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4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA

6 LAVERNON TITUS,
7 Plaintiff,

8 v.

9 CITY AND COUNTY OF SAN
10 FRANCISCO, et al.,
11 Defendants.

Case No. 13-cv-02401-JST

**ORDER GRANTING MOTION FOR
SUMMARY JUDGMENT**

Re: ECF No. 42

12 Before the Court is a motion for summary judgment filed by the City and County of San
13 Francisco, San Francisco Police Department Officers Andrew Johnson, Eric Vintero, and Patrick
14 Brady. ECF No. 42. The Court will grant Defendants' motion.

15 **I. BACKGROUND**

16 **A. Factual History**

17 For the purposes of summary judgment, the Court assumes the following facts pursuant to
18 Plaintiff's First Amended Complaint, ECF No. 40 ("FAC").¹ Plaintiff was driving his work truck
19 to Veteran's Administration Hospital when he was stopped by Officer Eric Vintero on May 7,
20 2012. ECF No. 40 at 4-5. Officer Vintero told Plaintiff that he was pulled over because he did not
21 stop at a stop sign. Id. at 5. Plaintiff informed Officer Vintero that he was on his way to the
22 hospital because he was a diabetic and was feeling very sick. Id. Plaintiff "was sweating, weak
23 and visibly shaking and was swaying when he stood." Id.

24 Officer Vintero only instructed Plaintiff to remain in the truck. Id. Officers Andrew

25
26 ¹ In their Reply to Plaintiff's opposition, Defendants object to a number of facts and statements in
27 Plaintiff's Declaration, to the extent they conflict with his deposition testimony. ECF No. 52 at 8-
28 9. Defendants also object to the Declaration and attached exhibits because they were untimely
filed, as well as to certain exhibits because they contain unauthenticated materials. Id. Because
the disputed facts are unnecessary to the Court's decision, the Court does not reach these
evidentiary objections.

1 Johnson and Patrick Brady arrived at the scene, at which time Officer Vintero ordered Plaintiff out
2 of his vehicle.² Id. Plaintiff was ordered to place his hands on the hood and spread his legs, and
3 then was told to stand on the sidewalk. Id. Officer Vintero allowed Plaintiff to sit when Plaintiff
4 reiterated that he felt sick. Id. Plaintiff alleges that the Officers were rude and yelled at him. Id.
5 at 6. Plaintiff was in custody for a total of about 40 minutes. Id. at 4.

6 The officers subsequently had Plaintiff's car towed, but allowed Plaintiff leave with a
7 citation. Id. Plaintiff asked for a ride to the hospital; the Officers refused because it was "only
8 two blocks away." Id. at 6. Plaintiff walked to the hospital and was taken in for examination, but
9 alleges that "the risk of being detained could have caused Plaintiff to have a stroke given his high
10 level of sugar." Id.

11 **B. Procedural History**

12 Plaintiff filed his initial complaint in San Francisco Superior Court, and Defendants
13 removed the case pursuant to 28 U.S.C. § 1441. Plaintiff was granted leave to amend his initial
14 complaint, and in August 2014 Plaintiff filed his FAC, alleging that Defendants were liable for
15 intentional infliction of emotion distress and deliberate indifference to his medical needs under
16 Section 1983, in violation of his Fourteenth Amendment rights. ECF No. 40 at 6-9. Defendants
17 filed this motion for summary judgment. ECF No. 42.

18 **C. Jurisdiction**

19 This Court has subject-matter jurisdiction under 28 U.S.C. § 1331 because Plaintiff's cause
20 of action arises under the United States Constitution.

21 **II. LEGAL STANDARD**

22 Summary judgment is proper when "there is no genuine dispute as to any material fact and
23 the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). See Celotex Corp. v.
24 Catrett, 477 U.S. 317, 323-24 (1986). A dispute is genuine only if there is sufficient evidence for
25 a reasonable fact finder to find for the non-moving party, and material only if the disputed fact
26 might affect the outcome of the case. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248-49

27 ² Defendants explain in their motion for summary judgment that Plaintiff was pulled over because
28 his vehicle registration was expired, and the car had mismatched license plates. ECF No. 42 at 4.
Plaintiff's FAC does not include this information.

1 (1986). The court must draw all reasonable inferences in the light most favorable to the non-
2 moving party. Johnson v. Rancho Santiago Cmt. Coll. Dist., 623 F.3d 1011, 1018 (9th Cir. 2010).
3 However, unsupported conjecture or conclusory statements do not create a genuine dispute as to
4 material fact and will not defeat summary judgment. Surrell v. Cal. Water Serv. Co., 518 F.3d
5 1097, 1103 (9th Cir. 2008).

6 **III. DISCUSSION**

7 Plaintiff brings two causes of action: a claim for intentional infliction of emotional distress
8 and a claim for deliberate indifference to medical needs. For the reasons stated below, Plaintiff
9 has not provided sufficient facts in his FAC to present a genuine issue of material fact in any of
10 these claims.

11 **A. Intentional Infliction of Emotional Distress**

12 Defendants' seek summary judgment against Plaintiff's claim that they intentionally
13 inflicted emotional distress during the traffic stop. ECF No. 40 at 6. The Court concludes that,
14 even viewing all facts in favor of the Plaintiff, no reasonable jury could find that Defendants'
15 actions rose to the level of outrageousness sufficient to support a claim for intentional infliction of
16 emotional distress.

17 To state a claim for intentional infliction of emotional distress, a plaintiff must show:
18 "(1) outrageous conduct by the defendant; (2) the defendant's intention of causing or reckless
19 disregard of the probability of causing emotional distress; (3) the plaintiff's suffering severe or
20 extreme emotional distress; and (4) actual and proximate causation of the emotional distress by the
21 defendant's outrageous conduct." George v. Sonoma County Sheriff's Dep't, No. C-08-02675
22 EDL, 2009 WL 656299, *6 (N.D. Cal. Mar. 12, 2009) (citing Trerice v. Blue Cross of Cal., 209
23 Cal.App.3d 878, 883 (1989); Davidson v. City of Westminster, 32 Cal.3d 197, 209 (1982)).
24 Plaintiff must also show that the outrageous conduct was "so extreme as to exceed all bounds of
25 that usually tolerated in a civilized society." Id. Rude or insensitive conduct is insufficient to
26 meet the requirements for intentional infliction of emotional distress. Id.

27 Defendants argue that Plaintiff has not demonstrated any conduct by the officers' that
28 would rise to the level of "outrageousness" required to make out a claim for intentional infliction

1 of emotional distress. Plaintiff does not offer argument in opposition to Defendants’ motion for
2 summary judgment as to his intentional infliction of emotional distress claim. Looking to his
3 complaint, Plaintiff alleges that during the course of a valid traffic stop, officers ordered Plaintiff
4 to hand over his license and registration, instructed him to get out of the car, and made him spread
5 his legs and place his hands on the hood. ECF No. 40 at 5. Plaintiff alleges that officers yelled at
6 him and were “rude and impolite the entire time.” Id. at 5-6. When Plaintiff asked for a ride to
7 the hospital because he was feeling ill, Defendants refused, because transporting a passenger who
8 was not handcuffed and had not been thoroughly searched was contrary to department policy.
9 ECF No. 42 at 5.

10 Plaintiff alleges no conduct by Defendants that allow a reasonable jury to find that their
11 actions were “so extreme as to exceed all bounds of that usually tolerated in a civilized society.”
12 Id. Plaintiff does not contest the validity of the traffic stop or deny Defendants’ claims that, while
13 driving a vehicle with a suspended license, he ran a stop sign. See ECF No. 29 at 2
14 (acknowledging that Plaintiff does not make claims of “false detention and false imprisonment”).
15 Although Plaintiff claims he was visibly ill throughout the length of the stop, it was not outrageous
16 for police officers to undertake a short traffic stop after witnessing him operate a vehicle illegally
17 in a manner that posed a danger to others. Once that stop was completed, Defendants’ only
18 additional action was to deny Plaintiff’s request to drive him to a hospital that was two blocks
19 away. Such a refusal is not “so extreme as to exceed all bounds of that usually tolerated in a
20 civilized society.” George, 2009 WL 656299, *6.

21 The Court therefore grants Defendants’ motion for summary judgment as to Plaintiff’s
22 intentional infliction of emotional distress claim.

23 **B. Deliberate Indifference**

24 Defendants’ also seek summary judgment as to Plaintiff’s claims they acted with deliberate
25 indifference to his serious medical needs by stopping him and then refusing to provide him a ride
26 two blocks to the hospital. Defendants contend that Plaintiff has failed to create a genuine issue as
27 to whether his Fourteenth Amendment rights were violated. Defendants argue in the alternative
28 that, even if Defendants’ rights were violated, Defendants are entitled to qualified immunity as

1 Defendants' conduct did not "violate clearly established statutory or constitutional rights of which
2 a reasonable person would have known." Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982)
3 (citations omitted). Because Defendants could not have known that their brief detention and
4 subsequent release of Plaintiff violated his constitutional rights, the Court will grant summary
5 judgment in their favor as to Plaintiff's deliberate indifference claim.

6 To determine whether to grant qualified immunity, a court must ask whether a plaintiff's
7 rights were violated and if that right that was "clearly established." Pearson v. Callahan, 555 U.S.
8 223, 236 (2009). Courts are "permitted to exercise their sound discretion in deciding which of the
9 two prongs of the qualified immunity analysis should be addressed first in light of the
10 circumstances in the particular case at hand." Id. "If an official could reasonably have believed
11 her actions were legal in light of clearly established law and the information she possessed at the
12 time, she is protected by qualified immunity." Franklin v. Fox, 312 F.3d 423, 437 (9th Cir. 2002).

13 It is clearly established in the law that the Fourteenth Amendment protects against police
14 officers' acting with deliberate indifference toward the serious medical needs of an individual they
15 have detained. See Gibson v. Cnty. of Washoe, Nev., 290 F.3d 1175, 1187 (9th Cir. 2002).
16 (collecting cases holding that deliberate indifference claims brought by arrestee arise "from the
17 due process clause rather than the Eighth Amendment's protection against cruel and unusual
18 punishment"). But for the purposes of the qualified immunity analysis, "the right allegedly
19 violated must be defined at the appropriate level of specificity before a court can determine if it
20 was clearly established." Wilson v. Layne, 526 U.S. 603, 615 (1999). Therefore, the task of
21 "determining whether the law was clearly established 'must be undertaken in light of the specific
22 context of the case, not as a broad general proposition.'" Estate of Ford v. Ramirez-Palmer, 301
23 F.3d 1043, 1050 (9th Cir. 2002) (quoting Saucier v. Katz, 533 U.S. 194, 201 (2001)). The Ninth
24 Circuit has held that, in the context of claims for deliberate indifference, courts must grant officers
25 qualified immunity where the circumstances would not have informed a reasonable officer that
26 their conduct "posed such a substantial risk of serious harm that doing so would be
27 constitutionally impermissible." Estate of Ford v. Ramirez-Palmer, 301 F.3d 1043, 1053 (9th Cir.
28 2002).

1 The parties dispute how much information Defendants had about Plaintiff’s medical
2 condition. Plaintiff alleges that he “was in dire need of emergency treatment when he was
3 detained, so much that it was obvious that even a layperson would easily recognize the necessity
4 for immediate medical attention.” ECF No. 40 at 8. Plaintiff also claims that he told officers he
5 was sick and had been en route to seeking emergency care at Veterans Hospital when he was
6 stopped. Id. Because the qualified immunity inquiry must be conducted viewing all facts in favor
7 of the plaintiff, the Court concludes that there is at least a genuine issue as to whether Plaintiff
8 made Defendants aware of a risk to his health such that Defendants were aware of Plaintiff’s
9 medical needs at the time they refused to transport him to the Hospital.

10 Nevertheless, the Court concludes that Defendants are entitled to qualified immunity,
11 because then-existing law did not clearly inform Defendants that validly stopping Plaintiff for a
12 short period of time and then allowing him to walk unassisted two blocks to a hospital posed such
13 a substantial risk of harm as to be constitutionally impermissible. Estate of Ford, 301 F.3d at
14 1053. Plaintiff was lawfully stopped after he ran a stop sign. Plaintiff does not contest the legality
15 of his initial detention or claim that he was detained for longer than necessary to complete the
16 investigation into his traffic violation and suspended license. Although Plaintiff alleges he was
17 visibly ill during the stop, he cites not authority for the proposition that illness entitles an
18 individual to be released from a brief and otherwise lawful traffic stop.

19 Although Plaintiff contends Defendants’ acted unlawfully in detaining him while he was
20 ill, Plaintiff’s deliberate indifference claim also rests on an allegation that officers acted
21 unlawfully by not keeping him in their custody further and transporting him in a police vehicle to
22 the Hospital. Even if the Court accepts that the Defendants acted with deliberate indifference to
23 Plaintiff’s serious medical needs by towing his car and failing to provide him with a ride to the
24 hospital when he appeared to be physically ill, Defendants could not have been expected to know
25 that their decision to release Plaintiff had constitutional ramifications. Plaintiff has pointed to no
26 case where any court has concluded that officers acted with deliberate indifference to an
27 individual’s health by releasing him from their custody and allowing him to proceed to a nearby
28 hospital unassisted.

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Deliberate indifference claims commonly arise where a Plaintiff is incarcerated or detained and therefore dependent on officers for medical care. Because a detained or incarcerated individual “must rely on prison authorities to treat his medical needs[,] if the authorities fail to do so, those needs will not be met.” Estelle v. Gamble, 429 U.S. 97, 103 (1976). Plaintiff cites to cases in which defendants were found to have acted with deliberate indifference where they refused to provide a plaintiff with medical care while keeping that plaintiff in custody, rendering the plaintiff unable to obtain any medical care. See ECF No. 49 at 8-9 (citing Nerren v. Livingston Police Department, 86 F.3d 469 (5th Cir. 1986); Estate of Cole by Pardue v. Fromm, 94 F.3d 254, 258 (7th Cir. 1996)). But none of those cases would have given notice to Defendants that their decision to release Plaintiff from their custody and allow him to proceed to a hospital only two blocks away constituted a Fourteenth Amendment violation. As Plaintiff was able to get to the hospital unassisted on foot after he was released, Defendants’ brief and lawful detention did not seriously compromise Plaintiff’s ability to treat his own medical needs.

Defendants state that they deferred to their departmental policy to refuse to provide rides to individuals who were not arrested and had not been thoroughly searched. No clearly-established constitutional law conflicted with this policy. Therefore, the Court finds that Defendants are entitled to summary judgment as to Plaintiff’s deliberate indifference claim.

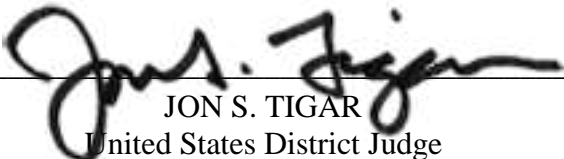
IV. CONCLUSION

For the foregoing reasons, Defendant’s motion for summary judgment is GRANTED in its entirety.

Defendants are ordered to provide a form of proposed judgment to the Court within 15 days of entry of this order.

IT IS SO ORDERED.

Dated: December 22, 2014



JON S. TIGAR
United States District Judge