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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ARTHUR LOPEZ, Plaintiff-Appellant, v. COSTA MESA POLICE DEPARTMENT; et al., Defendants-Appellees.	No. 18-55520 D.C. No. 8:17-cv-00297-VBF-MRW MEMORANDUM*

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

Submitted February 4, 2020**

Before: FERNANDEZ, SILVERMAN, and TALLMAN, 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 and Fourteenth Amendments arising from a traffic stop. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Blankenhorn v. City of Orange*, 485 F.3d 463, 470

* 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

(9th Cir. 2007). We affirm.

The district court properly granted summary judgment on Lopez's Fourth Amendment claim for defendants because Lopez failed to raise a genuine dispute of material fact as to whether defendants lacked reasonable suspicion to stop his vehicle or were unjustified in impounding the vehicle or conducting an inventory. *See Heien v. North Carolina*, 574 U.S. 54, 60 (2014) (holding that to conduct a traffic stop "officers need only reasonable suspicion—that is, a particularized and objective basis for suspecting the particular person stopped of breaking the law" (internal quotation marks omitted)); *United States v. Torres*, 828 F.3d 1113, 1120 (9th Cir. 2016) ("Once a vehicle has been legally impounded, the police may conduct an inventory search without a warrant."); *Miranda v. City of Cornelius*, 429 F.3d 858, 865 (9th Cir. 2005) ("The violation of a traffic regulation justifies impoundment of a vehicle if the driver is unable to remove the vehicle from a public location without continuing its illegal operation.").

The district court properly granted summary judgment on Lopez's Fourteenth Amendment claim for defendants because Lopez failed to raise a genuine dispute of material fact as to whether defendants acted with discriminatory purpose. *See Serrano v. Francis*, 345 F.3d 1071, 1082 (9th Cir. 2003) ("To avoid summary judgment, [the nonmoving party] 'must produce evidence sufficient to permit a reasonable trier of fact to find by a preponderance of the evidence that the

decision was racially motivated.'" (citations and internal quotations marks omitted)).

The district court did not abuse its discretion in denying Lopez's motion to amend his complaint to add claims against other potential defendants because those claims were futile. *See Bowles v. Reade*, 198 F.3d 752, 757-58 (9th Cir. 1999) (setting forth standard of review and factors for denial of a motion to amend).

The district court did not abuse its discretion in denying Lopez's motion to amend to add claims under 42 U.S.C. § 1985 because the amendment would have prejudiced defendants and caused undue delay in the litigation. *See id.*

The district court did not abuse its discretion in denying Lopez's motions for appointment of counsel because Lopez was able to articulate his claims and was unlikely to succeed on the merits. *See Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009) (setting forth standard of review and discussing factors to consider in ruling on a motion to appoint counsel).

The district court did not abuse its discretion in denying Lopez's motion to recuse District Judge Fairbank and Magistrate Judge Wilner because Lopez failed to demonstrate that a reasonable person would believe that either judges' impartiality could be questioned. *See United States v. Hernandez*, 109 F.3d 1450, 1453 (9th Cir. 1997) (setting forth standard of review and discussing standard for recusal under 28 U.S.C. §§ 144 and 455).

Appendix A

VLC

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).

Lopez's motion for judicial notice is denied.

AFFIRMED.

Appendix A

VCC

JS-6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

ARTHUR LOPEZ,

Plaintiff,

v.

CITY OF COSTA MESA, COSTA MESA POLICE DEPARTMENT, CHRISTOPHER WALK, and ISIDRO GALLARDO,

Defendants.

SA CV 17-00297-VBF-MRW

FINAL JUDGMENT

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

Dated: April 16, 2018

Valerie Baker Fairbank

Honorable Valerie Baker Fairbank
Senior United States District Judge

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ARTHUR LOPEZ,

Plaintiff,

v.

COSTA MESA POLICE DEP'T, CITY OF COSTA MESA, CHRISTOPHER WALK, and ISIDRO GALLARDO,

Defendants.

Case No. SA CV 17-00297 VBF (MRW)

ORDER

Adopting Report & Recommendation:

Granting Document #94 (Defendants' Motion for Summary Judgment);

Directing Entry of Separate Judgment;

Terminating the Case (JS-6)

Pursuant to 28 U.S.C. § 636, the Court reviewed the complaint, *see* CM/ECF Document ("Doc") 1; the motion for summary judgment filed on January 17, 2018 by all four named defendants (Docs 94-95); plaintiff's brief and other materials filed January 31, 2018 in opposition to summary judgment (Docs 99-101); defendants' reply brief filed February 7, 2018 (Doc 103); the Report and Recommendation issued by the United States Magistrate Judge on February 23, 2018 (Doc); plaintiff's objections filed March 9, 2018 (Doc 115) and the defendant's response filed March 15, 2018 (Doc 117); and the applicable

law. The Court also has reviewed each party's response to its adversary's proposed Statement of Undisputed Facts and Conclusions of Law (Docs 105 and 111). Finally, the Court has reviewed the defendants' evidentiary objections (Doc 104) and plaintiff's response (Doc 110).

After engaging in de novo review of those portions of the Report to which Plaintiff specifically objected, the Court finds no error of law, fact, or logic in the well-reasoned R&R. Accordingly, the Court will accept the findings and conclusions of the Magistrate Judge, and implement his recommendations.

ORDER

Plaintiff's objection **[Doc #115] is OVERRULED.**

The Feb. 23, 2018 Report & Recommendation **[Doc #114] is ADOPTED.**

Defendants' motion for summary judgment **[Doc #94] is GRANTED.**

Summary judgment is granted to each and every named defendant.

The complaint is **DISMISSED** with prejudice.

Final judgment will be entered consistent with the R&R. As required by Fed. R. Civ. P. 58(a), judgment will be a separate document.

The Clerk's Office **SHALL TERMINATE** this case (JS-6).

IT IS SO ORDERED.

Dated: April 16, 2018

Valerie Baker Fairbank

Hon. Valerie Baker Fairbank
Senior United States District Judge

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

ARTHUR LOPEZ,

Plaintiff,

v.

COSTA MESA POLICE DEPARTMENT, et al.,

Defendants.

Case No. SA CV 17-297 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 two local police officers and their department after a traffic stop. Plaintiff claims that the stop, the subsequent impounding and search of the car, and other conduct by the officers and the department violated his constitutional rights.

The Court concludes that all of the defendants are entitled to summary judgment. The undisputed facts could not lead any rational jury to conclude that either officer's actions rose to the level of constitutional violations. Moreover, Plaintiff's other grievances against the police are too unintelligible and utterly unsupported to warrant advancing to trial.

The Court therefore recommends that judgment be entered against Plaintiff and the action dismissed.

FACTS AND PROCEDURAL HISTORY

Plaintiff Is Stopped for a Traffic Violation

Newport Boulevard is a major, multi-lane street in Costa Mesa. Plaintiff made a left turn across the street into a business in the middle of a block – that is, he did not turn at an intersection.

According to photos of the location, the dashboard video of the incident, and a declaration from a city traffic engineer, Plaintiff made his turn between a set of "crash cushions" (two to four feet in height) and a median (six inches in height) that extended to the intersection. The portion where Plaintiff turned was constructed with the same material as the higher median (red brick surrounded by grey concrete edging). That lower portion is two inches in height based on safety regulations related to the crash cushions. (Docket # 94-4 at 3-4.) A large left-turn arrow is painted on the pavement in the traffic lane as drivers approach the gap and the intersection at 19th Street.[1] (Docket # 107 at 6.)

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[1] The video of the incident is lodged at Docket # 96. Plaintiff's objection to the video (he claims he could not properly view it) is overruled – he acknowledged at the hearing that the defense produced this material in discovery in the summer of 2017, and took no steps to solve his alleged problem accessing it.

The Court accepts and considers Plaintiff's late-filed photos, including those depicting the traffic arrow painted on the roadway. (Docket

Defendants Walk and Gallardo are police officers in Costa Mesa. They were on duty at the time of Plaintiff's ill-fated left turn. They observed Plaintiff drive over the two-inch median. They stopped Plaintiff and cited him for making an illegal turn on a divided highway in violation of California Vehicle Code section 20651(a).[2]

During the traffic stop, the police discovered that Plaintiff's vehicle had been unregistered and uninsured for nearly a year. (Docket # 94 at 13.) (Plaintiff received a ticket from the police for a similar violation several weeks earlier – he failed to rectify the violations and continued to drive the car.) The police told Plaintiff and his children to get out of the vehicle. After a search of the interior, the police had the car towed from the scene (a parking lot of a closed coffee shop) and impounded it.

According to the audio recording of the incident, neither of the officers used any unprofessional, racist, or derogatory language in the interaction with Plaintiff. Plaintiff contends that the police threatened him with jail if he did not

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107 at 6). Clearer photos are at Exhibit 8 of the declaration of Costa Mesa traffic engineer Raja Sethuraman. (Docket # 94-4 at 9.)

The Court rejects Petitioner's other late-filed submission. (Docket # 111 (presented on the morning of the summary judgment hearing).) Plaintiff's surreply filing purported to respond to the defense's reply papers. The filing was not authorized by the Court or the Local Rules. Moreover, the contents of the chaotic filing essentially repeated his earlier arguments.

[2] That section provides (in relevant part):

> Whenever a highway has been divided into two or more roadways by means of intermittent barriers or by means of a dividing section of not less than two feet in width, either unpaved or delineated by curbs, double-parallel lines, or other markings on the roadway, it is unlawful [ ] (2) To make any left [ ] turn with the vehicle on the divided highway, except through an opening in the barrier designated and intended by public authorities for the use of vehicles or through a plainly marked opening in the dividing section.

(emphasis added.)

comply with their instructions. He also referenced a negative reaction he received from one of the officers when Plaintiff indicated that he was taking his children to soccer practice at the time of the incident. (Docket # 101 at 9.) From this, Plaintiff contends that the police officers impugned his gender, religion, and Mexican heritage.

The Summary Judgment Submissions

Plaintiff's complaint alleged "unlawful stops, search and seizure systematically [sic] by Costa Mesa PD [and] its police officers." (Docket # 1 at 8.) He also broadly complained about discrimination based on "race, religion, gender, racial profiling victimization." (Id.) The complaint alleged that these actions violated Plaintiff's Fourth, Fifth, and Fourteenth Amendment rights under the U.S. Constitution.

After the close of discovery, the defense moved for summary judgment. (Docket # 94.) The defense motion thoughtfully divided Plaintiff's claims into components regarding the traffic stop, the inventory search of the vehicle, and its impoundment. Additionally, the defense attempted to analyze what it understood to be Plaintiff's Equal Protection Clause, Takings Clause, and Monell claims against the officers and the city's police department.

The significant portions of the defense submissions include a declaration from a traffic engineer who is the Costa Mesa director of public services. That declaration provides a factual explanation of the state of the median on Newport Boulevard at the scene of the incident. (Docket # 94-4.) As noted above, the Court reviewed the video and audio recordings of the traffic stop and the parties' numerous photos of the scene. In their declarations, the officers both state that they stopped Plaintiff for making "an unlawful left turn over a divided highway in violation of California Vehicle Code section 21651(a)." (Docket # 94-1 at 2; 94-2 at 2.) The officers also stated that they impounded

Plaintiff's vehicle under CVC section 22651(o) because the vehicle was "found or operated upon a highway" with a long-expired registration. (Id. at 3.)

In response to the motion, Plaintiff filed a "brief" containing a jumble of legal arguments, photocopies of various traffic regulations, and a Ninth Circuit decision (Brewster v. Beck, 859 F.3d 1194 (9th Cir. 2017)) involving the inapplicable impoundment policy of the City of Los Angeles. (Docket # 99.) He also submitted a declaration regarding the event (Docket # 101) and his own photos of the area. (Docket # 107.) Plaintiff claims (a) he knows the owners or employees of the coffee shop where his vehicle came to rest and (b) they would have let him leave his vehicle there in lieu of the police impounding it. (Docket # 101 at 3-4.) However, Plaintiff offered no non-hearsay proof of these facts from any competent witness.[3]

Plaintiff vigorously disputes the legal conclusions that the defense draws regarding the traffic stop and impounding of his vehicle. However, there does not appear to be any material dispute regarding the road condition where the initial incident occurred or where the vehicle was impounded.

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[3] The Court disregards Plaintiff's statement of controverted facts. (Docket # 100.) That submission consists 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). The Court recognizes its obligation to liberally construe a self-represented litigant's submission. However, that is no substitute for a party's failure to present evidence in a recognizable manner.

The Court also has little insight into the meaning of materials related to Plaintiff's subsequent administrative complaints and tort claims filed with the City (attached to several of Plaintiff's filings). Plaintiff's bare reference at the hearing to his First Amendment right to redress grievances does not explain the significance of these items to the officers' conduct or his other recognizable claims against the defense.

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 genuine, 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 a light most favorable to the non-moving 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).

To defeat a summary judgment motion, 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). 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 genuine issue of fact where the non-moving 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").

Unreasonable Traffic Stop

Law enforcement officers must conduct warrantless traffic stops in a manner that complies with the Fourth Amendment. Brendlin v. California, 551 U.S. 249, 255-59 (2007). The police "need only reasonable suspicion – that is, a particularized and objective basis for suspecting the particular person stopped" of breaking the law – to justify such a stop. Heien v. North Carolina, ___ U.S. ___, 135 S. Ct. 530, 536 (2014) (quotations omitted). A reasonable suspicion exists if "specific, articulable facts [ ] together with objective and reasonable inferences suggest that the persons detained by the police are engaged in criminal activity." United States v. Hartz, 458 F.3d 1011, 1017 (9th Cir. 2006) (quotation omitted); McCain v. Stockton Police Dep't, 695 F. App'x 314 (9th Cir. 2017) (same). That reasonable suspicion may "rest on a mistaken understanding" of the law. Heien, 135 S. Ct. at 536.

The standard for determining whether probable cause or reasonable suspicion exists "is an objective one; it does not turn either on the subjective thought processes of the officer or on whether the officer is truthful about the reason for the stop." United States v. Magallon-Lopez, 817 F.3d 671, 675 (9th

Cir. 2016). For this reason, a trial jury is instructed to consider (and a court ruling on a summary judgment motion must evaluate) whether "an objectively reasonable police officer would conclude there is a fair probability that the plaintiff has committed or was committing a crime" at the time of the traffic stop. 9th Cir. Model Civil Instr. 9.23 (Fourth Amendment-Unreasonable Seizure of Person-Probable Cause Arrest) (2017). This review is based on "the circumstances known to the officer[s] at the time" of the incident. Id. (citing Devenbeck v. Alford, 543 U.S. 146, 152-53 (2004). "Video evidence" of "apparent traffic offenses" may establish reasonable suspicion and lead to the entry of summary judgment in favor of the police. Neidermeyer v. Caldwell, ___ F. App'x ___, 2017 WL 6014359 at *1 (9th Cir. Dec. 5, 2017).

* * *

The officers are entitled to summary judgment on Plaintiff's claim that they improperly stopped him for a suspected traffic violation. The state vehicle code prohibits a driver from making a left turn on a divided road such as this street. CVC § 21651. The undisputed evidence makes clear that any reasonable officer would have reasonable cause to believe that Plaintiff violated this provision while driving.

The officers' declarations, the video of the stop, and Plaintiffs own admitted sequence of events make clear that Plaintiff drove over the low median that divides traffic on Newport Boulevard to make a left turn. Both officers observed Plaintiff make the turn over the divider. And that was easily confirmed during the Court's review of the dashboard video of the incident. Neidermeyer, 2017 WL 6014359 at *1. The plain evidence shows that the street was marked with a substantial brick-and-concrete delineation that was more than the required width. Id. There can be no dispute – he crossed over the low brick area to make a left turn. The officers identified specific and

articulable facts that hew to the statutory prohibition on making such a turn. Heien, 135 S. Ct. at 536; Hartz, 458 F.3d at 1017.

Moreover, there is no evidence from which to conclude that either of the two statutory exceptions in the vehicle code apply. If the low section of the median were to be considered "an opening in the barrier" between the traffic lanes under the vehicle code, there is no evidence that the opening was "designated and intended by public authorities for the use of vehicles." To the contrary, the only evidence on the subject (the declaration from the city's main traffic engineer) is that the city did not intend for the lower curb to be a break in the median for turning vehicles. Rather, it was expressly intended to facilitate the safety of the crash cushions separating traffic on the street.[4] (Docket # 94-4 at 4.)

As for the second exception, there is no proof that there was a "plainly marked opening" in the barrier that authorized drivers to turn left over the brick material. There was no visible sign at the location allowing such a turn. Plaintiff presented a photo showing an arrow painted on the roadway, which he claims authorized drivers to turn left. But Plaintiff offers no evidence beyond his bare lay opinion that the arrow related in any way to making a turn across the barrier. Neovi, Inc., 604 F.3d at 1159. To the contrary, reasonable Southern California drivers would undoubtedly understand that the arrow actually designated the lane of traffic for a left turn at the approaching regulated intersection, not a sharp turn across numerous lanes of traffic through a small gap in the divider. No reasonable jury could fairly conclude that the arrow

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[4] According to the Sethuraman declaration, the reduction of the median "to two inches in height 25 feet in front of the [crash cushions] was not done for motorists traveling southbound on Newport Blvd. to travel through it and make a left turn, but to not adversely affect the performance" of the crash devices. The city implemented this design to comply with state traffic regulations. Id.

painted on the asphalt transformed the median into a "plainly marked" left turn opportunity in the middle of a busy block.

But in any event, it is irrelevant whether Plaintiff thought he was entitled to turn left (based on the painted arrow in his traffic lane). The test is whether a reasonable officer in the position of the defendants would have believed that the driver violated the law. Magallon-Lopez, 817 F.3d at 675; Devenbeck, 543 U.S. at 152-53. And the evidence (photos, video) conclusively demonstrates that the defendants' police vehicle was on the opposite side of Newport Boulevard (that is, on the side toward which Plaintiff turned). Plaintiff offers no proof that the officers could possibly have seen the marking on the roadway; it was blocked by the wall of crash cushions. So, all that a reasonable officer in the defendants' position would have seen was Plaintiff driving over the raised median that divided this major street to make his left turn. Again, the only proof presented to the Court demonstrates the reasonableness of the officers' actions.[5]

Even interpreting the evidence in the light most favorable to Plaintiff, he can't show that a reasonable jury could plausibly conclude otherwise. Plaintiff failed to present "significant probative evidence" to demonstrate that these defendants lacked a reasonable suspicion to conduct the traffic stop. Summers, 127 F.3d at 1152. Summary judgment in favor of the defense is appropriate because there is no genuine dispute for trial. Ricci, 557 U.S. at 586.

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[5] To the extent that the officers were wrong in evaluating any legal distinction between the two-inch and six-inch brick medians, that mistake is insufficient to defeat summary judgment. Heien, 135 S. Ct. at 536.

The Court is not inclined to take up the defense's arguments regarding qualified immunity. However, in the alternative, the Court easily concludes that Plaintiff's claims regarding the height of the median were not so "clearly established" that "every reasonable official" would have known that this traffic stop violated the federal constitution. Ashcroft v. al-Kidd, 563 U.S. 731, 742 (2011).

Search and Impoundment Claims

Plaintiff also contends that the police improperly impounded and searched his vehicle. The Court's adverse conclusion regarding Plaintiff's traffic stop claim has a significant impact on the analysis of these derivative issues.

A seizure of a vehicle following a traffic stop must be reasonable under the Fourth Amendment. However, impoundment of a car may be reasonable and proper "if the driver's violation of a vehicle regulation prevents the driver from lawfully operating the vehicle, and also if it is necessary to remove the vehicle from an exposed or public location." Miranda v. City of Cornelius, 429 F.3d 858, 865 (9th Cir. 2005). "The violation of a traffic regulation justifies impoundment of a vehicle if the driver is unable to remove the vehicle from a public location without continuing its illegal operation." Id.; Ramirez v. City of Buena Park, 560 F.3d 1012, 1025 (9th Cir. 2009) (affirming summary judgment in favor of defense where vehicle impounded from drugstore parking lot); Grossman v. Popp, 696 F. App'x 248 (9th Cir. 2017) (same, citing Miranda and Ramirez).

California law is in accord with this. Under California Vehicle Code section 22651(o)(1), 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. The state statute further defines an offstreet parking facility to include "a privately owned facility for offstreet parking if a fee is not charged for the privilege to park and it is held open for the common public use of retail customers" – like a parking lot at a mini-mall. Cal. Veh. C. § 22651 (o)(5).

Plaintiff has not presented any evidence from which a jury could conclude that the police officers acted unreasonably. The uncontroverted

evidence (statements from the officers, and Plaintiff's own admissions in his complaint and declaration) show that the registration on Plaintiff's vehicle expired nearly a year before the lawful traffic stop. At the time of the stop, Plaintiff was operating the vehicle on a public street in violation of the law. The vehicle did not come to rest at any location (such as Plaintiff's residence or a safe space that he controlled) where he could properly leave his unregistered and uninsured vehicle indefinitely – Plaintiff stated on the video that he couldn't afford to pay his registration for a period of time. Rather, he stopped at a parking lot for a commercial business.[6] No jury could factually find the impoundment of the vehicle under these circumstances and in this obviously exposed location to be unreasonable. Miranda, 429 F.3d at 865; Ramirez, 560 F.3d at 1025.

* * *

The Court summarily recommends granting summary judgment on Plaintiff's unlawful search claim. "Once a vehicle has been legally impounded, the police may conduct an inventory search without a warrant." United States v. Torres, 828 F.3d 1113, 1120 (9th Cir. 2016); United States v. Cervantes, 703 F.3d 1135, 1141 (9th Cir. 2012). Such a warrantless search is proper if it is "aimed at protecting the owner's property and at protecting the police from the owner charging them with having stolen, lost, or damaged his property." United States v. Casares, 533 F.3d at 1064, 1074 (9th Cir. 2008).

That's exactly what the evidence establishes here. The officers testified (and can be heard on the recording explaining to Plaintiff) that they conducted

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[6] Plaintiff's reading of the impoundment statute and its definition of the term "offstreet parking facility" is simply wrong – the plain text appears to include this type of property. Neovi. And his contentions that he could have gotten permission from the store owner to leave his vehicle at the coffee shop and that the store was permanently closed are entirely unsupported by any admissible, nonhearsay evidence.

the inventory search incident to the impounding to "insure against later claims that property was lost during storage." (Docket # 94-2 at 3.) Plaintiff offered no evidence to the contrary. The defense is entitled to summary judgment regarding Plaintiff's vehicle search claim. Torres, 828 F.3d at 1120.

Remaining Claims

The defense diligently attempted to address and rebut the remainder of what it took to be Plaintiff's civil rights causes of action. (Docket # 94 at 22-31.)

It needn't have bothered. Plaintiff's conclusory complaint and summary judgment opposition fail to make clear in any meaningful way what his other constitutional claims are. There surely is no evidence of any racial, religious, or gender bias detectable in any of the officers' recorded interaction with Plaintiff (even if Plaintiff took umbrage from his latest encounter with the police). And Plaintiff makes no serious attempt to present evidence of any improper training or policies in place with the Costa Mesa Police Department that caused him injury.

Finally, Plaintiff's unsupported grievances about being ignored or treated uncordially by other police officials when he complained about the (legal) traffic stop and (legal) impoundment of his unregistered car cannot lead to relief. None of these claims can possibly lead to a favorable verdict at trial. Celotex Corp., 477 U.S. at 323.

CONCLUSION

Over the past few years, the Court has become quite familiar with Plaintiff's breathless, conclusion-laden pleading style.[7] Some of his cases have survived the screening / Rule 12(b)(6) stage. However, Plaintiff has been

[7] The docket reflects that he's attempted to pursue nearly two dozen civil rights actions against various schools, police departments, and court officials in Orange County.

unable to develop or present any admissible evidence to support his accusations to merit proceeding past the scrutiny of the summary judgment process. The Court recommends the entry of judgment against Plaintiff as to all of his articulated and inchoate constitutional claims arising from the Newport Boulevard 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: February 23, 2018

HON. MICHAEL R. WILNER
UNITED STATES MAGISTRATE JUDGE

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