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

ROBERT ALAN GIBBS,

No. 2:13-CV-2631-KJM-CMK

Plaintiff,

vs.

FINDINGS AND RECOMMENDATIONS

BOYD, et al.,

Defendants.

\_\_\_\_\_ /

Plaintiff, who is proceeding pro se, brings this civil rights action. Pending before the court is defendants' unopposed motion for summary judgment (Doc. 30).<sup>1</sup>

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<sup>1</sup> The motion is brought by defendants Edwards and Jackson ("county defendants"). Also before the court is a motion for summary judgment filed by remaining defendants Boyd and Little ("state defendants"), which will be addressed separately.

1 **I. BACKGROUND**

2 **A. Plaintiff's Allegations**

3 This action proceeds on the original complaint against defendants Boyd, Little,  
4 Edwards, and Jackson. Plaintiff claims:

5 My property was stolen by dep. Edwards on 12/23/12. My home  
6 was searched without a warrant on 3/8/13 by Fish and Game officers  
7 Little, Boyd, and Gaveki based upon a false report by Edwards. Sgt.  
8 Jackson of Shasta Sheriff knew and did nothing. I had a gun put to my  
9 head. Have not been the same since. . . .

10 In a statement attached to the complaint, plaintiff adds:

11 On December 23rd of 2012, I dialed 911 to alert authorities that my  
12 truck was stuck in the snow hanging precariously over a cliff. After two  
13 days of being stuck in snow and mud, I decided to evacuate from my cabin  
14 at Bear Gulch (French Gulch). With me were my three small dogs who  
15 were tired and not minding very well. I was wet and muddy over my  
16 entire body and had actually slept for about 3 hours in my wet clothes the  
17 night before. Night time was approaching yet again and I asked the  
18 Sheriff's if they could pick me up or send a cab if I could make it out  
19 to the highway. I then started making my way to the highway with my dogs  
20 and also a shotgun that belonged to a friend of mine. When I made it to  
21 the road and made contact with the deputies they seemed perturbed that  
22 they had to come to this side of the county and they were inquiring  
23 sarcastically as to how long I had been "tramping." I told them that I was  
24 not tramping and that I had a cabin in the area. Even though I had  
25 peacefully given them my shotgun and it was now safely stowed in one of  
26 the patrol vehicles, they still insisted upon putting me in the back and  
handcuffing me. Deputy Edwards then transported me to the Motel 6 on  
Twin View Blvd. Where I have stayed many times. After uncuffing me  
and allowing me to make sure there was a room available, Deputy  
Edwards then informed me that he wanted to take my shotgun for "safe  
keeping." I told him that taking my shotgun was unnecessary that there  
was no prohibition against weapons at Motel 6, and that he did not have  
my permission to do so. Deputy Edwards then told me that he was going  
to take my weapon anyway. Because Deputy Edwards is a law  
enforcement officer, I was not going to argue further, and Edwards took  
the gun. He told me I could claim the gun the next day at the Sheriff's  
department. He told me to contact the property officer. But when I  
contacted the property officer the next day she told me that I was being  
charged with felon in possession and that I could not come pick it up.

Throughout January and February, as mentioned in my letter, I did  
complain of what was happening to several Sheriff's employees and  
several people at the DA's office, including Sgt. Jackson, Sgt. Dupreaux,  
the investigator, and secretaries I spoke to at the DA's. Almost all of the  
people I spoke to were very unhelpful, seemed afraid to take action, and

1 seemed more than willing to do anything except help me to resolve the  
2 situation. As I ran into more and more brick walls, I found myself  
3 suffering from greater and greater level of anxiety and near psychotic  
4 levels of anger and frustration. All I wanted them to do was admit they  
5 were wrong and to make amends. It was their continued denial and  
6 complete apathy towards me that was the greatest disrespect and actually  
7 aggravated the situation beyond belief. Essentially, they wanted to get off  
8 on a false arrest on the cheap. They made a huge mistake and didn't want  
9 to pay for it. They didn't care how it was affecting me or if it continued to  
10 cause me psychological damage. Even if I was suicidal and completely  
11 depressed for days and weeks at a time, as long as they didn't have to pay,  
12 they were fine with it.

13 On March 8th, 2013, one day before my 41st birthday, while in my  
14 yard raking up leaves, I simultaneously heard and saw three men with  
15 pistols and a rifle and a german shepard [sic] run very fast into my yard  
16 screaming for me to lay on the ground. At the time, I did not know these  
17 men were Fish and Game and one of them as he ran into the yard was  
18 pointing a high powered rifle in the general direction and level with my  
19 head. I complied and layed [sic] on the ground at which point I did notice  
20 that these men wore uniforms. Within a few second I ascertained who  
21 these men were and why they were there. Immediately into interviewing  
22 me, the officer I would later learn was Brian Boyd began asking me where  
23 my guns were. When I said I had no guns, officer Boyd said I had two 38  
24 caliber pistols registered to me. I have never in my life owned a registered  
25 38 caliber pistol. It seemed to me at the time that it was just an excuse to  
26 make sure I didn't have any weapons (in essence, so the offices could  
come in with guns drawn since they didn't have any solid intelligence on  
me and didn't know what they were coming into). Officer Boyd also  
asked me where my "partner" was, when I said I lived alone and had lived  
alone the entire time I have been up here, he said we had information that  
there was someone else up here living with you. Again, I believe that this  
was Boyd's fabricating intelligence so that he could come in with 3 men  
well armed, as added security to him and his men, with no regard to  
whether or not I was alone unarmed and would go peacefully. Despite the  
fact that they had only the false arrest warrant for the Edwards case,  
Officer Boyd and Officer Little did nonetheless conduct an illegal search  
of my residence and property. Officer Boyd and Officer Little both  
entered my cabin and began asking me "where is the dope" to which I  
replied "I don't have any dope." Officer Little noticed some plastic tubs  
and asked me what was in them. I told him it was dirty clothes and  
hangers, which it was. They also asked me that was in the jars in my  
rafters. I told them they were empty. When we went back out into the  
yard Boyd asked again where the dope was. I showed him the six plants I  
had that were about a foot tall inside a dog cage. After hog tying me with  
some kind of a rope and leaving me in the custody of Officer Gauweki,  
both Officers Boyd and Little got into their truck and drove up a logging  
road on my property, apparently to search for more marijuana. I was then  
transported to Shasta County Jail on the felony warrant based upon  
Edwards' complaint. My dogs were left in my cabin by Fish and Game  
and I was able to leave them enough water and food for about a day. I was

1 told by Boyd that I would probably be processed out in a few hours. But  
2 when I got to the jail, I found out that my bail was \$100,000, the premium  
3 of which I would have to pay was \$10,000 cash, payable to the bondsmen  
4 within one month of my release. On Monday, March 11th, after three days  
5 in jail, not knowing if my dogs were ok and not knowing how much longer  
6 I would have to wait to get some other kind of release, I agreed to be  
7 bonded out.

8 **B. Prior State Court Action**

9 On December 6, 2013, plaintiff filed a small claims action in the Shasta County  
10 Superior Court against the Shasta County Sheriff's Department.<sup>2</sup> Plaintiff claimed:

11 I was falsely and maliciously charged by Dep. Edwards with a  
12 crime I did not commit. I paid \$10,000.00 in bond. Charge dismissed.

13 Following a bench trial, the court issued a written decision on March 18, 2014. In that decision,  
14 the court stated:

15 This case presents the question whether the County has liability to  
16 reimburse a defendant for the bond premium paid by him where the  
17 underlying criminal charges are later dismissed. The court has found no  
18 case addressing this specific factual situation.

19 The court instead examines the plaintiff's claim as one for damages  
20 stemming from false imprisonment. For purposes of analysis only, the  
21 court accepts as true the facts as offered by plaintiff that due to actions in  
22 another county a felony conviction appeared on the plaintiff's  
23 computerized law enforcement records, and that the conviction should not  
24 have so appeared, the felony charges having been dismissed in that other  
25 county. The court also finds the following facts were established by the  
26 evidence at trial:

- 27 1) The plaintiff was in possession of a firearm at the time of  
28 contact by a sheriff's deputy;
- 29 2) That the same sheriff's deputy checked the computerized  
30 law enforcement records and found that the plaintiff had a  
31 felony conviction;
- 32 3) That based on the recorded felony conviction, the deputy  
33 determined there was probable cause to believe the plaintiff  
34 had committed the crime of being a felon in possession of a

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35 <sup>2</sup> The court may take judicial notice of state court records. See Kasey v.  
36 Molybdenum Corp. of America, 336 F.2d 560, 563 (9th Cir. 1964).

1 firearm;

- 2 4) That the district attorney filed a criminal complaint and  
3 sought and obtained a court ordered arrest warrant;  
4 5) The warrant was regular on its face;  
5 6) That the department of Fish and Game executed the warrant  
6 and took the plaintiff into custody;  
7 7) That the plaintiff posted bail to get out of custody, at the  
8 cost of \$10,000.00; and  
9 8) That the criminal complaint was dismissed at arraignment.

9 The court notes that there was a factual dispute about whether the plaintiff  
10 consented to the deputy taking possession of the firearm or not. The court  
11 finds it unnecessary to resolve this dispute as immaterial to the present  
12 controversy.

11 Addressing the merits of plaintiff's false imprisonment claim, the court ruled against plaintiff  
12 concluding that liability did not exist because the arrest warrant was regular on its face and,  
13 therefore, provided a lawful reason to take plaintiff into custody. The court specifically found:  
14 "The fact that the sheriff, or his agent, did not investigate whether the computerized law  
15 enforcement record of the conviction was in error is not sufficient to show malice."

16 **C. Defendants' Evidence**

17 According to defendants:

18 On December 23, 2012, defendant Shasta County Sheriff's Deputy  
19 Chris Edwards responded to a request for assistance from an individual  
20 who said he had got stuck in the snow, and was walking along Highway  
21 299. When Edwards arrived on the scene, he encountered plaintiff Robert  
22 Gibbs with three dogs and a shotgun. Plaintiff initially asked for medical  
23 assistance, refused it when the paramedics arrived, and then asked to be  
24 transported to a Motel 6 in Redding. Edwards accommodated plaintiff,  
25 but when they arrived, as a matter of safekeeping, took possession of the  
26 shotgun, telling plaintiff he could retrieve it in the morning. After he  
dropped plaintiff off, Edwards ran a routine background check through the  
CLETS/NCIS database. The database showed that plaintiff had a felony  
conviction, which meant his possession of the shotgun was itself a felony.  
Edwards forwarded the information to the Shasta County District  
Attorney's office, which filed charges against plaintiff as a felon in  
possession of a firearm. Plaintiff was subsequently arrested by California  
Department of Fish and Wildlife agents in part, it appears, on the basis of  
the District Attorney's charge. He spent three days in jail, but was

1 released after posting bail.

2 As it turned out, the felony conviction had been reduced to a  
3 misdemeanor, but the CLETS/NCIS database Edwards consulted had not  
4 been updated to reflect the change in status. The District Attorney  
dropped the charges.

5 Defendants' evidence, which is not disputed by plaintiff, shows the following facts:

- 6 1. Edwards had public safety concerns about plaintiff, who appeared  
7 unstable, though Edwards did not believe plaintiff met the requirements  
8 for involuntary commitment under California Welfare and Institutions  
9 Code § 5150.
- 10 2. Edwards took plaintiff's shotgun for safekeeping based on his safety  
11 concerns.
- 12 3. Edwards' expectation at the time he seized the shotgun was that plaintiff  
13 would be able to reclaim it the following day.
- 14 4. After dropping plaintiff at the Motel 6, Edwards used the CLETS/NCIS  
15 database to run a routine criminal background check on plaintiff as part of  
16 normal procedure.
- 17 5. Edwards' check revealed that plaintiff had a prior felony conviction, and  
18 there was no indication on the CLETS/NCIS database that the conviction  
19 had been reduced to a misdemeanor.
- 20 6. Now believing that plaintiff was a felon in possession of a firearm in  
21 violation of California Penal Code § 29800(A)(1), Edwards forwarded his  
22 incident report and a copy of plaintiff's criminal history to the Shasta  
23 County District Attorney's Office.
- 24 7. Edwards had no other role in subsequent proceedings against plaintiff.
- 25 8. At the time he was contacted by plaintiff, Jackson was the on-duty Watch  
26 Commander.
9. Jackson was helpful and even provided plaintiff his cellphone number.
10. Jackson asked plaintiff to provide him with any documentation showing  
that the felony conviction had been reduced.
11. Records later faxed to Jackson by the Humboldt County Public Defender's  
Office did not show that plaintiff's felony conviction had been reduced to  
a misdemeanor but showed that the provision for a reduction had been  
crossed out, apparently by the judge.
12. Jackson then told plaintiff he should contact the Shasta County District  
Attorney's Office.

1 In his declaration filed in support of summary judgment, defendant Edwards states  
2 in relevant part as follows:

3 2. On Sunday, December 23, 2012, at approximately 1800  
4 hours, Shasta County Sheriff's Sergeant Gonzalez and I responded to  
5 dispatch regarding a call from a male who I later learned was Robert Gibbs  
6 who was stuck in the snow and needed assistance in the area of Highway  
7 299 near Trinity Mountain Road. Dispatch further explained that Gibbs  
8 mentioned he was carrying a shotgun.

9 3. My review of the dispatch printouts from the date of this  
10 incident indicates that dispatch also received information from a passerby  
11 stating that Mr. Gibbs told the passerby that he (Gibbs) was very angry at  
12 the world and that he doesn't like police.

13 4. As I approached the area, I saw an individual walking east-  
14 bound with what appeared to be a shotgun. I made contact and I asked  
15 him to place the gun on the ground. He complied. He identified himself  
16 as Robert Gibbs. I placed him in handcuffs for officer safety reasons.

17 5. Mr. Gibbs appeared to me to be upset, and began making  
18 bizarre statements about being homeless and living in a shack in the  
19 mountains, but refused to tell me where it was. He then asked for medical  
20 assistance due to chest pains. When medical staff arrives, however, he  
21 refused any care.

22 6. Mr. Gibbs asked to be transported with his dogs to a Motel  
23 6 in Redding. Although I was concerned about his behavior and, based on  
24 his bizarre and rambling statements, believed him to be unstable mentally,  
25 he did not meet the criteria for Cal. Welfare and Institutions Code § 5150  
26 involuntary commitment, so I agreed to take him to the motel.

7. When we arrived at the motel, I asked Mr. Gibbs if it was  
okay with him if I retained his shotgun for safekeeping, explaining that I  
did not think it a good idea for him to be carrying a shotgun into the hotel.  
Based on my conversation with Mr. Gibbs, I believed that he agreed with  
me. Based on that belief, and because I had public safety concerns about  
Mr. Gibbs, who appeared unstable, carrying a shotgun in a public place  
like a motel, I retained possession of the shotgun. I gave Mr. Gibbs a  
property sheet for the shotgun, explaining to him that it would be logged  
for safekeeping. Mr. Gibbs told me he understood.

20 In his declaration, defendant Jackson states in relevant part:

21 2. In January of 2013, I received a number of telephone calls  
22 from Robert Gibbs concerning official records indicating that he was a  
23 convicted felon.

24 3. I am informed and believe and on that basis allege that a  
25 search of the CLETS/NCIS database had indicated that Mr. Gibbs had a  
26 felony conviction, and that the conviction listed in the database formed the  
basis for a charge to be brought against him by the Shasta County District  
Attorney as a felon in possession of a firearm.

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1           If the moving party meets its initial responsibility, the burden then shifts to the  
2 opposing party to establish that a genuine issue as to any material fact actually does exist. See  
3 Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). In attempting to  
4 establish the existence of this factual dispute, the opposing party may not rely upon the  
5 allegations or denials of its pleadings but is required to tender evidence of specific facts in the  
6 form of affidavits, and/or admissible discovery material, in support of its contention that the  
7 dispute exists. See Fed. R. Civ. P. 56(c)(1); see also Matsushita, 475 U.S. at 586 n.11. The  
8 opposing party must demonstrate that the fact in contention is material, i.e., a fact that might  
9 affect the outcome of the suit under the governing law, Anderson v. Liberty Lobby, Inc., 477 U.S.  
10 242, 248 (1986); T.W. Elec. Serv., Inc. v. Pacific Elec. Contractors Ass’n, 809 F.2d 626, 630  
11 (9th Cir. 1987), and that the dispute is genuine, i.e., the evidence is such that a reasonable jury  
12 could return a verdict for the nonmoving party, Wool v. Tandem Computers, Inc., 818 F.2d 1433,  
13 1436 (9th Cir. 1987). To demonstrate that an issue is genuine, the opposing party “must do more  
14 than simply show that there is some metaphysical doubt as to the material facts . . . . Where the  
15 record taken as a whole could not lead a rational trier of fact to find for the non-moving party,  
16 there is no ‘genuine issue for trial.’” Matsushita, 475 U.S. at 587 (citation omitted). It is  
17 sufficient that “the claimed factual dispute be shown to require a trier of fact to resolve the  
18 parties’ differing versions of the truth at trial.” T.W. Elec. Serv., 809 F.2d at 631.

19           In resolving the summary judgment motion, the court examines the pleadings,  
20 depositions, answers to interrogatories, and admissions on file, together with the affidavits, if  
21 any. See Fed. R. Civ. P. 56(c). The evidence of the opposing party is to be believed, see  
22 Anderson, 477 U.S. at 255, and all reasonable inferences that may be drawn from the facts placed  
23 before the court must be drawn in favor of the opposing party, see Matsushita, 475 U.S. at 587.  
24 Nevertheless, inferences are not drawn out of the air, and it is the opposing party’s obligation to  
25 produce a factual predicate from which the inference may be drawn. See Richards v. Nielsen  
26 Freight Lines, 602 F. Supp. 1224, 1244-45 (E.D. Cal. 1985), aff’d, 810 F.2d 898, 902 (9th Cir.

1 1987). Ultimately, “[b]efore the evidence is left to the jury, there is a preliminary question for  
2 the judge, not whether there is literally no evidence, but whether there is any upon which a jury  
3 could properly proceed to find a verdict for the party producing it, upon whom the onus of proof  
4 is imposed.” Anderson, 477 U.S. at 251.

### 6 **III. DISCUSSION**

7 As defendants note, plaintiff’s complaint alleges of a “constellation of events” but  
8 does not specify any particular basis for liability against any of the named defendants. Plaintiff  
9 claims that his “property [shotgun] was stolen” by defendant Edwards, that his home was  
10 “searched without a warrant” by non-moving defendants Boyd and Little, and that defendant  
11 Jackson “knew and did nothing.” More specifically as to defendant Edwards, plaintiff claims  
12 that, despite his protestation that the officer did not have his permission to do so, defendant  
13 Edwards seized his shotgun. Plaintiff also claims that the search was “based upon a false report  
14 by Edwards.” As to defendant Jackson, plaintiff claims that he complained about “what was  
15 happening” to several people, including defendant Jackson, but that “[a]most all of the people I  
16 spoke to were very unhelpful, seemed afraid to take action, and seemed more than willing to do  
17 anything except help me to resolve the situation.”

18 Given plaintiff’s specific allegations, the court finds that plaintiff is attempting  
19 to articulate the following federal claims against the moving defendants: (1) defendant Edwards  
20 violated plaintiff’s Fourth Amendment rights by seizing the shotgun and providing a false report;  
21 and (2) defendant Jackson is liable for the conduct of other defendants. It is also possible that  
22 plaintiff is attempting to state a claim against defendant Edwards under the Second Amendment  
23 based on seizure of plaintiff’s shotgun. As to these claims, defendants Edwards and Jackson  
24 argue they are entitled to judgment in their favor as a matter of law.<sup>3</sup>

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25 <sup>3</sup> Defendants also argue that they are entitled to judgment as a matter of law to the  
26 extent plaintiff states a state law false imprisonment claim. The court finds no such claim –

1           **A.     Defendant Jackson**

2           The undisputed evidence establishes that defendant Jackson was the on-duty  
3 Watch Commander at the time of his initial contact with plaintiff in January 2013. Supervisory  
4 personnel are generally not liable under § 1983 for the actions of their employees. See Taylor v.  
5 List, 880 F.2d 1040, 1045 (9th Cir. 1989) (holding that there is no respondeat superior liability  
6 under § 1983). A supervisor is only liable for the constitutional violations of subordinates if the  
7 supervisor participated in or directed the violations. See id. The Supreme Court has rejected the  
8 notion that a supervisory defendant can be liable based on knowledge and acquiescence in a  
9 subordinate’s unconstitutional conduct because government officials, regardless of their title, can  
10 only be held liable under § 1983 for his or her own conduct and not the conduct of others. See  
11 Ashcroft v. Iqbal, 556 U.S. 662, 129 S.Ct. 1937, 1949 (2009). Supervisory personnel who  
12 implement a policy so deficient that the policy itself is a repudiation of constitutional rights and  
13 the moving force behind a constitutional violation may, however, be liable even where such  
14 personnel do not overtly participate in the offensive act. See Redman v. Cnty of San Diego, 942  
15 F.2d 1435, 1446 (9th Cir. 1991) (en banc).

16           When a defendant holds a supervisory position, the causal link between such  
17 defendant and the claimed constitutional violation must be specifically alleged. See Fayle v.  
18 Stapley, 607 F.2d 858, 862 (9th Cir. 1979); Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir.  
19 1978). Vague and conclusory allegations concerning the involvement of supervisory personnel  
20 in civil rights violations are not sufficient. See Ivey v. Board of Regents, 673 F.2d 266, 268 (9th  
21 Cir. 1982). “[A] plaintiff must plead that each Government-official defendant, through the

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23 which was litigated in state court – presented in the current complaint. Plaintiff’s only possible  
24 suggestion of such a claim in the complaint is his allegation of a “false arrest warrant.” This  
25 allegation, however, was made in the context of plaintiff’s allegation that non-moving defendants  
26 Boyd and Little searched his property without a valid warrant or probable cause. In context,  
plaintiff alleges: “Despite the fact that they had only the false arrest warrant for the Edwards  
case, Officer Boyd and Officer Little did nonetheless conduct an illegal search of my residence  
and property.”

1 official’s own individual actions, has violated the constitution.” Iqbal, 129 S.Ct. at 1948.

2 In this case, defendants’ evidence shows that defendant Jackson attempted to  
3 assist plaintiff with his concerns and ultimately referred plaintiff to the District Attorney’s Office.  
4 Plaintiff has not presented any evidence to the contrary. Nor has plaintiff presented any evidence  
5 that Jackson implemented a constitutionally deficient policy. The court agrees with defendants  
6 that defendant Jackson is entitled to judgment as a matter of law.

7 **B. Defendant Edwards**

8 As to plaintiff’s claim against Edwards based on seizure of the shotgun,  
9 defendants argue that defendant Edwards’ conduct constituted a permissible community  
10 caretaking function. Defendants primarily rely on Shields v. Tracy, 2:03-CV-1614-DFL-PAN,  
11 2005 WL 1490300 (E.D. Cal. 2009), the only in-circuit case cited in their brief. In that case, the  
12 plaintiff sued alleging civil rights violations arising from her arrest. The court recognized a  
13 “community caretaker” exception to the probable cause requirement for seizing a person, noting  
14 that such stops are akin to stops allowed under Terry v. Ohio, 392 U.S. 1 (1968). Ultimately, the  
15 court in Shields concluded that the exception did not apply.

16 Shields is unpersuasive. In that case, the community caretaker exception was  
17 discussed in the context of the plaintiff’s claim that she had been improperly stopped and  
18 detained by the police, not that her property had been improperly seized as is plaintiff’s claim in  
19 this case. Additionally, unlike the plaintiff in Shields, plaintiff in this case was not being  
20 detained, held in custody, or placed under arrest at the time defendant Edwards seized the  
21 shotgun. Defendants have not cited any Ninth Circuit authority supporting the proposition that a  
22 community caretaker exception applies to seizures of property occurring under the circumstances  
23 presented in this case.

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1 Defendants appear to concede the point. In their brief, defendants state:

2 The 9th Circuit has limited *searches* under the community  
3 caretaking function to vehicles (*see U.S. v. Erickson*, 991 F.2d 529, 530-  
4 532 (9th Cir. 1993)), but defendants’ research has not revealed a Ninth  
5 Circuit case ruling on its application to the seizure of weapons that are not  
6 in vehicles. Two cases from this District recognize, based on out-of-  
7 circuit opinions, that the community caretaking function extends to  
8 seizures of *individuals* who appear to be a danger to themselves or others.  
9 *See Shields v. Tracy*, 2005 WL 1490300 at \*6 and cases cited therein;  
10 *Kaur v. City of Lodi*, 214 WL 3889976 at \*5 (E.D. Cal. 2014). . . . (italics  
11 in defendants’ brief).

12 As defendants correctly observe, the cases from this district are distinguishable and no Ninth  
13 Circuit case has held that the community caretaking exception applies to the seizure that occurred  
14 here.

15 Given the state of the law in this circuit, defendants argue that defendant Edwards  
16 is entitled to qualified immunity because his seizure of plaintiff’s shotgun did not violate any law  
17 which was clearly established at the time. As defendants observe, government officials are  
18 entitled to qualified immunity if his conduct did not “violate clearly established . . . constitutional  
19 rights of which a reasonable person would have known.” *Pearson v. Callahan*, 555 U.S. 223, 231  
20 (2009). In this case, assuming that defendant Edwards’ seizure of plaintiff’s shotgun violated the  
21 Fourth Amendment, the court agrees with defendants that the law with respect to application of  
22 the community caretaker exception is not clearly established now and was certainly not at the  
23 time of the seizure in late 2012. Defendant Edwards is entitled to qualified immunity.

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1 **IV. CONCLUSION**

2 Based on the foregoing, the undersigned recommends that defendants' motion for  
3 summary judgment (Doc. 30) be granted.

4 These findings and recommendations are submitted to the United States District  
5 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days  
6 after being served with these findings and recommendations, any party may file written  
7 objections with the court. Responses to objections shall be filed within 14 days after service of  
8 objections. Failure to file objections within the specified time may waive the right to appeal.  
9 See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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11 DATED: March 4, 2016

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13 **CRAIG M. KELLISON**  
14 UNITED STATES MAGISTRATE JUDGE  
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