

United States District Court
For the Northern District of California

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E-FILED on 4/14/09

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

JOHN DOE,

Plaintiff,

v.

CITY OF SAN JOSE, *et al.*

Defendants.

No. C-06-06307 RMW

ORDER GRANTING IN PART
DEFENDANTS' MOTION FOR SUMMARY
JUDGMENT

Defendants City of San Jose, Chief Robert Davis, Officer Stephen Donohue, Officer Tony Ruelas and Officer Daniel Guerra (the "San Jose Defendants") move for summary judgment on all claims asserted against them. Plaintiff, proceeding *pro se*, opposes the motion. The motion was submitted for decision without oral argument on November 17, 2008.

Having considered the papers submitted by the parties, and for good cause appearing, the San Jose Defendants' motion for summary judgment is GRANTED IN PART.¹

¹ The motion is granted only in part because defendants' memorandum of points and authorities addresses only some of the causes of action alleged against some of the San Jose defendants, even though the motion itself seeks summary judgment on behalf of all San Jose defendants on all asserted claims. Specifically, defendants have not offered any argument or analysis as to why summary judgment should be entered in their favor on the fourth through sixth causes of action for violation of state civil rights laws. Defendants have not offered any argument or analysis why summary judgment is appropriate in favor of Police Chief Davis. Defendants have offered no argument or analysis directed towards plaintiff's tenth cause of action for the infliction of emotional distress. And, defendants have offered no analysis or argument to support summary judgment on the eleventh cause of action for negligence, except to the limited extent that summary judgment is sought by the City of San Jose for anything other than potential respondeat superior liability.

BACKGROUND

A. Facts

Plaintiff filed this action alleging twelve causes of action against the City of San Jose, Police Chief Davis, three San Jose Police Officers, the County of Santa Clara, the Chief of the County's Department of Corrections, and the County Sheriff. The Second Amended Complaint focuses on two incidents: an October 2005 traffic stop and subsequent arrest by Officers Ruelas and Donohue and with a resulting strip search at the Santa Clara County Jail by county employees, and 2) a September 2006 traffic stop and vehicle impoundment by San Jose Officer Guerra.

More specifically, on October 13, 2005, Defendants Ruelas and Donohue initiated a traffic stop involving plaintiff. It is undisputed that at the time, plaintiff was driving a vehicle with expired registration tags and a cracked windshield and had made lane changes without signaling. The Officers approached plaintiff's vehicle, and observed him reach behind him and lift up his pelvic area, which the Officers recognized as a possible indication that plaintiff was hiding contraband or reaching for a weapon. Ruelas Decl. ¶9, Donohue Decl. ¶9. After monitoring plaintiff's pulse, the officers placed him under arrest for being under the influence of a controlled substance and transported him to the San Jose Police Department Pre-Processing Center. Ruelas Decl. ¶¶11-12; Donohue Decl. ¶¶10-12.

At the Pre-Processing Center, plaintiff refused to submit to a strip search. He was subsequently transported to the Santa Clara County Main Jail where he was processed. Ruelas Decl. ¶13; Donohue Decl. ¶13. The officers advised the County correctional personnel that they believed plaintiff may have concealed contraband on his person. Donohue Police Report at 5, attached as Exhibit A to Declaration of Donohue. While at the Santa Clara County Main Jail, County Department of Corrections personnel subjected plaintiff to a strip search and body cavity search, resulting in injuries. No drugs or contraband were found.

On September 12, 2006, defendant Guerra observed plaintiff's vehicle, performed a record check and determined that the registration had been expired for more than a year. Officer Guerra thereafter caused the vehicle to be towed because of the expired registration, and, before it was towed, conducted an inventory search of the car. Guerra Decl. ¶¶4-6.

1 In one significant respect, plaintiff's opposition papers offer a different statement of the facts,
2 albeit not in the form of admissible evidence, suggesting that a San Jose Police Sergeant Gonzalez
3 had instructed the arresting officers to return plaintiff to his vehicle after plaintiff refused to consent
4 to a strip search, but that instead of doing so, Officers Ruelas and Donohue transported plaintiff to
5 the County Jail, informed the Department of Corrections personnel that they suspected plaintiff had
6 contraband hidden on his person, and thereby instigated the forcible strip search. See Opp. at 8.

7 The strip search that allegedly caused plaintiff's physical injuries was conducted by
8 defendants affiliated with Santa Clara County Department of Corrections, not by defendants
9 affiliated with the City of San Jose. Plaintiff has settled his claims against the County Defendants,
10 and by stipulated order, the claims against those defendants were dismissed with prejudice. [Docket
11 46] The only defendants who remain in this case are the San Jose defendants.

12 Plaintiff admitted in his deposition testimony that at no time did the San Jose Police Officers
13 hurt him. Plaintiff's Depo. at 172:23-173:2; 367:15-18.

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15 **B. The Second Amended Complaint**

16 The Second Amended Complaint alleges twelve causes of action:

- 17 1. A claim under 42 U.S.C. §1983 against all defendants for violation of plaintiff's
18 Fourth and Fourteenth Amendment rights to be free from unreasonable seizures and
19 excessive and/or arbitrary force without reasonable or probable cause;
- 20 2. A claim under 42 U.S.C. §1983 against all defendants for violation of plaintiff's
21 Fourteenth Amendment rights not to be deprived of liberty without due process of
22 law;
- 23 3. A claim under 42 U.S.C. §1983 against all defendants for deprivation of plaintiff's
24 rights to equal protection;
- 25 4. A claim under the California constitution against all defendants for violation of
26 plaintiff's right to be free from unreasonable seizures and excessive and/or arbitrary
27 force without reasonable or probable cause;

28

- 1 5. A claim under the California constitution against all defendants for violation of
- 2 plaintiff's rights not to be deprived of liberty without due process of law;
- 3 6. A claim under the California constitution against all defendants for violation of
- 4 plaintiff's rights to equal protection;
- 5 7. A claim against Officers Donohue, Ruelas and Guerra for violation of California
- 6 Civil Code Section 52.1 for interfering by threats, intimidation and coercion with
- 7 plaintiff's peaceable exercise and enjoyment of rights secured by the state and federal
- 8 constitutions;
- 9 8. A claim against Officers Donohue, Ruelas and Guerra for violation of California
- 10 Civil Code Section 51.7 for violating plaintiff's rights to be free from violence,
- 11 intimidation, or threats of violence committed against him because of his race;
- 12 9. A tort claim against Officers Donohue, Ruelas and Guerra for assault and battery;
- 13 10. A tort claim against Officers Donohue, Ruelas and Guerra for the intentional
- 14 infliction of emotional distress;
- 15 11. A claim against all defendants for negligence; and,
- 16 12. A claim against the County Defendants for violation of California Penal Code Section
- 17 4030, a claim which has been settled and dismissed.

18
19 **ANALYSIS**

20 Summary judgment is proper where the pleadings, discovery, and affidavits show that there
21 is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of
22 law. Fed. R. Civ. P. 56(c). Material facts are those which may affect the outcome of the case and a
23 dispute as to a material fact is "genuine" only if there is sufficient evidence for a reasonable trier of
24 fact to decide in favor of the nonmoving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248
25 (1986). The moving party has the burden to demonstrate that no genuine issue of material fact exists
26 and that it is entitled to judgment as a matter of law. Celotex Corp. v. Catrett, 477 U.S. 317, 321
27 (1986). Where a defendant moves for summary judgment on an issue upon which the plaintiff bears
28 the burden of proof at trial, the moving defendant may meet its burden by showing that there is an

1 absence of evidence to support the non-moving party's case, Celotex, 477 U.S. at 325, or by
2 submitting affirmative evidence that disproves an essential element of the plaintiff's claim. Adickes
3 v. S.H. Kress & Co., 398 U.S. 144, 158-160 (1970).

4 After the moving party has met its burden under Rule 56(c), then the non-moving party has
5 the burden of coming forward with admissible evidence to show that a genuine issue of material fact
6 exists. Fed. R. Civ. P. 56(e)(2). If the non-moving party does not do so, then summary judgment is
7 appropriate. Id., Celotex, 477 U.S. at 322.

8 Plaintiff has not satisfied his burden under Rule 56(e) of submitting affidavits or other
9 evidence to set out specific facts showing a genuine issue for trial. FRCP 56(e)(2). Although
10 Plaintiff filed a "Declaration of Plaintiff John Doe in support of plaintiff statement of facts before
11 trial" [Docket No. 78] and a document titled "Plaintiff reply to Defendant's motion of summary
12 judgment" [Docket No. 81], neither of these documents constitutes a sworn affidavit or other
13 admissible evidence. Accordingly, plaintiff has not met his Rule 56 burden of identifying specific
14 facts demonstrating the existence of an actual issue for trial. He has not demonstrated facts
15 sufficient to show that a jury could reasonably find in his favor on his claims. Anderson v. Liberty
16 Lobby, Inc., 477 U.S. 242 (1986). On the record taken as a whole, a reasonable fact finder could not
17 find for plaintiff on the claims, and summary judgment is therefore appropriate. Matsushita Elec.
18 Indus. Co. v. Zenith Radio, 475 U.S. 574 (1986).

19 **1. First through Third Causes of Action: Federal Civil Rights Claims (42 U.S.C.**
20 **§1983):**

21 The defendants first seek summary judgment on the first three causes of action, each of them
22 brought under 42 U.S.C. §1983 for alleged violations of plaintiff's federal civil rights.

23 **A. Claims Asserted Against Officers Donohue, Ruelas and Guerra**

24 Officers Donohue, Ruelas and Guerra seek summary judgment on plaintiff's first three causes
25 of action brought under 42 U.S.C. §1983 on the basis of qualified immunity. These three causes of
26 action allege that plaintiff was subjected to an unreasonable seizure of his person, unreasonable and
27 excessive force in the search of his person, and deprivation of due process and equal protection in
28 violation of plaintiff's rights under the Fourth and Fourteenth Amendments to the United States

1 Constitution. "The doctrine of qualified immunity protects government officials 'from liability for
2 civil damages insofar as their conduct does not violate clearly established statutory or constitutional
3 rights of which a reasonable person would have known.'" Pearson v. Callahan, ___ U.S. ___, 129 S.
4 Ct. 808, 815 (2009) (quoting, Harlow v. Fitzgerald, 457 U.S. 800 (1982)). "Qualified immunity
5 balances two important interests-the need to hold public officials accountable when they exercise
6 power irresponsibly and the need to shield officials from harassment, distraction, and liability when
7 they perform their duties reasonably. The protection of qualified immunity applies regardless of
8 whether the government official's error is "a mistake of law, a mistake of fact, or a mistake based on
9 mixed questions of law and fact." Id., citing Groh v. Ramirez, 540 U.S. 551, 567 (2004) (J.
10 Kennedy, dissenting).

11 To determine whether a defendant is entitled to qualified immunity, the court must first
12 consider whether the facts, taken in a light most favorable to plaintiff, show that the officer's conduct
13 violated a constitutional right. Saucier v. Katz, 533 U.S.194, 201 (2001). If no right was violated,
14 then the inquiry ends and the officers have immunity from suit. On the other hand, if the facts
15 construed in a light most favorable to the plaintiff show that the officer's conduct did violate a
16 constitutional right, then a second step in the analysis is to determine whether the right the official is
17 alleged to have violated was clearly established such that it would be clear to a reasonable officer
18 that his or her conduct was unlawful in the situation confronted. Id. at 202. In this case, under
19 either prong of the analysis, summary judgment is appropriate. Under the undisputed facts set forth
20 above, even read most favorably towards plaintiff, neither Officer Ruelas, Officer Donohue, nor
21 Officer Guerra could be found to have violated plaintiff's constitutional rights.

22 Plaintiff has failed to submit evidence sufficient to establish that Officers Donohue and
23 Ruelas did not act reasonably, or have sufficient basis to: 1) initiate the stop of plaintiff's vehicle on
24 October 13, 2005, conduct a limited search, and 2) place plaintiff under arrest for driving under the
25 influence of alcohol or drugs. Plaintiff has similarly failed to submit evidence sufficient to establish
26 that Officer Guerra did not have a sufficient basis to initiate the stop of plaintiff's vehicle on
27 September 12, 2006 and to subsequently have the vehicle towed. Plaintiff has not submitted any
28 evidence sufficient for a jury to find in his favor that his due process or equal protection rights were

1 violated by the San Jose defendants in either incident. Accordingly, Officers Donohue, Ruelas and
2 Guerra are entitled to summary judgment on the first three causes of action brought under 42 U.S.C.
3 §1983.

4 **B. Claims Asserted Against the City of San Jose and Police Chief Davis**

5 Defendants City of San Jose and San Jose Police Chief Robert Davis also seek summary
6 judgment on the first three causes of action. Specifically, the City argues that it cannot be held
7 liable under Section 1983 under a theory of respondeat superior. Oklahoma v. Tuttle, 471 U.S. 808
8 (1985); Pembaur v. Cincinnati, 475 U.S. 469 (1986). A plaintiff seeking to hold a municipality
9 liable under Section 1983 must identify a policy or custom that caused the alleged injury. Board of
10 County Commissioners v. Brown, 520 U.S. 397, 403 (1997).

11 City argues that it cannot be held liable under Section 1983 because there is no evidence: 1)
12 that the City had a policy or custom which allows for the existence of any unconstitutional
13 misconduct by its police officers; 2) that the City's policy-making officials were intentionally
14 indifferent to any alleged unconstitutional misconduct or that they tacitly authorized any allegedly
15 unconstitutional misconduct; or 3) that the City had some policy or custom that actually caused the
16 alleged constitutional deprivations. Mem. in Support at 11-13, citing case law, including Monell v.
17 Department of Social Services, 436 U.S. 658 (1978). City further argues that plaintiff "will be
18 unable to offer any evidence to support a finding that the City has a policy or custom which allows it
19 police officers to violate people's constitutional rights," and thus summary judgment in defendants'
20 favor is appropriate. Mem. in Support at 14.

21 As noted above, plaintiff has failed to submit evidence sufficient to establish that defendant
22 City of San Jose could be held liable to him under 42 U.S.C. §1983. Accordingly, it is appropriate
23 to grant summary judgment to the City of San Jose on the first three causes of action.

24 Defendants have not directly addressed why Chief Davis is also entitled to summary
25 judgment on plaintiff's Section 1983 claims. From a review of the second amended complaint, Chief
26 Davis' presence in the lawsuit is based solely upon his role as the policy-maker for the City of San
27 Jose on the matters alleged in the complaint. SAC ¶13. Accordingly, having found it appropriate to
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1 Civ. P. 56(e)(2). Plaintiff failed to do so, and accordingly, summary judgment is appropriate. Id.,
2 Celotex, 477 U.S. at 322.

3 **4. Eighth Cause of Action: Violation of California Civil Code Section 51.7**

4 Plaintiff's eighth cause of action is for violation of the Unruh Civil Rights Act, California
5 Civil Code Section 51.7. It, too, is asserted only against Officers Donohue, Ruelas and Guerra.
6 Defendants seek summary judgment on the basis that California Government Code Section 821.6
7 provides immunity under state law for any injury caused by police officers in the course of the
8 performance of their duties. Motion at 15. Under Section 821.6 "a public employee is not liable for
9 injury caused by his instituting or prosecuting any judicial or administrative proceeding within the
10 scope of his employment, even if he acts maliciously and without probable cause." This immunity
11 extends to acts taken by police officers in the course of investigations. Amylou R. v. County of
12 Riverside, 28 Cal.App.4th 1205, 1210 (1994) (citing case law). The second amended complaint
13 alleges that each defendant acted within the course and scope of his employment. SAC ¶18. The
14 undisputed facts show the same: each officer defendant was acting in the course of his official
15 duties. Thus, the state law immunity attaches and summary judgment is appropriate.²

16 **5. Ninth Cause of Action: Assault and Battery**

17 Plaintiff's ninth cause of action is for assault and battery and is alleged only against Officers
18 Donohue, Ruelas and Guerra. Defendants seek summary judgment on the basis that plaintiff cannot
19 establish that any force used against him by these defendants was unreasonable. Edson v. City of
20 Anaheim. 63 Cal.App.4th 1269, 1273 (1998) (a prima facie battery is not established unless plaintiff
21 establishes that unreasonable force was used). The heart of plaintiff's allegations center on the strip
22 search conducted by the County Department of Corrections Officers and the resulting injuries that
23 plaintiff alleges he suffered. Yet, plaintiff settled his claims against the county defendants and there
24 is no genuine dispute of material fact that any remaining defendant was directly involved in the
25 force used against plaintiff in the course of the strip search. Plaintiff admitted in deposition that he
26

27 ² It may very well be that this same immunity would shield the officer defendants from other state
28 law claims asserted by plaintiff, but the parties have not briefed this issue. Accordingly, the court
does not reach it here.

1 was never physically harmed by Officer Ruelas or Officer Donohue and that he was never touched
2 by Officer Guerra. Plaintiff's Depo at 172:23-173:2; 367:15-18. Based on these admissions,
3 summary judgment in favor of defendants on the assault and battery claim is warranted.

4 **6. Tenth Cause of Action: Infliction of Emotional Distress**

5 Plaintiff's tenth cause of action seeks to recover for the alleged intentional infliction of
6 emotional distress and is asserted only against Officers Donohue, Ruelas and Guerra. Defendants'
7 supporting papers, however, offer no argument or analysis with regard to why summary judgment is
8 appropriate on the tenth cause of action. Accordingly, the motion is denied without prejudice.

9 **7. Eleventh Cause of Action: Negligence**

10 Plaintiff's eleventh cause of action is for negligence and is asserted against all defendants. In
11 seeking summary judgment, defendants focus only on the negligence claim as it is alleged against
12 the City of San Jose, and only to the extent that the cause of action seeks to impose liability other
13 than through the doctrine of respondeat superior liability. Specifically, defendants argue that as a
14 public entity, the City of San Jose cannot be liable for negligence because Government Code §815
15 precludes public entity liability excepts as otherwise provided by statute. Mem. in Support at 18.
16 The City concedes, however, that it may be held liable for negligence under respondeat superior, and
17 seeks summary judgment on the eleventh cause of action only "to the extent that the eleventh cause
18 of action alleges anything other than potential *respondeat superior* liability for negligent conduct
19 which may be found on the part of any of the defendant officers." *Id.* at 19. Defendants do not
20 address whether defendants Chief Davis, or Officers Ruelas, Donohue and Guerra, should be granted
21 summary judgment on the negligence claim. The court agrees that the City's liability is limited by
22 statute, but the City may be liable under a respondeat superior theory. Accordingly, it is not
23 appropriate to grant summary judgment in favor of the City on this claim, and the motion is denied
24 without prejudice.

25 **ORDER**

26 For the foregoing reasons, it is hereby ordered that:

27 1. Defendants' motion for summary judgment is GRANTED on plaintiff's first, second and
28 third causes of action;

1 2. Defendants' motion for summary judgment is DENIED without prejudice on plaintiff's
2 fourth, fifth and sixth causes of action;

3 3. Defendants' motion for summary judgment is GRANTED on plaintiff's seventh cause of
4 action;

5 4. Defendants' motion for summary judgment is GRANTED on plaintiff's eighth cause of
6 action;

7 5. Defendants' motion for summary judgment is GRANTED on plaintiff's ninth cause of
8 action;

9 6. Defendants' motion for summary judgment is DENIED without prejudice on plaintiff's
10 tenth cause of action; and

11 7. Defendants' motion for summary judgment is DENIED without prejudice on plaintiff's
12 eleventh cause of action although the court agrees that the City's liability is limited to that provided
13 by statute.


14 This case is presently set for a pretrial conference to be held on May 7, 2009 at 2:00 p.m.,
15 and for jury trial on May 11, 2009 at 1:30 p.m. Based on the court's review of the papers on the
16 present motion and various pretrial materials that have already been submitted by the parties, the
17 court is not convinced that this case will be ready to proceed to jury trial on May 11, as presently
18 scheduled. There are several issues left unaddressed by defendants' motion for summary judgment
19 that, when briefed and presented to the court, may make trial on this matter unnecessary, such as the
20 extent to which the claims against Chief Davis should be dismissed, the extent to which state law
21 immunity may protect the defendant officers from liability on the other asserted state law claims,
22 and the extent to which summary judgment may or may not be appropriate on all remaining causes
23 of action. The court suggests that the parties meet and confer about whether trial should be
24 postponed pending further motion practice.

25

26 DATED: 4/14/09

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RONALD M. WHYTE
United States District Judge

