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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

MAURA COTTER,	)	Case No. CV 14-05495 DDP (JEMx)
	)	
Plaintiff,	)	
	)	
v.	)	
	)	<b>ORDER GRANTING PLAINTIFF'S MOTION</b>
CITY OF LONG BEACH; LONG	)	<b>FOR PARTIAL SUMMARY JUDGMENT</b>
BEACH POLICE OFFICER ARMAND	)	
CASALLENOS, BADGE NO. 5705;	)	
LONG BEACH POLICE OFFICER	)	
VEGA, BADGE NO. 5791; LONG	)	
BEACH POLICE OFFICER ARZOLA	)	[Dkt. 27]
BADGE NO. 6189,	)	
	)	
Defendants.	)	
	)	

**I. Background**

Plaintiff is a member of an organization known as "Food, Not Bombs." (Decl. Of Maura Cotter, ¶ 2.) On August 14, 2013, Plaintiff and two other members of Food, Not Bombs (collectively, "the protesters") were peacefully protesting against McDonald's while holding a 5 x 3 foot banner and passing out flyers and vegan burritos on the sidewalk in front of the McDonald's entrance at 640 Long Beach Blvd. (Id. at ¶¶ 4 & 7.) The manager of McDonald's called the Long Beach Police Department to complaint that the protesters were disturbing his business by approaching customers

1 and telling them not to eat at McDonald's and handing out free food  
2 to get them to go away. (Decl. of Jeffrey Le Beau, Ex. 9, 1.) When  
3 officers arrived, they spoke with the manager and took photos of  
4 the protesters. (Le Beau Decl., Ex. 24, 4.) Then, the officers  
5 asked the protesters for identification and checked for warrants.  
6 (Le Beau Decl., Ex. 27, 3-4.)

7 Plaintiff was ostensibly arrested because she failed to  
8 provide the officers with identification. (Le Beau Decl., Ex. 11,  
9 3.) Plaintiff alleges that although she was arrested for failing  
10 to provide the officer with identification, she gave the officer  
11 her Illinois Driver's License at the scene of the incident. (Decl.  
12 of Ms. Cotter, ¶ 8; Exhibit 30, 2-3.) Plaintiff was taken to the  
13 station and booked on charges of obstructing a public passage  
14 (L.B.M.C. 9.30.050) and violation of operating conditions as a  
15 peddling merchant (L.B.M.C. 5.66.020). (Le Beau Decl., Ex. 12.) On  
16 August 23, 2013, a criminal complaint was filed in the Los Angeles  
17 Superior Court against Plaintiff, charging her with a misdemeanor  
18 for obstructing a public passage. (Id., Ex. 13.) On December 30,  
19 2013, the court made a finding of factual innocence and granted an  
20 order sealing the records of Plaintiff's arrest. (Le Beau Decl.,  
21 Ex. 15.)

22 Plaintiff's Complaint here states four causes of action:  
23 violation of her First, Fourth, and Fourteenth Amendment Rights  
24 under 42 U.S.C. § 1983, unlawful custom and practice under 42  
25 U.S.C. § 1983, civil rights violations under California Civil Code  
26 § 52.1, and false arrest and imprisonment. Plaintiff now moves for  
27 Partial Summary Judgment.

28 **II. Legal Standard**

1 Summary judgment is appropriate where the pleadings,  
2 depositions, answers to interrogatories, and admissions on file,  
3 together with the affidavits, if any, show "that there is no  
4 genuine dispute as to any material fact and the movant is entitled  
5 to judgment as a matter of law." Fed. R. Civ. P. 56(a). A party  
6 seeking summary judgment bears the initial burden of informing the  
7 court of the basis for its motion and of identifying those portions  
8 of the pleadings and discovery responses that demonstrate the  
9 absence of a genuine issue of material fact. See Celotex Corp. v.  
10 Catrett, 477 U.S. 317, 323 (1986). All reasonable inferences from  
11 the evidence must be drawn in favor of the nonmoving party. See  
12 Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 242 (1986). If the  
13 moving party does not bear the burden of proof at trial, it is  
14 entitled to summary judgment if it can demonstrate that "there is  
15 an absence of evidence to support the nonmoving party's case."  
16 Celotex, 477 U.S. at 323.

17 Once the moving party meets its burden, the burden shifts to  
18 the nonmoving party opposing the motion, who must "set forth  
19 specific facts showing that there is a genuine issue for trial."  
20 Anderson, 477 U.S. at 256. Summary judgment is warranted if a party  
21 "fails to make a showing sufficient to establish the existence of  
22 an element essential to that party's case, and on which that party  
23 will bear the burden of proof at trial." Celotex, 477 U.S. at 322.  
24 A genuine issue exists if "the evidence is such that a reasonable  
25 jury could return a verdict for the nonmoving party," and material  
26 facts are those "that might affect the outcome of the suit under  
27 the governing law." Anderson, 477 U.S. at 248. There is no genuine  
28 issue of fact "[w]here the record taken as a whole could not lead a

1 rational trier of fact to find for the nonmoving party." Matsushita  
2 Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986).

3 It is not the court's task "to scour the record in search of a  
4 genuine issue of triable fact." Keenan v. Allan, 91 F.3d 1275, 1278  
5 (9th Cir.1996). Counsel has an obligation to lay out their support  
6 clearly. Carmen v. San Francisco Sch. Dist., 237 F.3d 1026, 1031  
7 (9th Cir.2001). The court "need not examine the entire file for  
8 evidence establishing a genuine issue of fact, where the evidence  
9 is not set forth in the opposition papers with adequate references  
10 so that it could conveniently be found." Id.

### 11 **III. Discussion**

12 As an initial matter, the scope of Plaintiff's Motion is  
13 unclear. Plaintiff's Notice of Motion seeks partial summary  
14 judgment "of the First Cause of Action for Relief . . . because the  
15 undisputed evidence establishes that defendant CASTELLANOS falsely  
16 arrested plaintiff to stop her from exercising her First Amendment  
17 Rights to protest." The Complaint's First Cause of Action alleges  
18 that Defendants "deprived Plaintiff of her rights secured by the  
19 First, Fourth, and Fourteenth Amendments . . . in that Defendants .  
20 . . subjected plaintiff [sic] to excessive and unreasonable force,  
21 search and seizure and malicious prosecution." The motion,  
22 however, states that it "is directly [sic] solely to the issue of  
23 Ms. Cotter's false arrest," and refers to false arrest as a  
24 violation of the Fourth Amendment.<sup>1</sup> (Mot. At 13, 14.) Because the  
25 bulk of Plaintiff's Motion appears directed at her Fourth Amendment  
26 false arrest claim, the court addresses the Motion accordingly.

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28 <sup>1</sup> The Complaint also alleges a Fourth Cause of Action for  
false arrest and imprisonment.

1 A. 42 U.S.C. § 1983

2 Under 42 U.S.C. § 1983, a plaintiff may bring a claim for  
3 deprivation of rights where a government actor deprived him or her  
4 of his or her constitutional rights. Merritt v. Mackey, 827 F.2d  
5 1368, 1374 (9th Cir. 1987). "A claim for unlawful arrest is  
6 cognizable under § 1983 as a violation of the Fourth Amendment,  
7 provided the arrest was without probable cause or other  
8 justification." Velazquez v. City of Long Beach, 793 F.3d 1010,  
9 1018 (9th Cir. 2015) (quoting Lacey v. Maricopa County, 691 F.3d  
10 896, 913 (9th Cir. 2012)). Probable cause exists when, based on  
11 the totality of the circumstances known to officers at the time,  
12 there is a "fair probability or substantial chance of criminal  
13 activity." Velazquez, 793 F.3d at 1018.

14 Defendants, without any citation to the record, assert that  
15 Defendant Castellanos had probable cause to believe that Plaintiff  
16 was blocking the sidewalk in violation of Long Beach Municipal Code  
17 § 9.30.050, which states:

18 No person shall block, impede or obstruct any public place  
19 or any entrance, exit or approach to any place of business  
20 in a manner calculated or with intent to prevent, delay,  
21 hinder or interfere with any person in the free passage  
22 along or the entering or leaving of such public place or  
23 place of business.

24 According to Defendants, Defendant Castellanos (1) observed  
25 Plaintiff holding a banner across the sidewalk, (2) "perceived that  
26 the banner sufficiently blocked the sidewalk to obstruct public  
27 passage," (3) learned from the McDonald's manager and from  
28 Plaintiff's group that the group was trying to dissuade passers by  
from eating at McDonald's, and "[b]ased on those facts . . .

1 decided to cite the group" and then arrested Plaintiff. (Motion at  
2 7.)

3 First, the fact that Defendant Castellanos may have known or  
4 believed that Plaintiff was trying to dissuade people from eating  
5 at McDonald's has little bearing on whether she was physically  
6 obstructing pedestrians' travel on the sidewalk. Second, although  
7 not dispositive of the probable cause question, Plaintiff was found  
8 to be factually innocent of a § 9.30.050 violation. Further,  
9 although Defendants do not cite to any evidence, and it is not the  
10 court's burden to scour the record in search of a triable issue,  
11 the court's review of the evidence reveals that Plaintiff and her  
12 group's banner were not even arguably hindering public passage.  
13 A photograph taken by Officer Castellano himself, and therefore  
14 reflective of the circumstances known to him at the time of the  
15 incident, clearly indicates that the protesters and their sign  
16 occupied less than half the width of the sidewalk, and that  
17 pedestrian traffic was minimal. Other, undisputed evidence  
18 establishes that the sidewalk, at 26 feet in width, was  
19 significantly wider than a typical sidewalk, and that Plaintiff's  
20 group's sign measured approximately five feet in width. Indeed,  
21 photographic and video evidence shows that the sidewalk was wide  
22 enough to accommodate two police cruisers parked side by side,  
23 while still leaving enough space in between for a tree and for  
24 pedestrians, including at least one pedestrian with a stroller, to  
25 proceed without a sliver of obstruction. Under these  
26 circumstances, no reasonable trier of fact could conclude that  
27 there was a fair probability that Plaintiff was blocking the  
28 sidewalk in violation of § 9.30.050.

1 B. Qualified Immunity

2 Defendants also contend, somewhat briefly, that Officer  
3 Castellanos is entitled to qualified immunity. "Qualified immunity  
4 gives government officials breathing room to make reasonable but  
5 mistaken judgments," and "'protects' all but the plainly  
6 incompetent or those who knowingly violate the law.'" Green v.  
7 Fresno, 751 F.3d 1039, 1051 (9th Cir. 2014) (citing Ashcroft v. al-  
8 Kidd, 131 S. Ct. 2074, 2083 (2011)). The Supreme Court has  
9 established a two-part test for determining if a police officer is  
10 entitled to qualified immunity: (1) whether the allegations, if  
11 true, establish a constitutional violation, and (2) whether the  
12 constitutional violation was clearly established. Pearson v.  
13 Callahan, 555 U.S. 223, 235-36 (2009). The second part of the test  
14 requires two separate determinations: (1) whether the law governing  
15 the conduct at issue was clearly established and (2) whether the  
16 facts as alleged could support a reasonable belief that the conduct  
17 in question conformed to the established law. Act Up!/Portland v.  
18 Bagley, 988 F.2d 868, 873 (9th Cir. 1993). Here, Plaintiff's  
19 Fourth Amendment rights were violated, as discussed above. The  
20 only remaining question, therefore, and that to which Defendants  
21 devote the entirety of their brief qualified immunity argument, is  
22 whether a reasonable person would have known that the arrest  
23 violated Plaintiff's rights.

24 It was well established at the time of the incident that  
25 individuals may not be subjected to seizure or arrest without  
26 reasonable suspicion or probable cause. Green v. City and County  
27 of San Francisco, 751 F.3d 1039, 1052 (9th Cir. 2014). Defendants  
28 argue, however, that Defendant Castellanos could reasonably have

1 believed that Plaintiff was violating § 9.30.050 by blocking a  
2 portion of the sidewalk.

3 Qualified immunity may be based upon a reasonable mistake of  
4 law, fact, or both. Lal v. California, 746 F.3d 1112, 1116 (9th  
5 Cir. 2014). Here, Defendant Castellano's mistakes were not  
6 reasonable. Factually, as described in detail above, there is no  
7 question that Plaintiff was not blocking the sidewalk or impeding  
8 pedestrian traffic. Indeed, in granting Plaintiff's motion for a  
9 finding of factual innocence, the state court noted that the case  
10 was not a close one.

11 Nor was Defendant Castellano's interpretation of § 9.30.050 to  
12 include partial obstructions of the sidewalk a reasonable  
13 interpretation of the law. First, Defendants completely ignore the  
14 knowledge element of the ordinance, which requires that a person  
15 intend to hinder free passage through a public space. Second, to  
16 insert the term "partial" alongside "block, impede, or obstruct"  
17 would render the ordinance meaningless in the context of a lightly  
18 traveled sidewalk. No person can travel or stand upon a sidewalk  
19 without, in some sense, "obstructing" at least that portion of the  
20 sidewalk which she herself occupies. No reasonable person,  
21 however, could argue that a person standing on an empty sidewalk is  
22 blocking, let alone intending to block, free passage along the  
23 route. See, e.g. White v. City of Laguna Beach, 679 F.Supp.2d  
24 1149, 1153 (C.D. Cal. 2010) (suggesting that ordinance banning  
25 "standing in a stationary position upon any sidewalk, boardwalk or  
26 other public thoroughfare so as to obstruct free pedestrian  
27 traffic" would be unconstitutional as applied to an empty  
28 sidewalk); see also In Re Wallace, 3 Cal.3d 289, 295 (1970) ("[A]ny



1 visitor to a fair or other public exhibition necessarily occupies a  
2 certain area of ground or floor space wherever he stands, and  
3 persons wishing to proceed past him are manifestly required to  
4 'avoid' that area under pain of tort liability. The record is thus  
5 devoid of evidence that petitioners 'obstructed' the business of  
6 the fair" by handing out leaflets.).

7 Because Defendant Castellanos arrested and booked Plaintiff  
8 without probable cause, and made no reasonable mistake of either  
9 fact or law, he is not entitled to qualified immunity.

10 **IV. Conclusion**

11 For the reasons stated above, Plaintiff's Motion for Partial  
12 Summary Judgment with respect to her Fourth Amendment claim for  
13 false arrest is GRANTED.

14  
15 IT IS SO ORDERED.

16  
17 Dated: January 29, 2016



18 DEAN D. PREGERSON  
19 United States District Judge  
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