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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

MAURICE PETER EUNICE,

Plaintiff,

vs.

UNITED STATES OF AMERICA, et
al.,

Defendant.

CASE NO. 12cv1635-GPC(BGS)

**ORDER GRANTING DEFENDANT
UNITED STATES OF AMERICA'S
SUPPLEMENTAL MOTION FOR
SUMMARY JUDGMENT**

[FILED UNDER SEAL]

[Dkt. Nos. 119.]

Before the Court is Defendant United States of America's supplemental motion for summary judgment. (Dkt. No. 119.) An opposition was filed as well as a reply. (Dkt. Nos. 121, 123.) After a review of the briefs, supporting documentation and the applicable law, the Court GRANTS Defendant United States of America's supplemental motion for summary judgment.

Procedural Background

On June 29, 2012, Plaintiff Maurice Peter Eunice ("Plaintiff") filed a complaint against numerous Defendants alleging causes of action arising from the Defendants use of explosives to enter his property causing unnecessary and extensive damage. (Dkt. No. 1.) On January 2, 2013, Plaintiff filed another action against the United States of America in case no. 13cv0009 alleging causes of action under the Federal Tort Claims Act ("FTCA"). (Case No. 13cv0009, Dkt. No. 1, Compl.) On September 10, 2013, the

1 Court granted the parties' joint motion to consolidate the cases. (Dkt. No. 71.)

2 The remaining two causes of action are trespass to land and private nuisance as
3 to Defendant United States of America. These causes of action were not properly
4 briefed in Defendant's prior motion for summary judgment. Pursuant to a joint motion,
5 the parties agreed to file supplemental briefs on the two remaining claims. (Dkt. No.
6 115, 116.) On August 11, 2014, the United States of America filed a supplemental
7 brief. (Dkt. No. 119.) Plaintiff filed an opposition on September 12, 2014. (Dkt. No.
8 121.) On September 24, 2014, the United States of America filed a reply. (Dkt. No.
9 123.)

10 **Factual Background¹**

11 In 1995, Plaintiff purchased the property located at 419/421/423 El Cajon
12 Boulevard in El Cajon, California. He has been a member of the Hells Angels
13 Motorcycle Club ("Hells Angels") since 1994. In 1996, Plaintiff began leasing the
14 properties to Tim Timms, a member of the Hells Angels for use by the Hell Angels as
15 their Clubhouse. All three buildings on the property are used solely for the Hells
16 Angels Clubhouse.

17 On August 2, 2011, Special Agent ("SA") Patrick Ryan of the Drug Enforcement
18 Agency ("DEA") obtained a night search warrant for the properties pursuant to a DEA
19 investigation into Plaintiff's tenants. Plaintiff does not challenge the validity of the
20 search warrant. Agent Ryan contacted the El Cajon Police Department regarding the
21 service of the high-risk search warrant at the properties. There were eleven arrest
22 warrants and eight search warrants related to the case. The role of the El Cajon SWAT
23 team was to assist the DEA with entry and to secure the location and all the occupants
24 on the premises and to clear the compound for the DEA investigators to perform the
25 search.

26 According to the El Cajon Police Department SWAT After Action Report of the
27

28 ¹The facts are taken from the Court's prior order on the Defendant Davis and
United States of America's motions for summary judgment filed on July 31, 2014.

1 incident on August 3, 2011, [REDACTED]

2 [REDACTED]

3 [REDACTED] (Dkt. No. 110-1, Jun Decl., Ex, 1 at 2 (under

4 S E A L) .)

5 [REDACTED]

6 [REDACTED]. (Id. (under SEAL).)

7 [REDACTED]

8 [REDACTED]. (Id. (under SEAL).)

9 [REDACTED]

10 [REDACTED]. (Id. (under SEAL).)

11 [REDACTED]

12 [REDACTED]. (Id. (under SEAL).)

13 [REDACTED].

14 (Id. (under SEAL).) [REDACTED]. (Id. at 3

15 (u n d e r S E A L) .)

16 [REDACTED]. (Id.

17 (under SEAL).)

18 [REDACTED]

19 [REDACTED]. (Id. at 3 (under SEAL).) [REDACTED]

20 [REDACTED]

21 [REDACTED] (Id. (under SEAL).)

22 [REDACTED]

23 (Id. (under SEAL).) [REDACTED]

24 [REDACTED]. (Id. (under SEAL).) [REDACTED]

25 [REDACTED]. (Id. at 4 (under SEAL).) [REDACTED]

26 [REDACTED]

27 [REDACTED]. (Id. (under SEAL).) [REDACTED]

28 [REDACTED]

1 (Id. (under SEAL.) [REDACTED]
2 [REDACTED]. (Id.) [REDACTED]
3 [REDACTED]
4 [REDACTED]. (Id.) [REDACTED]. (Id. (under SEAL).)
5 [REDACTED]. (Id. (under SEAL).) [REDACTED]
6 [REDACTED]
7 [REDACTED]. (Id. (under SEAL).)

8 Breaching charges are detonating explosives used by SWAT to remove doors
9 and hinges and create a loud boom and a flash. (Dkt. No. 100-5, Davis Depo. at 15:24-
10 16:24.) Flash bangs are diversionary devices used to startle occupants of a home by
11 making a loud noise and creating a bright flash. (Id. at 14:17-15:23.) The purpose is
12 to stun people who may be inside a house. (Id. at 15:9-10.)

13 **Discussion**

14 **A. Legal Standard for Federal Rule of Civil Procedure 56**

15 Federal Rule of Civil Procedure 56 empowers the Court to enter summary
16 judgment on factually unsupported claims or defenses, and thereby “secure the just,
17 speedy and inexpensive determination of every action.” Celotex Corp. v. Catrett, 477
18 U.S. 317, 325, 327 (1986). Summary judgment is appropriate if the “pleadings,
19 depositions, answers to interrogatories, and admissions on file, together with the
20 affidavits, if any, show that there is no genuine issue as to any material fact and that the
21 moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c). A fact
22 is material when it affects the outcome of the case. Anderson v. Liberty Lobby, Inc.,
23 477 U.S. 242, 248 (1986).

24 The moving party bears the initial burden of demonstrating the absence of any
25 genuine issues of material fact. Celotex Corp., 477 U.S. at 323. The moving party can
26 satisfy this burden by demonstrating that the nonmoving party failed to make a
27 showing sufficient to establish an element of his or her claim on which that party will
28 bear the burden of proof at trial. Id. at 322-23. If the moving party fails to bear the

1 initial burden, summary judgment must be denied and the court need not consider the
2 nonmoving party's evidence. Adickes v. S.H. Kress & Co., 398 U.S. 144, 159-60
3 (1970).

4 Once the moving party has satisfied this burden, the nonmoving party cannot rest
5 on the mere allegations or denials of his pleading, but must "go beyond the pleadings
6 and by her own affidavits, or by the 'depositions, answers to interrogatories, and
7 admissions on file' designate 'specific facts showing that there is a genuine issue for
8 trial.'" Celotex, 477 U.S. at 324. If the non-moving party fails to make a sufficient
9 showing of an element of its case, the moving party is entitled to judgment as a matter
10 of law. Id. at 325. "Where the record taken as a whole could not lead a rational trier
11 of fact to find for the nonmoving party, there is no 'genuine issue for trial.'" Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986). In
12 making this determination, the court must "view[] the evidence in the light most
13 favorable to the nonmoving party." Fontana v. Haskin, 262 F.3d 871, 876 (9th Cir.
14 2001). The Court does not engage in credibility determinations, weighing of evidence,
15 or drawing of legitimate inferences from the facts; these functions are for the trier of
16 fact. Anderson, 477 U.S. at 255.

17
18 In the prior order on Defendant's motion for summary judgment, the Court
19 granted summary judgment on the state causes of action for intentional infliction of
20 emotional distress, negligence, and California Civil Code section 52.1 pursuant to the
21 Federal Tort Claims Act ("FTCA"). In the order, the Court concluded that the "use of
22 breaching charges and flash bangs [by Davis] was reasonable in relation to the potential
23 dangers at issue at the time." (Dkt. No. 113 at 14.) The parties do not dispute that the
24 search warrant was valid. (Id. at 4.)

25 **B. Trespass to Land**

26 Defendant argues that the trespass to land cause of action should be dismissed
27 because the Court concluded that the search warrant was valid and reasonable and so
28 entry onto Plaintiff's land was authorized. Moreover, it contends that the DEA was not

1 involved in the initial search when El Cajon SWAT used breaching charges and flash
2 bangs. In opposition, Plaintiff argues that while the search warrant authorized the
3 search of Plaintiff's property, it did not allow the unreasonable and unnecessary use of
4 explosives. Therefore, the use of breaching charges and flash bangs exceeded the
5 scope of the warrant which caused fire and property damage. Moreover, Plaintiff
6 asserts that since the trespass was committed jointly between the DEA and El Cajon
7 SWAT, liability is imputed to the United States.

8 In this case, Plaintiff alleges that the damage caused by the use of breaching
9 charges and flash bangs constitute trespass to land. However, the El Cajon SWAT
10 team, not the DEA, executed the entry into the Clubhouse with the use of flash bangs
11 and breaching charges. The threshold issue is whether Defendant is liable for the acts
12 conducted by another agency. Plaintiff summarily argues, without any legal authority
13 or additional facts, that the entry was jointly conducted by the El Cajon SWAT team
14 and the DEA; therefore, the DEA is liable.

15 In the Court's prior order on the negligence claim, it explained,

16 that the conduct that caused Plaintiff's injury is SWAT's detonating an
17 explosive charge that destroyed the doors and windows. Ryan's
18 request for assistance is too remote of a connection to impose a duty of
19 care by the DEA to Plaintiff. After the request for assistance, the DEA
20 had no other role in determining how the Clubhouse would be
21 breached and only entered the scene once SWAT's entry was
22 successfully made. It was SWAT's responsibility to conduct the entry
23 into the Clubhouse. DEA agents merely observed from a distance.
24 DEA did not use the explosives and did not direct SWAT to use
25 explosives.

26 Plaintiff has not shown that the DEA is responsible for SWAT's
27 decisions and actions to establish a duty of care.

28 (Dkt. No. 113 at 18.)

While the Court's analysis and conclusion was conducted in the context of a duty
of care analysis, the conclusion sheds light on whether liability can be imputed to the
DEA by the SWAT teams' use of explosives. Based on the facts before the Court,
there is no indication that the DEA and the SWAT team worked jointly in the execution
of the entry into the Clubhouse. Moreover, Plaintiff provides no legal authority or

1 additional facts that liability can be imputed to the United States of America based on
2 joint action. Accordingly, Plaintiff has not demonstrated that there are genuine issues
3 of material facts as to whether Defendant United States of America can be liable for a
4 claim of trespass to land. The Court GRANTS Defendant's motion for summary
5 judgment on the trespass to land cause of action.

6 **C. Private Nuisance**

7 Defendant argues that since the Court ruled that the SWAT's use of breaching
8 charges and flash bangs was reasonable, the search could not have been a nuisance.
9 It also contends that Plaintiff improperly alleges that El Cajon SWAT and the DEA
10 acted jointly in the initial entry. Plaintiff contends that reasonableness under nuisance
11 and reasonableness under the Fourth Amendment are distinct standards and the DEA's
12 conduct constitute unreasonableness sufficient to constitute private nuisance.

13 Again, the threshold issue is whether the DEA can be liable for the conduct of
14 the SWAT team. Plaintiff alleges that since the SWAT team was under the DEA's
15 direction, it is liable for private nuisance based on the use of the flash bangs and
16 breaching charges. However, Plaintiff has not demonstrated that there are genuine
17 issues of material facts as to whether Defendant can be liable for a claim of private
18 nuisance. The facts show that the SWAT team, not the DEA, executed the flash bangs
19 and breaching charges. Plaintiff present no additional facts or case law that Defendant
20 would be liable for the acts of the SWAT team. Thus, the Court GRANTS Defendant's
21 motion for summary judgment on the private nuisance cause of action.

22 **Conclusion**

23 Based on the above, the Court GRANTS Defendant United States of America's
24 supplemental motion for summary judgment on the two remaining causes of action for
25 trespass to land and private nuisance. The hearing set for October 10, 2014 shall be
26 **vacated**. The Clerk of Court shall issue judgment and close the case.

27 IT IS SO ORDERED.
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1 DATED: October 1, 2014

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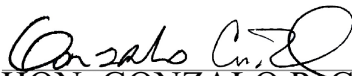
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HON. GONZALO P. CURIEL
United States District Judge