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**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

LUIS SANCHEZ, et al.,

Plaintiffs,

v.

**CITY OF FRESNO, ASHLEY SWEARENGIN,
MARK SCOTT, BRUCE RUDD, GREG
BARFIELD, JERRY DYER, PHILLIP
WEATHERS, MALCOLM DOUGHERTY, and
DOES 1-100, inclusive,**

Defendants.

LEAD CASE: 1:12-CV-00428-LJO-SKO

**MEMORANDUM DECISION AND
ORDER GRANTING UNOPPOSED
MOTION FOR SUMMARY
JUDGMENT (DOC. 192)**

Plaintiffs in these consolidated cases are current or former homeless residents of the City of Fresno (“City”) who allege that their personal property, including property necessary for survival, essential to health, and of personal and emotional value, was seized and immediately destroyed as part of the City’s efforts to clean up homeless encampments in Downtown Fresno in late 2011 and early 2012. More than thirty similar cases arising out of these cleanup activities have been consolidated for pretrial purposes, with the above-captioned matter serving as the lead case. *See* Doc. 27.

Plaintiff Felix Hernandez (“Plaintiff”) brings claims against the City of Fresno, Ashley Swearingin, Mark Scott, Bruce Rudd, Greg Barfield, Jerry Dyer, Phillip Weathers, and Malcolm Dougherty (“Defendants”), alleging violations of 42 U.S.C. § 1983 based on the Fourth Amendment (unlawful seizure) and Fourteenth Amendment (due process); violations of Article I, Sections 7 and 13

1 of the California Constitution; intentional infliction of emotional distress; conversion; and breach of
2 contract.¹ See Case No. 1:12-cv-01161 LJO SKO, Doc. 1. Before the Court for decision is Defendants'
3 unopposed motion for summary judgment as to Plaintiff's remaining claims. Doc. 192. The Court
4 decides this motions on the record without a hearing, pursuant to Local Rule 230(g).

5 All parties agree that all of Plaintiff's remaining claims arise out of Defendants' involvement in a
6 clean up of homeless encampments in November 2011. See Doc. 192-2 at #1. Each such claim is
7 premised upon Plaintiff's allegation that on November 7, 2011, Plaintiff resided in a tent on Santa Clara
8 Avenue in Downtown Fresno; and that on November 7, 2011, Plaintiff's tent and personal property were
9 seized by Defendants and immediately destroyed. *Id.*

10 However, the undisputed factual record reveals that Plaintiff actually resided in a housing facility
11 operated by a nonprofit organization on November 6 and 7, 2011. *Id.* at ## 3-5. In light of the
12 undisputed facts, Plaintiff cannot prevail on any of his remaining claims. Accordingly, summary
13 judgment is proper because "there is no genuine dispute as to any material fact and the movant is
14 entitled to judgment as a matter of law." Fed. R. Civ. P. 56.

15 **CONCLUSION**

16 Defendants' unopposed motion for summary judgment as to all remaining claims brought by
17 Plaintiff Felix Hernandez is GRANTED.

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19 IT IS SO ORDERED.

20 Dated: **October 16, 2014**

/s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE

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26 ¹ Other claims brought by Plaintiff have been resolved at earlier stages of this litigation.