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

PAUL WELDON,  
  
Plaintiff,  
  
v.  
  
JOHN CONLEE, POLICE OFFICER,  
FRESNO POLICE DEPARTMENT;  
ECONO TOWING; MARTY KODMAN,  
OWNER, ECONO TOWING; ROBERT  
KODMAN, OWNER, ECONO TOWING;  
AND BERYLE DODSON, EMPLOYEE,  
ECONO TOWING,  
  
Defendants.

Case No. 1:13-CV-00540-LJO-SAB  
  
JURY TRIAL JUNE 24, 2015  
  
ORDER GRANTING DEFENDANTS’ AND  
DENYING PLAINTIFF’S MOTIONS FOR  
SUMMARY JUDGMENT, AND  
DISMISSING AS MOOT PLAINTIFF’S  
MOTIONS TO STAY AND FOR  
RECONSIDERATION.  
  
(Doc. Nos. 96, 97, 132, 133, 135, 138, 139,  
141, 143, 145)

Before the Court in the above-styled and numbered cause of action are “Defendants Robert Kodman and Marty Kodman, Individually and DBA Econo Towing, Econo Towing and Beryle Dodson’s Motion for Summary Judgment,” filed February 18, 2015 (Doc. 96), Defendant John Conlee’s Motion for Summary Judgment, filed February 18, 2015 (Doc. 97), and Plaintiff Paul Weldon’s Motion for Summary Judgment, filed on April 9, 2015 (Doc. 139). The Court concludes that the matters are appropriate for determination without oral argument. *See* Local Rule 230(g). The Court, having considered the record in this case, the parties’ briefing, and the relevant law, will grant Defendants’ motions for summary judgment, deny Plaintiff’s motion for summary judgment, and will dismiss as moot Plaintiff’s pending motions to stay and for reconsideration.

1 **BACKGROUND**

2 Plaintiff Paul Weldon’s (“Plaintiff” or “Weldon”) claims arise from an incident during a  
3 traffic stop on April 18, 2011. Weldon alleges that he was driving a van when he was pulled over  
4 by Defendant City of Fresno Police Officer John Conlee (“Conlee”), who, according to Weldon,  
5 was impersonating a police officer. During the traffic stop, Weldon alleges that Conlee was rude to  
6 him, ordered him out of the van, and assaulted him by twisting his arms behind his back to handcuff  
7 him. Weldon also alleges that, although the van was properly registered, Conlee ripped the  
8 registration tab off of the license plate and called Econo Towing Company and its employee tow-  
9 truck driver (“the Towing Defendants”) to tow the car. The Court has construed Weldon’s Fourth  
10 Amended Complaint as asserting claims under Section 1983 for unreasonable search and seizure in  
11 violation of the Fourth Amendment, the use of excessive force in violation of the Fourth  
12 Amendment, a due process claim in violation of the Fifth and Fourteenth Amendments, and state  
13 law claims for conversion and assault and battery.

14 **A. Defendants’ Facts**

15 ***Officer Conlee’s Account***

16 On April 18, 2011, Officer Conlee was on duty, in uniform, and operating a marked police  
17 vehicle in the area of Parkway and Belmont avenues in Fresno, California. *See* City Defendants’  
18 Separate Statement of Undisputed Material Facts (“SSUMF,” Doc. 97-6), ¶ 7. Conlee observed  
19 Plaintiff’s vehicle driving at what he estimated was a speed of 55 miles per hour in a 40 mile-per-  
20 hour speed zone. SSUMF ¶ 8. Conlee used a hand-held radar device which clocked Plaintiff’s  
21 speed at 58 miles per hour. *Id.* ¶ 9. Conlee initiated a vehicle stop for the purpose of issuing a traffic  
22 citation for Plaintiff’s speeding, a violation of California Vehicle Code section 22350 (speeding).  
23 *Id.* ¶ 10. Plaintiff pulled into the private property of an Econo Lodge parking lot at 445 N Parkway  
24 Drive. *Id.* ¶ 11. When approached by Officer Conlee, Plaintiff identified himself as “Doug  
25 Weldon” and stated he did not have identification on him. *Id.* ¶ 12. Conlee ran Plaintiff’s name  
26 through the Record Management System and was unable to locate a driver’s license or  
27 identification information for the name, “Doug Weldon.” Conlee concluded that Plaintiff was  
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1 driving without a license in violation of Vehicle Code section 12500(a), and for all of these reasons  
2 placed Plaintiff under arrest. *Id.* ¶ 13.

3 While conducting a search incident to arrest, Conlee located a wallet in Plaintiff's pocket  
4 which contained an expired driver's license issued to "Paul Douglas Weldon." *Id.* ¶ 14. Conlee ran  
5 the expired license through dispatch and discovered Plaintiff had a suspended license. *Id.* ¶ 15.  
6 Based on Conlee's training and experience, he concluded Plaintiff was operating his vehicle on a  
7 public roadway knowing his driver's license was suspended, an arrestable offense in violation of  
8 Vehicle Code section 14601.1(A). *Id.* ¶ 16. Because of Plaintiff's suspended license, combined  
9 with the fact that Econo Lodge was a private parking lot situated in a high-crime area, making it an  
10 easy target for vandalism or theft, Conlee requested the vehicle be impounded. A tow-truck driver  
11 from Econo Towing arrived minutes later and towed Plaintiff's vehicle off the premises. *Id.* ¶ 17.

### 12 ***The Towing Defendants' Account***

13 Econo Towing received a request from Officer Conlee that they tow an impounded vehicle.  
14 *See* Econo Towing Defendants' Separate Statement of Undisputed Material Facts ("ET-SSUMF,"  
15 Doc. 96-1), ¶ 7. Econo Towing dispatched its employee, tow-truck driver Beryle Dodson. ET-  
16 SSUMF ¶ 8. Upon arrival, Officer Conlee, a uniformed police officer at the scene, gave Dodson a  
17 Fresno Police Department Vehicle Inventory Report. *Id.* ¶ 9. Dodson reviewed the report and  
18 executed it. *Id.* ¶ 9. After Dodson executed the Inventory Report, Officer Conlee gave him the keys  
19 to the Dodge Caravan in order to facilitate the tow. *Id.* ¶ 8 & 10. Dodson was familiar with the  
20 procedure because it was the same procedure that he knew from previous Fresno Police impound  
21 tows, and the circumstances and procedures appeared appropriate and consistent with those known  
22 towing procedures for the Fresno Police Department. *Id.* ¶ 8 & 10. Dodson had no contact with  
23 Weldon; he neither saw nor spoke with Weldon at any point during the towing activity. *Id.* ¶ 12.  
24 All of the towing activity at the scene took place in the presence and under the supervision of  
25 Officer Conlee. In order for Conlee to inform Weldon about the vehicle's storage location, Dodson  
26 gave Conlee his Econo Towing business card, which included the location of the impound yard. At  
27 all times, Dodson believed that he was following the lawful instruction of Officer Conlee and was  
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1 authorized to tow the vehicle and. *Id.* ¶ 13. Weldon’s vehicle did not incur any damage from the  
2 towing and storage activity. *Id.* ¶ 14.

3 Econo Towing is not allowed to release an impounded vehicle to its owner without an  
4 executed release form from the impounding law enforcement agency. *Id.* ¶ 15. On the same day as  
5 the incident, at approximately 12:58 p.m., Leah Holler (“Holler”), the office manager at Econo  
6 Towing, received from the City of Fresno Police Department, via facsimile, the Vehicle  
7 Administrative Release form for Weldon’s vehicle. *Id.* ¶ 16. Within approximately one hour after  
8 receiving the release form from the police department, Weldon and Lowell Dean Weldon presented  
9 themselves at Econo Towing’s impound yard to recover Weldon’s vehicle. *Id.* ¶ 17. Each presented  
10 their identification cards, which Holler photocopied. *Id.* Weldon paid the towing and storage  
11 charges, totaling \$175.00, and Lowell Dean Weldon drove the vehicle off the lot. *Id.* ¶ 18.

#### 12 **B. Plaintiff’s Facts<sup>1</sup>**

13 Plaintiff Weldon alleges that he was driving down Belmont Avenue in Fresno, California on  
14 April 18, 2011 in a properly registered vehicle, a van, when he was pulled over by an employee of  
15 the Fresno Police Department driving a motorcycle. FAC ¶ 11. The man approached Plaintiff’s  
16 driver-side window and identified himself as John Conlee, a Fresno Police Officer. *Id.* ¶ 12.  
17 Plaintiff asserts that Conlee was unlawfully impersonating a police officer because he never took an  
18 oath of office that comports with the minimum requirements of the United States or California  
19 constitutions. *Id.* ¶ 13. During his interaction with Plaintiff, Conlee used a harsh and belligerent  
20 tone. *Id.* ¶ 14. Plaintiff did not know why he had been pulled over by Conlee. *Id.* ¶ 14. Conlee  
21 informed Plaintiff that he was speeding. *Id.* ¶ 14.

22 Plaintiff did not like Conlee’s belligerent attitude. *Id.* ¶ 15. Plaintiff told Conlee that they  
23 should immediately go before a magistrate so that the matter might be resolved in a respectful  
24 manner, which seemed to infuriate Conlee. *Id.* Conlee then reached into Plaintiff’s van, snatched  
25 the keys out of the ignition, and became more belligerent. *Id.* During the interaction, Plaintiff  
26 received a phone call on his cellular phone from his legal counsel. *Id.* ¶ 16. Plaintiff took the call

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27 <sup>1</sup> The Court takes the factual background from the facts as alleged in Plaintiffs’ Complaint (Doc. 77),  
28 unless otherwise noted. For the purposes of summary judgment, the Court resolves factual disputes  
in favor of the nonmoving party.

1 and asked the caller to wait so he could “deal with” Conlee. *Id.* Plaintiff placed his phone on the  
2 dashboard. *Id.* Conlee seemed concerned that the incident was being recorded. *Id.* Conlee snatched  
3 the phone, closed the cover, and tossed it back into the vehicle. *Id.* This seemed to further infuriate  
4 Conlee. *Id.*

5 Conlee ordered Plaintiff to get out of the van in a threatening tone. *Id.* ¶ 17. Plaintiff  
6 complied. *Id.* Upon Plaintiff’s exit from the van, Conlee grabbed Plaintiff by his wrists, twisted his  
7 arms in a violent fashion as to bring Plaintiff’s arms behind his back. *Id.* ¶ 18. The movement was  
8 “brutish” and caused Plaintiff pain in the joints, rotator sockets, elbows, and wrists. *Id.* Upon  
9 “wresting” Plaintiff’s arms behind him, Conlee clenched Plaintiff’s fingers together with great  
10 force, enough to cause him pain which lasted several hours. *Id.* ¶ 19. Conlee hurried to handcuff  
11 Plaintiff, and clamped them on “as tightly as possible.” *Id.* ¶ 20. As a result of the tight handcuffs,  
12 Plaintiff experienced “considerable pain and numbness which lasted for several hours.” *Id.*  
13 Plaintiff does not allege that he complained to Conlee about the handcuffs. Once Plaintiff was in  
14 handcuffs, Conlee proceeded to remove the contents of Plaintiff’s pockets, including a pager  
15 clipped onto his pocket. *Id.* ¶ 21. While doing so, Conlee dropped the pager on the asphalt and it  
16 broke, irreparably. *Id.* Conlee took Plaintiff to the rear of the van “so that Weldon might observe  
17 him ripping off the valid tab from the rear license plate of Weldon’s van.” *Id.* ¶ 22.

18 Conlee next called a towing company, Econo Towing, to take Plaintiff’s van away from the  
19 private property where the incident took place. *Id.* ¶ 23. Plaintiff contends that this was unlawful  
20 because no Defendant had a warrant from a court of competent jurisdiction that authorized any of  
21 the Defendants to lawfully remove his vehicle from the private property. *Id.* ¶ 25. The tow truck  
22 operator who arrived was Beryle Dodson. *Id.* ¶ 24. Dodson acted “at the behest of the other  
23 defendants in this action,” when he removed Plaintiff’s van from private property without the  
24 approval from Plaintiff or the private property owner. *Id.* ¶ 26. Also, Dodson trespassed on private  
25 property. *Id.*

26 After the tow truck left, Conlee removed Plaintiff’s handcuffs and left him stranded. *Id.* ¶  
27 27. Plaintiff was emotionally distressed. *Id.* Plaintiff’s cellular phone was undamaged, so Plaintiff  
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1 called someone to pick him up and drive him home. *Id.* He waited approximately 40 minutes along  
2 the street. *Id.*

3 Plaintiff does not address the validity of his arrest, his suspended license, or the officer's  
4 account of his giving a false name to identify himself.

### 5 **C. Procedural History**

6 Plaintiff commenced this action, *pro se*, by filing his original complaint with this Court on  
7 April 15, 2013. (Doc. 1). Plaintiff names Econo Towing Company, Robert Kodman and Marty  
8 Kodman, individual owner operators of Econo Towing Company, and Beryle Dodson, an  
9 individual tow truck operator for Econo Towing Company, as defendants in this action ("the  
10 Towing Defendants"), as well as Jerry Dyer, Chief of the Fresno Police Department, and Officer  
11 John Conlee, a City of Fresno police officer ("the City Defendants") (collectively, "Defendants").  
12 *See* FAC (Doc. 77). On April 19, 2013, the Magistrate Judge screened the complaint, and, finding  
13 that Plaintiff stated some cognizable claims, required Plaintiff to either inform the Court whether he  
14 wished to proceed only as to the cognizable claims, or file an amended complaint curing the  
15 deficiencies. (Doc. 4). On May 14, 2013, Plaintiff filed his First Amended Complaint ("the  
16 Amended Complaint," Doc. 5). On May 21, 2013, the Magistrate Judge screened the Amended  
17 Complaint, finding that it failed to state any cognizable claims, therefore dismissing it with leave to  
18 amend. (Doc. 7.)

19 On June 19, 2013, Plaintiff filed his Second Amended Complaint ("SAC," Doc. 10). The  
20 Magistrate Judge again screened the SAC, finding that it stated some cognizable claims, but  
21 recommended that claims against Defendant Jerry Dyer and Plaintiff's claims under 42 U.S.C.  
22 § 1986 be dismissed with prejudice and that the action proceed only as to the claims against  
23 Defendants John Conlee, Econo Towing and Doe Defendants Nos. 1-3. Acknowledging Plaintiff's  
24 statement of nonopposition (Doc. 13), this Court adopted in full the Magistrate Judge's Findings  
25 and Recommendations in its Order rendered July 9, 2013. (Doc. 14).

26 On January 27, 2014, Plaintiff filed multiple motions for entry of default against Defendants  
27 (Docs. 30-33), which the Magistrate Judge denied on February 4, 2014. (Doc. 34).

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1 On March 17, 2014, Plaintiff filed a motion for leave to amend his complaint in order to  
2 substitute the Doe Defendants (Doc. 35), and lodged the Third Amended Complaint (“TAC,” Doc.  
3 36). For that limited purpose, the Magistrate Judge granted leave to amend. (Doc. 37).

4 In May 2014, the Defendants filed consents to jurisdiction of a United States Magistrate  
5 Judge (Docs. 47 & 48), but Plaintiff declined (Doc. 51). This Court referred subsequent pretrial  
6 motions to the Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 304.

7 On April 24, 2014, the Towing Defendants filed a Motion to Dismiss Plaintiff’s Complaint  
8 (Doc. 44), which this Court referred to the Magistrate Judge (Doc. 45). On May 19, 2014, Plaintiff  
9 filed his opposition to the motion to dismiss (Doc. 50), and a “Motion for Leave to File Brief in  
10 Opposition to ‘Defendants [ . . . ] Motion to Dismiss Complaint, or Alternatively, Motion for More  
11 Definite Statement’ Out of Time” (Doc. 49).

12 On June 4, 2014, Plaintiff failed to appear at the motion hearing on Defendants’ motion to  
13 dismiss (Doc. 52). As a result, the Magistrate Judge took the motion under submission without oral  
14 argument, and issued an order to show cause why sanctions should not issue for Plaintiff’s failure  
15 to appear. (Doc. 55). Because Plaintiff had been given explicit notice about the hearing, the  
16 Magistrate Judge did not accept Plaintiff’s excuse that he was unaware that his attendance was  
17 required. (Doc. 72). The Court admonished Plaintiff to comply with the Local Rules but did not  
18 issue monetary sanctions because Defendant failed to provide evidence of the costs and fees  
19 associated with their appearance at the motion hearing. *Id.* The Magistrate Judge also denied  
20 Plaintiff’s motion relative to “a more definite statement out of time.” (Doc. 53). Also on June 4,  
21 2014, the Magistrate rendered his Findings and Recommendations (Doc. 54), in which he  
22 recommended to this Court that Defendants’ motion to dismiss be denied, which this Court adopted  
23 in full on July 9, 2014 (Doc. 73).

24 On June 12, 2014, the Court rendered an order consolidating the instant action with Case  
25 No. 1:14-CV-00549 (Doc. 56). In light of the consolidation, Plaintiff requested leave to amend the  
26 TAC (Doc. 68), which, on July 30, 2014, the Magistrate Judge granted (Doc. 76).

27 On September 2, 2014, Plaintiff filed the operative Fourth Amended Complaint (“FAC,”  
28 Doc. 77). On September 19, 2014, the City Defendants filed a motion to strike portions of

1 Plaintiff's FAC (Doc. 79). On October 24, 2014, the Magistrate Judge recommended denying the  
2 City Defendants' motion (Doc. 86), and this Court, on December 4, 2014, adopted in full the  
3 Magistrate Judge's findings and recommendations (Doc. 87).

4 On October 9, 2014, Plaintiff filed a motion for a protective order regarding a videotaped  
5 deposition of Plaintiff noticed by Defendants (Doc. 83). On October 10, 2014, the Magistrate  
6 Judge denied the motion (Doc. 84), without oral argument or further briefing, reasoning that  
7 Plaintiff's motion was frivolous for at least two reasons: first, that the basis for Plaintiff's motion  
8 was his subjective opinion that he should not have to participate in his deposition because he found  
9 it to be inconvenient and harassing; and, because Plaintiff's argument that his deposition served no  
10 purpose was nonsensical in circumstances where Plaintiff is obviously a percipient witness of the  
11 events alleged in his own complaint. The Magistrate Judge explicitly warned Plaintiff that he  
12 "must abide by the same rules and procedures that Defendants must abide by according to the  
13 Federal Rules of Civil Procedure, including those rules and procedures governing depositions and  
14 other discovery requests." (Doc. 80, Order Denying Mot. for Protective Order 2:3-5.)

15 On January 20, 2015, the City Defendants filed a motion to conduct a mental examination  
16 of Plaintiff pursuant to Federal Rule of Civil Procedure 35. (Doc. 88). Initially scheduled to be  
17 heard on March 11, 2015, it was continued to March 25, 2015 (Doc. 104). On February 17, 2015,  
18 Plaintiff filed a motion for protective order regarding a mental examination (Doc. 95). Plaintiff  
19 filed several discovery responses on January 26, 2015 (Docs. 89-91), which the Magistrate rightly  
20 disregarded on January 28, 2015 (Doc. 92).

21 On February 2, 2015, the City Defendants filed a motion to compel Plaintiff to provide  
22 responses to certain questions he refused to answer during his deposition (Doc. 93). The Magistrate  
23 Judge observed that the deposition transcript illustrates that Plaintiff's conduct during the  
24 deposition was rude, uncooperative, disrespectful, and simply unacceptable. After arriving twenty  
25 minutes late to his own deposition, Plaintiff initially refused to submit to the deposition until the  
26 City Defendant's attorney, Ms. Camarena, satisfied Plaintiff's groundless demands that she prove  
27 that she was licensed to practice law and qualified to administer oaths. Not until counsel warned  
28 Plaintiff about a future motion to compel and further sanctions did Plaintiff allow Ms. Camarena to



1 ask questions. However, Plaintiff refused to answer numerous obviously relevant questions,  
2 arguing that they were not relevant. Finally, Plaintiff accused Ms. Camarena of “rape, a molest,  
3 and a torture” because she asked him questions which displeased him. Plaintiff behaved in this  
4 uncooperative, offensive, and unacceptable manner despite the Magistrate Judge’s October 10,  
5 2014 Order, in which he expressly rejected Plaintiff’s claims that a deposition was unduly  
6 inconvenient and harassing, and had explicitly ordered Plaintiff to comply with Federal Rules,  
7 including those about depositions and discovery.

8         Because the Court scheduled a hearing on the City Defendant’s motion to compel for  
9 March 11, 2015, in accordance with Local Rule 251, the parties were required to file a Joint  
10 Statement regarding the discovery dispute by March 4, 2015. Instead, on March 4, 2015, the City  
11 Defendants filed a statement in which they informed the Court that Plaintiff failed to participate in  
12 drafting a joint statement (Doc. 102). On March 6, 2015, the Magistrate Judge rendered an order  
13 granting the City Defendant’s motion to compel and ordered Plaintiff to show cause why sanctions  
14 should not issue for Plaintiff’s refusal to participate in the preparation of a Joint Statement (Doc.  
15 103). In the same Order, the Magistrate Judge ordered Plaintiff to pay \$715.00 in monetary  
16 sanctions for his behavior at the previous deposition, and to schedule and cooperate with Defendant  
17 at a new deposition. On March 20, 2015, Plaintiff filed a written response to the order to show  
18 cause (Doc. 120).

19         The parties were also required to submit by March 18, 2015, a Joint Statement related to the  
20 City Defendant’s January 20, 2015 motion for a mental examination. Instead, on March 18, 2015,  
21 Defendant Conlee filed a statement informing the Court that, again, Plaintiff failed to participate in  
22 the preparation of a joint statement (Doc. 115). On March 20, 2015, the Magistrate Judge granted  
23 Defendant’s motion for a mental examination and ordered Plaintiff to show cause why sanctions  
24 should not be imposed for his second failure to participate in the preparation of a Joint Statement  
25 (Doc. 116). On April 3, 2015, Plaintiff filed his response (Doc. 135) to the Court’s March 20, 2015  
26 order to show cause, in which he argued that he had complied with the Joint Statement requirement  
27 by providing “Exhibit A” that was attached to Plaintiff’s response to the March 6 order to show  
28 cause, which the Magistrate Judge has reviewed and found to be not only insufficient, but a

1 falsehood.

2 Because Plaintiff's FAC (Doc. 77) asserts claims which the Court had previously dismissed  
3 with prejudice, the City Defendants requested *nunc pro tunc* relief (Doc. 94). On March 18, 2015,  
4 this Court granted relief and specifically acknowledged its July 9, 2013 Order (Doc. 14) dismissing  
5 all of Plaintiff's claims against Dyer, as well as all of Plaintiff's claims under section 1986, without  
6 leave to amend. The Court warned Plaintiff, yet again, that failure to follow the Court's orders  
7 could result in sanctions up to and including dismissal of his case in its entirety.

8 On March 20, 2015, Plaintiff filed a motion to stay discovery, citing the Court's pending  
9 resolution of the motion for summary judgment, which the Court disregarded for Plaintiff's failure  
10 to comply with Local Rule 230 (Doc. 121). Plaintiff filed additional improperly noticed motions  
11 (Docs. 122, 124, 126), which the Court likewise disregarded (Docs. 130 & 131).

12 On March 30, 2015 and again on April 10, 2015, Plaintiff filed three duplicative motions:  
13 to Stay Discovery Pending Determination of Pending Motions for Summary Judgment (Docs. 132  
14 & 145); to Stay Imposition of \$715 Monetary Sanctions Pending Disposition of Motion to  
15 Reconsider (Docs. 133 & 143); and for Reconsideration of the Court's previous order continuing  
16 the hearing on Defendants' motion to compel Plaintiff to submit to an independent medical  
17 examination (Docs. 135 & 141).

18 On February 18, 2015, Defendants filed their motions for summary judgment (Docs. 96 &  
19 97). Plaintiff filed his Oppositions to the motions on March 12, 2015 (Docs. 105 & 106).  
20 Defendants filed their respective Reply briefs on March 17, 2015 (Docs. 110 & 111). Plaintiff filed  
21 a motion for summary judgment on April 9, 2015 (Doc. 139). The matters are now ripe for review.

## 22 LEGAL STANDARD

23 Summary judgment is appropriate when there is no genuine issue as to any material fact and  
24 the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56. The Court must  
25 draw all reasonable inferences in favor of the nonmoving party, and it may not make credibility  
26 determinations or weigh the evidence. *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133,  
27 150 (2000). A fact is "material" if its proof or disproof is essential to an element of a plaintiff's  
28 case. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). A factual dispute is "genuine" "if the

1 evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Anderson v.*  
2 *Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). “Where the record taken as a whole could not lead a  
3 rational trier of fact to find for the non-moving party, there is no genuine issue for trial.” *Matsushita*  
4 *Elec. Industrial Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (internal citation  
5 omitted).

6 The moving party bears the initial burden of informing the court of the basis for its motion,  
7 and of identifying those portions of the pleadings and discovery responses that demonstrate the  
8 absence of a genuine issue of material fact for trial. *Celotex*, 477 U.S. at 323. If the moving party  
9 meets its initial burden, the nonmoving party must go beyond the pleadings and, by its own  
10 affidavits or discovery, set forth specific facts showing that there is some genuine issue for trial in  
11 order to defeat the motion. *See* Fed. R. Civ. P. 56(c); *Liberty Lobby*, 477 U.S. at 250.

12 A verified complaint based on personal knowledge setting forth specific facts admissible in  
13 evidence is treated as an opposing affidavit under Rule 56. *Schroeder v. McDonald*, 55 F.3d 454,  
14 460 (9th Cir. 1995). A verified pleading based on personal knowledge in opposition to a summary  
15 judgment motion setting forth facts that would be admissible in evidence may also function as an  
16 affidavit. *Johnson v. Meltzer*, 134 F.3d 1393, 1399-1400 (9th Cir.), *cert. denied*, 525 U.S. 840  
17 (1998).

## 18 DISCUSSION

19 Defendant Officer Conlee and the Towing Defendants argue that summary judgment should  
20 be granted in their favor on Weldon’s Section 1983 claim because: (1) the Officer and Towing  
21 Defendants are not liable on the Section 1983 claims as there was no constitutional violation and  
22 Plaintiff has otherwise failed to present evidence sufficient to persuade a reasonable trier of fact  
23 that such Defendants are liable for such claims; (2) Officer Conlee is exempt from suit on Weldon’s  
24 Section 1983 claim for unreasonable seizure under the community caretaker doctrine; (3) the  
25 Towing Defendants contend that summary judgment should be granted in their favor on Plaintiff’s  
26 Section 1983 claim because they are entitled to a “good faith” defense; (4) Plaintiff cannot plead a  
27 cognizable due process claim; (5) the Officer is not liable on the excessive force claim as there was  
28 no constitutional violation and Plaintiff does not meet his burden of showing that genuine issues of

1 material fact remain for trial; and, (6) Officer Conlee is entitled to qualified immunity as to the  
2 excessive force claim.

3 The Court acknowledges that it could dismiss this case in its entirety, as the Magistrate  
4 Judge recommends, because Plaintiff has repeatedly defied Court orders. In the absence of genuine  
5 issues of material fact, however, the Court finds summary judgment appropriate.

## 6 **I. SECTION 1983 CLAIMS**

7 To succeed in asserting his Section 1983 claims, Weldon must demonstrate that the action  
8 (1) occurred “under color of state law,” and (2) resulted in the deprivation of a constitutional or  
9 federal statutory right. *Leer v. Murphy*, 844 F.2d 628, 632-33 (9th Cir. 1988) (citations omitted).

10 As the moving party, Defendants bear the initial burden on summary judgment of pointing  
11 out “an absence of evidence to support [Plaintiff’s] case.” *Celotex*, 477 U.S. at 325. The parties do  
12 not dispute that Defendants acted under color of state law, but dispute whether Defendants violated  
13 Weldon’s constitutional rights.

### 14 **A. Fourth Amendment Claims**

15 Under the Fourth Amendment, “[t]he right of the people to be secure in their persons,  
16 houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and  
17 no Warrants shall issue, but upon probable cause.” U.S. Const. amend. IV. “The Fourth  
18 Amendment does not proscribe all state-initiated searches and seizures; it merely proscribes those  
19 which are unreasonable.” *Florida v. Jimeno*, 500 U.S. 248, 250 (1991) (citations omitted); *see also*  
20 *United States v. Chan-Jimenez*, 125 F.3d 1324, 1326 (9th Cir. 1997) (“For purposes of the Fourth  
21 Amendment, a seizure occurs when a law enforcement officer, by means of physical force or show  
22 of authority, in some way restrains the liberty of a citizen.”).

#### 23 **1. Unreasonable Seizure**

24 Weldon brings a 42 U.S.C. Section 1983 action against Officer Conlee and the Towing  
25 Defendants alleging that such Defendants violated his Fourth Amendment rights by towing his  
26 vehicle without a warrant or his permission, and that, as a result, the seizure was unlawful.  
27 Defendant Officer Conlee counters that the conduct was constitutional and that the “community  
28 caretaking” exception applies.

1 The impoundment of an automobile is a seizure within the meaning of the Fourth  
2 Amendment. A seizure results if “there is some meaningful interference with an individual’s  
3 possessory interests in that property.” *Soldal v. Cook County*, 506 U.S. 56, 61 (1992). “A seizure  
4 conducted without a warrant is per se unreasonable under the Fourth Amendment—subject only to  
5 a few specifically established and well delineated exceptions. The burden is on the Government to  
6 persuade the district court that a seizure comes under one of a few specifically established  
7 exceptions to the warrant requirement.” *Miranda v. City of Cornelius*, 429 F.3d 858, 862 (9th Cir.  
8 2005) (quoting *United States v. Hawkins*, 249 F.3d 867, 872 (9th Cir. 2001)) (internal quotation  
9 marks and citations omitted).

10 ***Defendant John Conlee***

11 Under California law, if an officer discovers that an individual is driving on a suspended  
12 license, it is within a police officer’s discretion to “immediately arrest” such an individual and  
13 “cause the removal and seizure of that vehicle.”<sup>2</sup> Cal. Veh. Code § 14602.6(a)(1) (West). It is also  
14 well-settled that under the community caretaker doctrine, once an arrest is made, a law enforcement  
15 officer may seize and remove any vehicle which may impede traffic, threaten public safety, or be  
16 subject to vandalism. *See e.g. Hallstrom*, 991 F.2d at 1477 n.4 (finding that impoundment of  
17 arrestee’s car from private parking lot “to protect the car from vandalism or theft” was reasonable  
18 under the community caretaking function).

19 Defendants contend that because it was clear that Weldon, his license suspended, could not  
20 lawfully drive the vehicle, Officer Conlee towed the van to a secure storage lot for safekeeping,  
21 rather than abandon it in a high-crime neighborhood for an unknown length of time. On this basis,  
22 Defendant Officer Conlee argues that towing Weldon’s van was unquestionably reasonable and the

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23 <sup>2</sup> California Vehicle Code Section 14602.6(a)(1) states, “Whenever a peace officer determines that a  
24 person was driving a vehicle while his or her driving privilege was suspended or revoked, driving a  
25 vehicle while his or her driving privilege is restricted pursuant to Section 13352 or 23575 and the  
26 vehicle is not equipped with a functioning, certified interlock device, or driving a vehicle without  
27 ever having been issued a driver’s license, the peace officer may either immediately arrest that person  
28 and cause the removal and seizure of that vehicle or, if the vehicle is involved in a traffic collision,  
cause the removal and seizure of the vehicle without the necessity of arresting the person in  
accordance with Chapter 10 (commencing with Section 22650) of Division 11. A vehicle so  
impounded shall be impounded for 30 days.”

1 officer is exempt from suit under the caretaking exception to the Fourth Amendment. *See e.g. Cody*  
2 *v. Dombrowski*, 413 U.S. 433 (1973); *see also Hallstrom v. City of Garden City*, 991 F.2d 1473 (9th  
3 Cir 1993). The Towing Defendants also contend that they are entitled to invoke a good faith  
4 defense.

5         The nonmoving party must go beyond the assertions and allegations of the pleadings and set  
6 forth specific facts by producing competent evidence that shows a genuine dispute of material fact  
7 for trial. *Celotex*, 477 U.S. at 324. Here, Weldon asserts that Conlee was impersonating an officer,  
8 thus his orders were not lawful commands. Weldon relies on his subjective opinion that, because  
9 Conlee had not taken a proper oath of office, he was merely impersonating a police officer at the  
10 time of the incident. As a result, the argument goes, Conlee’s order to tow the vehicle was not a  
11 valid command, but a theft and an unconstitutionally unreasonable seizure. Other than declarations  
12 in support of his motions, Weldon gives no competent evidence to support this material fact.  
13 Weldon’s subjective opinion is insufficient to dispute the evidence that Conlee is, and was at all  
14 relevant times, a police officer with the City of Fresno Police Department because a plaintiff cannot  
15 create a genuine issue of material fact by mere conclusory assertions unsupported by anything  
16 beyond a “scintilla of evidence.” *See Liberty Lobby*, 477 U.S. at 252; *Taylor v. List*, 880 F.2d 1040,  
17 1045 (9th Cir. 1989) (summary judgment cannot be avoided by relying on conclusory allegations  
18 unsupported by factual data). The Court finds that plaintiff has failed to create a genuine issue of  
19 material fact that Conlee was not an actual police officer at the time of the incident.

20         It is undisputed that Officer Conlee had probable cause to make a traffic stop, and that in the  
21 course of the lawful traffic stop, Weldon pulled into the Econo Lodge parking lot. FAC ¶¶ 17-20;  
22 Fed. R. Civ. P. 56(e) (if the nonmoving party fails to properly support or address a fact, a court may  
23 consider the fact undisputed). There is no dispute that at the time of the incident, Officer Conlee  
24 found that Weldon had a suspended license, and that he was arrested. *Id.* There is no dispute that  
25 incident to that arrest, Econo Towing received a request from Officer Conlee for a tow-truck to  
26 respond to the scene of that arrest, and that, in response, they dispatched an employee, Dodson, to  
27 that location. *Id.* It is also undisputed that under the supervision of Officer Conlee, Dodson towed  
28 Weldon’s vehicle to the tow company’s impound location.

1 Recitation of the facts nearly serves as the Court’s analysis. In light of the undisputed fact  
2 that Weldon did not have a valid license at the time of the incident, Weldon’s arguments that the  
3 van was properly registered or that he did not consider it a high-crime area, are unpersuasive.  
4 Weldon’s arrest for a suspended license was an appropriate factor in the officer’s calculus to tow  
5 the vehicle because Weldon could not lawfully operate the vehicle – in that, or any other  
6 neighborhood. *See City of Cornelius*, 429 F.3d at 865 (citing *United States v. Gutierrez*, 995 F.2d  
7 169, 171 (9th Cir. 1993) (“after determining that neither [occupant] possessed a valid driver’s  
8 license, the officer advised them that they were free to go, but that they could not drive the  
9 Cadillac.”); *United States v. Rodriguez-Morales*, 929 F.2d 780, 785 (1st Cir. 1991) (because neither  
10 occupant held a valid license, “the [officer’s] decision not to let the vehicle continue on its journey  
11 was quintessentially reasonable.”)). Considering that Weldon had no valid license and could not  
12 lawfully drive the vehicle, the Court finds reasonable Officer Conlee’s decision to tow the van from  
13 a location where Weldon did not live, but had pulled into by happenstance as a result of a traffic  
14 stop. To do otherwise would mean abandoning the vehicle for an unknown period of time in a  
15 motel parking lot, which, the officer reasoned, would create a target for theft or vandalism, an  
16 acceptable purpose to tow the vehicle under the community caretaker doctrine.

17 Accordingly, the Court concludes that, under the community caretaker doctrine, Officer  
18 Conlee is exempt from suit as to this cause of action.

### 19 ***The Towing Defendants***

20 The Towing Defendants invoke a “good faith” defense. *See, e.g., Clement v. City of*  
21 *Glendale*, 518 F.3d 1090, 1097 (9th Cir. 2008) (private defendants may assert a “good faith”  
22 defense to a section 1983 claim) (citing *Richardson v. McKnight*, 521 U.S. 399, 413-14 (1997);  
23 *Wyatt v. Cole*, 504 U.S. 158, 169 (1992); *Jensen v. Lane County*, 222 F.3d 570, 580 n. 5 (9th Cir.  
24 2000)).

25 As the towing company did in *Clement v. City of Glendale*, the Towing Defendants acted at  
26 the direction of the police, and had no reason to believe that towing Weldon’s van implicated his  
27 Fourth Amendment rights. 518 F.3d at 1096-97. The parties agree – indeed, Weldon emphasizes –  
28 that the Towing Defendants acted in response to Officer Conlee’s call requesting the tow, that

1 Dodson, the towing employee, performed the tow “at the behest” of the officer, and that the officer  
2 directed the tow activity. *See* FAC ¶ 26. Defendants contend, and Weldon does not disagree, that  
3 the officer presented Dodson with a Fresno Police Department Vehicle Inventory Report and that  
4 Dodson and Officer Conlee followed the usual police procedure for impoundments and towing  
5 vehicles, and, also, that the tow company received a fax directly from the Fresno Police Department  
6 in order to release the vehicle. Weldon offers no reasonable basis for questioning Defendant  
7 Dodson’s evidence that he acted in subjective good faith, and no reasonable basis exists in the  
8 record for the Court to conclude that the Towing Defendants acted in subjective bad faith. Based  
9 on their good faith belief that they were towing Weldon’s vehicles in compliance with a valid order  
10 by the Fresno Police Department, and because there is no material dispute about these facts, the  
11 Towing Defendants are entitled to invoke the good faith defense.

12 As there are no genuine issues of material fact underlying these defenses, the Court will  
13 grant summary judgment for all Defendants as to these claims.

## 14 **2. Excessive Force**

15 Weldon asserts that in the process of arresting him, Defendant Officer Conlee pulled his  
16 arms behind his back and placed his hands in handcuffs, and did so “brutishly,” which the Court  
17 construes as an allegation of excessive force and an unreasonable seizure in violation of the Fourth  
18 Amendment. Weldon alleges that in the process of effectuating the arrest, Officer Conlee  
19 handcuffed him tightly, causing him pain in several joints and numbness. Weldon argues that such  
20 force was excessive because he was compliant with the officer’s command to get out of the car.

21 Weldon does not address or dispute that Officer Conlee had probable cause to arrest him for  
22 operating a vehicle without a license, a violation of California Vehicle Code section 12500(a), and  
23 does not dispute that handcuffs are used in the ordinary course of lawful arrests. If a party fails to  
24 properly support an assertion of fact or fails to properly address another party’s assertion of fact as  
25 required by Rule 56(c), the court may consider the fact undisputed for purposes of the motion. *See*  
26 Fed. R. Civ. P. 56(e).

27 Defendants argue that even using Weldon’s facts, Conlee’s conduct does not constitute  
28 violative conduct but that, even if it did, Officer Conlee is entitled to qualified immunity.



1 Qualified immunity shields government officials “from liability for civil damages insofar as  
2 their conduct does not violate clearly established statutory or constitutional rights of which a  
3 reasonable person would have known.” *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). The  
4 protection of qualified immunity applies regardless of whether the government official makes an  
5 error that is “a mistake of law, a mistake of fact, or a mistake based on mixed questions of law and  
6 fact.” *Pearson v. Callahan*, 555 U.S. 223, 231 (2009) (internal quotation and citation omitted).  
7 “The principles of qualified immunity shield an officer from personal liability when an officer  
8 reasonably believes that his or her conduct complies with the law.” *Id.* at 245.

9 Because qualified immunity is an affirmative defense, the defendant bears the burden of  
10 establishing entitlement to it. *Gomez v. Toledo*, 446 U.S. 635, 640 (1980) (“Since qualified  
11 immunity is a defense, the burden of pleading it rests with the defendant.”). “The threshold inquiry  
12 in a qualified immunity analysis is whether the plaintiff’s allegations, if true, establish a  
13 constitutional violation.” *Wilkins v. City of Oakland*, 350 F.3d 949, 954 (9th Cir. 2003) (citing  
14 *Saucier*, 533 U.S. at 201); *see also Wilkinson v. Torres*, 610 F.3d 546, 550 (9th Cir. 2010) (quoting  
15 *Pearson*, 555 U.S. at 232).

16 ***Prong One: Whether the Officer’s Conduct Was Objectively Reasonable***

17 A claim against law enforcement officers for excessive force is analyzed under the Fourth  
18 Amendment’s “objective reasonableness” standard. *See Graham v. Connor*, 490 U.S. 386, 388  
19 (1989). “Determining whether the force used to effect a particular seizure is reasonable under the  
20 Fourth Amendment requires a careful balancing of the nature and quality of the intrusion on the  
21 individual’s Fourth Amendment interests against the countervailing governmental interests at  
22 stake.” *Id.* at 396 (quotation omitted).

23 The Fourth Amendment requires police officers making an arrest to use only an amount of  
24 force that is objectively reasonable in light of the circumstances facing them. *Tennessee v. Garner*,  
25 471 U.S. 1, 7-8 (1985). Neither tackling nor punching a suspect to make an arrest necessarily  
26 constitutes excessive force. *Graham*, 490 U.S. at 396 (citing *Johnson v. Glick*, 481 F.2d 1028, 1033  
27 (2d Cir. 1973)). But “even where some force is justified, the amount actually used may be  
28 excessive.” *Santos v. Gates*, 287 F.3d 846, 853 (9th Cir. 2002). “The reasonableness of a particular

1 use of force must be judged from the perspective of a reasonable officer on the scene, rather than  
2 with the <sup>20</sup>/<sub>20</sub> vision of hindsight.” *Id.* (citing *Terry v. Ohio*, 392 U.S. 1, 20-22 (1968)). An  
3 excessive force analysis requires evaluating “the severity of the crime at issue, whether the suspect  
4 poses an immediate threat to the safety of the officers or others, and whether he is actively resisting  
5 arrest or attempting to evade arrest by flight.” *Id.* The absence of probable cause does not grant an  
6 individual the right to offer resistance. *See United States v. Span*, 970 F.2d 573, 580 (9th Cir. 1992).  
7 An individual’s limited right to offer reasonable resistance is only triggered by an officer’s bad  
8 faith or provocative conduct. *Id.*

9         The question in all cases is whether the use of force was “objectively reasonable in light of  
10 the facts and circumstances confronting” the arresting officer. *Graham*, 490 U.S. at 397 (internal  
11 quotation marks omitted). Notwithstanding Weldon’s subjective opinion to the contrary, his own  
12 factual allegations underscore his defiant and unpredictable conduct in the time leading up to his  
13 arrest. Weldon admits that Conlee, in uniform, came to his driver side window and identified  
14 himself as a City of Fresno Police Officer and was driving a police vehicle, but Weldon argues that  
15 he did not believe that Officer Conlee was an actual police officer. Plaintiff Paul Weldon does not  
16 dispute the officer’s account that when asked his name he, in an apparent effort to evade detection  
17 for driving on a suspended license, lied and said “Doug Weldon.” Weldon does not dispute that  
18 when Officer Conlee ran the name “Doug Weldon,” through the police Record Management  
19 System, no such licensee existed. With Conlee at his driver’s side window, Weldon admits that he  
20 demanded an immediate hearing, that he interrupted Officer Conlee and reached inside his van for  
21 his cellular phone, ignored the officer, and took the call. In other words, by Weldon’s account,  
22 Officer Conlee faced an argumentative and unpredictable individual. Deferring to Weldon’s facts,  
23 as it must, his unpredictable behavior makes it unquestionably reasonable to pull such a suspect’s  
24 arms behind his back, place his hands in handcuffs, and to do so swiftly and without injury.

25         Defendant Officer Conlee does not dispute the facts as Weldon presents them. Further, the  
26 parties do not disagree about the use of force. As Weldon alleges, Conlee concedes that he used  
27 force to pull Weldon’s arms behind his back and to place his hands in handcuffs. But Conlee  
28 argues that to do so was reasonable under the facts and circumstances with which he was

1 confronted, given how Weldon behaved and that handcuffs are a necessary and routine part of  
2 effectuating an arrest. The officer emphasizes that the information he had at the time was that  
3 Weldon had committed a criminal act in that he was driving without a license, lied about his name,  
4 demanded an immediate hearing, disputed the officer's authenticity, reached back into his vehicle  
5 for his cellular phone, ignored the officer and spoke with the caller, and was unpredictable.  
6 Although Weldon asserts a subjective conclusion that he was compliant, Weldon does not present  
7 any specific facts or competent evidence disputing the officer's account of his suspended license,  
8 lies to the officer, reaching for the phone, or unpredictable behavior. Fed. R. Civ. P. 56(e) (a court  
9 may consider such facts undisputed).

10 Police officers need not use the least intrusive means available to them, *see Scott v. Henrich*,  
11 39 F.3d 912, 915 (9th Cir. 1994), and here Weldon contends that Officer Conlee did not apply the  
12 minimum, but a disproportionate amount of force to arrest Weldon by "wresting" his arms, twisting  
13 his arms "in a violent fashion" in order to bring them behind his back, grabbing him by his wrists,  
14 and handcuffing him. However, "[i]f an officer reasonably, but mistakenly, believed that a suspect  
15 was likely to fight back, for instance, the officer would be justified in using more force than in fact  
16 was needed." *Saucier v. Katz*, 533 U.S. 194, 204-05 (2001). The evidence shows that Conlee did  
17 not know who Weldon actually was, and could not have known what Weldon was doing or  
18 reaching for inside the vehicle when he went for his cellular phone. Faced with the unpredictable  
19 actions of an argumentative suspect, it is a reasonable conclusion that Weldon was likely to fight  
20 back. The Court finds that under these circumstances, as Weldon describes them, the minimal force  
21 Officer Conlee used was reasonable. *See Arpin v. Santa Clara Valley Transp. Agency*, 261 F.3d  
22 912, 921-22 (9th Cir. 2001) (citing *Forrester v. City of San Diego*, 25 F.3d 804, 806-07 (9th Cir.  
23 1994) (finding the use of pain compliance techniques on nonresisting abortion protestors, that  
24 resulted in complaints of bruises, a pinched nerve and a broken wrist, was objectively reasonable);  
25 *Foster v. Metro. Airports Comm'n*, 914 F.2d 1076, 1082-83 (8<sup>th</sup> Cir. 1990) (determining resistance  
26 justified using force to handcuff a suspect where it was insufficient to create evidence of injury)).

27 Weldon's allegations of injury are also unsupported. In some instances, tight handcuffing  
28 can constitute excessive force. *See e.g. LaLonde v. Cnty. Of Riverside*, 204 F.3d 947, 960 (9th Cir.

1 2000). But that tight handcuffs may constitute excessive force in *some* instances does not mean  
2 that it does in *all* instances. An officer may certainly use handcuffs to effectuate an otherwise  
3 lawful arrest without implicating the Fourth Amendment. *See Graham*, 490 U.S. at 396 (1989) (an  
4 officer is allowed to use reasonable force during an arrest). In circumstances analogous to the  
5 instant case, courts in this circuit have found that no Fourth Amendment violation occurred where  
6 police officers used handcuffs in the ordinary course of an otherwise lawful arrest absent either a  
7 showing that an officer ignored the plaintiff-detainee’s complaint about tight handcuffs or that  
8 handcuffs caused plaintiff’s injury, or both. *See e.g. Ressay v. King County*, No. C11-760 MJP, 2012  
9 WL 2155006, at \*1 (W.D. Wash. June 13, 2012) *aff’d*, 520 F. App’x 554 (9th Cir. 2013)); *Epling v.*  
10 *Komathy*, 536 F. App’x 755 (9th Cir. 2013).

11 In *Ressay v. King County*, the Ninth Circuit affirmed the district court’s finding that the  
12 officer’s tightly handcuffing a suspect did not constitute unconstitutionally excessive force because  
13 the plaintiff-detainee had apparently not complained to the officer about the handcuffs at the time  
14 of the incident. 520 F. App’x 554. In *Epling v. Komathy*, the Ninth Circuit again held that the  
15 district court properly granted summary judgment in the defendant’s favor because the plaintiff-  
16 detainee neither complained about tight handcuffs at the time of the incident nor showed that she  
17 suffered injury related to the handcuffing, and thus failed to raise a genuine dispute of material fact  
18 as to whether defendant’s use of force in handcuffing her was unreasonable. 536 F. App’x 755  
19 (citing *Graham*, 490 U.S. at 396; *see also Kennedy v. Allied Mut. Ins. Co.*, 952 F.2d 262, 266 (9th  
20 Cir. 1991) (a party cannot create dispute of fact by an affidavit contradicting prior deposition  
21 testimony); *Arpin*, 261 F.3d at 922 (summary judgment is proper on an excessive force claim  
22 arising from application of handcuffs where plaintiff did not provide any medical records to support  
23 her claim that she suffered an injury as a result of being handcuffed)).

24 And in *Luong v. City & County of San Francisco*, despite Luong’s complaint about a minor  
25 but temporary injury, a district court found no triable issue of fact because the plaintiff-detainee’s  
26 “only complaint is that his handcuffs were too tight, which left a slight abrasion on his wrists.” No.  
27 C11-5661 MEJ, 2012 WL 5869561, at \*5 (N.D. Cal. Nov. 19, 2012). The court found that the  
28 plaintiff’s “only evidence to support his excessive force claim is his testimony that the handcuffs

1 were too tight and caused him a slight abrasion” and such an allegation was “vague testimony” and  
2 “not enough to withstand summary judgment.” *Id.* In *Shaw v. City of Redondo Beach*, a district  
3 court also granted summary judgment in defendants’ favor because the detainee “did not repeatedly  
4 request to have the handcuffs removed or loosened, was not in any demonstrable pain, did not  
5 complain of pain or inform [the officer] of any pre-existing injuries, and was not pushed or  
6 shoved.” 2005 WL 6117549, at \*9 (C.D. Cal. Aug. 23, 2005).

7 This Court agrees that a generalized allegation of excessive force is insufficient for a claim  
8 to survive summary judgment; the factual allegations must include: (1) being demonstrably injured  
9 by the handcuffs; or, (2) having had his complaints about pain ignored by officers. *See e.g. Dillman*  
10 *v. Tuolumne Cnty.*, No. 1:13-CV-00404 LJO, 2013 WL 1907379, at \*8 (E.D. Cal. May 7, 2013).

11 Weldon’s allegations plainly fit the pattern of insufficiencies in the exemplary case law.  
12 Weldon does not allege that he complained about tight handcuffs or pain at the time of the incident.  
13 Nor does he allege that he asked any officer to loosen his handcuffs, or that any police officer  
14 ignored such a request. Like Luong’s complaints about an abrasion, Weldon vaguely complains  
15 that when Officer Conlee “twisted” his arms behind his back and placed his hands in handcuffs it  
16 was “brutish,” it caused him pain in his joints, rotator sockets, elbows and wrists, and that as a  
17 result of the handcuffs he was “numb” and in pain for “several hours.” But Weldon does not allege  
18 that he contemporaneously reported any pain or injury to an officer. Subsequently, Weldon fails to  
19 demonstrate that he suffered any actual injury. As in *Arpin*, Weldon does not present evidence,  
20 such as medical records, demonstrating injury. Indeed, Weldon does not suggest that he sought  
21 medical attention that day – or ever – due to the handcuffing procedure the officer used.

22 Absent allegations that a police officer ignored his complaint about tight handcuffs, or that  
23 he incurred actual injury, Weldon’s vague and conclusory allegations, unsupported by evidence, are  
24 insufficient to support a constitutional claim that survives summary judgment. *Arpin*, 261 F.3d at  
25 922 (citing *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989)). There is no evidence that would  
26 permit a fact-finder to conclude that the officer applied an unreasonable amount of force under the  
27 circumstances. *See Graham*, 490 U.S. at 396 (“Not every push or shove, even if it may later seem  
28 unnecessary in the peace of a judge’s chambers, violates the Fourth Amendment.” (citation and

1 quotation marks omitted)). Judges must make “allowance for the fact that police officers are often  
2 forced to make split-second judgments-in circumstances that are tense, uncertain, and rapidly  
3 evolving-about the amount of force that is necessary in a particular situation.” *Graham*, 490 U.S. at  
4 397. Therefore, the answer to the first question under *Saucier* is “no.”

5 The Court finds that, even if true, Weldon’s allegations do not establish a constitutional  
6 violation. The Court concludes that Weldon’s allegations fail to raise genuine disputes of material  
7 fact as to whether the force used was unreasonable or that he sustained actual injuries.

8 ***Prong Two: Whether Right Was Clearly Established***

9 The second question a court must ask to determine if qualified immunity applies, is  
10 “whether the right at issue was ‘clearly established’ at the time of defendant’s alleged misconduct.”  
11 *Wilkinson v. Torres*, 610 F.3d 546, 550 (9th Cir. 2010) (quoting *Pearson*, 555 U.S. at 232). If, in  
12 the course of the two-prong test, however, a court finds that the answer to the first question is “No,”  
13 then the inquiry ends and the defense of qualified immunity applies. *Saucier*, 533 U.S. at 201

14 In the instant action, because the Court has determined, *supra*, that, even if true, Weldon’s  
15 allegations do not establish a constitutional violation, the Court’s inquiry stops and concludes that  
16 Officer Conlee is entitled to qualified immunity. *Saucier*, 533 U.S. at 201.

17 Accordingly, the Court will grant summary judgment in favor of the City Defendants on  
18 Plaintiff’s excessive force claim.

19 **B. Plaintiff’s Due Process Claims under the Fifth and Fourteenth Amendments**

20 Weldon apparently asserts a procedural due process claim by his argument that Defendants  
21 did not have a warrant or permission to tow his vehicle. Yet, “procedural due process does not  
22 require pre-deprivation notice and a hearing before impoundments.” *See City of Cornelius*, 429  
23 F.3d at 867 (citing *Soffer v. City of Costa Mesa*, 798 F.2d 361, 363 (9th Cir. 1986) (finding no  
24 requirement for pre-deprivation notice because procedural burden is incompatible with legitimate  
25 purpose of immediate impoundment); *Goichman v. Rheuban Motors, Inc.*, 682 F.2d 1320, 1323-24  
26 (9th Cir. 1982) (same); *Stypmann v. City and County of San Francisco*, 557 F.2d 1338, 1342 (9th  
27 Cir. 1977) (same). Because the officer was clearly acting within his legitimate caretaking function,  
28 these cases control and Weldon’s due process claim necessarily fails. Moreover, courts have

1 rejected the proposition that the statutory impound scheme violates due process. *See e.g. Salazar v.*  
2 *Maywood*, 414 Fed.Appx. 73, 74-75 (9th Cir. 2011) (finding that the statute’s notice provisions  
3 satisfy due process). As there are no genuine issues of material fact, summary judgment on this  
4 claim is warranted.

## 5 **II. STATE LAW CLAIMS**

### 6 **A. Assault and Battery**

7 Under California law, Weldon’s state law assault and battery claims are coextensive with  
8 his federal claim for excessive force. Because Weldon fails to demonstrate that Officer Conlee  
9 used unreasonable force against him during an otherwise lawful arrest, these claims fail. *See Arpin*,  
10 261 F.3d at 921-22 (citing *Saman v. Robbins*, 173 F.3d 1150, 1156-57, fn. 6 (9th Cir. 1999)).  
11 Weldon also cannot sustain a claim for battery unless he proves the unreasonable force caused him  
12 injury, damages, loss or harm. *Id.* As set forth, *supra*, Weldon cannot show that Officer Conlee  
13 used unreasonable force or that such unreasonable force caused injury, damage, loss, or harm.  
14 Accordingly, the Court will grant summary judgment in favor of Defendants on Weldon’s state law  
15 causes of action for assault and battery.

### 16 **B. Conversion**

17 Weldon claims that by towing away his van, the Towing Defendants’ committed theft (or  
18 conversion). The Towing Defendants argue that they cannot be liable for theft or conversion  
19 because they never wrongfully possessed Weldon’s vehicle, rather they towed it at the apparently  
20 valid command of Officer Conlee, a City of Fresno Police Officer. *See Halajian v. D & B Towing*,  
21 209 Cal. App. 4th 1 (2012); Cal. Veh. Code § 14602.6(a)(1) (West).

22 In *Halajian*, under facts similar to the instant case, a California appellate court found that a  
23 towing company’s possession of a vehicle was only at the lawful instruction of a police officer,  
24 thus, there could be no liability for conversion. *Id.* In other analogous cases, the Ninth Circuit has  
25 held that an owner of a towed vehicle does not have a state law conversion claim against a towing  
26 company because the automobile was properly towed. *See e.g. Scofield v. City of Hillsborough*, 862  
27 F.2d 759, 766-67 (9th Cir. 1988).

1 Here, it is undisputed that the officer determined that Weldon was driving on a suspended  
2 license. Pursuant to California Vehicle Code § 14602.6(a)(1), “[w]henver a peace officer  
3 determines that a person was driving a vehicle while his or her driving privilege was suspended . . .  
4 the peace officer may . . . cause the removal and seizure of that vehicle . . . .” Therefore, this Court  
5 likewise concludes that because the towing company operated at the direction of a lawful command  
6 for impoundment, Weldon has no claim for conversion. *Id.*

7 Weldon counters with a subjective conclusion that because Officer Conlee was merely  
8 impersonating an officer at the time of the incident, his towing instructions were not lawful. As  
9 evidence, Weldon suggests that Conlee failed to take an oath of office which comports with the  
10 California or United States constitution, an omission that somehow invalidates Conlee’s status as a  
11 police officer, which, in turn, makes the towing activity a theft, and not a lawful impoundment.

12 The Court observes that in support of his legal conclusion, Weldon provides neither case  
13 law nor any reasonable basis for such a finding. Even if Officer Conlee took the oath that Weldon  
14 suggests is deficient, such an oath has no impact on whether the Towing Defendants believed in  
15 good faith that they were following a valid police command. Weldon’s logic seems to be that,  
16 notwithstanding a reasonable belief to the contrary, his subjective opinion about Conlee’s status as  
17 a police officer renders the Towing Defendants’ belief about the validity of the police command  
18 irrelevant. Not so. Public policy and fairness militate finding that the Towing Defendants’ belief  
19 that they acted in accordance with the law is, indeed, relevant. *Tarantino v. Syputo*, No. C 03-03450  
20 MHP, 2006 WL 1530030, at \*12 (N.D. Cal. June 2, 2006) *aff’d sub nom. Tarantino v. Syputa*, 270  
21 F. App’x 675 (9th Cir. 2008) (“A contrary rule would not only be inequitable but would discourage  
22 cooperation with law enforcement agencies.”) (quoting *Sokol v. Public Utilities Commission*, 65  
23 Cal.2d 247, 257-58 (1966)).

24 Weldon’s factual assertions also undermine his argument. By all accounts, Dodson and the  
25 other Towing Defendants acted at the request and direction of Conlee and the Fresno Police  
26 Department. Under Weldon’s facts, Conlee acted as a putative police officer because he: identified  
27 himself as a City of Fresno Police Officer; was driving a Fresno Police vehicle; was wearing a City  
28 of Fresno Police Department uniform; was equipped with handcuffs; effectuated Weldon’s arrest;



1 and, that he requested and directed the tow activity with the cooperation of the Fresno Police  
2 Department. Also, Weldon does not dispute that the towing company staff received the appropriate  
3 paperwork from the City of Fresno Police Department about the impoundment. Thus, Dodson and  
4 the Towing Defendants had every reason to believe that Conlee was an actual police officer giving  
5 valid commands. Under these facts, it is unquestionably reasonable for the Towing Defendants to  
6 have believed that the command to tow the vehicle came from a valid law enforcement agency. *See*  
7 *Tarantino*, 2006 WL 1530030, at \*12. As in *Tarantino*, the Towing Defendants cannot be held  
8 liable for complying with an order that was valid upon its face, even if that order is later found to be  
9 unconstitutional. *Id.* (finding that a towing company could not be found liable for conversion if  
10 complying with an order that was valid on its face, reasoning that the California Supreme Court  
11 found in similar circumstances that a telephone company could not be found liable “for complying  
12 with a mandatory order of the Public Utilities Commission valid upon its face, if that order is later  
13 found to be unconstitutional,” because to hold otherwise would “impose upon the utility the  
14 investigative functions of a law enforcement agency and the decision-making duty of a judicial  
15 tribunal.”) (quoting *Sokol*, 65 Cal.2d at 257).

16 Accordingly, this Court will grant the Towing Defendants’ motion for summary judgment  
17 on Plaintiff’s conversion claim.

### 18 **C. Other State Law Claims**

19 Plaintiff’s FAC is, at best, puzzling because the various claims are lost in Plaintiff’s ranting.  
20 The Court has done its best to liberally interpret the claims asserted. To the extent Weldon asserts  
21 additional state law claims which the Court has not unearthed, the Court notes that having found it  
22 appropriate to grant summary judgment in favor of the Defendants on Plaintiff’s federal claims over  
23 which the Court has original jurisdiction, and as the balance of pertinent factors<sup>3</sup> (judicial economy,  
24

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25 <sup>3</sup> *See Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 (1988) (“a federal court should consider  
26 and weigh in each case, and at every stage of the litigation, the values of judicial economy,  
27 convenience, fairness, and comity in order to decide whether to exercise jurisdiction over a case  
28 brought in that court involving pendent state-law claims. When the balance of these factors indicates  
that a case properly belongs in state court, as when the federal-law claims have dropped out of the  
lawsuit in its early stages and only state-law claims remain, the federal court should decline the  
exercise of jurisdiction by dismissing the case without prejudice.”).

1 convenience, fairness, and comity) weigh against the exercise of supplemental jurisdiction in this  
2 case, the Court declines to exercise supplemental jurisdiction over any additional state law claims  
3 and **DISMISSES** such claims without prejudice pursuant to 28 U.S.C. § 1367(c). *See e.g.*  
4 *Deligiannis v. City of Anaheim*, No. SACV 06-720 DOC(JC), 2010 WL 1444538, at \*13 (C.D. Cal.  
5 Mar. 2, 2010) *report and recommendation adopted*, No. SACV 06-720DOC(JC), 2010 WL  
6 1444535 (C.D. Cal. Apr. 3, 2010) *aff'd*, 471 F. App'x 603 (9th Cir. 2012) (declining to exercise  
7 supplemental jurisdiction over a plaintiff's state law claims for conversion, when Court granted  
8 summary judgment in favor of City and Towing Defendants on federal claims related to towed  
9 vehicle) (citing *Acri v. Varian Associates, Inc. v. Varian Associates, Inc.*, 114 F.3d 999, 1001 (9th  
10 Cir. 1997) (en banc) ("The Supreme Court has stated, and we have often repeated, that 'in the usual  
11 case in which all federal-law claims are eliminated before trial, the balance of factors . . . will point  
12 toward declining to exercise jurisdiction over the remaining state-law claims.'") (quoting *Carnegie-*  
13 *Mellon University v. Cohill*, 484 U.S. 343, 350 n. 7 (1988)); *see also United Mine Workers v.*  
14 *Gibbs*, 383 U.S. 715, 726 (1966) (if federal claims dismissed before trial, state claims should be  
15 dismissed as well); *McKinney v. Carey*, 311 F.3d 1198, 1201 n. 2 (9th Cir. 2002) (district court  
16 appropriately declined to exercise supplemental jurisdiction over state claims where federal claims  
17 dismissed)).

### 18 **III. CONCLUSION AND ORDER**

19 Summary judgment will be granted when "there is no genuine dispute as to any material  
20 fact." Fed. R. Civ. Pro. 56(a); *Liberty Lobby*, 477 U.S. at 248. Defendants have met their initial  
21 burden of showing "an absence of evidence" supporting Plaintiff's case, and Plaintiff has failed to  
22 show with "specific facts" that there is a genuine issue of fact suitable for trial. *Celotex*, 477 U.S. at  
23 325; *Anderson*, 477 U.S. at 250. Accordingly,

24 **IT IS HEREBY ORDERED** that the Towing Defendants' Motion for Summary Judgment  
25 (Doc. 96), and the City Defendants' Motion for Summary Judgment (Doc. 97) are **GRANTED**.

26 **IT IS FURTHER ORDERED** that Plaintiff Paul Weldon's Motion for Summary Judgment  
27 (Doc. 139) is **DENIED**.

28 Consequently, The Magistrate Judge's findings and recommendations (Doc. 138) are

1 **DISMISSED AS MOOT**, as are the following pending motions: Plaintiff's Motions to "Stay  
2 Discovery Pending Determination of Pending Motions for Summary Judgment" (Docs. 132 & 145);  
3 Plaintiff's Motions for Reconsideration of the Court's previous order continuing the hearing on  
4 Defendants' motion to compel Plaintiff to submit to an independent medical examination (Docs.  
5 135 & 141); and, Plaintiff's Motions to Stay Imposition of \$715 Monetary Sanctions Pending  
6 Disposition of Motion to Reconsider (Docs. 133 & 143).

7       The Court acknowledges Plaintiff's history in this action of repeated violations of the  
8 Federal Rules, Local Rules, and court orders, as well as his vexatious conduct and unreasonable  
9 refusals to cooperate with the opposing parties. Such conduct has caused a significant waste of  
10 time and resources for the Defendants and the Court. Plaintiff has not complied with the Court's  
11 March 6, 2015 Order (Doc. 103), in which the Court ordered Plaintiff to cooperatively schedule and  
12 submit to a new deposition, and to respectfully participate in such a deposition. As of this date,  
13 Plaintiff has neither scheduled nor submitted to a further deposition, nor has he paid the \$715.00 in  
14 monetary sanctions. The sanctions imposed by the Magistrate Judge stand.

15  
16 IT IS SO ORDERED.

17 Dated: April 21, 2015

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