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UNITED STATES DISTRICT COURT  
Northern District of California

KIMBERLY LUONG,

No. C 11-05661 MEJ

Plaintiff(s),

**ORDER RE DEFENDANTS' RULE 50  
MOTION**

v.

SF CITY & COUNTY,

Defendant(s).

Following the close of evidence, Defendants moved for judgment as a matter of law pursuant to Federal Rule of Civil Procedure 50(a). Under Rule 50, the Court may grant judgment as a matter of law against a party on a claim if the Court finds that a reasonable jury would not have a legally sufficient evidentiary basis to find for the party on an issue essential to that claim. Having considered the parties' arguments and controlling law, the Court rules as follows:

**I. Kimberly Luong**

**A. Claims Against Officer Albern Ciudad**

Kimberly Luong testified that Officer Ciudad never touched her or otherwise made contact with her. Thus, the Court finds that the jury has no legally sufficient evidentiary basis to find for her on the excessive force claim as to Ofc. Ciudad. Further, the Court finds that the evidence presented as to Ofc. Ciudad's conduct is not legally sufficient to rise to the level of outrageousness to sustain a claim for intentional infliction of emotional distress. The Court therefore **GRANTS** judgment in favor of Ofc. Ciudad as to Kimberly Luong on all claims.

**B. Claims Against Officer Gary Moriyama**

As to Ofc. Moriyama, Kimberly testified that he never physically touched her. The record also lacks sufficient evidence from which the jury could find that Ofc. Moriyama's conduct toward

1 Kimberly rose to the level of outrageousness to sustain an intentional infliction of emotional distress  
2 claim. Thus, the Court finds that the jury has no legally sufficient evidentiary basis to find for her on  
3 either the excessive force or the intentional infliction of emotional distress claims as to Ofc.  
4 Moriyama. The Court therefore **GRANTS** judgment in favor of Ofc. Moriyama as to Kimberly  
5 Luong on all claims.

6 C. Claims Against Officer Sophal Chea and Sergeant Thomas Haymond

7 With respect to Ofc. Chea and Sgt. Haymond, the Court finds that there is evidence in the  
8 record to allow the claims to go to the jury. The Court therefore **DENIES** the Rule 50 motion as to  
9 Ofc. Chea and Sgt. Haymond with respect to Kimberly Luong's claims.

10 **II. Vicky Luong**

11 A. Claims Against Ofc. Ciudad

12 Vicky testified that Officer Ciudad never touched her or otherwise made contact with her.  
13 Thus, the Court finds that the jury has no legally sufficient evidentiary basis to find for her on either  
14 the excessive force or the intentional infliction of emotional distress claims as to Ofc. Ciudad. The  
15 Court therefore **GRANTS** judgment in favor of Ofc. Ciudad as to Vicky Luong on all claims.

16 B. Claims Against Ofc. Chea

17 With respect to Ofc. Chea, Vicky offered no testimony that Ofc. Chea did anything to her  
18 physically. The record also lacks sufficient evidence from which the jury could find that Ofc. Chea's  
19 conduct toward Vicky rose to the level of outrageousness to sustain an intentional infliction of  
20 emotional distress claim. Thus, the Court finds that the jury has no legally sufficient evidentiary  
21 basis to find for her on either the excessive force or the intentional infliction of emotional distress  
22 claims as to Ofc. Chea. The Court therefore **GRANTS** judgment in favor of Ofc. Chea as to Vicky  
23 Luong on all claims.

24 C. Claims Against Ofc. Moriyama and Sgt. Haymond

25 As to Ofc. Moriyama and Sgt. Haymond, the Court finds that there is evidence in the record to  
26 allow the claims to go to the jury as to these officers. The Court therefore **DENIES** the Rule 50  
27 motion as to Ofc. Moriyama and Sgt. Haymond with respect to Vicky Luong's claims.

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**III. Punitive Damages**

The Court **DENIES** the motion as to punitive damages as to the remaining claims.

**IT IS SO ORDERED.**

Dated: March 28, 2013



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Maria-Elena James  
United States Magistrate Judge