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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KUWESE COREYELLE WALKER,

Plaintiff,

v.

CITY OF SACRAMENTO, CA; THE
SACRAMENTO POLICE
DEPARTMENT; and DOES 1-5 IN
THEIR OFFICIAL AND PERSONAL
CAPACITY,

Defendants.

No. 2:15-cv-00656-MCE-EFB

MEMORANDUM AND ORDER

This lawsuit arises from the detention, search and arrest of Plaintiff Kuwese Coreyelle Walker ('Plaintiff') for domestic violence by the Sacramento Police Department, and a subsequent motor vehicle accident that occurred when the patrol car transporting Plaintiff to the Sacramento County Jail hit a concrete pillar in the jail's underground parking lot as the patrol car was parking. Plaintiff's complaint, initially filed in state court, was removed here on federal question grounds pursuant to 28 U.S.C. § 1331. Defendant City of Sacramento ("City") now moves for partial summary judgment as to six of the seven causes of action pled against it. As set forth below, that Motion is GRANTED.¹

¹ Having determined that oral argument would not be of material assistance, the Court ordered this matter submitted on the briefs in accordance with E.D. Local Rule 230(g).

BACKGROUND

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3 Factually, this case stems from Plaintiff's arrest by Sacramento Police Officers
4 after they responded to a domestic violence in progress call at the Motel 6 located at
5 227 Jibboom Street in Sacramento, California. Defendant City's Statement of
6 Undisputed Facts, No. 1. Plaintiff had fled the Motel 6 where the violence allegedly
7 occurred and was located sitting on the nearby Jibboom Street bridge. Id. at 2 ,6.
8 Officers arrested him and drove him back to the Motel 6, where a woman claimed that
9 Plaintiff had choked her and punched her in the face with a closed fist. Id. at 9, 11. After
10 investigating the matter, Plaintiff was searched and placed under arrest for violations of
11 California Penal Code § 273.5 (domestic violence) and § 1203.2 (violation of probation).
12 Id. at 16.

13 A Sacramento Police Officer then proceeded to transport Plaintiff to the
14 Sacramento County Jail in his patrol vehicle. Id. at 17. During transport, Plaintiff was in
15 handcuffs and was seated without a seatbelt in the back seat of the patrol vehicle. Id. at
16 18. As the Officer was parking in the jail's underground parking lot, he hit a concrete
17 pillar at an estimated speed of less than two miles an hour. Id. at 19. In the present
18 complaint, Plaintiff alleges he sustained injuries as a result of that collision. Id. at 20.

19 Through the present motion, the City argues it is entitled to partial summary
20 judgment with respect to Plaintiff's claims for: 1) police misconduct in violation of
21 42 U.S.C. § 1983, as alleged in Plaintiff's Seventh Cause of Action; 2) negligent training
22 supervision and retention, also under § 1983 as alleged in Plaintiff's Second Cause of
23 Action; 3) state constitutional violations as alleged in the Sixth Cause of Action; 4) gross
24 negligence under the Third Cause of Action; 5) intentional infliction of emotional distress
25 as set forth in the Fourth Cause of Action; and 6) battery as alleged in the Fifth Cause of
26 Action. The only cause of action not challenged by the City's Motion is the First Cause
27 of Action, for negligence in allegedly hitting the pillar in the parking lot and in failing to
28 secure Plaintiff properly beforehand.

1 **ANALYSIS**

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3 The City’s moving papers meet its initial burden of showing its entitlement to
4 partial summary judgment as to the six causes of action delineated above. That shifts
5 the burden, under the Matsushita analysis cited above, to Plaintiff to show that genuine
6 material issues of fact indeed exist. Plaintiff has failed to meet that burden, and in the
7 absence of any showing whatsoever, the City is entitled to partial summary judgment in
8 its favor as requested.

9 Although Plaintiff is represented by counsel, that counsel, Kenneth W. Burt II,
10 responded to the City’s Motion not by making any real substantive opposition, or citing
11 any evidence, but instead by simply claiming that Plaintiff was without funds to oppose
12 the motion. Plaintiff’s counsel goes on to ask the Court to order that the City file a copy
13 of Plaintiff’s deposition, and for the Court to then review that transcript prior to any ruling
14 on the City’s Motion, since “Plaintiff sets forth material facts in [his] deposition which give
15 support to the pleading, and entitle the matter to be decided by a jury.” Pl.’s Response,
16 ECF No. 18, 2:4-5. Based on counsel’s bare allegation alone, Plaintiff requests that the
17 City’s Motion be denied.²

18 Plaintiff’s apparent effort to shift the burden of identifying triable issues of fact to
19 the Court, upon its own examination of Plaintiff’s deposition transcript, cannot be
20 countenanced. As the Seventh Circuit has observed, “[j]udges are not like pigs, hunting
21 for truffles buried in briefs,” or indeed in any other document. U.S. v. Dunkel, 927 F.2d
22 955, 956 (7th Cir. 1991).

23 Upon receiving Plaintiff’s response, then, the Court notified Plaintiff that his filing
24 failed to comply with the requirements for a valid opposition to a motion for summary
25 judgment under Local Rule 260(b). January 9, 2017 Minute Order, ECF No. 19. The
26 Court further rejected Plaintiff’s request both for a fee waiver and for an order that

27 ²Although Plaintiff also refers to a “digital record” of the collision itself as establishing the City’s
28 negligence, the City does not move for summary adjudication as to Plaintiff’s First Cause of Action, for negligence.

1 Defendant provide a copy of Plaintiff's deposition transcript. Id. Finally, and most
2 significantly, the January 9, 2017 Minute Order both ordered Plaintiff's counsel to file
3 opposition papers in compliance with the Court's Local Rules not later than February 9,
4 2017, and notified counsel that "failure to do so will result in Defendant's Motion being
5 granted without further notice." Id. In order to accommodate the extension being
6 afforded for opposition, the hearing on Defendant City's Motion was continued to
7 February 16, 2017. Id.

8 In contravention of the Court's direct order, Plaintiff filed nothing whatsoever in
9 advance of the February 16, 2016 hearing and a review of the docket indicates that
10 Plaintiff has submitted no filings since that time, either. Consequently, the Court finds
11 that having failed to raise a triable issue of fact to counter the City's prima facie showing
12 that they are entitled to partial summary judgment, the City's Motion will be granted.³

14 CONCLUSION

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16 For the reasons set forth above, Defendant City of Sacramento's Motion for
17 Partial Summary Judgment (ECF No. 15) is GRANTED.

18 IT IS SO ORDERED.

19 Dated: October 5, 2017

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22 MORRISON C. ENGLAND, JR.
23 UNITED STATES DISTRICT JUDGE

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27 ³ Additionally, given Plaintiff's failure to file any opposition in the face of the Court's express order
28 to that effect, dismissal under 41(b) for failure to comply with both Rule 56 and the Court's Local Rules in
this regard, let alone the Court's own express order, constitutes yet another ground for dismissal.