IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

DOREEN MACLELLAN,

Plaintiff,

v.

COUNTY OF ALAMEDA, et al.,

Defendants.
_____/

No. C-12-5795 MMC

ORDER GRANTING DEFENDANTS DINIS, ALVAREZ, AND COUNTY OF ALAMEDA'S MOTION FOR SUMMARY JUDGMENT

Before the Court is defendants County of Alameda ("the County"), Deputy Marc Dinis ("Dinis"), and Deputy Rafael Alvarez's ("Alvarez") Motion for Summary Judgment, filed December 20, 2013. Plaintiff Doreen MacLellan ("MacLellan") has filed opposition to the motion, to which defendants have replied. Having read and considered the papers filed in support of and in opposition to the motion, the Court rules as follows.[1]

BACKGROUND[2]

Shortly after 11:00 a.m. on October 12, 2011, the Alameda County Sheriff's Office

[1] By order filed January 28, 2014, the Court vacated the hearing on the motion scheduled for January 31, 2014 and took the matter under submission.

[2] The facts set forth below, including the sequence in which they transpired, are derived from the declarations, deposition transcripts, interrogatory responses, and exhibits submitted by the parties, and either are not in dispute or are "viewed in the light most favorable to the party opposing the motion." See Matsushita Electric Industrial Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986). MacLellan has filed various objections to the evidence submitted by defendants. To the extent the Court has relied on any such evidence herein, the objections thereto are overruled. To the extent the Court has not relied on such evidence, the objections are not further addressed herein.

received a call from Claudette Wright, the manager at a local Safeway. (See Torchy Decl. Ex. A (Dispatch Audio Recording).) Wright reported that she had a customer outside who had "kind of lost her mind." (See id.) Wright explained that the customer, later determined to be MacLellan, was a regular who drove a Mercedes, had her two children with her at the time, and "thinks everybody's after her." (See id.) She reported that the customer was screaming at Wright's front end manager and was "not coherent." (See id.) Wright further stated: "[The woman] wanted the president. I don't know. She wanted everybody out there. . . . [S]he wants to call the FBI and the CIA and stuff." (See id.)[3] The Sheriff's Office subsequently alerted Deputies Dinis, Alvarez, and Dawn Sullivan ("Sullivan") to the situation, specifically (1) that Wright had reported there was a woman outside of Safeway with her children; (2) that Wright thought the woman was "losing her mind" and was having "psych issues"; and (3) that the woman "appear[ed] very paranoid." (See id.) The deputies were sent to Wright's location to determine whether the woman met the criteria for an involuntary hold pursuant to California Welfare and Institutions Code § 5150. (See id.)

Three deputies arrived on the scene shortly after 11:20 a.m. (See Dinis Decl. ¶ 6; Alvarez Decl. ¶ 6; Sullivan Decl. ¶ 5.) Dinis, who was the officer in charge at the scene, and Sullivan approached MacLellan, who "stated that she believed that people were watching her and were attempting to obtain unknown information from her." (See Dinis Decl. ¶ 7; Sullivan Decl. ¶ 6.) The deputies found her conversation "incoherent and nonsensical." (Dinis Decl. ¶ 7; Sullivan Decl. ¶ 6.) She also refused to give the deputies her name, claiming they already knew it. (Dinis Decl. ¶ 7; Sullivan Decl. ¶ 6.)

The deputies noticed that MacLellan's children were of school age but not in school. (See Dinis Decl. ¶ 8; Alvarez ¶ 8; Sullivan Decl. ¶ 7.) MacLellan told Alvarez she had taken them out of school for a few days, but she refused to explain why. (See MacLellan Ex. B at 4:5-7.) One of her sons asked her to answer the deputies' questions and told her he did

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[3] In her opposition, MacLellan argues that, contrary to what was reported to dispatch, she did not in fact mention the CIA, and, in addition to the president, only instructed Wright to "call the local authorities/police, the EPA, the FBI, or D.A.R.P.A." (See Opp'n 7:2-7 (citing MacLellan Ex. B (MacLellan Interrogatory Responses) at 3:3-4).)

not understand what she was saying. (See Dinis Decl. ¶ 8.) During the course of the conversation, MacLellan "all of a sudden" began to walk away from the deputies with her sons (see MacLellan Ex. L 26:6-11 (Dinis Depo. Tr.); see also Dinis Decl. ¶ 9), "expressing concern that the boys were giving too much information to the police" (see id. ¶ 9). Dinis then noticed the older son looking back at the deputies and starting to cry. (See id. ¶ 10.) Although the boy's back was turned to Dinis and he did not see tears, he determined the boy was crying based on his "[s]niffing and head down and . . . just general crying behavior." (MacLellan Ex. L (Dinis Depo. Tr.) 36:14-15.) Dinis asked the boy "if he was scared of his mother," and he said he was. (See id.)

At that point, which was approximately 12:11 p.m., Dinis, based on what he had observed and heard, made the determination to place MacLellan under an involuntary detention hold pursuant to section 5150. (See Dinis Decl. ¶ 11.) Sullivan then approached MacLellan from behind and placed her in handcuffs. (See Sullivan Decl. ¶ 11.) Although the handcuffs were "very, very tight" and caused MacLellan pain (see Sazama Decl. Ex. D (MacLellan Depo. Tr.) at 272:7-9), she did not inform the deputies of those circumstances (see id. at 273:15-17). Neither Dinis nor Alvarez touched MacLellan during their encounter with her. (See Dinis Decl. ¶ 13; Alvarez Decl. ¶ 11.)

After MacLellan was thus detained, Dinis had intended to place her in the back seat of one of the police cars while they waited for the ambulance that would transport her to the hospital for psychiatric evaluation (see Dinis Decl. ¶ 15), but she appeared to become upset (see id.), dropped to the ground (see Sazama Decl. Ex. D (MacLellan Depo. Tr.) at 271:3-6),[4] and began rolling and speaking "nonsensically" (see Dinis Decl. ¶ 15). In particular, MacLellan stated she "believed some type of artificial or virtual technology [was] being used, [had] been used on [her]" (see id. 555:15-17; see also MacLellan Ex. B (MacLellan Interrogatory Responses) at 4:13); asked Alvarez if he had seen her driving on

[4] Later, at her deposition, MacLellan explained that she "felt this pole-like sensation, isolation through [her] spinal column" (see Sazama Decl. Ex. D (MacLellan Depo. Tr.) at 271:3-6; 272:6-9) and that she couldn't move her legs (id. at 272:12-16).

the freeway the previous day (see id. at 4:14); and expressed relief that "they" couldn't see her (see Dinis Decl. ¶ 15). Dinis attempted to read her the advisement on the 5150 application form, which informed her of the fact she was being placed under an involuntary psychiatric hold and of where she was being taken. (Id. ¶ 16.) He was unable to complete the advisement, however, because MacLellan did not appear to be listening to what he was saying. (Dinis Decl. ¶ 16.) The ambulance arrived at approximately 12:20 p.m., and MacLellan was delivered into the care of the ambulance personnel. (Id. ¶ 17.)

MacLellan subsequently filed the instant action against Dinis, Alvarez, and the County, asserting claims under 42 U.S.C. § 1983 and California Civil Code § 52.1. Defendants have moved for summary judgment on all of plaintiff's claims against them.

LEGAL STANDARD

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, a "court shall grant summary judgment if the movant shows that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." See Fed. R. Civ. P. 56(a).

The Supreme Court's 1986 "trilogy" of Celotex Corp. v. Catrett, 477 U.S. 317 (1986), Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986), and Matsushita Electric Industrial Co. v. Zenith Radio Corp., 475 U.S. 574 (1986), requires that a party seeking summary judgment show the absence of a genuine issue of material fact. Once the moving party has done so, the nonmoving party must "go beyond the pleadings and by [its] own affidavits, or by the depositions, answers to interrogatories, and admissions on file, designate specific facts showing that there is a genuine issue for trial." See Celotex, 477 U.S. at 324 (internal quotation and citation omitted). "When the moving party has carried its burden under Rule 56(c), its opponent must do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita, 475 U.S. at 586. "If the [opposing party's] evidence is merely colorable, or is not significantly probative, summary judgment may be granted." Liberty Lobby, 477 U.S. at 249-50 (citations omitted). "[I]nferences to be drawn from the underlying facts," however, "must be viewed in the light most favorable to the party

opposing the motion." See Matsushita, 475 U.S. at 587 (internal quotation and citation omitted).

DISCUSSION

A. First Claim for Relief against All Defendants: 42 U.S.C. § 1983

42 U.S.C. § 1983 provides a cause of action to a plaintiff when a person acting under color of law deprives that plaintiff of any "rights, privileges, or immunities secured by the Constitution and laws [of the United States]." Section 1983 "is not itself a source of substantive rights, but merely provides a method for vindicating federal rights elsewhere conferred." Graham v. Connor, 490 U.S. 386, 393-94 (1989) (internal quotations and citation omitted). Here, in her complaint, MacLellan alleges that the deputy sheriffs, all of whom are employees of the County, lacked probable cause to take her into custody under section 5150, used excessive force in detaining her, and conducted an unconstitutional search of her personal items. McLellan further alleges that such acts were taken pursuant to County policy, custom, pattern or practice.

1. Unconstitutional Seizure by Dinis and Alvarez

MacLellan contends she was detained without probable cause. As set forth above, it is undisputed that Dinis made the decision to take MacLellan into custody pursuant to California Welfare and Institutions Code § 5150. At the time of the events at issue, section 5150 provided as follows:

> When any person, as a result of mental disorder, is a danger to others, or to himself or herself, or gravely disabled, a peace officer . . . may, upon probable cause, take, or cause to be taken, the person into custody and place him or her in a facility designated by the county and approved by the State Department of Mental Health as a facility for 72-hour treatment and evaluation.

See Cal. Welf. & Inst. Code § 5150.

The lawfulness of a detention under section 5150 is measured by Fourth Amendment standards. See Maag v. Wessler, 960 F. 2d 773, 775 (9th Cir. 1992) (holding seizure of suspected mentally ill person for psychiatric evaluation is "analogous to a criminal arrest and must therefore be supported by probable cause"). "To constitute

probable cause to detain a person pursuant to section 5150, a state of facts must be known to the peace officer . . . that would lead a person of ordinary care and prudence to believe, or to entertain a strong suspicion, that the person detained is mentally disordered and is a danger to himself or herself or is gravely disabled." People v. Triplett, 144 Cal. App. 3d 283, 287-88 (1983). "[G]ravely disabled" means "[a] condition in which a person, as a result of a mental disorder, is unable to provide for his or her basic personal needs for food, clothing, or shelter." See Cal. Welf. & Inst. Code § 5008(h)(1)(A).

A peace officer need not make a medical diagnosis; "it is sufficient if the officer, as a lay person, can articulate behavioral symptoms of mental disorder, either temporary or prolonged." Triplett, 144 Cal. App. 3d at 288. Generally, a sufficient showing can be made where "a person's thought processes, as evidenced by words or actions or emotional affect, are bizarre or inappropriate for the circumstances." See id.; see,e.g., Cotterill v. SF City and County, 2009 WL 3398369 at *6 (N.D. Cal. Oct. 20, 2009) (holding, where plaintiff was yelling and screaming then non-responsive, plaintiff's apartment was in disarray, and neighbor was concerned plaintiff was experiencing psychotic break, officers reasonably determined plaintiff "was at least temporarily disordered").

The determination as to probable cause "must be decided on the facts and circumstances presented to the officer at the time of the detention." Triplett, 144 Cal. App. 3d at 288. The question thus presented here is whether, as a matter of law, the state of facts known to Dinis at the time he detained MacLellan was sufficient to cause Dinis to "believe, or to entertain a strong suspicion, that [MacLellan was] mentally disordered and [was] a danger to . . . herself or [wa]s gravely disabled." See Triplett, 144 Cal. App. 3d at 287-88.

In that regard, defendants have provided undisputed evidence that Dinis, based on MacLellan's "disordered, confused, and paranoid mental state" and her son's having "expressed being afraid of his mother," became concerned that MacLellan "presented a danger to herself and her children" (see Dinis Decl. ¶ 11), and, further, was concerned about "her ability to take care of herself and her kids in her bizarre, paranoid and

disordered state of mind" (see id. ¶ 8; see also Sullivan Decl. ¶ 7 (further noting it "seemed unsafe to me for her to be driving")).

Based on the above-discussed undisputed circumstances preceding MacLellan's detention, the Court finds MacLellan has failed to raise a triable issue as to the claimed lack of probable cause to detain her under section 5150.

2. Excessive Force by Dinis and Alvarez

MacLellan contends Dinis and Alvarez, in violation of § 1983, used excessive force in connection with her detention. (See Compl. ¶ 50.) Specifically, MacLellan alleges that her handcuffs were applied too tightly, causing her to experience pain and injury to her wrists. (See Opp'n 14:17-15:25.)[5]

Claims of excessive force that arise in the context of an arrest, investigatory stop or other "seizure" of a person are analyzed under the Fourth Amendment and its reasonableness standard. Graham, 490 U.S. at 395. The applicable standard "requires a careful balancing of the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing governmental interests at stake" and "must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." Id. at 395-96 (internal citation and quotations omitted). While excessive force claims generally present questions of fact for the jury, such claims may be decided as a matter of law "if the district court concludes, after resolving all factual disputes in favor of the plaintiff, that the officer's use of force was objectively reasonable under the circumstances." Scott v. Henrich, 39 F.3d 912, 915 (9th Cir. 1994).

Here, it is undisputed that Sullivan, who is not a defendant in this action, applied MacLellan's handcuffs. (See, e.g., Sullivan Decl. ¶ 11.) Where multiple officers are present at a challenged law enforcement action, the liability of any such officer is

[5] In her complaint, MacLellan alleged she was "tackled" in front of her children. (See Compl. ¶ 18.) At her deposition, however, she explained that she was not thrown to the ground but, rather, used the word "tackled" to refer to her having been approached from behind prior to being handcuffed. (See Sazama Decl. Ex. D (MacLellan Depo. Tr.) 257:7-259:17.)

"predicated on his integral participation in the alleged violation." Chuman v. Wright, 76 F.3d 292, 294-95 (9th Cir.1996) (internal quotation and citation omitted). "Integral participation does not require that each officer's actions themselves rise to the level of a constitutional violation"; it does, however, require "some fundamental involvement in the conduct that allegedly caused the violation." Blankenhorn v. City of Orange, 485 F.3d 463, 481 n.12 (9th Cir. 2007) (internal quotations, citations and alterations omitted) (holding, where plaintiff, during arrest, was secured with "hobble restraints," officer who arrived on scene after arrest was completed and officer who provided crowd control did not participate integrally in application of "hobble restraints" but that officers who tackled plaintiff and officer who handcuffed plaintiff did because their actions were "instrumental in officers' gaining control of [plaintiff]").

Here, as noted, Dinis was the officer in charge at the scene; the evidence is undisputed, however, that at the time MacLellan was handcuffed, Alvarez was "back some distance," approximately "three to five parking stalls" behind the others (see MacLellan Ex. L (Dinis Depo. Tr.) 39:15-22), and thereafter remained there, minding the children (see id. at 43:22-44:10). Under such circumstances, to the extent any constitutional violation occurred based on the use of excessive force, the Court finds Dinis may be held liable but not Alvarez. The Court next turns to the question of whether defendants have shown, as a matter of law, that no such violation was committed.

The Fourth Amendment does not prohibit an officer's use of reasonable force during an arrest. See Graham, 490 U.S. at, 396 (noting "the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it"). Where it leads to injury, however, an "abusive application of handcuffs" may constitute excessive force. See, e.g., Palmer v. Sanderson, 9 F.3d 1433, 1436 (9th Cir. 1993) (holding, where officer "fastened [plaintiff's] handcuffs so tightly around his wrist that they caused [plaintiff] pain and left bruises that lasted for several weeks" and "refus[ed] to loosen the handcuffs after [plaintiff] complained of the pain," officer not entitled to summary judgment on excessive force claim). Here, MacLellan

has submitted undisputed evidence that at 6:45 p.m. on October 13, 2011, the day after the above-described events, a nurse at Alameda County Medical Center, on a form Nursing Assessment, documented, as to the heading "Fair/Minor wound," an "ecchymosis" on each wrist and on one ankle (see MacLellan Ex. Q at 2), and that on October 14, 2013, MacLellan's mother observed "[b]ruising" to the inside of MacLellan's wrists (see MacLellan Ex. K (Louise MacLellan Depo. Tr.) at 161:2-9).

As noted above, however, it also is undisputed that MacLellan made no complaint at any time during the period the handcuffs were in place (see Sazama Decl. Ex. D (MacLellan Depo. Tr.) 273:5-17); additionally, defendants have offered evidence, uncontradicted by MacLellan, that Sullivan "inserted a pinkie finger into the space between . . . MacLellan's wrists and the handcuffs, to confirm that there was space in the cuffs for her wrists to move" (see Sullivan Decl. ¶ 11), and there is no indication the procedures followed were otherwise improper in any manner. Further, there is no dispute that MacLellan's handcuffs were removed once she was placed in the ambulance by the paramedics (see Sazama Decl. Ex. D (MacLellan Depo. Tr.) 282:16-20), "no more than approximately 24 minutes after they were applied" (see Dinis Decl. ¶ 17), and that she had "[n]o visible trauma" at that time (see id. Ex. F (Wheaton Depo. Tr.) at 26:6). Although, as noted, some minor bruising was apparent in the following days, MacLellan offers no evidence to support an inference that any of the deputies had any reason to believe the handcuffs may have required any adjustment.

Under such circumstances, MacLellan has failed to submit sufficient evidence to raise a triable issue as to her claim that Sullivan, Dinis, and Alvarez used excessive force in connection with her detention.

3. Unconstitutional Search by Dinis and Alvarez

MacLellan contends Sullivan unlawfully searched the purse she was carrying and removed her car key and cellular phone. (See Compl. ¶ 51; Opp'n 16:12–15; see also MacLellan Ex. L (Dinis Depo. Tr.) 44:22-24 (describing purse as having been removed "from [MacLellan's] arm").) Under the Fourth Amendment, a search conducted without a

warrant is "per se unreasonable subject only to a few specifically established and well-delineated exceptions." See Schneckloth v. Bustamonte, 412 U.S. 218, 219 (1973) (internal quotation, citations, and alterations omitted). The government bears the burden of establishing that a warrantless search was reasonable and did not violate the Fourth Amendment. United States v. Carbajal, 956 F.2d 924, 930 (9th Cir.1992).

Pursuant to California law, "[a]t the time a person is taken into custody [under section 5150] for evaluation, or within a reasonable time thereafter, unless a responsible relative or the guardian or conservator of the person is in possession of the person's personal property, the person taking him into custody shall take reasonable precautions to preserve and safeguard the personal property in the possession of or on the premises occupied by the person[;] [t]he person taking him into custody shall then furnish to the court a report generally describing the person's property so preserved and safeguarded and its disposition." See Cal. Welf. & Inst. Code § 5156.

Here, defendants argue that because MacLellan was lawfully detained under section 5150, they were required by section 5156 to take reasonable precautions to preserve and safeguard her personal property (see Mot. 15:7-9 (quoting Cal. Welf. & Inst. Code § 5156)), and it is undisputed that all her property accompanied her to the hospital and was returned to her when she was discharged, with the exception of one car key, which was used by her father, who arrived later to take custody of the children and drive her car from the scene (see Sazama Decl. Ex. D at 663:1-16; 664:2-12). MacLellan offers no evidence that the officers' handling of her purse failed to comply with section 5156. See Triplett, 144 Cal. App. 3d at 289 (finding no constitutional violation based on search of detainee's purse; noting officer was "complying with dictates of section 5156"); see also United States v. Burnette, 698 F.2d 1038, 1049 (9th Cir. 1983) (finding no unconstitutional search where purse carried by arrestee was searched incident to arrest).

Under such circumstances, MacLellan has failed to submit sufficient evidence to raise a triable issue as to the claimed unconstitutional search.

4. Monell Claim against Alameda County

MacLellan alleges that Dinis and Alvarez acted "at all times herein knowing full well that the established practices and customs of the Alameda County Sheriff's Department would allow . . . the continued violation of the Fourth Amendment." (See Compl. ¶ 54.)[6]

A "local governing body" can be held liable under 42 U.S.C. § 1983 "where the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers," see Monell v. Dep't of Social Servs., 436 U.S. 658, 690 (1978), or is committed "pursuant to governmental custom, even though such a custom has not received formal approval through the body's official decisionmaking channels," see id. at 690-91. "Exoneration of [the individual officer] of the charge [against him]," however, "precludes municipal liability for the alleged unconstitutional [action]." Fairley v. Luman, 281 F.3d 913, 916 (9th Cir.2002); see also Quintanilla v. City of Downey, 84 F.3d 353, 356 (9th Cir.1996) (holding where individual officers were found not to have deprived plaintiff of Fourth Amendment rights, trial court correctly entered judgment for municipality on municipal liability claim; distinguishing case where exoneration of officer was based on qualified immunity). Here, as discussed above, the Court has found MacLellan has failed to raise a triable issue as to the claimed constitutional violations by any of the individual deputies.

Accordingly, MacLellan fails to raise a triable issue as to her Monell claim against the County.

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[6] In addition to the above-discussed claimed violation, MacLellan, citing California Welfare and Institutions Code §§ 5150.1 and 5150.2 (see Opp'n 19:27–20:11), asserts in her opposition that the defendant deputies acted unlawfully pursuant to "the custom, practice, policy and procedure that allowed [her] on October 12, 2011 to be detained and transported via ambulance for an involuntary 'medical clearance,'" rather than requiring she be transported by the deputies themselves (see Opp'n 22:24-23:4). Neither of said sections dictates the procedures by which such transportations are to be accomplished. See Cal. Welf. & Inst. Code § 5150.1 (precluding mental health personnel from interfering with or restricting peace officers with respect to transportation and performance of duries under section 5150); Cal. Welf. & Inst. Code § 5150.2 (same), nor does MacLellan cite any authority suggesting the manner in which she was transported rises to the level of a constitutional violation.

B. Fourth Claim for Relief against All Defendants: California Civil Code § 52.1

Lastly, MacLellan contends Dinis, in the course of "directing" the 5150 hold, violated California Civil Code § 52.1 by interfering with "her right to free speech, rights of liberty, to be free of unreasonable searches and seizures, right to be free from bodily harm, unreasonable deprivation of life without due process of law, deprivation of familial companionship and society, all of which are secured by the Constitution and laws of California and the United States." (See Compl. ¶ 76-77.)

Section 52.1 provides a private right of action for damages against any person, whether acting under color of law or not, who interferes or attempts to interfere "by threats, intimidation, or coercion, with the exercise or enjoyment by any individual or individuals of rights secured by the Constitution or laws of the United States, or of the rights secured by the Constitution or laws [of California]." See Cal. Civ. Code § 52.1(a)-(b); Cal. Civ. Code. § 52.1(j) (providing "speech alone is not sufficient to support" a section 52.1 action, unless the "speech itself threatens violence"); see also Jones v. Kmart Corp., 17 Cal. 4th 329, 334 (1998) (holding violation of section 52.1 requires "an attempted or completed act of interference with a legal right, accompanied by a form of coercion"). Here, MacLellan's claim under section 52.1 is based on the same conduct as is her § 1983 claim, and, as discussed above, MacLellan has failed to raise a triable issue as to any claimed violation of state or federal law by any defendant, let alone a violation involving any coercion or threat of violence.

Accordingly, MacLellan fails to raise a triable issue as to her section 52.1 claim against Dinis, Alvarez, or the County.

CONCLUSION

For the reasons stated above, defendants Dinis, Alvarez, and the County's motion

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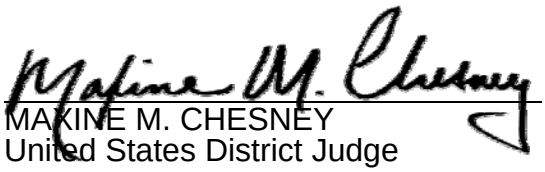
for summary judgment is hereby GRANTED.

IT IS SO ORDERED.

Dated: February 26, 2014



MAXINE M. CHESNEY
United States District Judge