UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL **JS-6 'O'**

Case No.	5:15-cv-01771-CAS(KKx); c/w 5:15-cv-02470-CAS(KKx)	Date	April 5, 2017
Title	RONALD J. COLLINS v. CITY OF COLTON; ET AL.		

Present: The Honorable	CHRISTINA A. SNYDER	
Catherine Jeang	Not Present	N/A
Deputy Clerk	Court Reporter / Recorder	Tape No.
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:	
Not Present	Not Present	

Proceedings: (IN CHAMBER) - DEFENDANT SCOTT CHADWICK'S MOTION FOR SUMMARY JUDGMENT (Dkt. 37, filed February 24, 2017)

DEFENDANTS CITY OF COLTON AND JACK MORENBERG'S MOTION FOR SUMMARY JUDGMENT (Dkt. 38, filed February 24, 2017)

I. INTRODUCTION

On February 10, 2015, plaintiff Ronald J. Collins filed an action in San Bernardino Superior Court against defendants City of Colton (the "City") and Jack Morenberg (collectively, the "City defendants"). Dkt. 1-1. On June 9, 2015, plaintiff filed a first amended complaint in Superior Court. Dkt 1-9 ("FAC"). In the FAC, Collins asserted three claims for relief: (1) conversion; (2) intentional infliction of emotional distress; and (3) unreasonable seizure in violation the Fourth Amendment, pursuant to 42 U.S.C. § 1983. Id. On August 31, 2015, the City defendants removed the action to this Court. Dkt. 1.

On October 19, 2015, the Court dismissed without prejudice plaintiff's Section 1983 claim against the City and Collins' conversion claim against both City defendants. Dkt. 17. On December 29, 2015, the Court entered an order, pursuant to the stipulation of Collins and the City defendants to dismiss the claim for conversion in its entirety, and the Section 1983 claim as against the City. Dkt. 25.

On October 8, 2015, Collins filed a second action in San Bernardino County Superior Court against the City defendants *and* Scott Chadwick, owner of the automobile dealership. Collins v. City of Colton et al., Case No. 5:15-cv-02470-CAS-KK ("Second Action"), dkt. 1-4, Ex. A ("Second Action Compl."). Collins asserted two claims the City defendants and Chadwick: (1) unreasonable seizure in violation the Fourth Amendment, pursuant to 42 U.S.C. § 1983; and (2) malicious prosecution. Id. On December 3, 2015, this case was removed to this Court. Second Action dkt. 1. On December 15, 2015, pursuant to Collins' request, the Court dismissed plaintiff's Section 1983 claim as against Chadwick. Second Action dkt. 13.

On February 11, 2016, pursuant to the stipulation of all of the parties, the Court consolidated Collins' two actions. Dkt. 28. The following claims remain at issue in the consolidated case: (1) unreasonable seizure, pursuant to Section 1983, as against the City defendants; (2) malicious prosecution as against all defendants; and (3) intentional infliction of emotional distress as against the City defendants.

On February 24, 2017, Chadwick filed a motion for summary judgment on Collins' claim of malicious prosecution. Dkt. 37 ("Chadwick MSJ"). On the same day, the City defendants filed a motion for summary judgment or summary adjudication of the claims against them. Dkt. 38 ("City MSJ"). On March 3, 2017, Collins filed his oppositions to defendants' motions. Dkts. 40 ("Opp'n to Chadwick"), 41 ("Opp'n to City"). The City defendants and Chadwick filed replies in support of their respective motions on March 13, 2017.[1]

Having carefully considered the parties' arguments, the Court finds and concludes as follows.

[1] On March 13, 2017, the City defendants objected to the evidence Collins submitted in large part because the depositions that Collins introduced lacked cover pages and reporters' certificates, and therefore lacked foundation and authentication. Dkt. 43. On March 14, 2017, Collins filed a supplemental declaration including the appropriate cover pages and reporters' certificates for the relevant depositions. Dkts. 46, 47. Even considering the evidence submitted by Collins, the Court finds in favor of defendants. Therefore, the Court declines to exclude the material submitted by Collins.

II. BACKGROUND

The following facts are not disputed.

On April 8, 2013, plaintiff purchased a truck from Chadwick Auto Wholesale, which is owned by Chadwick.[2] At the time of purchase, plaintiff signed, under penalty of perjury, a California Department of Motor Vehicles Statement of Facts attesting that the purchase of the truck constituted "an out of state sale" and that "NO sales tax or license fees were collected at time of sale."[3] Because the sale of the truck was completed as an out-of-state sale, Chadwick directed Hector Flores, an employee, to remove the truck's license plates before the truck was turned over to plaintiff.[4]

On May 31, 2013, Collins filed an action against Chadwick in Alabama alleging that Chadwick had sold Collins a defective truck.[5] The Circuit Court of Mobile County dismissed Collins' complaint for failure to state a claim on which relief can be granted.[6]

While the Alabama case was pending, Daniel Ruiz—Collins' neighbor at a Howard Johnson Hotel in Norco ("Norco hotel"), California—called Chadwick and stated that Collins had asked Ruiz's daughter to write a statement on Collins' behalf stating that the truck plaintiff purchased from Chadwick did not run properly.[7] Ruiz also

[2] Dkt 37-1, Chadwick's Statement of Uncontroverted Facts ("Chadwick's SUF") at no. 1; dkt. 40-1, Plaintiff's Statement of Genuine Disputes of Material Fact ("Collins' Facts in Opp'n to Chadwick") at no. 13.

[3] Collins' Facts in Opp'n to Chadwick at no. 17; dkt. 40-2, Ex. 14.

[4] Chadwick's SUF at no. 4; Dkt 37-3, Declaration of Hector Flores ¶¶ 4–6 (testifying that Chadwick and the financial manager asked Flores to remove the license plates from the truck).

[5] Dkt 37-4, Ex. G (complaint filed in the Circuit Court for Mobile County, AL).

[6] Dkt 37-4, Ex. H (dismissal of the Alabama complaint).

[7] Dkt 37-3, Declaration of Scott Chadwick ("Chadwick Decl.") ¶ 14; dkt. 37-5, Ex M Deposition of Daniel Ruiz ("Ruiz Depo.") at 7:6–24;13:13–14:15 (testifying that Ruiz called Chadwick's dealership and told Chadwick that Collins had asked Ruiz to sign a statement saying that the truck had been broken down).

stated that Collins asked Ruiz to lie about the condition of the truck and promised Ruiz money, the truck, and a trip to Hawaii.[8]

In or about July 2013, Gary Boyd—the prior owner of the truck in question—called Chadwick and told him that Collins had contacted Boyd because Collins was upset that the truck had broken down.[9] After the conversation, Boyd sent Chadwick a letter stating that the truck was in good working condition when Boyd sold the truck to Chadwick.[10]

In or about September 2013, Ruiz called Chadwick and stated that Collins continued to stay at the Norco hotel and had been driving the truck in question daily, with license plates.[11] At Chadwick's request, Ruiz sent Chadwick a photograph of the truck.[12] Chadwick confirmed that the license plates matched those that he had directed Flores to remove on April 8, 2013.[13]

On or about September 11, 2013, Colton Police Officer Samuel Smith was dispatched to Chadwick Auto Wholesale regarding a report of stolen license plates.[14] When he arrived at Chadwick Auto Wholesale, Smith spoke with Chadwick, who reported that that someone had stolen license plates from his business on or about April 8, 2013.[15] Chadwick told Smith that he sold a Chevrolet truck to plaintiff on April 8, 2013, and that the transaction constituted an out-of-state sale that required Chadwick to return

[8] Chadwick Decl. ¶ 14; Ruiz Depo. at 19:1–24; 68:23–69:24.

[9] Chadwick Decl. ¶ 15; dkt. 37-5, Ex P, Deposition of Gary Boyd ("Boyd Depo.") at 8:8–24 (testifying the he called Chadwick to tell him that Collins called Boyd to say that the truck had broken down).

[10] Chadwick Decl. ¶ 15; Boyd Depo. at 10:25–11:21 (testifying that he sent Chadwick a letter); dkt. 37-4, Ex I (July 10, 2013 letter from Boyd to Chadwick).

[11] Chadwick Decl. ¶¶ 17, 18; Ruiz Depo. at 22:3–21.

[12] Chadwick Decl. ¶ 18.

[13] Id.; dkt. 27-4, Ex. J.

[14] Dkt. 38-1, City Defendants' Statement of Uncontroverted Facts ("City SUF") at no. 1; dkt. 38-2, Ex. A, Deposition of Samuel Smith ("Smith Depo.") at 5:24–6:5.

[15] City SUF at no. 2; Smith Depo. at 5:21–22, 6:21–24; dkt. 38-2, Ex. B ("Theft Report").

the license plates to the state.[16] Chadwick also stated that he received an anonymous call on September 10, 2013 from a man who stated that the truck was at the Norco hotel.[17]

On September 23, 2013, Chadwick encountered Colton City Detective Morenberg at a business that they both frequented.[18] Chadwick told Morenberg that Chadwick had additional information about an incident at Chadwick's business.[19] Later, Morenberg met Chadwick at his business and Chadwick recounted the April 8, 2013 transaction with Collins.[20] Chadwick showed Morenberg a signed DMV Statement of Fact, the letter from Boyd, and a letter from Ruiz.[21] Chadwick also reported and described the phone calls from Boyd and Ruiz.[22] The signed DMV statement that Morenberg was shown included typed text providing: "Customer demand title, out of state sale. No Sales tax or license fees were collected at time of Sale" *and* a handwritten statement providing: "Customer took on flatbed to AL. Window sticker was shredded in error. Customer will register + title in AL. No CA record for this transaction is needed."[23] However, Chadwick later testified that there was a second copy of the signed statement *without* the handwritten terms, leading Chadwick to believe the statement was "signed and then filled out later."[24] Chadwick told Morenberg that Chadwick had asked an employee to remove the license plates from the truck.[25] Chadwick did not seek out the employee, Flores, to confirm that Chadwick had asked Flores to remove the plates.[26] Chadwick reported to Morenberg that he had noticed the license plates were missing the day after the sale to plaintiff, but

[16] Theft Report.

[17] Id.; City SUF at no. 5.

[18] City SUF at no. 8; Collins' Facts in Opp'n to Chadwick at no. 36; dkt. 41-1, Plaintiff's Statement of Genuine Disputes of Material Fact ("Collins' Facts in Opp'n to City") at no. 53.

[19] City SUF at no 9; Collins' Facts in Opp'n to City at no. 55; dkt. 28-2, Ex. E, Deposition of Jack Morenberg ("City's Morenberg Depo.") at 14:7–11.

[20] City SUF at no. 11; Collins' Facts in Opp'n to City at nos. 56–57.

[21] City's Morenberg Depo. at 14:22–15:8; Collins' Facts in Opp'n to City at no. 60.

[22] City SUF at no. 17; Dkt 38-2, Ex D ("Morenberg Crime Report"); Dkt 38-5.

[23] Dkt 38-5, Declaration of Jack Morenberg ("Morenberg Decl.") ¶ 5.

[24] Dkt. 37-6, Transcript of Preliminary Hearing at 32:3–33:7.

[25] City's Morenberg Depo. at 20:5–10; Collins' Facts in Opp'n to City at no. 61.

[26] City's Morenberg Depo. at 20:11–13; Collins' Facts in Opp'n to City at no. 62.

Chadwick assumed that his employees had processed the return of the plates to the DMV.[27] Chadwick also told Morenberg that plaintiff had filed suit against Chadwick.[28]

On October 2, 2013, Morenberg drove over to the Norco Hotel and observed a truck matching the description of the vehicle purchased by Collins.[29] The truck had the same license plate number as the plates that had been removed at the time of sale.[30] Morenberg impounded the truck, removed the license plates, and placed the plates into evidence.[31] Morenberg then knocked on Collins' door and interviewed him.[32] Collins stated that there were materials in the truck which he intended to use in a future lawsuit contemplated against Chadwick.[33] Morenberg denied Collins' request to remove his paperwork from the backseat of the truck.[34] Collins asserted several times that the plates were on the vehicle when he purchased it.[35] Collins called the paramedics after Morenberg left the hotel.[36]

On October 10, 2013, Morenberg authored a police report.[37] Morenberg reported that he interviewed Boyd and Ruiz.[38] Ruiz confirmed that plaintiff had offered money or trips to Ruiz in exchange for Ruiz's assistance in writing letters that the truck was

[27] Morenberg Crime Report; Morenberg Decl. ¶ 7.

[28] Dkt. 41-2, Deposition of Jack Morenberg ("Plaintiff's Morenberg Depo.") at 29:5–12.

[29] Morenberg Crime Report; Collins' Facts in Opp'n to City no. 38.

[30] City SUF at 21; City's Morenberg Depo. at 36:2–5;

[31] Morenberg Crime Report; Collins' Facts in Opp'n to City at no. 40.

[32] Morenberg Crime Report; City SUF at no. 23; Collins' Facts in Opp'n to City at no. 40.

[33] Dkt. 38-2, Ex. F ("Transcript of Morenberg's Belt Recording") at 3:20–25; 5:9–24; 8:3–7.

[34] Id. at 9:17–10:3.

[35] Id. at 4:21–23; 6:9–7:1; 13:7–25; 15:24–16:1; 21:3–7; 24:15–18; 27:16–24.

[36] Transcript of Preliminary Hearing at 70:3–4.

[37] Morenberg Crime Report; Collins' Facts in Opp'n to City at no. 44.

[38] Morenberg Crime Report; City SUF at no. 27

defective.[39] Although Morenberg reported that he contacted Boyd by phone, during Boyd's deposition, Boyd could not recall any police officer or detective speaking to him about the truck or the surrounding circumstances.[40]

Morenberg concluded that the report should be referred to the District Attorney's office for review for possible filing of criminal charges.[41] Morenberg subsequently submitted the case to the San Bernardino District Attorney's Office for evaluation and the possible filing of criminal charges.[42]

On October 13, 2013, Lieutenant Jim Joliff received a letter from Rene Korper, Collins' counsel.[43] In the letter, Korper asserted that: (1) Morenberg's allegation, at the time he impounded the truck, that plaintiff attempted to bribe a witness to the prospective lawsuit between Collins and Chadwick was false; (2) there was no justification for impounding the truck; (3) there was no probable cause to believe the vehicle was or contained evidence of a crime; (4) Collins suffered severe seizures as a result of the emotional distress caused by the impounding of his vehicle.[44] Korper requested the return of Collins' vehicle.[45] Joliff spoke by telephone with Korper that same day and requested that Korper's client complete a citizen complaint form if he desired to initiate a formal internal investigation.[46] Joliff faxed the "Citizen Complaint Form" to Korper, along with a document setting forth the Colton Police Department's procedure for reporting police misconduct and a form requiring the complainant to attest that he knows

[39] Morenberg Crime Report; see also Ruiz Depo. at 66:17–69:24 (testifying that plaintiff asked Ruiz to lie about the condition of the truck in order to assist in plaintiff's lawsuit against Chadwick, in exchange for money).

[40] 41-2 Ex. BE, Deposition of Gary Boyd at 12:12–14:11.

[41] Morenberg Crime Report.

[42] City SUF at 30.

[43] City SUF at no. 32; dkt 41-2 Ex. BD, Deposition of Jim Joliff 10:19–11:1; dkt 41-2 Ex. 35 ("Korper Letter"); dkt. 38-6 Declaration of Jim Joliff ("Joliff Decl.") ¶ 6.

[44] Korper Letter.

[45] Id.

[46] Joliff Decl. ¶ 7.

that "[i]t is against the law to make a complaint that you know to be false."[47] Joliff never received a completed complaint form from plaintiff or his counsel.[48]

On or about October 22, 2013, Morenberg asked Chadwick for any additional documentation related to the case.[49] Chadwick provided signed sales documents and attorney correspondence related to the Alabama litigation, and identified the employee who filled out the DMV Statement of Facts.[50] Morenberg provided this information to the District Attorney's office in a supplemental report.[51]

On or about November 6, 2013, the San Bernardino County District Attorney's office filed a felony complaint against plaintiff in San Bernardino Superior Court.[52] The complaint alleged that plaintiff had committed perjury, second degree commercial burglary, and bribery of a witness.[53]

On August, 13, 2014, the San Bernardino County Superior Court held a preliminary hearing on the criminal charges against Collins.[54] During the hearing, plaintiff's counsel elicited testimony tending to undermine the prosecution's case against plaintiff. For example:

[47] 41-2 Ex. 36 (Joliff's fax); 38-2, Ex. I (same)

[48] Joliff Decl. ¶ 9.

[49] Morenberg Decl. ¶ 21.

[50] Id.

[51] Id.

[52] Dkt. 38-2 Ex. 1. The City defendants request that the Court take judicial notice of the felony complaint and the first amended felony complaint filed in San Bernardino Superior Court. See dkt 38-3. The Court **GRANTS** these requests because the documents are in the public record and their existence is "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b).

[53] Id.

[54] City SUF at no. 39; Collins' Facts in Opp'n to City at no. 47; see Transcript of Preliminary Hearing.

- Chadwick testified that he did not look at the DMV Statement of Facts before plaintiff signed it and that he believed the handwritten portion of the Statement was filled out *after* plaintiff signed the document.[55]

- Chadwick testified that the handwritten portion the DMV Statement of Facts providing "Window sticker was shredded in error" was incorrect; the stickers were not shredded.[56]

- Chadwick testified at the hearing that he saw the license plates after they were removed, and told Morenberg as much.[57] However, Morenberg testified that Chadwick's assertion that he saw the plates after they were removed was inconsistent with the Chadwick's September 2013 statement to Morenberg.[58]

- Morenberg testified that, before speaking with Chadwick about this incident, Morenberg and Chadwick knew one another because they participated in a common hobby.[59]

- Collins' counsel elicited testimony from Morenberg demonstrating inconsistencies in what Collins offered to Ruiz in exchange for his assistance in Collins' lawsuit against Chadwick.[60]

On the evidence presented at the preliminary hearing, the Superior Court concluded that "[i]t does appear . . . that the offenses alleged in the complaint have been committed and that sufficient cause exists to believe the defendant committed those offenses."[61] The Superior Court therefore ordered Collins "to be held to answer for the offenses as charged in the complaint and any other offenses that as are shown from the evidence."[62] Also on August 13, 2014, after the preliminary hearing, the District

[55] Transcript of Preliminary Hearing at 31:26–33:3.
[56] Id. at 35:4–16.
[57] Id. at 31:4–15.
[58] Id. at 55:12–56:3.
[59] Id. at 58:5–19.
[60] Id. at 61:13–64:18.
[61] Id. at 81:2–5.
[62] Id. at 81:5–7.

Attorney's office filed an amended complaint adding the allegation that Collins obtained money, labor, or property by false pretenses.[63] The charges against Collins were subsequently dismissed before trial.

III. LEGAL STANDARD

Summary judgment is appropriate where "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The moving party bears the initial burden of identifying relevant portions of the record that demonstrate the absence of a fact or facts necessary for one or more essential elements of each claim upon which the moving party seeks judgment. See Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986).

If the moving party meets its initial burden, the opposing party must then set out specific facts showing a genuine issue for trial in order to defeat the motion. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986); see also Fed. R. Civ. P. 56(c), (e). The nonmoving party must not simply rely on the pleadings and must do more than make "conclusory allegations [in] an affidavit." Lujan v. Nat'l Wildlife Fed'n, 497 U.S. 871, 888 (1990); see also Celotex, 477 U.S. at 324. Summary judgment must be granted for the moving party if the nonmoving party "fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Id. at 322; see also Abromson v. Am. Pac. Corp., 114 F.3d 898, 902 (9th Cir. 1997).

In light of the facts presented by the nonmoving party, along with any undisputed facts, the Court must decide whether the moving party is entitled to judgment as a matter of law. See T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass'n, 809 F.2d 626, 631 & n.3 (9th Cir. 1987). When deciding a motion for summary judgment, "the inferences to be drawn from the underlying facts . . . must be viewed in the light most favorable to the party opposing the motion." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986) (citation omitted); Valley Nat'l Bank of Ariz. v. A.E. Rouse & Co., 121 F.3d 1332, 1335 (9th Cir. 1997). Summary judgment for the moving party is proper when a rational trier of fact would not be able to find for the nonmoving party on the claims at issue. See Matsushita, 475 U.S. at 587.

[63] City SUF at 46; dkt. 38-2 Ex. 3.

IV. DISCUSSION

A. Unreasonable Seizure

Plaintiff brings a Section 1983 claim against the City defendants for the alleged violation of his Fourth Amendment right to be free from unreasonable seizure. The basis for Collins' Section 1983 claim is Collins' allegation that Morenberg intentionally and wrongfully seized Collins' truck (and the documents within it) in violation of the Fourth and Fourteenth Amendments. FAC ¶¶ 95–96; Second Action Compl. ¶¶ 46, 49. Section 1983 provides for a cause of action against a person who, acting under color of state law, deprives another of rights guaranteed under the U.S. Constitution. 42 U.S.C. § 1983. "To prove a case under section 1983, the plaintiff must demonstrate that (1) the action occurred 'under color of state law' and (2) the action resulted in the deprivation of a constitutional right or federal statutory right." Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002).

California law permits a peace officer to impound a vehicle without a warrant when there is probable cause to believe the vehicle is or contains evidence tending to show that a crime has been committed. Cal. Veh. Code § 22655.5(b). Furthermore, under the Fourth Amendment, "the police may seize a car from a public place without a warrant when they have probable cause to believe that the car itself is an instrument or evidence of crime." United States v. Cooper, 949 F.2d 737, 747 (5th Cir. 1991); see also Maryland v. Buie, 494 U.S. 325, 330 (1990) (noting that a police officer could lawfully seize evidence "which was in plain view and which the officer had probable cause to believe was evidence of a crime"); United States v. Bagley, 772 F.2d 482, 491 (9th Cir. 1985) ("[I]f the existence of probable cause alone justifies the warrantless search of a vehicle parked in a public place, certainly a warrantless seizure of such a vehicle, based only on probable cause, also falls within the automobile exception."). Therefore, if Morenberg had probable cause to seize Collins' truck, Morenberg did not deprive Collins of his Fourth Amendment rights.

"Probable cause does not require proof beyond a reasonable doubt of every element of a crime. Rather, probable cause exists where under the totality of the circumstances known to the officer, a prudent person would have concluded that there was a fair probability that the suspect had committed or was committing a crime." United States v. Noster, 590 F.3d 624, 629–30 (9th Cir. 2009) (citation omitted); see also Florida

v. Harris, 133 S. Ct. 1050, 1055 (2013) ("The test for probable cause is not reducible to precise definition or quantification. Finely tuned standards such as proof beyond a reasonable doubt or by a preponderance of the evidence . . . have no place in the [probable-cause] decision. All we have required is the kind of fair probability on which reasonable and prudent [people,] not legal technicians, act." (citation and quotation marks omitted)).

1. Morenberg

In support of its motion for summary judgment as to Collins' Section 1983 claim against Morenberg for unreasonable seizure, the City defendants make two arguments:
(1) Morenberg's seizure of the truck was supported by probable cause; and
(2) Morenberg is shielded by qualified immunity. City MSJ at 10–13.

The City defendants contend that Morenberg had probable cause to impound Collins' truck because: (1) Chadwick made a theft report; (2) Chadwick provided Morenberg with a DMV Statement of Facts indicating that Collins' purchase of the truck was an out-of-state sale, with no sales or license fees paid, and that the truck would be taken to Alabama; (3) Chadwick told Morenberg that Chadwick had instructed his employee to remove the license plates from the truck; and (4) Morenberg observed a truck matching the description of the vehicle purchased by Collins at the Norco hotel. City MSJ at 11.

Collins does not dispute these facts. Rather, Collins contends that Morenberg "made up the very facts that he based his probable cause on . . . . Probable cause based on known lies is not probable cause at all." Opp'n to City at 8. Collins points to the following evidence to support this assertion: (1) Morenberg had known Chadwick for 20 to 25 years;[64] (2) Morenberg never spoke with Flores to confirm that Flores removed the plates from the car; (3) Morenberg *may* have seen both versions of the DMV Statement of Facts when Chadwick provided him with the documents relating to the sale to Collins; (4) Chadwick never mentioned the two different versions of the DMV Statement of Facts until confronted with it on cross-examination; (5) Morenberg stated that, when he spoke to Boyd, Boyd said plaintiff offered him money to write a letter stating that the truck had

[64] Plaintiff's Morenberg Depo. at 8:44–7.

a bad engine;[65] but Boyd testified at his deposition that he never spoke to a police officer or detective about the circumstances.[66]

Even viewing the facts in the light most favorable to plaintiff, the Court concludes that a rational trier of fact would not be able to find for plaintiff. Plaintiff does not dispute any of the facts underlying Morenberg's determination of probable cause. The Court concludes, based on those undisputed facts, that "a prudent person would have concluded that there was a fair probability that [plaintiff] had committed or was committing a crime." See Noster, 590 F.3d at 6230. In addition, plaintiff has not provided sufficient evidence such that a rational trier of fact could conclude that Morenberg and Chadwick fabricated the facts on which Morenberg based his finding of probable cause. Accordingly, the Court **GRANTS** the City defendants' motion for summary judgment on Collins' Section 1983 claim against Morenberg.[67]

2. The City

Collins also asserts a claim against the City for violation of his Fourth Amendment right to be free from unreasonable seizure. Second Action Compl. ¶ 50. Specifically, Collins alleges that the City had a policy not to investigate the accuracy of its police offers' reports, even if made aware of an allegation that the report contained false information. Id.

Local government entities may be sued directly under Section 1983 when their policies or customs are the moving force behind a constitutional violation. Monell v. Dep't of Soc. Servs. of City of New York, 436 U.S. 658, 690 (1978). To establish liability for governmental entities under Monell, "a plaintiff must prove (1) that [he] possessed a constitutional right of which [he] was deprived; (2) that the municipality had a policy; (3) that this policy amounts to deliberate indifference to the plaintiff's constitutional right; and, (4) that the policy is the moving force behind the constitutional violation." Dougherty v. City of Covina, 654 F.3d 892, 900 (9th Cir. 2011) (quotation marks omitted). "[E]vidence of inaction—specifically, failure to investigate and

[65] Plaintiff's Morenberg Depo. at 32:4–11.

[66] Boyd Depo. at 12:12–14:11.

[67] Having concluded that Morenberg's seizure was supported by probable cause, the Court need not decide whether Morenberg is entitled to qualified immunity with respect to Collins' Section 1983 claim.

discipline employees in the face of widespread constitutional violations—can support an inference that an unconstitutional custom or practice has been unofficially adopted by a municipality." Hunter v. Cty. of Sacramento, 652 F.3d 1225, 1234 n.8 (9th Cir. 2011).

Because the Court has concluded that Morenberg had probable cause to seize Collins' truck, Collins was not deprived of his Fourth Amendment rights. In addition, the Court finds that the City's requirement that Collins complete a citizen complaint form to trigger an investigation does not constitute a policy not to investigate. Indeed, Joliff did not demonstrate *inaction*, rather he actively provided Collins' counsel with a complaint form and instructions on how to initiate a citizen complaint. Cf. Reyes v. City of Glendale, No. 05-cv-0253-CAS-MAN, 2009 WL 2241602, at *19 (C.D. Cal. July 23, 2009) ("Plaintiff has also presented no authority for the proposition that a constitutional right to an investigation was triggered by plaintiff's complaint that his arrest was a mistake."). Accordingly, the Court **GRANTS** the City defendants' motion for summary judgment with respect to Collins' Section 1983 claim against the City.

B. Malicious Prosecution

"To establish a cause of action for malicious prosecution, a plaintiff must demonstrate that the prior action (1) was initiated by or at the direction of the defendant and legally terminated in the plaintiff's favor, (2) was brought without probable cause, and (3) was initiated with malice." Siebel v. Mittlesteadt, 161 P.3d 527, 530 (Cal. 2007). The burden to show a lack of probable cause is high because California law gives a malicious prosecution defendant the benefit of the doubt: "[i]n making its determination whether the prior action was legally tenable, the trial court must construe the allegations of the underlying complaint liberally in a light most favorable to the malicious prosecution defendant." Sangster v. Paetkau, 68 Cal. App. 4th 151, 165 (1998).

The filing of a criminal complaint by the District Attorney gives rise to a presumption that a decision to file a criminal complaint resulted from an independent decision on the part of the District Attorney and would preclude liability for those who participated in the investigation or filed a report that resulted in the initiation of proceedings. See Smiddy v. Varney, 665 F.2d 261, 266 (9th Cir. 1981) ("Smiddy I") overruled on other grounds by Beck v. City of Upland, 527 F.3d 853, 865 (9th Cir. 2008)). However, this Smiddy presumption can be rebutted if the investigating official "improperly exerted pressure on the prosecutor, knowingly provided misinformation to him, concealed exculpatory evidence, or otherwise engaged in wrongful or bad faith

conduct that was actively instrumental in causing the initiation of legal proceedings." Awabdy v. City of Adelanto, 368 F.3d 1062, 1067 (9th Cir. 2004) (applying Smiddy I presumption to malicious prosecution case). A "plaintiff's account of the incident in question, by itself, does not overcome the presumption of independent judgment." Newman v. County of Orange, 457 F.3d 991, 994 (9th Cir. 2006). The Ninth Circuit has further explained the type of evidence that will suffice to overcome the presumption. For example, in Borunda v. Richmond, 885 F.2d 1384 (9th Cir. 1988), the Ninth Circuit found that the plaintiff had rebutted the presumption of independent judgment where the defendant officers "procured the filing of the criminal complaint by making misrepresentations to the prosecuting attorney." Id. at 1390; see also Blankenhorn v. City of Orange, 485 F.3d 463, 483–84 (9th Cir. 2007) (finding summary judgment improper where evidence demonstrated that prosecutor had not viewed a key videotape prior to filing charges and other evidence demonstrated that the officers' reports were false and misleading); Newman, 457 F.3d at 995 ("Because Sloman had no evidence of material omissions, or inconsistent police or eyewitness accounts, he could not demonstrate a genuine issue of material fact as to whether the prosecutor exercised independent judgment. Summary judgment for the defendant officers was therefore appropriate." (citing Sloman v. Tadlock, 21 F.3d 1462, 1474 (9th Cir. 1994))); Barlow v. Ground, 943 F.2d 1132, 1136–37 (9th Cir. 1991) (civil rights plaintiff overcame the Smiddy presumption where the prosecutor relied solely on the arresting officers' reports, which omitted critical information, an independent witness corroborated at least part of plaintiff's version of events, and the officers' accounts varied).

The City defendants argue that the Smiddy presumption applies to Morenberg and that plaintiff has failed to meet his burden to rebut that presumption. City MSJ at 18. Collins argues that the Smiddy presumption does not apply because Morenberg presented information to the District Attorney's office that he knew to be false. Opp'n to City at 10–12. Notwithstanding the evidence Collins introduces suggesting that Chadwick and Morenberg could have had improper motives, Collins presents no evidence actually demonstrating that Morenberg knew that the crime report he submitted to the District Attorney's office was false. Accordingly, the Smiddy presumption applies, and Collins has not demonstrated a genuine issue of material fact that Morenberg is liable for malicious prosecution.

Even if the Smiddy presumption did not apply, the City defendants argue that Morenberg had probable cause to submit the case to the San Bernardino District

Attorney's office on the basis of plaintiff's alleged burglary of the license plates, perjury, and bribery. City MSJ at 17. The Court agrees. As described above, the Court has already determined that Morenberg had probable cause to seize the truck on the basis of his reasonable belief that the attached license plates had been stolen. Furthermore, plaintiff does not dispute that he signed a DMV Statement of Facts, under penalty of perjury, stating "Customer demand title, out of state sale. NO Sales tax or license fees were collected at time of Sale." As a result, the Court concludes that Morenberg's discovery that plaintiff was driving the truck in California with California license plates constitutes probable cause to believe that plaintiff had committed perjury. Finally, Morenberg spoke with Ruiz, who reported that plaintiff attempted to bribe Ruiz to assist plaintiff in a law suit against Chadwick. Therefore, the Court finds that Morenberg had probable cause to believe plaintiff had attempted bribery.

The City defendants and Chadwick argue that Collins' claim of malicious prosecution is collaterally estopped by the Superior Court's conclusion that there was probable cause to believe plaintiff committed the charged offenses. City MSJ at 19; Chadwick MSJ at 9–11. Collins, in turn, argues that where a plaintiff alleges that an officer is lying, collateral estoppel only applies if the judge decided the "credibility issue." Opp'n to City at 12; Opp'n to Chadwick at 17. Collins contends that the Superior Court's determination of probable cause did not constitute a finding of the credibility of the witnesses. Opp'n to City at 13; Opp'n to Chadwick at 18.

Federal courts must give "preclusive effect to state-court judgments whenever the courts of the State from which the judgments emerged would do so." Allen v. McCurry, 449 U.S. 90, 96 (1980). Under California law, collateral estoppel applies when five requirements are met:

> (1) the issue sought to be relitigated must be identical to the issue decided in the earlier action; (2) the issue must have been actually litigated and (3) necessarily decided in the earlier action; (4) the earlier decision must be final and made on the merits; and (5) the party against whom issue preclusion is asserted must have been a party to the earlier action or in privity with such a party.

Wige v. City of Los Angeles, 713 F.3d 1183, 1185 (9th Cir. 2013). "As a general rule, each of these requirements will be met when courts are asked to give preclusive effect to

preliminary hearing probable cause findings in subsequent civil actions for false arrest and malicious prosecution." Id. "In California, as in virtually every other jurisdiction, it is a long-standing principle of common law that a decision by a judge or magistrate to hold a defendant to answer after a preliminary hearing constitutes *prima facie*—but not *conclusive*—evidence of probable cause." Awabdy, 368 F.3d at 1067. A plaintiff can rebut a prima facie finding of probable cause "by showing that the criminal prosecution was induced by fraud, corruption, perjury, fabricated evidence, or other wrongful conduct undertaken in bad faith." Id. The "fabricated evidence exception allows plaintiffs who can *establish* that an officer lied or fabricated evidence to relitigate the issue of probable cause with the falsified evidence removed from the equation or, in cases involving intentional concealment of exculpatory evidence, with the undisclosed evidence added back into the equation." Wige, 713 F.3d at 1186 (emphasis added). On the whole, "when a determination in a state preliminary hearing is claimed to preclude relitigation in the federal court § 1983 suit, the specific preliminary hearing determination must be carefully evaluated to determine if the issue in the state court proceeding was the same as that in the § 1983 action and, if so, whether the party against whom the state court determination is asserted realistically had a full and fair opportunity to litigate the federal issue in the preliminary hearing." Martin A. Schwartz, Section 1983 Litigation, § 10.4[c] (4th ed.).

The Ninth Circuit has recognized that "in some circumstances a probable cause finding *necessarily entails* a rejection of challenges raised to the veracity of the [witness in the preliminary hearing]." Wige, 713 F.3d at 1187 (emphasis added). The Wige court found that this principle did not apply in that case because "the state court never purported to find" the credibility of the relevant testimony. Id. At the preliminary hearing in Wige, the lead detective on the case testified that he and his partner interviewed Torres, the victim of the charged attempted murder, and that Torres identified Wige as the shooter. Id. at 1184. Torres, however, testified that (a) he had never seen Wige before being interviewed by the detectives, (b) he initially told the detectives his shooter was not in the photographic lineup presented to him, and (c) that he circled Wige's photograph and identified Wige as the shooter only after the officers pressured him into doing so after several hours of interrogation. Id. At the conclusion of preliminary hearing, Wige moved to dismiss the attempted murder charge for lack of probable cause. Id. The state court denied Wige's motion and stated "There are issues in the case. I think most of the issues you addressed are really for the jury to decide; not the Court at the preliminary hearing." Id. The Ninth Circuit subsequently clarified that what

was significant in Wige was that the allegation of fabricated evidence was not presented in the state court preliminary hearing. See Forest v. City of Ft. Bragg, 520 F. App'x 616, 617 (9th Cir. 2013) ("This case is distinguishable from this court's recent decision in Wige v. City of Los Angeles where plaintiff's allegation of fabricated evidence was not heard in his state court proceedings and, if true, would have undermined the existence of probable cause."). The California Court of Appeal addressed similar circumstances in Greene v. Bank of America, 236 Cal. App. 4th 922 (2015). However, in contrast to Wige, the state court noted that the "plaintiff challenged [the witness's] veracity at [the] preliminary hearing and the magistrate expressly found that [the witness] was telling the truth when she testified about plaintiff's [illegal conduct]." Id. at 934. Because the "the magistrate decide[d] the credibility issue in the arresting officer's favor," the fabricated evidence claim was already litigated, with the effect that the identity-of-issues requirement of collateral estoppel was satisfied. Id. For that reason, the Green court found that the case before it was distinguishable from Wige. Id. Notably, Green relied on Guenther v. Holmgreen, 738 F.2d 879 (7th Cir. 1984). Green, 236 Cal. App. 4th at 935. In Guenther, the Seventh Circuit concluded that where a plaintiff attacked the sufficiency and integrity of the evidence supporting probable cause, and thoroughly litigated and challenged the veracity of the arresting officer and other prosecution witnesses who supplied the basis for probable cause, "[t]here can be little doubt that the issue of [the officer's] veracity and good faith . . . was both raised and actually litigated in the preliminary hearing." Guenther v. Holmgreen, 738 F.2d 879, 884 (7th Cir. 1984). Notably, in Wige, the Ninth Circuit relied on Guenther in recognizing that "in some circumstances a probable cause finding necessarily entails a rejection of challenges raised to the veracity of the arresting officer." Wige, 713 F.3d at 1187 (citing Guenther, 738 F.2d at 884); see also Haupt v. Dillard, 17 F.3d 285, 289 (9th Cir. 1994) (citing approvingly to Guenther). Therefore,

> [t]he Court reads Greene to establish the following rule: where a plaintiff alleges a claim for malicious prosecution or false arrest and the defendant shows that the court in the underlying criminal case found probable cause, that plaintiff cannot avoid collateral estoppel by alleging that fraud or other wrongful conduct induced that finding if (1) he raised the same factual basis for his wrongful conduct claim in the preliminary hearing and (2) that argument was necessarily rejected.

Jen v. City & Cty. of San Francisco, No. 15-cv-03834-HSG, 2016 WL 3669985, at *10 (N.D. Cal. July 11, 2016). In explaining the Greene rule, the court in Jen concluded that Greene was controlling on the court's analysis and that "the Ninth Circuit would follow Greene in the appropriate case," which Wige defined as "circumstances [in which] a probable cause finding *necessarily entails* a rejection of challenges raised to the veracity of the [witness in the preliminary hearing.]" Jen, 2016 WL 3669985, at *10 (quoting Wige, 713 F.3d at 1187) (emphasis added).

In the present case, Collins' counsel cross-examined Chadwick and Morenberg at the preliminary hearing, challenging their veracity and credibility and eliciting testimony that raised same credibility issues that plaintiff raises again here. For example, Collins' counsel elicited testimony regarding the *two* DMV Statements of Facts; discrepancies in Chadwick's testimony regarding whether he saw the removed license plates; Chadwick and Morenberg's past relationship; inconsistencies in Ruiz's statements regarding what Collins offered him; and Morenberg's knowledge about a legal proceeding by Collins against Chadwick. See generally Transcript of Preliminary Hearing. Nonetheless, the Superior Court concluded that probable cause existed to believe that Collins committed the charged offenses. Accordingly, having "carefully evaluated" the "specific preliminary hearing determination[,]" made at Collins' preliminary hearing, the Court finds that Collins "realistically had a fully and fair opportunity to litigate" the question of probable cause, see Schwartz, supra, at § 11.04[C], and that Chadwick and Morenberg's credibility was actually litigated and necessarily decided by the Superior Court. See Cotton v. Cty. of San Bernardino, No. 15-cv-2314-VAP-AGR, 2016 WL 7187442, at *9 (C.D. Cal. Nov. 9, 2016) (though plaintiff argued that the probable cause finding at the preliminary hearing was based on the withholding of evidence, the court found that the relevant evidence *was* in fact introduced at the preliminary hearing and, therefore, concluded that collateral estoppel applied), report and recommendation adopted, No. 15-cv-2314-VAP-AGR, 2016 WL 7176575 (C.D. Cal. Dec. 8, 2016); Hinchman v. Moore, 312 F.3d 198, 203 (6th Cir. 2002) ("A state court judge ruling on the presence or absence of probable cause in a criminal action must necessarily take into account the veracity of the officers' statements."); Smith v. Thornburg, 136 F.3d 1070, 1087 (6th Cir. 1998) ("[W]here the state affords an opportunity for an accused to contest probable cause at a preliminary hearing and the accused does so, a finding of probable cause by the examining magistrate or state judge should foreclose relitigation of that finding in a subsequent § 1983 action."); Hubbert v. City of Moore, 923 F.2d 769, 773 (10th Cir. 1991) ("[W]e are convinced the question of probable cause is conclusively determined at

a preliminary hearing when the parties have had a full and fair opportunity to litigate that issue."); cf. Ayers v. City of Richmond, 895 F.2d 1267, 1272 (9th Cir. 1990) (a ruling in a state court suppression hearing that arrests did not violate the Fourth Amendment collaterally estopped federal court Section 1983 claimant from relitigating the Fourth Amendment issue where the issue in state and federal court was the same and criminal defendant had full motivation and opportunity to litigate Fourth Amendment issue at suppression hearings). In addition, Collins may not rely on the "fabricated evidence exception" because he has not introduced facts that "*establish* that an officer lied or fabricated evidence[.]" See Wige, 713 F.3d at 1186 (emphasis added). In Wige, the plaintiff's claim of fabricated evidence was not "mere speculation[,]" but "testimony under oath from [the victim of the charged offense] himself that the officers pressured him into making a false identification." Id. Collins presents no such evidence here. The Court therefore concludes that Collins is barred from re-litigating probable cause in this matter.

Because Collins cannot as a matter of law demonstrate that prior action against him was brought without probable cause, the Court **GRANTS** defendants' motions for summary judgment as to Collins' claim of malicious prosecution as against the City defendants and Chadwick.[68]

C. Intentional Infliction of Emotional Distress

Collins alleges that Morenberg's seizure of Collins' truck and the documents inside the vehicle "under false pretenses was outrageous." FAC ¶ 88.

The City defendants argue that Morenberg's conduct in seizing the truck and the subsequent interview of Collins did not constitute conduct "beyond the bounds of human decency." City MSJ at 24. Collins contends that Morenberg's conduct was outrageous because Morenberg falsely accused Collins of crimes, threatened arrest, confiscated of property without a warrant or probable cause, and abused his relationship and power as a police officer. Opp'n to City at 18.

[68] Having concluded that Morenberg is entitled to summary judgment on Collins' malicious prosecution claim as a result of the Smiddy presumption and collateral estoppel, the Court need not decide whether Morenberg is entitled to qualified immunity.

The elements of the tort of intentional infliction of emotional distress are: "(1) extreme and outrageous conduct by the defendant with the intention of causing, or reckless disregard of the probability of causing, emotional distress; (2) the plaintiff's suffering severe or extreme emotional distress; and (3) actual and proximate causation of the emotional distress by the defendant's outrageous conduct." Wilson v. Hynek, 207 Cal. App. 4th 999, 1009 (2012). "A defendant's conduct is 'outrageous' when it is so extreme as to exceed all bounds of that usually tolerated in a civilized community. And the defendant's conduct must be intended to inflict injury or engaged in with the realization that injury will result." Hughes v. Pair, 209 P.3d 963, 976 (Cal. 2009) (citation and quotation marks omitted). "Ordinarily mere insulting language, without more, does not constitute outrageous conduct." Johnson v. Ralphs Grocery Co., 204 Cal. App. 4th 1097, 1108 (2012) (quotation marks omitted).

The Court has already concluded that (a) Collins has failed to introduce evidence showing that Morenberg knew the charges against Collins were false and (b) Morenberg had probable cause to seize the vehicle, and to believe that Collins had committed perjury and bribery. Furthermore, after reviewing the transcript and audio recording of Morenberg's interview with Collins, the Court finds that while Morenberg may indeed have been "rude and dismissive," Opp'n to City at 18, a rational trier of fact would not be able to find that Morenberg's conduct was beyond the bounds of conduct usually tolerated in a civil community.

Accordingly, the Court **GRANTS** the City defendants' motion for summary judgment as to Collins' claim for intentional infliction of emotion distress.

V. CONCLUSION

In accordance with the foregoing, the Court **GRANTS** defendants' motions for summary judgment.

IT IS SO ORDERED.

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