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NO JS-6

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

ROBERT GARBER,	)	Case No. CV 11-09745 DDP (RNBx)
	)	
Plaintiff,	)	<b>ORDER GRANTING DEFENDANTS' MOTION</b>
	)	<b>FOR SUMMARY JUDGMENT AND DENYING</b>
v.	)	<b>PLAINTIFF'S MOTION FOR SUMMARY</b>
	)	<b>JUDGMENT</b>
HICKMAN #30355, in her	)	
official capacity as a	)	[Dkt. Nos. 33 & 37 ]
detective for the Los	)	
Angeles Police Department,	)	
	)	
Defendant.	)	
	)	
_____	)	

Presently before the court are Plaintiff Robert Garber's Motion for Summary Judgment and Defendants City of Los Angeles, Los Angeles Police Department, Jennifer Hickman, Jill Niles, and Frances Boateng's Motion for Summary Judgment. Having considered the parties' submissions, the court adopts the following order.

**I. Background**

The following facts are not disputed.<sup>1</sup>

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<sup>1</sup> These facts are drawn from Plaintiff's Statement of Undisputed Material Facts in Opposition to Defendants' Cross-Motion for Summary Judgment (Dkt. No. 52), pp. 11-20, which quotes Plaintiff's response to Defendant's Statement of Undisputed Material Facts (Dkt. No. 37) and responds to each.

1           On January 6, 2011, in the evening, Los Angeles Police  
2 Department officers Lee and Batista responded to a radio call at  
3 Woodley Park in Los Angeles of "two men on Woodley bleeding from  
4 the face, jumping into traffic." The officers responded northbound  
5 Woodley from Burbank Blvd and came across a rescue ambulance (LAFD  
6 090) treating an unknown person. Officers encountered Mr. Garber  
7 being treated in the rescue ambulance by LA Fire Department  
8 personnel. Witness Hal Dejong arrived and stated to the officers  
9 that he had been flagged down by passing motorists. Dejong  
10 reported to Officer Batista that Mr. Garber explained to Dejong  
11 that he heard a loud knock at his trailer, which was parked on  
12 Woodley Ave. Scared, Mr. Garber exited his trailer with a knife  
13 and encountered a male, later identified as David Sandlin, outside  
14 Plaintiff's trailer. An altercation ensued between the two men.  
15 Dejong reported to Officer Batista that Mr. Garber stated to Dejong  
16 that Mr. Garber observed a weapon in the other person's hand. At  
17 one point, Mr. Garber stated his shirt was pulled over his head, at  
18 which he began to swing his knife towards the other male in many  
19 directions. Dejong reported to Officer Batista that eventually the  
20 other male ran off. Dejong advised Officer Batista that Sandlin  
21 had serious stab wounds and injuries.<sup>2</sup> Mr. Garber was then  
22 detained in Officer Lee and Batista's patrol car.

23           LAPD Officers Robinson and Tomlin broadcasted that they  
24 interviewed Sandlin at a different location, and that Sandlin  
25 related to them that Mr. Garber came out of his motorhome  
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27           <sup>2</sup> Mr. Garber disputes that the wounds were in fact serious,  
28 based on Sandlin's departure from the hospital within one hour of  
arrival.

1 brandishing a large knife after Sandlin knocked on the motorhome as  
2 a practical joke. Robinson and Tomlin advised Officer Batista that  
3 Sandlin reported Mr. Garber stabbed Sandlin with the knife and  
4 Sandlin defended himself with a switchblade. Mr. Garber contests  
5 Sandlin's account, asserting that Mr. Garber did not brandish a  
6 knife when he came out of his motorhome (it was in his pocket) and  
7 that he was attacked by Sandlin, not Sandlin who was attacked by  
8 him.

9 Officers Lee and Batista transported Mr. Garber to West Valley  
10 Police Station, where he spoke with Lt. Jill Niles, a watch  
11 commander. Officers spoke to Lt. Niles and the night watch  
12 detective regarding the incident and provided them with the  
13 evidence and facts of the event. The night watch detective was  
14 Detective Larry Alvarez.

15 Lt. Niles signed a Booking Approval form for Mr. Garber to be  
16 booked for a violation of California Penal Code Section 245  
17 (a)(1)(Assault with a Deadly Weapon). Mr. Garber began to complain  
18 of chest pains. A rescue ambulance transported him to Northridge  
19 Hospital for treatment of the chest pains. Mr. Garber states that  
20 he waited over one hour for the ambulance, and Lt. Niles states  
21 that the ambulance was requested immediately. (Plaintiff's  
22 Statement of Undisputed Material Facts in Opposition ¶ 25; Niles  
23 Decl. ¶ 9.) After an EKG was completed on Garber, it was  
24 determined that he would have to stay in the hospital. A crime  
25 report was completed. Northridge Hospital later called LAPD to  
26 advise that Garber refused any further treatment and he was going  
27 to be released. Other LAPD officers responded back to the hospital

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1 and placed him under arrest again. He was taken to the Van Nuys  
2 Jail.

3 On January 7, 2011, LAPD Det. Hickman reviewed the reports and  
4 booking recommendation for Mr. Garber. Det. Hickman had no role in  
5 the previous arrest or booking of Mr. Garber. Det. Hickman spoke  
6 to witness Dejong on the telephone on January 7, 2011. Dejong, an  
7 off-duty police officer, reported to Hickman an account of the  
8 incident, according to which Sandlin told Dejong that Mr. Garber  
9 had stabbed Sandlin and Dejong observed that Sandlin was bleeding.  
10 Dejong told Hickman he observed Mr. Garber was armed with a knife.  
11 Dejong told Det. Hickman that Sandlin told Dejong that Garber  
12 "tried to kill" him. Mr. Garber asserts that Sandlin's description  
13 of the incident is false, and that Sandlin attacked Mr. Garber. He  
14 also asserts that Dejong did not see Mr. Garber's knife.

15 Mr. Garber remained in custody until Monday, January 10, 2011.

16 No criminal charges were filed against Mr. Garber, who was  
17 released.

## 18 **II. Legal Standard**

19 Summary judgment is appropriate where the pleadings,  
20 depositions, answers to interrogatories, and admissions on file,  
21 together with the affidavits, if any, show "that there is no  
22 genuine dispute as to any material fact and the movant is entitled  
23 to judgment as a matter of law." Fed. R. Civ. P. 56(a). A party  
24 seeking summary judgment bears the initial burden of informing the  
25 court of the basis for its motion and of identifying those portions  
26 of the pleadings and discovery responses that demonstrate the  
27 absence of a genuine dispute of material fact. Celotex Corp. v.  
28 Catrett, 477 U.S. 317, 323 (1986). All reasonable inferences from

1 the evidence must be drawn in favor of the nonmoving party. See  
2 Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 242 (1986).

3 If the moving party does not bear the burden of proof at trial, it  
4 is entitled to summary judgment if it can demonstrate that "there  
5 is an absence of evidence to support the nonmoving party's case."  
6 Celotex, 477 U.S. at 323.

7       Once the moving party meets its burden, the burden shifts to  
8 the nonmoving party opposing the motion, who must "set forth  
9 specific facts showing that there is a genuine issue for trial."  
10 Anderson, 477 U.S. at 256. Summary judgment is warranted if a  
11 party "fails to make a showing sufficient to establish the  
12 existence of an element essential to that party's case, and on  
13 which that party will bear the burden of proof at trial." Celotex,  
14 477 U.S. at 322. A genuine issue exists if "the evidence is such  
15 that a reasonable jury could return a verdict for the nonmoving  
16 party," and material facts are those "that might affect the outcome  
17 of the suit under the governing law." Anderson, 477 U.S. at 248.  
18 There is no genuine issue of fact "[w]here the record taken as a  
19 whole could not lead a rational trier of fact to find for the non-  
20 moving party." Matsushita Elec. Indus. Co. v. Zenith Radio Corp.,  
21 475 U.S. 574, 587 (1986).

22       It is not the court's task "to scour the record in search of a  
23 genuine issue of triable fact." Keenan v. Allan, 91 F.3d 1275,  
24 1278 (9th Cir. 1996). Counsel has an obligation to lay out their  
25 support clearly. Carmen v. San Francisco Sch. Dist., 237 F.3d  
26 1026, 1031 (9th Cir. 2001). The court "need not examine the entire  
27 file for evidence establishing a genuine issue of fact, where the

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1 evidence is not set forth in the opposition papers with adequate  
2 references so that it could conveniently be found." Id.

3 **III. Discussion**

4 **A. False Arrest Under Color of Law**

5 Probable cause exists for a warrantless arrest where "under  
6 the totality of the facts and circumstances known to the arresting  
7 officer, a prudent person would have concluded that there was a  
8 fair probability that the suspect had committed a crime." U.S. v.  
9 Struckman, 603 F.3d 731, 739 (9th Cir. 2010) (internal quotation  
10 marks omitted).

11 Defendants present declarations indicating their basis for  
12 concluding that "there was a fair probability that the suspect had  
13 committed a crime." Id. "[C]ourts look to the totality of the  
14 circumstances known to the officers in determining whether there is  
15 probable cause for an arrest. . . . probable cause may be based on  
16 the collective knowledge of officers at the scene of an arrest."  
17 United States v. Sandoval-Venegas, 292 F.3d 1101, 1105 (9th Cir.  
18 2002)(internal quotation marks and citations omitted). Relevant  
19 facts establishing probable cause from the officers' declarations  
20 include the following:

- 21 • a witness reported that Garber had a knife (Batista Decl.  
22 ¶ 2; Hickman Decl. ¶ 4.)
- 23 • officers reported to Officer Batista that Garber admitted  
24 he had a knife and used it during an altercation (Batista  
25 Decl. ¶ 4; Niles Decl. ¶ 6.)
- 26 • officers reported to Officer Batista and Lt. Niles that  
27 Sandlin reported to them that Garber stabbed Sandlin with  
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1           the knife and he sustained injuries. (Batista Decl. ¶  
2           4; Niles Decl. ¶ 5.)

3           Plaintiff argues that a number of facts weigh against the  
4 officers having had probable cause to arrest him. (Garber Mot. at  
5 11.) Most of the facts noted by Plaintiff pertain to Sandlin's  
6 greater degree of culpability, such as Sandlin's intoxication at  
7 the time of the incident (Exh. 11), Sandlin being on probation for  
8 another crime, Sandlin's age (21) relative to Plaintiff's (70),  
9 Sandlin's elopement from the hospital after being treated for his  
10 injury (Exh. 12), Sandlin's subsequent threatening gesture to  
11 Plaintiff, etc. (See Garber Mot. at 6 ff.)

12           These facts do not address the question of whether Defendants  
13 had probable cause to arrest Mr. Garber. Mr. Garber would have to  
14 present evidence that Defendants had knowledge of those facts at  
15 the time that Mr. Garber was arrested, but Plaintiff admitted at  
16 his deposition that he did not hear Sandlin's report of the crime  
17 to any police officer. (Garber Depo. 29:10-13.) Furthermore, Mr.  
18 Garber would have to demonstrate that these facts about Sandlin  
19 negate the information Defendants had received concerning  
20 Plaintiff's role in the incident. There is no reason why  
21 Defendants could not have had probable cause to arrest both Mr.  
22 Garber and Sandlin.

23           Plaintiff also points to what he argues are falsehoods in  
24 Defendants' declarations. (Reply at 4-6.) For instance, he claims  
25 that it is false that Sandlin had more serious injuries than  
26 Garber, and that therefore Lt. Niles' declaration contains a  
27 falsehood. (Id. at 5.) What Lt. Niles' declaration says in her  
28 declaration, however, is that she "was told that . . . Sandlin had

1 more serious injuries than Garber." (Niles Decl. ¶ 3.) Even  
2 assuming that Plaintiff's injuries were more severe than Sandlin's,  
3 this does not create an issue of fact as to Lt. Niles' declaration,  
4 since she is stating only what she heard, not the truth of what  
5 happened.<sup>2</sup> Likewise, Lt. Niles' statement that Dejong took the  
6 knife from Plaintiff is a report of the information she obtained  
7 from other officers, which contributed to her belief that there was  
8 probable cause to arrest Plaintiff.

9 "[T]he term 'probable cause means less than evidence which  
10 would justify condemnation, and . . . a finding of 'probable cause'  
11 may rest upon evidence which is not legally competent in a criminal  
12 trial. There is a large difference between the two things to be  
13 proved (guilt and probable cause), as well as between the tribunals  
14 which determine them, and therefore a like difference in the quanta  
15 and modes of proof required to establish them." United States v.  
16 Ventresca, 380 U.S. 102, 107-08 (1965). "It is irrelevant whether  
17 the police had admissible evidence proving [the suspected crime]  
18 beyond a reasonable doubt." Hart v. Parks, 450 F.3d 1059, 1067  
19 (9th Cir. 2006).

20 The court finds that Defendants have presented evidence of the  
21 basis of their probable cause to arrest Plaintiff, and Plaintiff  
22 has not presented any evidence calling that basis into question.  
23 Plaintiff purports to have evidence that the basis for Defendants'  
24 probable cause was inaccurate or false, but that is not the issue  
25 in the probable cause inquiry. Here, the question is whether  
26 "under the totality of the facts and circumstances known to the

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28 <sup>2</sup> This is also why the Officers' depositions are not hearsay,  
contrary to Mr. Garber's assertion.



1 arresting officer, a prudent person would have concluded that there  
2 was a fair probability that the suspect had committed a crime."  
3 U.S. v. Struckman, 603 F.3d at 739. The court finds that the  
4 officers had probable cause to arrest Plaintiff and GRANTS summary  
5 judgment on this cause of action in favor of Defendants.

6 **B. Conspiracy to Violate Civil Rights**

7 "To establish liability for a conspiracy in a § 1983 case, a  
8 plaintiff must demonstrate the existence of an agreement or meeting  
9 of the minds to violate constitutional rights." Crowe v. Cnty. of  
10 San Diego, 608 F.3d 406, 440 (9th Cir. 2010)(internal citation and  
11 quotation marks omitted).

12 Plaintiff alleges that there was a conspiracy among the  
13 officers to arrest and jail him without probable cause. (Compl. ¶  
14 60.) In support of this claim, he asserts that Sandlin was never  
15 arrested or properly investigated, that Sandlin was 20 and  
16 Plaintiff was 70, and that Sandlin's identity card from San  
17 Francisco did not match his actual residence ("among the bushes  
18 along Burbank Blvd., Encino). (Id. ¶ 61.)

19 Defendants Boateng and Hickman state in their declarations  
20 that there was no conspiracy to violate Mr. Garber's rights.  
21 (Boateng Decl. ¶ 6, Hickman Decl. ¶ 12.)

22 Plaintiff's evidence does not establish that there was a  
23 meeting of the minds to violate his constitutional rights. It may  
24 establish that Defendants also had probable cause to arrest  
25 Sandlin, but that does not suffice to establish that there was an  
26 agreement between Defendants to violate Plaintiff's rights.

27 Defendants' evidence that there was no conspiracy, in the form  
28 of their declarations, is uncontroverted. The court finds that

1 there is no issue of material fact as to this cause of action and  
2 GRANTS summary judgment in favor of Defendants.

3 **C. Unreasonable seizure under color of law**

4 Under this cause of action, Mr. Garber alleges that he was  
5 arrested without probable cause, there was probable cause to arrest  
6 Sandlin, and witnesses were not interviewed. (Compl. ¶¶ 63-65.)  
7 All of these claims go to the issue of whether Defendants had  
8 probable cause to arrest Mr. Garber. As discussed above,  
9 Defendants have presented evidence of probable cause to arrest Mr.  
10 Garber, and Mr. Garber has not presented evidence that raises an  
11 issue of material fact with respect to his own arrest, the court  
12 finds that there is no disputed issue of fact as to probable cause.

13 Mr. Garber also may be alleging that he was detained without  
14 being charged for an unreasonable period of time. He points out  
15 that Defendants claim that he was booked at on Friday, January 7,  
16 2011, "due to his medical complaints" (Decl. Hickman ¶ 5), but that  
17 another booking sheet indicates that he was arrested on Thursday,  
18 January 6, 2011, at 6:40 p.m. (Exh. 13.) Whether Mr. Garber was  
19 arrested on Thursday at 6:40 p.m. or on Friday is immaterial to the  
20 deadline for either charging or releasing him; either way  
21 Defendants had, as Det. Hickman states, the full day of Monday,  
22 January 10, 2011, to arrest or release him. See Cal. Penal Code §  
23 825 ("[T]he defendant shall in all cases be taken before the  
24 magistrate without unnecessary delay, and, in any event, within 48  
25 hours after his or her arrest, excluding Sundays and holidays. . .  
26 . When the 48 hours . . . expire at a time when the court in which  
27 the magistrate is sitting is not in session, that time shall be

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1 extended to include the duration of the next court session on the  
2 judicial day immediately following.”)

3 The court therefore GRANTS summary judgment to Defendants on  
4 this issue.

5 **D. Harassment/Retaliation Under Color of Law**

6 In this cause of action, Mr. Garber asserts a violation of his  
7 substantive due process rights. (Compl. ¶ 68.) To the extent that  
8 he is purporting to state a claim under the Fourteenth Amendment  
9 based on his allegations that Defendants falsely arrested him, Mr.  
10 Garber has no substantive right under the Due Process Clause to be  
11 free from criminal arrest or prosecution without probable cause.  
12 Albright v. Oliver, 510 U.S. 266, 268 (1994). Such claims must be  
13 brought under the Fourth Amendment, which “requires a judicial  
14 determination of probable cause as a prerequisite to any extended  
15 restraint on liberty following an arrest.” Id. at 274 (internal  
16 citation omitted). The court has already determined that there was  
17 probable cause to arrest Mr. Garber.

18 **E. Discrimination under color of law**

19 “[Section] 1983 claims based on Equal Protection violations  
20 must plead intentional unlawful discrimination or allege facts that  
21 are at least susceptible of an inference of discriminatory intent.”  
22 Monteiro v. Tempe Union High Sch. Dist., 158 F.3d 1022, 1026 (9th  
23 Cir. 1998). Mr. Garber has failed to set forth any facts to raise  
24 any inference that any Defendant intentionally discriminated  
25 against him based on his membership in a protected class. Mr.  
26 Garber alleges that he was discriminated against as an Israeli

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1 citizen, a Jewish person,<sup>3</sup> and a homeless person. (Compl. ¶¶ 75-  
2 78.) Defendants assert that they had no prior knowledge of Mr.  
3 Garber in any capacity. (Niles Decl. ¶ 12; Hickman Decl. ¶ 12;  
4 Boateng Decl. ¶ 5.)

5 Mr. Garber claims prior acquaintance with Det. Hickman and  
6 Officer Lee. (Plaintiff's Statement of Undisputed Facts in  
7 Opposition to Defendant's Cross-Motion for Summary Judgment ¶ 39.)  
8 However, although Mr. Garber presents testimony indicating his  
9 prior acquaintance with Det. Hickman in his Deposition<sup>3</sup> (Garber  
10 Depo. 15:2-24:10.), he also stated that he did not recall if he  
11 informed Det. Hickman of his nationality or religion (21:2-9). He  
12 did assert that "[t]hey - every police officer at the - at the West  
13 Valley Police Station know that I'm an Israel citizen. . . .  
14 Because my lawsuits and my statements to LAPD officers every time  
15 that they detain me or arrest me." (20:19-21:1.) However, these  
16 assertions of general knowledge of Mr. Garber's religion and  
17 nationality do not suffice to raise the inference of intentional  
18 discrimination against him on those bases. Nor does he present any  
19 facts from which to draw the inference that he was intentionally  
20 discriminated against because he is homeless; the court has already  
21 found that Defendants had probable cause to arrest him.

22 The court finds that there is no issue of fact as to this  
23 cause of action and GRANTS summary judgment to Defendants.

24 **F. Malicious Prosecution**

25 \_\_\_\_\_  
26 <sup>3</sup> The court infers this from his Complaint, which states that  
27 Mr. Garber is "an alien with an israeli citizenship which makes for  
an additional protection based on religion." (Compl. ¶ 75.)

28 <sup>3</sup> The deposition does not appear to mention prior acquaintance  
with Officer Lee.

1            "In order to prevail on a § 1983 claim of malicious  
2 prosecution, a plaintiff must show that the defendants prosecuted  
3 [him] with malice and without probable cause, and that they did so  
4 for the purpose of denying [him] equal protection or another  
5 specific constitutional right." Awabdy v. City of Adelanto, 368  
6 F.3d 1062, 1066 (9th Cir. 2004)(internal quotation marks and  
7 citation omitted). Mr. Garber concedes that no charges were filed  
8 against him, but asserts that Defendants Hickman, Niles, and  
9 Alvarez attempted to trick the District Attorney into filing  
10 charges. (Opp. at 9.)

11            The parties agree that no charges were brought against Mr.  
12 Garber. Additionally, the court has found that Defendants had  
13 probable cause to arrest Mr. Garber. There is therefore no issue  
14 of fact as to this cause of action. The court GRANTS summary  
15 judgment in favor of defendants.

16 **G. Personal Injury Under Color of Law**

17            In this cause of action, Mr. Garber alleges that as a result  
18 of his arrest and detention, and the concomitant impounding of his  
19 dog, trailer, and van, he suffered severe mental trauma which  
20 resulted in depression. (Compl. ¶ 86.) He also alleges that the  
21 "constant surveillance and abuse" police officers have resulted in  
22 "constant pressure and anxiety." (Id. ¶ 90.) This appears to be  
23 an assertion of damages resulting from violations of his  
24 constitutional rights. However, as discussed above, Mr. Garber has  
25 failed to provide facts supporting an underlying constitutional  
26 violation. Without establishing such violation, Mr. Garber cannot  
27 recover for any alleged injuries.

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1 The court finds that there is no issue of fact as to this  
2 cause of action and GRANTS summary judgment in favor of Defendants.

3 **IV. Conclusion**

4 For the reasons stated above, the court DENIES Plaintiff's  
5 Motion for Summary Judgment and GRANTS Defendants' Motion for  
6 Summary Judgment.

7 In addition, the SCHEDULING CONFERENCE set for May 13, 2013 is  
8 VACATED.

9 IT IS SO ORDERED.

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Dated: May 8, 2013

  
DEAN D. PREGERSON  
United States District Judge