NOT FOR PUBLICATION

FILED

AUG 10 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ARTHUR LOPEZ, Plaintiff-Appellant, v. CORONA POLICE DEPARTMENT, official capacity; et al., Defendants-Appellees.	No. 19-55231 D.C. No. 5:17-cv-02379-VBF-MRW MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Valerie Baker Fairbank, District Judge, Presiding

Submitted August 5, 2020**

Before: SCHROEDER, HAWKINS, and LEE, Circuit Judges.

Arthur Lopez appeals pro se from the district court's summary judgment in his 42 U.S.C. § 1983 action alleging violations of the Fourth Amendment. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Blankenhorn v. City of Orange*, 485 F.3d 463, 470 (9th Cir. 2007). We affirm.

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

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Appendix A

The district court properly granted summary judgment because Lopez failed to raise a genuine issue of material fact as to whether defendants' decision to impound his vehicle was not justified under the community caretaking exception to the Fourth Amendment's warrant requirement, given that his vehicle was parked blocking a private driveway. *See United States v. Cervantes*, 703 F.3d 1135, 1141 (9th Cir. 2012) ("Under the community caretaking exception, police officers may impound vehicles that jeopardize public safety and the efficient movement of vehicular traffic." (citation and internal quotation marks omitted)); *Clement v. City of Glendale*, 518 F.3d 1090, 1094 (9th Cir. 2008) ("The costs and burdens on the car owner associated with a tow can only be justified by conditions that make a tow necessary and appropriate, such as that the car is parked in the path of traffic, blocking a driveway, obstructing a fire lane or appears abandoned").

The district court did not abuse its discretion in sanctioning Lopez because Lopez knowingly submitted a materially doctored document to the district court for an improper purpose. *See Conn. Gen. Life Ins. Co. v. New Images of Beverly Hills*, 482 F.3d 1091, 1094-97 (9th Cir. 2007) (affirming sanctions where party photocopied records in a way to support misleading date calculation; conduct was a "fraud on the court"); *F.J. Hanshaw Enters. v. Emerald River Dev.*, 244 F.3d 1128, 1135 (9th Cir. 2001) (standard of review).

The district court did not abuse its discretion in denying Lopez's motion for

Appendix A

reconsideration because Lopez set forth no valid grounds for reconsideration. *See Sch. Dist. No. 1J, Multnomah Cty., Or. v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993) (setting forth standard of review and grounds for reconsideration under Federal Rules of Civil Procedure 59 and 60).

We do not consider matters not specifically and distinctly raised and argued in the opening brief, or arguments and allegations raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

All pending motions are denied.

AFFIRMED.

Appendix A

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

ARTHUR LOPEZ,

Plaintiff,

v.

CORONA POLICE DEPARTMENT, CITY OF CORONA, SUPERVISOR JOSEPH BROWN in his individual capacity, JIMMIE BIRMINGHAM in his individual capacity, and Does 1-100,

Defendants.

No. ED CV 17-02379-VBF-MRW

FINAL JUDGMENT

Final judgment is hereby entered in favor of all defendants and against plaintiff Arthur Lopez. IT IS SO ADJUDGED.

Dated: February 13, 2019

Valerie Baker Fairbank

Honorable Valerie Baker Fairbank
Senior United States District Judge

Appendix C

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

ARTHUR LOPEZ,

Plaintiff,

v.

CORONA POLICE DEPARTMENT, CITY OF CORONA, SUPERVISOR JOSEPH BROWN in individual capacity, JIMMIE BIRMINGHAM in his individual capacity, and Does 1-100,

Defendants.

No. ED CV 17-02379-VBF-MRW

ORDER

Granting Document #15 and Awarding Summary Judgment to All Defendants

Granting Document #25 and Directing Plaintiff to Pay a Fed. R. Civ. P. 11 Sanction

Directing Entry of Judgment

The Court has reviewed the complaint, CM/ECF Document ("Doc") 1; the defendants' summary-judgment motion and declarations (Docs 15 - 15-4), plaintiff's opposition (Doc 24), and defendants' reply (Doc 33). The Court also reviewed the defendants' motion for Fed. R. Civ. P. 11 sanctions (Doc 25) and plaintiff's opposition (Doc 32) (defendants did not file a reply).

On December 12, 2018, the Magistrate Judge issued a Report and Recommendation ("R&R") regarding the summary-judgment motion (Doc 36) and an R&R regarding the sanctions motion (Doc 38). Plaintiff has not objected within

the time allotted by Fed. R. Civ. P. 72(b)2), and Fed. R. Civ. P. 72(b)(3) requires de novo review only of those parts of an R&R to which a party has timely objected. *See Khan v. Langford*, 2018 WL 1271204, *1 (C.D. Cal. Mar. 8, 2018) (citing, *inter alia*, *US v. Reyna Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc))).

But the Advisory Committee Notes to Fed. R. Civ. P. 72(b) recommend that when no timely objection is filed, the Court should still review the R&R "for clear error on the face of the record." *Juarez*, 2016 WL 2908238 at *2 (cite omitted); *accord Douglass v. USAA*, 79 F.3d 1415, 1420 (5th Cir. 1996) (en banc); *Benitez v. Parmer*, 654 F. App'x 502, 503 (2d Cir. 2016) ("Because Benitez thus made only a general objection, the district court reviewed the 2013 R&R for clear error.") (citing, *inter alia*, Adv. Comm. Notes to 1983 Am. of Fed. R. Civ. P. 72(b)).

The Court finds no error of law, fact, or logic in the R&R, clear or otherwise. Accordingly, the Court will accept the Magistrate's findings and conclusions and implement his recommendations.

Finally, the Court will require plaintiff to pay post-judgment interest on the Rule 11 sanction. Title 28 U.S.C. section 1961 provides, in pertinent part,

> (a) Interest shall be allowed on any money judgment in a civil case recovered in a district court. Execution therefor may be levied by the marshal, in any case where, by the law of the State in which such court is held, executed may be levied for interest on judgment recovered in the courts of the State. *Such interest shall be calculated from the date of the entry of the judgment, at a rate equal to the weekly average 1 year constant[ ]maturity [United States] Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the calendar week preceding the date of the judgment.* The Director of the Administrative Office of the United States Court shall distribute notice of that rate and any changes in it to all Federal judges.

> (b) *Interested shall be computed daily to the date of payment except as provided in section 2516(b) of this title and section 1304(b) of Title 31, and shall be compounded annually.*

Italics added.[1] "Federal Rule of Civil Procedure 54(a) defines 'judgment' as including 'a decree and any order from which an appeal lies.' Thus, the . . . sanction order is a 'judgment' for purposes of the accrual of interest pursuant to section 1961." *Bank Atlantic v. Blythe Eastman Paine Webber, Inc.*, 12 F.3d 1045, 1053 (11th Cir. 1994). *See, e.g., Wm. T. Thompson Co. v. GNC, Inc.*, 105 F.R.D. 119, 123 (C.D. Cal. Jan. 21, 1985) (Cynthia Hall, J.) ("The Court reaffirms its earlier decision to award interest on the monetary sanctions" and "concludes that the applicable rate is specified by 28 U.S.C. § 1961 . . . ."); *Michael Grecco Prods., Inc. v. De La Rosa*, 2017 WL 8186754, *1 (C.D. Cal. Aug. 31, 2017) (Dolly Gee, J.) ("[An] award in the amount of $10,000 is reasonable and sufficient to sanction Defendant . . . . Additionally, . . . Plaintiff is entitled to postjudgment interest at the statutory rate").[2]

---

[1] The rest of section 1961(c) does not apply here: subsection (1) governs internal revenue cases; (2) governs final judgments against the federal government in the U.S. Court of Appeals for the Federal Circuit; (3) governs judgment of the U.S. Court of Federal Claims; and (4) merely disclaims any effect on "the interest on the judgment of any court not specified in this section."

[2] *See also US v. Hill*, 2014 WL 12839160, *1 (D. Ariz. June 23, 2014); *US v. Vernon*, 2012 WL 5416565, *6 (D. Ak. May 16, 2012) ("[Plaintiffs] are liable . . . for the United States' reasonable expenses, including attorney's fees in bringing its motions to compel and for discovery sanctions, . . . plus interest accruing after September 10, 2010 pursuant to 28 U.S.C. section 1961 until paid."), *aff'd*, 485 F. App'x 892 (9th Cir. 2012);

Straitshot Communications, Inc. v. Telekenex, Inc., 2012 WL 5880293, *10 (W.D. Wash. Nov. 20, 2012) (citing section 1961 and requiring defendants to pay post-judgment interest on spoliation sanction); *Stensaker v. Flying J*, 2008 WL 11413500, *1 (D. Mont. Jan. 30, 2008) ("The Court . . . notes that the sanction bears interest at the federal judgment rate from the date of entry o[f] the order.") (citing section 1961); *EEOC v. Local Union 38*, 1984 WL 1130, *7 (N.D. Cal. Aug. 22, 1984) (requiring postjudgment interest on contempt sanction at rate specified in section 1961).

ORDER

Plaintiff's objection to the R&Rs **[Doc #39] is OVERRULED.**

The Report and Recommendation at **Doc # 36 is ADOPTED**:

Defendants' motion for summary judgment **[Doc #15] is GRANTED.**

The action is dismissed with prejudice.

The Report and Recommendation at **Doc # 38 is ADOPTED**:

No later than March 18, 2019, plaintiff SHALL PAY $3,200.00 to defense counsel as an FRCP 11 sanction. If plaintiff does not pay the full amount by said date, plaintiff will be liable to defense counsel for interest on the unpaid amount beginning on March 19, 2019, at the rate specified in 28 U.S.C. § 1961(a)-(b).[3]

As required by Fed. R. Civ. P. 58(a), judgment will be a separate document.

The case SHALL BE TERMINATED and closed (JS-6).

IT IS SO ORDERED.

Dated: February 13, 2019

Valerie Baker Fairbank

Honorable Valerie Baker Fairbank
Senior United States District Judge

---

[3] *Accord KCI USA, Inc.*, 339 F. Supp.3d 672, 689 (N.D. Ohio 2018) ("The plain language of 28 U.S.C. section 1961 strongly suggests that post-judgment interest is mandatory for attorney fees awarded as sanctions. * * * 'Because a dollar today is worth more than a dollar in the future, the only way a party can be made whole is to grant interest from the time of the award of fees. Any other rule would effectively reduce the judgment for attorney fees.' The Court therefore rules that 28 U.S.C. section 1961 applies to the sanction amounts entered against Cavitch and its attorneys, ...") (quoting *Assoc'd Gen. Contractors of Ohio, Inc. v. Drabik*, 250 F.3d 482, 485 (6th Cir. 2001)).

NOT FOR PUBLICATION

FILED

JUN 19 2018

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ARTHUR LOPEZ, Plaintiff-Appellant, v. CORONA POLICE DEPARTMENT, official capacity; et al., Defendants-Appellees.	No. 17-56869 D.C. No. 5:17-cv-02379-VBF-MRW MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Valerie Baker Fairbank, District Judge, Presiding

Submitted June 12, 2018**

Before: RAWLINSON, CLIFTON and NGUYEN, Circuit Judges.

Arthur Lopez appeals pro se from the district court's order denying his application to proceed in forma pauperis ("IFP") in his 42 U.S.C. § 1983 action alleging unconstitutional seizure of his vehicle. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion. *O'Loughlin v. Doe*, 920 F.2d 614, 616 (9th Cir. 1990). We reverse and remand.

The district court denied Lopez's motion to proceed IFP finding that Lopez failed to state a Fourth Amendment claim relating to the seizure of his vehicle. However, Lopez alleged that defendants seized his currently registered vehicle without a warrant while it was lawfully parked outside his residence. These allegations are sufficient to state a claim for unreasonable seizure in violation of the Fourth Amendment. *See Miranda v. City of Cornelius*, 429 F.3d 858, 862 (9th Cir. 2005) (government bears the burden of showing that a warrantless impoundment of a vehicle is justified by the community caretaking exception to the Fourth Amendment's warrant requirement).

Lopez's request for injunctive relief (Docket Entry No. 10) is denied.

REVERSED and REMANDED.

Appendix B

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

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

ARTHUR LOPEZ,

Plaintiff,

v.

CORONA POLICE DEPARTMENT, CITY OF CORONA, SUPERVISOR JOSEPH BROWN in individual capacity, JIMMIE BIRMINGHAM in his individual capacity, and Does 1-100,

Defendants.

No. ED CV 17-2379-VBF-MRWx

ORDER

Denying Document # 46
(Pl.'s Motion to Reconsider)

Scheduling Optional Briefs
Regarding Interest on Sanction

Defendants filed a summary-judgment motion, CM/ECF Documents ("Docs") 15 through 15-4; plaintiff filed an opposition brief (Doc 24), and defendants filed a reply (Doc 33). Defendants also filed a motion for Fed. R. Civ. P. 11 sanctions (Doc 25); plaintiff filed a brief opposing sanctions (Doc 32), and defendants did not reply. The U.S. Magistrate Judge issued a Report and Recommendation ("R&R") regarding the summary-judgment motion (Doc 36) and an R&R regarding the sanctions motion (Doc 38). Plaintiff objected to the R&Rs (Doc 39), and defendants did not respond.

Appendix D

This Court issued an Order (Doc 41) that adopted both R&Rs. As recommended by the Magistrate, the Court granted summary judgment to defendants and sanctioned plaintiff $3,200 due to his intentional, fraudulent fabrication and alteration of evidence that he then filed with this Court. The Court concluded by requiring plaintiff to pay interest on the sanction as set forth in 28 U.S.C. § 1961. The Court entered final judgment in favor of the defendants (Doc 42).

Plaintiff timely filed a Notice initiating an appeal from the judgment and the sanction, number 19-0555231 (Docs 43 and 45), but on **May 21, 2019, the Ninth Circuit issued an Order (Doc 51) dismissing plaintiff's appeal for lack of prosecution.** The Circuit's Order stated that it would serve as that Court's Mandate effective twenty-one days later, i.e., on June 9, 2019.

After allowing his appeal to be dismissed for lack of prosecution, plaintiff returned to this Court with a motion for reconsideration of the summary-judgment ruling and the sanction award (Doc 46). After considering the defendants' response (Doc 48) and plaintiff's reply (Doc 49), **the Court will deny reconsideration for the reasons stated in the defendants' response brief and will direct plaintiff to pay the previously ordered sanction to defense counsel.**

Finally, the Court will require plaintiff to pay post-judgment interest on the Rule 11 sanction. Title 28 U.S.C. section 1961 provides, in pertinent part,

> (a) Interest shall be allowed on any money judgment in a civil case recovered in a district court. Execution therefor may be levied by the marshal, in any case where, by the law of the State in which such court is held, executed may be levied for interest on judgment recovered in the courts of the State.
>
> *Such interest shall be calculated from the date of the entry of the*

Appendix D

> *judgment, at a rate equal to the weekly average 1 year constant[ ]maturity [United States] Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the calendar week preceding the date of the judgment.* The Director of the Administrative Office of the United States Court shall distribute notice of that rate and any changes in it to all Federal judges.
>
> (b) *Interested shall be computed daily to the date of payment except as provided in section 2516(b) of this title and section 1304(b) of Title 31, and shall be compounded annually.*

Italics and first ¶ break added.[1] "Federal Rule of Civil Procedure 54(a) defines 'judgment' as including 'a decree and any order from which an appeal lies.' Thus, the . . . sanction order is a 'judgment' for purposes of the accrual of interest pursuant to section 1961." *Bank Atlantic v. Blythe Eastman Paine Webber, Inc.*, 12 F.3d 1045, 1053 (11th Cir. 1994). *See, e.g., Wm. T. Thompson Co. v. GNC, Inc.*, 105 F.R.D. 119, 123 (C.D. Cal. Jan. 21, 1985) ("The Court reaffirms its earlier decision to award interest on the monetary sanctions" and "concludes that the applicable rate is specified by 28 U.S.C. § 1961 . . . ."); *Michael Grecco Prods., Inc. v. De La Rosa*, 2017 WL 8186754, *1 (C.D. Cal. Aug. 31, 2017) (Dolly Gee, J.) ("[An] award in the amount of $10,000 is reasonable and sufficient to sanction Defendant . . . . Additionally, . . . Plaintiff is entitled to postjudgment interest at the statutory rate").[2]

---

[1] The rest of section 1961(c) does not apply here: subsection (1) governs internal revenue cases; (2) governs final judgments against the federal government in the U.S. Court of Appeals for the Federal Circuit; (3) governs judgment of the U.S. Court of Federal Claims; and (4) merely disclaims any effect on "the interest on the judgment of any court not specified in this section."

[2] *See also US v. Hill*, 2014 WL 12839160, *1 (D. Ariz. June 23, 2014); *US v. Vernon*, 2012 WL 5416565, *6 (D. Ak. May 16, 2012) ("[Plaintiffs] are liable . . . for the United States' reasonable expenses, including attorney's fees in bringing its motions to compel and for discovery sanctions, . . . plus interest accruing after September 10, 2010 pursuant to 28 U.S.C. section 1961 until paid."),

Appendix D

ORDER

Plaintiff's reconsideration motion **[Doc #46] is DENIED.**

Plaintiff **SHALL PAY** a sanction to defense counsel in the amount of $3,200 plus post-judgment interest thereon.

Interest shall be calculated at the rate specified by 28 U.S.C. § 1961.

Interest shall be paid for the period beginning on February 23, 2019 ("the start date") and ending on the date on which plaintiff tenders payment to defense counsel ("the end date"), inclusive of both the start date and the end date.

No later than Friday, February 21, 2020, defendants **SHALL FILE** a notice stating the amount of interest due and specifying the steps in their calculation.

No later than Friday, March 14, 2020, plaintiff **MAY FILE** a response addressing only the calculation of statutory interest on the sanction.

No later than Monday, March 28, 2020, defendants **MAY FILE** a reply.

IT IS SO ORDERED.

Dated: January 29, 2020

Valerie Baker Fairbank

Honorable Valerie Baker Fairbank
Senior United States District Judge

---

aff'd, 485 F. App'x 892 (9th Cir. 2012);

Straitshot Communications, Inc. v. Telekenex, Inc., 2012 WL 5880293, *10 (W.D. Wash. Nov. 20, 2012) (citing section 1961 and requiring defendants to pay post-judgment interest on spoliation sanction); *Stensaker v. Flying J*, 2008 WL 11413500, *1 (D. Mont. Jan. 30, 2008) ("The Court . . . notes that the sanction bears interest at the federal judgment rate from the date of entry o[f] the order.") (citing section 1961); *EEOC v. Local Union 38*, 1984 WL 1130, *7 (N.D. Cal. Aug. 22, 1984) (requiring postjudgment interest on contempt sanction at rate specified in section 1961).

Appendix D

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

ARTHUR LOPEZ,

Plaintiff,

v.

CITY OF CORONA, et al.,

Defendants.

Case No. ED CV 17-2379 VBF (MRW)

REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

This Report and Recommendation is submitted to the Honorable Valerie Baker Fairbank, Senior United States District Judge, pursuant to 28 U.S.C. § 636 and General Order 05-07 of the United States District Court for the Central District of California.

SUMMARY OF RECOMMENDATION

This is a pro se civil rights action. Plaintiff sued a local police agency and two police officers after his car was towed. Plaintiff contends that the towing of his car constituted a warrantless seizure of his property in violation of the Fourth Amendment.

The Court concludes that the defense is entitled to summary judgment. Plaintiff failed to demonstrate a triable issue of material fact regarding the legitimacy of the police decision to tow the vehicle (whether based on Plaintiff's failure to properly register the car or because it blocked a local resident's driveway). Additionally, to the extent that Plaintiff's creative interpretation of the state vehicle code rendered his registration valid, the police officers are entitled to qualified immunity from liability due to the unique argument he asserted.

The Court therefore recommends that judgment be entered against Plaintiff and the action dismissed with prejudice.[1]

FACTS AND PROCEDURAL HISTORY

Plaintiff's Car Blocks a Driveway and Is Towed

Plaintiff owns a 2008 Lexus. In November 2017, a neighbor of Plaintiff contacted the Corona police regarding the vehicle. The neighbor complained that Plaintiff's Lexus was parked on the street and blocking part of the driveway of her home. (Docket # 15-4 at 2.)

A Corona police officer (Defendant Birmingham) confirmed that the car was blocking the driveway.[2] (Docket # 15-2 at 9-10 (police report).) The officer also determined that the vehicle's registration expired approximately 14 months earlier. (Id.) On that basis, Officer Birmingham authorized the

[1] In a separate Report, the Court will take up the defense's motion for sanctions against Plaintiff pursuant to Federal Rule of Civil Procedure 11. (Docket # 25, 26.)

[2] According to the defense's reply submission, Officer Birmingham passed away recently. (Docket # 33 at 3 and attachment.) The Court assumes (without deciding) that Plaintiff's claim may continue against this defendant's estate or, owing to principles of indemnification, against the police department. However, the Court declines to rely on the statements in Officer Birmingham's declaration (Docket # 15-2) pursuant to Federal Rule of Civil Procedure 56(c)(4). The police reports and records attached to his declaration are likely admissible – and may properly be considered at the summary judgment stage – under Federal Rules of Evidence 104, 801, and 803.

towing of Plaintiff's car. (Id. at page 9 (noting registration "expired 09-08-16," and vehicle "blocking driveway at listed address").) There is no evidence that Officer Birmingham had any interaction with Plaintiff directly, or any other involvement with the incident afterward.

Plaintiff Has a Tow Hearing

Shortly after learning that his car had been towed and impounded, Plaintiff went to the Corona police station. He met with Defendant Corporal Brown and had a recorded vehicle impound / "tow" hearing. (Docket # 15-3 at 2; Docket # 16 (audio recording).)

Plaintiff requested that the police waive any impound and towing fees because Plaintiff believed the vehicle was properly registered with the DMV. Plaintiff presented DMV paperwork demonstrating that he paid the registration fees for the vehicle several days earlier. (Docket # 15-3 at 2, 6.) He also provided a DMV document that showed a "new exp[iration] date" of September 2018 for the vehicle. (Docket # 15-3 at 6, 24 at 17.) From this, Plaintiff argued that his vehicle was registered under California Vehicle Code § 4000(a). (Id.; Docket # 24 at 3.)

Corporal Brown disagreed. He noted that the face of the DMV paperwork bore the bold-faced legend "INCOMPLETE APPLICATION [-] THIS IS NOT AN OPERATING PERMIT." The form also contained a code ("RDF [report of deposit of fees] Reasons: 0") indicating that the vehicle lacked a valid smog certification.[3] (Docket # 15-3 at 6, 14, 17.) For this reason, the

[3] In earlier litigation in this Court, Plaintiff contended that the engine of the Lexus was damaged several years earlier when a towing company improperly put diesel fuel (rather than gasoline) in the car. Lopez v. Tustin Police Dep't, No. SA CV 17-496 VBF (MRW) (C.D. Cal.), dismissal of action affirmed, No. 17-56405 (9th Cir. 2018) (Docket # 37-38.) As a result, Plaintiff's vehicle was unable to pass a "smog check" test or obtain a smog certification from the state Department of Motor Vehicles without extensive repairs to the car. (Docket # 15-3 at 2.) Plaintiff admitted this in the audiorecording of the tow hearing.

DMV (and the Corona police department) did not consider the vehicle to be properly registered, only that Plaintiff had paid the registration application fee. Corporal Brown denied Plaintiff's appeal of the towing "on the grounds that his vehicle was not registered" and because the car "was illegally blocking a private driveway." (Docket # 15-3 at 3.)

The Complaint, Appellate, and Summary Judgment Submissions

Later in November 2017, Plaintiff filed this civil rights action. (Docket # 1.) Plaintiff's complaint presented a jumble of alleged First, Fourth, and Fourteenth Amendment violations under 42 U.S.C. § 1983. Magistrate Judge Wilner recommended that the district court deny in forma pauperis treatment and dismiss the action as frivolous. (Docket # 5.) The district judge accepted the recommendation and dismissed the case.

The Ninth Circuit reversed the district court's decision as to Plaintiff's Fourth Amendment allegations only. The appellate court stated that "Lopez alleged that defendants seized his currently registered vehicle without a warrant while it was lawfully parked outside his residence."[4] (Docket # 10 at 2.) The appellate court concluded that "[t]hese allegations are sufficient to state a claim for unreasonable seizure in violation of the Fourth Amendment." (Id.)

Following remand, Judge Wilner ordered the U.S. Marshals Service to serve the summons and complaint on the defense. (Docket # 11-12.) Instead of answering the complaint, the defendants collectively moved for summary judgment on various grounds. (Docket # 15.) The defense motion was supported by declarations from Corporal Brown, the late Officer Birmingham

[4] As noted in the defense's motion for sanctions under Rule 11, the appellate court was presented with a doctored version of the DMV record (omitting the "Incomplete Application" legend) when it reviewed Plaintiff's allegations regarding the car's registration and reversed the district court dismissal. CA No. 17-56869, Docket # 7 at 22 (attachment to appellant's opening brief in Ninth Circuit).

(discussed above), and the neighbor, plus various DMV and local police records.

Plaintiff's submission in opposition to the motion consisted of his now-familiar statement of the law, a first person narrative of events, and a handful of photocopied materials and photographs.[5] (Docket # 24.) He also submitted a general "statement" of controverted facts. (Docket # 24-3.) That submission consisted of Plaintiff's handwritten disputes scrawled on the defense's statement of uncontroverted facts. Plaintiff's submission neither constitutes nor points the Court to relevant, admissible evidence. FRCP 56(c)(1, 4).

Judge Wilner set the matter for a hearing in mid-December; Plaintiff failed to appear at the court hearing.

RELEVANT FEDERAL LAW AND ANALYSIS

Standard of Review

Under Federal Rule of Civil Procedure 56(c), summary judgment is appropriate when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. A "genuine issue" exists only if there is a sufficient evidentiary basis upon which a reasonable jury could return a verdict for the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986).

The party seeking summary judgment must present admissible evidence that establishes that there is no triable, material factual dispute and that he is entitled to judgment as a matter of law. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). The Court views the inferences drawn from the underlying facts in

[5] The Court reviewed similar submissions in connection with summary judgment proceedings in Plaintiff's cases against Costa Mesa (SA CV 17-297 VBF (MRW)) and Newport Beach (SA CV 17-488 VBF (MRW)) police agencies.

a light most favorable to the nonmoving party. Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986). "Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party," there is no genuine issue for trial. Ricci v. DeStefano, 557 U.S. 557, 586 (2009) (quoting Matsushita); Zetwick v. Yolo County, 850 F.3d 436, 441 (9th Cir. 2017) (to defeat summary judgment, non-moving party must present evidence "such that a reasonable juror drawing all inferences in favor of the respondent could return a verdict in the respondent's favor").

The nonmoving party must present more than "a mere 'scintilla' of evidence[;] rather, the nonmoving party must introduce some significant probative evidence tending to support the complaint." Summers v. Teichert & Son, Inc., 127 F.3d 1150, 1152 (9th Cir. 1997) (quotation omitted, emphasis added); Anderson, 477 U.S. at 252 (same); Blankenbaker v. Progressive Cas. Ins. Co., 620 F. App'x 579, 582 n.4 (9th Cir. 2015) ("party opposing summary judgment must come forward with significant probative evidence as to each element of the claim on which it bears the burden of proof"). The nonmoving party may not rest on its own conclusory allegations or mere assertions; it must set forth non-speculative evidence of specific facts. Emeldi v. University of Oregon, 673 F.3d 1218, 1233 (9th Cir. 2012).

A court need not find a triable issue of fact where the nonmoving party's "self-serving" presentation puts forward "nothing more than a few bald, uncorroborated, and conclusory assertions rather than evidence." FTC v. Neovi, Inc., 604 F.3d 1150, 1159 (9th Cir. 2010). Specifically, a court may "disregard a self-serving declaration for purposes of summary judgment" when the declaration states "facts beyond the declarant's personal knowledge and "provide[s] no indication how [the declarant] knows [these facts] to be true." SEC v. Phan, 500 F.3d 895, 910 (9th Cir. 2007) (quotations omitted); see also

Hexcel Corp. v. Ineos Polymers, Inc., 681 F.3d 1055, 1063 (9th Cir. 2012) (declarations "must be made with personal knowledge; declarations not based on personal knowledge are inadmissible and cannot raise a genuine issue of material fact").

Impoundment of Vehicle

Relevant Law

The Fourth Amendment to the U.S. Constitution "protects against unreasonable interferences in property interests." The impoundment of a vehicle "is a seizure within the meaning of the Fourth Amendment." Miranda v. City of Cornelius, 429 F.3d 858, 862 (9th Cir. 2005). The warrantless impoundment of a vehicle "is per se unreasonable[.] The burden is on the Government to persuade the district court that the seizure comes under one of a few specifically established exceptions to the warrant requirement." United States v. Hawkins, 249 F.3d 867, 872 (9th Cir. 2001) (quoted in Miranda).

The "community caretaking function" is such an exception. The police decision to seize and tow a vehicle may be "necessary and appropriate" under that doctrine when the car at issue "is parked in the path of traffic, blocking a driveway, obstructing a fire lane, or appears abandoned." Clement v. City of Cornelius, 518 F.3d 1090, 1094 (9th Cir. 2008). Additionally, a tow may be appropriate when "there are no current registration stickers and police can't be sure that the owner won't move or hide the vehicle." Id. at 1095; Hylton v. Anytime Towing, 563 F. App'x 570 (9th Cir. 2014) (same).

Under the California Vehicle Code, a person may not "drive, move, or leave standing on a highway[6] [ ] any motor vehicle" unless the vehicle "is registered and the appropriate fees have been paid" under state law. Cal. Veh.

---

[6] The term "highway" is defined under state law as "a way or place of whatever nature, publicly maintained and open to the use of the public for purposes of vehicular travel. Highway includes street." Cal. Veh. C. § 360.

C. § 4000(a)(1). A vehicle is properly registered and may be operated when it possesses a valid smog certificate. Cal. Veh. C. § 4000(b); People v. McIntire, 2016 WL 5338545 at *8 (Cal. App. 2016) ("a vehicle must not be driven if it has been registered in violation of the smog inspection statutes") (unpublished decision).

A police officer may "remove a vehicle" if it "is found or operated upon a highway, public land, or an offstreet parking facility" with a registration that has been expired for more than six months. Cal. Veh. C. § 22651(o)(1). Towing is also permitted if the vehicle is "illegally parked so as to block the entrance to a private driveway." Cal. Veh. C. § 22651(d). Numerous federal courts have affirmed the constitutionality of warrantless impoundment of vehicles under these and similar provisions. See, e.g., Hylton, 563 F. App'x at 570 (plaintiff "failed to raise a genuine dispute of material fact as to whether the impounding of his car [was] unreasonable," citing Cal. Veh. C. §§ 4000(a)(1) and 22651); Brewster v. Beck, 859 F.3d 1194, 1196 (9th Cir. 2017) (seizure of vehicle from unlicensed driver); Easley v. Flores, No. CV 15-4359 GW (E), 2017 WL 7938602 at *6 (C.D. Cal. 2017) (collecting cases).

Discussion

The defense is entitled to summary judgment on Plaintiff's Fourth Amendment claim. Plaintiff presents no evidence from which a reasonable jury could conclude that the towing of his vehicle violated the federal constitution. Anderson, 477 U.S. at 252.

The basic facts are uncontroverted. At the time of the parking incident in November 2017, Plaintiff's vehicle had not been properly registered under the state vehicle code since mid-2016. (Docket # 15-3 at 6.) Plaintiff's Lexus was parked on a public street in a manner that blocked part of the neighbor's driveway. (Docket # 15-2 at 9; 15-4.) Based on these facts, Officer

Birmingham was entitled to rely on state law and the community caretaking doctrine to tow Plaintiff's car without a warrant. Miranda, 429 F.3d at 862-64; Clement, 518 F.3d at 1094-95; Hylton, 563 F. App'x at 570.

Plaintiff offers a strained and unsupported argument in partial response. He contends that his vehicle was registered under state law. He bases this claim on the DMV's acceptance of his payment of registration fees, a notation on the receipt indicating that the vehicle's new expiration date was in the future, and his lay reading of the vehicle code. (Docket # 24 at 3.)

Plaintiff's contention is unpersuasive. The state vehicle code certainly does require payment of fees as a condition of registration. Payment of "appropriate fees" is a prerequisite to registration and lawful operation of a vehicle under Section 4000(a)(1). But the code also requires that the vehicle be registered with the DMV. A plain reading of the receipt that Plaintiff obtained from the agency shows that it was not – the DMV marked the application "incomplete" on its face. (Docket # 15-3.) At the time, Plaintiff clearly knew (a) the registration application was incomplete and (b) the reason why. As he explained to Corporal Brown, Plaintiff's vehicle could not pass a smog check to obtain a proper certification. (Docket # 15-3 at 2.) That information is also recorded (in code, as explained by the defense evidence) on the face of the DMV receipt. (Docket # 15-3 at 14-16.)

Based on the uncontroverted evidence, the Court concludes that the defense adequately carried its burden of establishing that the vehicle was not properly registered for well over a year at the time of the towing incident. That's sufficient to establish an exception to the warrant requirement here. Hawkins, 249 F.3d at 872. There was no Fourth Amendment violation.[7]

---

[7] Plaintiff offered no real response to the alternative basis for the tow – his vehicle (properly registered or not) was parked in front of the

* * *

To the extent that Plaintiff presented derivative claims against Corporal Brown (regarding the tow hearing) or the police department (some type of Monell theory), the defense convincingly demonstrates that Plaintiff cannot succeed at trial. Plaintiff identified no policy, procedure, or practice of the municipality that resulted in a violation of his constitutional rights. Monell v. Dep't of Soc. Servs. of the City of New York, 436 U.S. 658, 694 (1978); Doughtery v. City of Covina, 654 F.3d 892, 900 (9th Cir. 2011).

Additionally, Plaintiff has not articulated how his interaction with the senior police officer after the towing violated the law in any way. To the contrary, the audiorecording of the hearing (summarized in the Brown declaration at Docket # 15-3 at 3) reveals that the officer assisted Plaintiff in understanding what Plaintiff would need to do to lawfully have his vehicle promptly released from impound and driven home. Brewster, 859 F.3d at 1197 (mandatory 30-day impound of vehicle was punitive and violated Fourth Amendment). None of these claims can possibly lead to a favorable verdict at trial. Celotex Corp., 477 U.S. at 323.

Qualified Immunity

Even if Plaintiff was able to plead and prove a constitutional claim against the named defendants, the Court concludes that the officers are entitled to qualified immunity.

The doctrine of qualified immunity provides government officials with "an entitlement not to stand trial or face the other burdens of litigation."

---

neighbor's driveway. In his unsworn submission, Plaintiff cryptically claims that it was "mathematically impossible" for the Lexus to have completely blocked the driveway. (Docket # 24 at 5.) Plaintiff offers no authority for a claim that he could legally block part (but not all) of a private driveway. Celotex Corp., 477 U.S. at 323; Neovi, Inc., 604 F.3d at 1159; Phan, 500 F.3d at 910. No reasonable jury could plausibly find in his favor at trial.

Mitchell v. Forsyth, 472 U.S. 511, 526 (1985). This privilege "is an immunity from suit rather than a mere defense to liability." Saucier v. Katz, 533 U.S. 194, 200 (2001) (quotation omitted). Such immunity "shields government officials from civil damages liability unless the official violated a statutory or constitutional right that was clearly established at the time of the challenged conduct." Reichle v. Howards, 566 U.S. 658, 664 (2012). "When properly applied, [qualified immunity] protects all but the plainly incompetent or those who knowingly violate the law." Ashcroft v. al–Kidd, 563 U.S. 731, 743 (2011); District of Columbia v. Wesby, ___ U.S. ___, 138 S. Ct. 577 (2018) (same).

In analyzing a claim of qualified immunity, a federal court must decide whether: (i) "the facts that a plaintiff has alleged [ ] or shown make out a violation of a constitutional right"; and (ii) "whether the right at issue was clearly established at the time of the defendant's alleged misconduct." Pearson v. Callahan, 555 U.S. 223, 232 (2009) (quotation omitted). "To be clearly established, a right must be sufficiently clear that every reasonable official would have understood that what he is doing violates that right." Reichle, 566 U.S. at 664. This requires demonstrating that the law prohibited the "particular conduct" in the "specific context of the case" at issue. Mullenix v. Luna, ___ U.S. ___, 136 S. Ct. 305, 308 (2015). A plaintiff "bears the burden of showing that the rights allegedly violated were clearly established." Vos v. City of Newport Beach, 892 F.3d 1024, 1035 (9th Cir. 2018).

* * *

The sheer creativity and utter thinness of Plaintiff's my-car-was-registered-because-I-paid-the-fee-without-the-smog-certificate argument compels a finding of qualified immunity. There is no reason to conclude that a typical local police officer would be expected to conclude that Plaintiff's long-

unregistered vehicle was, as a matter of state law, actually properly registered by dint of his payment of the registration fee.

Plaintiff offers no proof that his contention about the alleged validity of his registration was "clearly established" at the time of the seizure or post-seizure hearing with the police. Pearson, 555 U.S. at 232; Mullenix, 136 S. Ct. at 308. And there's no basis to conclude that the officers "knowingly violate[d] the law" when approving the towing in reliance on the DMV's own paperwork showing that the car's registration application was incomplete. al–Kidd, 563 U.S. at 743; Wesby, 138 S. Ct. at 577. Plaintiff failed to carry his burden of showing that his registration argument was clearly established in this case. Vos, 892 F.3d at 1035. Qualified immunity protects the officers from civil liability.

CONCLUSION

The Court recommends the entry of judgment against Plaintiff as to all of his claims arising from the Corona towing incident.

IT IS THEREFORE RECOMMENDED that the District Judge issue an order: (1) accepting the findings and recommendations in this Report; (2) granting the defense motion for summary judgment; and (3) dismissing the action with prejudice.

Dated: December 13, 2018

HON. MICHAEL R. WILNER
UNITED STATES MAGISTRATE JUDGE

Additional material from this filing is available in the Clerk's Office.