facts show that Macias and Foster had probable cause to arrest plaintiffs.

Nevertheless, plaintiffs maintain that Macias and Foster knew that plaintiffs had paperwork that they physically presented to the officers that proved that they had leased the mattress, and that CCRC and Wysinger had no possessory or other interest in the mattress. (Opp. at 10.) However, as defendants note in their Reply, the SuperCare contract specifically provided that: **"CUSTOMER SHALL NOT, in any way, attempt to TRANSFER EQUIPMENT to a location other than the customer's address or residence as noted on this invoice, without explicit approval of SuperCare."** (Plaintiffs' Separately Filed Exhibits, Exh. A at A-8, ¶4 (emphasis in original).) The address noted on the invoice was 4070 Jurupa Avenue, Riverside, California 92506, which was the address of CCRC. (Id. at A-1.) Thus, the terms of the contract

suggest that plaintiffs were aware that they had no right to remove the mattress and air pump.

Accordingly, the undisputed evidence establishes that, based on the totality of the circumstances that they encountered, Macias and Foster had probable cause to arrest plaintiffs and, therefore, defendants are entitled to summary judgment on Claim 1.

Notwithstanding this conclusion, the Court also finds that Macias and Foster are entitled to qualified immunity because, for the reasons stated, *supra*, "a reasonable officer could have believed that probable cause existed to arrest." Hunter v. Bryant, 502 U.S. 224, 228, 112 S. Ct. 534, 116 L. Ed. 2d 589 (1991) (per curiam); see also Rosenbaum v. Washoe Cnty., 663 F.3d 1071, 1076 (9th Cir. 2011) (per curiam) ("whether it is *reasonably arguable* that there was probable cause for arrest – that is, whether reasonable officers could disagree as to the legality of the arrest such that the arresting officer is entitled to qualified immunity" (alteration in original)); Peng, 335 F.3d at 980.

2. Claim 6: Fourth Amendment unlawful search

In Claim 6, plaintiffs contend that Macias and Foster unlawfully searched the persons of plaintiffs and searched and seized the personal property of Raymond. (Complaint at ¶¶85-86.)[6]

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[6] In their Opposition, plaintiffs also refer to an unlawful search of Daniel's truck. (Opp. at 11.) However, plaintiffs have not asserted a claim regarding such in their Complaint.

The Supreme Court has held that a police officer who makes a lawful arrest may conduct a warrantless search of the arrestee's person and the area "within his immediate control." Davis v. United States, ___ U.S. ___, 131 S. Ct. 2419, 2424, 180 L. Ed. 2d 285 (2011); Chimel v. California, 395 U.S. 752, 762-63, 89 S. Ct. 2034, 23 L. Ed. 2d 685 (1969). The search incident to arrest exception "derives from interests in officer safety and evidence preservation that are typically implicated in arrest situations." Arizona v. Gant, 556 U.S. 332, 338, 129 S. Ct. 1710, 173 L. Ed. 2d 485 (2009); see also United States v. Robinson, 414 U.S. 218, 234, 94 S. Ct. 467, 38 L. Ed. 2d 427 (1973) ("The justification or reason for the authority to search incident to a lawful arrest rests quite as much on the need to disarm the suspect in order to take him into custody as it does on the need to preserve evidence on his person for later use at trial.").

Initially, although plaintiffs allege in the Complaint that both Raymond and Daniel were searched, plaintiffs have not presented any evidence that Macias or Foster searched Daniel on March 9, 2013. As such, plaintiffs have failed to make a showing sufficient to establish the existence of an essential element on plaintiff's Fourth Amendment claim based on an unlawful search of Daniel and, therefore, summary judgment is proper. Celotex Corp., 477 U.S. at 322.

With respect to the search of Raymond, it is undisputed that Raymond was searched before he was placed in the patrol vehicle. (Raymond Decl. at ¶¶50, 58.) "A custodial arrest of a suspect based on probable

cause is a reasonable intrusion under the Fourth Amendment; that intrusion being lawful, a search incident to the arrest requires no additional justification." Robinson, 414 U.S. at 235. It is immaterial that the search was done before plaintiff was formally under arrest. "So long as an arrest that follows the search is supported by probable cause independent of the fruits of the search, the precise timing of the search is not critical." United States v. Smith, 389 F.3d 944, 951 (9th Cir. 2004) (per curiam) (citing Rawlings v. Kentucky, 448 U.S. 98, 111, 100 S. Ct. 2556, 65 L. Ed. 2d 633 (1980)). Here, as previously explained, there was probable cause to arrest Raymond and the arrest was independent of any evidence found on his person. As such, because Macias and Foster had probable cause to arrest Raymond, the search of his person also was proper as a search incident to arrest and, therefore, Raymond's claim that he was unlawfully searched fails as a matter of law. See Robinson, 414 U.S. at 235.

It is further undisputed that, while Raymond was handcuffed, standing next to the police vehicle, Macias searched Raymond's backpack. (Raymond Decl. at ¶¶49-51.) "An officer may make a 'search incident to arrest' of the area within the arrestee's immediate control to look for weapons or destructible evidence." United States v. Nohara, 3 F.3d 1239, 1243 (9th Cir. 1993) (citing Chimel, 395 U.S. at 762-63). The permissible scope of a search incident to arrest includes the arrestee's person and the area within his immediate control, meaning "the area from within which he might gain possession of a weapon or destructible evidence."

Chimel, 395 U.S. at 762-63. This includes searching bags that are on the arrestee's person at the time of arrest. See, e.g., Nohara, 3 F.3d at 1243; Ross v. California, No. ED CV 11-1252-DSF (SP), 2013 WL 2898066, at *10 (C.D. Cal. Jun. 10, 2013); United States v. Cook, No. CR 10-00376-3 JSW, 2011 WL 6748517 (N.D. Cal. Dec. 22, 2011); United States v. Gordon, 895 F. Supp. 2d 1011, 1022 (D. Haw. 2012); United States v. Kowalczyk, No. 3:08-95-KI, 2012 WL 3201975, at *17 (D. Or. Aug. 3, 2012).

To determine whether a search incident to arrest of a suspect's bag is reasonable, the Court must conduct a two step inquiry: "(1) [W]as the searched item 'within the arrestee's immediate control when he was arrested'; and (2) did 'events occurring after the arrest but before the search ma[k]e the search unreasonable?'" United States v. Maddox, 614 F.3d 1046, 1048 (9th Cir. 2010) (quoting United States v. Turner, 926 F.2d 883, 887 (9th Cir. 1991).

Here, it is undisputed that Macias received a call from the police department dispatch that two men were reported stealing items from CCRC. (Macias Decl. at ¶2.) Upon arrival, Macias spoke to Wysinger, who identified Raymond and Daniel as having stolen an air mattress and pump. (Id.) It also undisputed that Macias attempted to speak with Raymond. (Macias Decl. at ¶2; Raymond Decl. at ¶42.) Although the parties dispute the nature of the conversation between Raymond and Macias that followed, the undisputed evidence establishes that Macias then handcuffed Raymond and searched his backpack before he was placed

in the back of the police vehicle. (Raymond Decl. ¶¶49-52, 58; Macias Decl. at ¶4.)

Again, as previously explained, it is immaterial that the search was done before plaintiff was formally under arrest. See Smith, 389 F.3d at 951. Here, there was probable cause to arrest Raymond, which was independent of the search of the backpack. See Ross, 2013 WL 2898066, at *9 ("Because plaintiff was ultimately arrested in connection with criminal activity that was independent of the search of the backpack, the fact that the search occurred before the formal arrest should not change the analysis of the reasonableness of search of plaintiff's backpack.").

With respect to the Turner factors, the undisputed evidence demonstrates that the backpack was within Raymond's "immediate control." (See Raymond Decl. at ¶¶45-48.) Raymond had the backpack in his possession at the nurses' station and Macias took it from him when he initially detained Raymond. Indeed, Raymond contends that he did not want to leave his backpack at the nurses' station in order to go talk to Macias. (Id. at ¶¶44-48.) After Raymond was handcuffed, Macias searched Raymond, took him out of the facility, and stood him next to the police vehicle. (Id. at ¶¶49-51.) Macias then searched the backpack on top of the police vehicle. (Id. at ¶52.) Thus, as to the second factor, there are no intervening events that would make the search unreasonable. The undisputed evidence shows that the search of the backpack occurred during a continuous series of events closely connected in time to the arrest. Indeed, where, as here, Raymond's arrest followed

"quickly on the heels" of the search, the precise order "is not particularly important." Smith, 389 F.3d at 951.

Accordingly, the search of Raymond's backpack was a valid search incident to arrest and, as such, Raymond's claim that his backpack was unlawfully searched fails as a matter of law. The City defendants are entitled to summary judgment on Claims 1 and 6.

B. The Court declines to exercise supplemental jurisdiction over plaintiff's remaining state law claims.

A district court may decline to exercise supplemental jurisdiction over a state claim if "the district court has dismissed all claims over which it has original jurisdiction." 28 U.S.C. § 1367(c)(3). "The Supreme Court has stated, and we have often repeated, that 'in the usual case in which all federal-law claims are eliminated before trial, the balance of factors . . . will point toward declining to exercise jurisdiction over the remaining state-law claims.'" Acri v. Varian Assocs., Inc., 114 F.3d 999, 1001 (9th Cir. 1997) (en banc) (quoting Carnegie-Mellon Univ. v. Cohill, 484 U.S. 343, 350 n.7, 108 S. Ct. 614, 98 L. Ed. 2d 720 (1988)).

In light of the fact that the Court has dismissed the only claims over which it has original jurisdiction, and after considering the jurisdictional principles of judicial economy, convenience, fairness, and comity, the Court declines to exercise supplemental jurisdiction over plaintiffs' remaining state law claims.

CONCLUSION

For the foregoing reasons, the Court GRANTS summary judgment in favor of the City defendants on plaintiffs' federal law claims and DISMISSES plaintiffs' remaining state law claims without prejudice to plaintiffs raising such claims in state court.

IT IS SO ORDERED.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RAYMOND NICHOLS; DANIEL NICHOLS, Plaintiffs-Appellees. v. CITY OF RIVERSIDE; DANIEL MACIAS; MICHAEL FOSTER, Defendants-Appellants, and STEPHANIE WYSINGER; COMMUNITY CARE RAHAB [sic] CENTER, LLC, a California Limited Liability Company, Defendants.	No. 18-55135 D.C. No. 5:14-cv-00364-JGB-SP Central District of California, Riverside ORDER (Filed Oct. 1, 2019)

Before: SCHROEDER and GRABER, Circuit Judges, and LEFKOW,* District Judge.

The panel has voted to deny the petition for panel rehearing. Judge Graber has voted to deny the petition for rehearing en banc, and Judges Schroeder and Lefkow have so recommended.

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* The Honorable Joan Lefkow, United States District Judge for the Northern District of Illinois, sitting by designation.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petition for panel rehearing and petition for rehearing en banc, Docket No. 43, are **DENIED**.