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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ANA PATRICIA FERNANDEZ, Plaintiff, vs. LOS ANGELES COUNTY; et al., Defendants.	CASE NO. 2:20-cv-9876-DMG-PD **DEFENDANTS COUNTY OF LOS ANGELES, JOHN ROTH AND WYATT WALDRON'S REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT OR PARTIAL SUMMARY JUDGMENT** Date: May 10, 2024 Time: 2:00 p.m. Place: Courtroom 8C Judge: Hon. Dolly M. Gee

Defendants, COUNTY OF LOS ANGELES, JOHN ROTH and WYATT WALDRON hereby submit the following as its Memorandum of Law in reply to the Plaintiffs' opposition to their Motion for Summary Judgment or Partial Summary Judgment.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES **Page(s)**

STATUTES

MEMORANDUM OF LAW IN REPLY

I. BASED ON THE OPPOSING PAPERS, THE DEFENDANTS ARE ENTITLED TO JUDGMENT IN THEIR FAVOR

Federal Rule of Civil Procedure Rule 56(c) mandates the entry of summary judgment, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. In such a situation, there can be "no genuine issue as to any material fact," since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial. Celotex Corp. v. Catrett, 477 U.S. 317, 322–23 (1986). A disputed fact is "material" where the resolution of that fact might affect the outcome of the suit under the governing law, and the dispute is "genuine" where "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

The burden of establishing the absence of a genuine issue of material fact lies with the moving party. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322–23 (1986). Once the moving party satisfies its burden, the nonmoving party cannot simply rest on the pleadings or argue that any disagreement or "metaphysical doubt" about a material issue of fact precludes summary judgment. *Id*. *See* *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986); *Cal. Architectural Bldg. Prods., Inc. v. Franciscan Ceramics, Inc.*, 818 F.2d 1466, 1468 (9th Cir. 1987). The non-

moving party must show that there are "genuine factual issues that ... may reasonably be resolved in favor of either party." *Anderson*, 477 U.S. at 250. However, "uncorroborated and self-serving" testimony will not create a genuine issue of material fact. *Villiarimo v. Aloha Island Air, Inc.*, 281 F.3d 1054, 1061 (9th Cir. 2002). "Conclusory" or "speculative" testimony is likewise "insufficient to raise genuine issues of fact and defeat summary judgment." *See Hous. Rights Ctr. v. Sterling*, 404 F. Supp. 2d 1179, 1183 (C.D. Cal. 2004). Though the Court may not weigh conflicting evidence or make credibility determinations, a plaintiff must ultimately provide more than a "scintilla" of contradictory evidence to avoid summary judgment. *Anderson*, 477 U.S. at 251–52; *Addisu v. Fred Meyer, Inc.*, 198 F.3d 1130, 1134 (9th Cir. 2000).

Overall, in opposition to the defendant's Motion for Summary Judgment, the plaintiff offers no admissible evidence to prove her claims. The plaintiff offers her own self-serving declaration wherein she contradicts her sworn deposition testimony. The plaintiff cannot create a genuine issue of material fact by contradicting her own testimony. The Plaintiff offers other photographic evidence that is unauthenticated and speculative. The plaintiff offers the declaration of her expert on condition of the firearms and valuation after the firearms were retrieved from County custody. She offers no evidence of the condition or value of the firearms prior to seizure, during seizure, during transport or during storage by the County.

Based on the undisputed material facts: the firearm fee imposed upon her by the County of Los Angeles was not unreasonable under the Fourth Amendment; Defendants Roth and Waldron are entitled to Qualified Immunity on the Plaintiff's Fourth Amendment claim; and the opposing papers offer no genuine issue of material fact to prove negligence, the breach of a bailment or a trespass to chattels by these defendants. The Defendants and each of them are entitled to judgment as matter of law.

II. THE OPPOSING PAPERS FAIL TO SHOW THAT THE FIREARM FEE IMPOSED UPON THE PLAINTIFF WAS UNREASONABLE UNDER THE FOURTH AMENDMENT

As set forth in the moving papers, the Cal. Penal Code § 33880 (a) permits a county to a fee not to exceed it its administrative costs relating to the seizure, impounding, storage, or release of any firearm, ammunition feeding device, or ammunition. "The fee under subdivision (a) shall not exceed the actual costs incurred for the expenses directly related to the taking possession of any firearm, ammunition feeding device, or ammunition, storing it, and surrendering possession of it to a licensed firearms dealer to be delivered to the owner."

In opposition the Plaintiff contends that the intent of the legislature was not to permit assessment of a fee for the work incurred in the seizure of the firearms, however the statute does not so provide. In the Legislative history cited by the Plaintiff, "chargeable costs" expressly provides: "a law enforcement agency or court

that has taken custody of a firearm may charge the owner or a person claiming title a reasonable fee not to exceed the "actual cost" incurred by the local law enforcement agency or court for taking possession, storing and transferring of firearms. For purposes of this subdivision, 'actual costs' means expenses directly related to taking possession of a firearm, storing the firearm, and surrendering possession of the firearm to a licensed dealer as defined on Section 12071 of the Penal Code or to the respondent." [*Opposition to SUF No. 96*].

I addition, the Plaintiff offers an unauthenticated letter from former Los Angeles County Sheriff Leroy Baca concluding that $54 per firearm was a reasonable firearm fee in the year 2005. This offer is not only hearsay but is irrelevant. The statute provides that the County may assess a fee no greater than its actual costs of seizing, storing, impounding and releasing firearms, firearm feeding device and ammunition. The former Sheriff's letter has no bearing on the actual facts of this case.

In as much as the Plaintiff attempts to understate the unusual nature of the seizure in this case, the fact remains that a seizure of 450-500 firearms is an unusual occurrence, at least for the County employees involved in this case. (SUF Nos. 17, 18). In connection with the Fernandez firearms, the defendants have produced the 5,500 pages of documents reflecting the workhours expended in connection with the seizure, impounding, and storage of the Fernandez firearms, ammunition feeding devices, ammunition, as well as the release of the 451 firearms to Plaintiff Ana Fernandez.

Also in opposition, the Plaintiff argues that in her opinion the time spent for certain tasks was unreasonable. However, the Plaintiff offers nothing more than her argument, speculation and conclusions. The County has offered declarations attesting to the workhours expended, and the documentation supporting those hours. The County has even offered evidence of additional workhours which could not be quantified but were nonetheless expended.

The evidence in this case proves that the fee imposed upon the Plaintiff was imposed to defray the costs of seizure, impounding, storage, or release of firearms at issue.

The Sheriff's Department expended at a minimum, 826.75 and as many as 949.75 employee workhours in connection with the seizure, impounding, storage and release of the Fernandez firearms based on the number of workhours that could be calculated. The Department actually expended more time than documented in this motion as the number of the hours could not be calculated.

There is no evidence that the County unreasonably raises the fee. In fact, the Plaintiff offers evidence that the $54 per firearm fee has been the same in Los Angeles County for nearly 20 years. There is no evidence that the County has raised the raises the fee even to adjust for inflation or other rising administrative costs.

The Plaintiff will offer no evidence that the fee of $24,354.00 was unlawful under the California Penal Code or unreasonable under the Fourth Amendment.

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III. THE OPPOSING PAPERS CONFIRM THAT DEPUTIES ROTH AND WALDRON ARE ENTITLED TO QUALIFIED IMMUNITY

A. THE OPPOSITION FAILS TO PROVE THAT DEPUTY ROTH OR WALDRON VIOLATED THE CONSTITUION.

As set forth in the moving papers, a Fourth Amendment claim for destruction to property requires evidence of excessive or unnecessarily destructive behavior, recognizing that "officers executing a search warrant occasionally must damage property in order to perform their duty." *Mena v. City of Simi Valley,* 226 F.3d 1031, 1041 (9th Cir.2000); *Liston v. County of Riverside,* 120 F.3d 965, 979 (9TH Cir.1997) ("only unnecessarily destructive behavior, beyond that necessary to execute a warrant effectively, violates the Fourth Amendment").

In opposition to the Defendants' motion, the Plaintiff offers no admissible evidence that Deputy Waldron or Deputy Roth unnecessarily damaged the firearms or engaged in any excessive or destructive behavior during the seizure.

The undisputed facts are Plaintiff Ana Fernandez has no knowledge of how many handguns or long guns were in her husband's possession in June 2018. [SUF, No. 63]. The Plaintiff is unaware of the condition of the firearms prior to the June 2018. And is unaware of whether her husband's collection of firearms was new or used. [SUF, No. 72]. Manuel Fernandez shot the firearms in his collection; they were not simply sitting idle. [SUF, No. 70]. The Plaintiff has no documentation showing the condition of the firearms prior to June 2018. [SUF, No. 73]. The Plaintiff cannot

identify which, if any, of the seized firearms were allegedly damaged by the sheriff's department. [SUF, No. 74]. Many of the firearms were kept in the garage without air conditioning in the Agua Dulce desert. [SUF No. 71]. The Plaintiff has no knowledge of the value of the seized firearms prior to the seizure. [SUF No. 68]. She has no receipts, no appraisals, and no evidence of insurance or insured value of the firearms prior to the seizure. [SUF Nos. 64].

In opposition to the motion for summary judgment, the Plaintiff offers nothing more than speculation and inadmissible evidence in an attempt to prove that Deputies Waldron and Roth damaged firearms during the seizure.

The Plaintiff offers a series of photographs of guns as Exhibits N-1, N-2, N-3. There is no attempt made by the Plaintiff to authenticate the photos. There is no evidence of who took the photographs nor when they were taken. There is no evidence proving that these are firearms that belonged to Manuel Fernandez, nor that these are firearms seized by the deputies and placed in County custody. There is no evidence to prove that these firearms were damaged while in County custody. There is certainly no evidence to prove that these firearms were damaged by Deputy Waldron or Deputy Roth at the time of the seizure. The evidence proffered by the Plaintiff is irrelevant, wholly prejudicial and constitutes inadmissible hearsay.

The Plaintiff also offers photographs in Exhibit N-4. Some of the photographs depict the Fernandez firearms as they were organized post seizure at the Palmdale Sheriff's Station. *(Plaintiff's Exhibits N-4 Bates 000617-00623, 000634-000636,*

00644-00649). One of the photographs depict firearms laid on a blanket and placed in rubber bins during the seizure. *(Plaintiff's Exhibit N-4, Bates No. 00642).* One photograph shows the firearms in the back of the pick-up truck. *(Plaintiff's Exhibit N-4, Bates 00641).* From these photographs alone, it cannot be inferred that the Fernandez firearms were damaged while in County custody. It certainly cannot be inferred that the firearms were damaged by Deputies Waldron or Roth at the time of the seizure. Again, the Plaintiff has no evidence of the condition of any of the firearms prior to the seizure. No attempt is made by the Plaintiff so authenticate the remaining photographs in Exhibit N-4.

The Plaintiff offers her own self-serving declaration in opposition to the summary judgment motion. Plaintiff states that she was home during the search on June 14, 2018 and witnessed the search. This statement is misleading and incomplete. The Plaintiff testified at deposition that she, her husband and daughter were kept in the den during the search. *(Fernandez deposition p. 29:9-12, Defense Exhibit 2)*. While in the den she could not see any of the areas where the deputies were searching. *(Fernandez deposition p. 30:8-10, Defense Exhibit 2).* The search lasted the entire day *(Fernandez deposition p. 28:3 – 29:9, Defense Exhibit 2)*. The only time she witnessed any portion of the search was the 6-7 times that she left the den to go to the kitchen or restroom. *(Fernandez Deposition, p. 30:12-17).* When she did leave the den, she only saw deputies removing firearms from boxes. *(Fernandez Deposition, p. 30:18-22; p. 31:3-6).* Fernandez did not see the firearms

being loaded into the pick-up truck, nor did she witness their transport to the station. *(Fernandez deposition, p. 31:7-10).*

The Plaintiff also declares that her husband was proud of his gun collection and kept the guns in boxes or wrapped in blankets. In contradiction to her own statement the Plaintiff offers a pre-seizure photograph of the firearms stored in the hot, Agua Dulce garage, stacked inside of a cardboard box. *(Plaintiff's Exhibit N-4, page 13, Bates 000628)*.

What is significant about the Fernandez declaration in opposition to the summary judgment motion is that she does not state that she saw the deputies damage any of the firearms. At worst, Fernandez declares that she found it disrespectful that the deputies were excited and "giddy" about the number of guns they were finding.

Finally, the Plaintiff offers the declaration of her expert Carol Watson. Watson attests to the condition of the firearms when she retrieved them from the Palmdale Station in December 2019. Watson's declaration, however, sets forth no facts regarding the condition of the firearms prior to their seizure. Any testimony by Carol Watson of the condition of the firearms prior to June 14, 2018, is pure and rank speculation. She has no knowledge that the firearms were maintained by Fernandez in hoarder-like conditions in both the Caprock and Sweetwater locations. Watson's opinions of the diminution in value of the firearms is also meaningless without evidence of the value of the firearms, or the condition of the firearms prior

to the seizure. Finally, Watson's declaration is not proof that Deputies Waldron on Roth unnecessarily and excessively damaged the firearms at the time of seizure.

On summary judgment, the Plaintiff must produce more than speculation and conclusions to support the elements upon which she has the burden of proof at trial. In addition, the Plaintiff must provide more than a scintilla of evidence or a mere possibility as proof of her claims.

Because the Plaintiff offers no evidence that either Deputy Waldron or Deputy Roth unnecessarily or excessively damaged the firearms during the seizure, the deputies are entitled to qualified immunity.

B. THERE IS NO EVIDENCE THAT DEFENDANTS ROTH OR WALDRON VIOLATED ANY CLEARLY ESTABLISHED LAW AT THE TIME OF THE SEIZURE.

Assuming that the Plaintiff could prove that Deputy Waldron or Deputy Roth violated her Fourth Amendment Rights by unnecessarily and excessively damaging the firearms during the seizure, the deputies are still entitled to qualified immunity as there is no clearly established law which dictates that their conduct was unreasonable under the totality of the circumstances.

"Clearly established" for qualified immunity purposes means that the contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right. His very action need not previously have been held unlawful, but in the light of per-existing law its

unlawfulness must be apparent. *Anderson v. Creighton,* 483 U.S. 635, 640 (1987). The state of the law at the time the warrants were served must have provided Deputies Roth and Waldron with "fair warning" that their conduct was unconstitutional. *See Hope v Pelzer,* 536 U.S. 730, 741 (2002)

In cases such as this, where the officers react to a sudden unexpected situation, the officers are entitled to qualified immunity if their actions are reasonable under the totality of the circumstances. *Graham v Connor,* 490 U.S. 386, 397 (1989). As with any seizure under the Fourth Amendment, "[r]easonableness is the touchstone": courts must "look to the totality of the circumstances to determine whether the destruction of property was reasonably necessary to effectuate the performance of the law enforcement officer's duties." *San Jose Charter of Hells Angels Motorcycle Club v. City of San Jose,* 402 F.3d 962, 975 (9th Cir. 2005). The courts recognize that in assessing reasonableness under the Fourth Amendment an appropriate factor is whether the officer considered alternatives before undertaking intrusive activity implicating constitutional concerns. *See Chew v. Gates,* 27 F.3d 1432, 1440 n. 5 (9th Cir.1994); *see also Gutierrez v. City of San Antonio,* 139 F.3d 441, 450 (5th Cir.1998).

(1) Deputy Waldron Did not Violate Any Clearly Established Law under the Circumstances He Faced.

Plaintiffs contend that by setting the firearms on the ground during the search, and stacking them in the back of a pick-up truck for transport back to the station the

deputies caused unreasonable and unnecessary damage to the firearms. As set forth above, the Plaintiff offers nothing more than speculation that the firearms were damaged during the searches. However, assuming that the Plaintiff is correct, the deputies are entitled to qualified immunity as their actions were reasonable under the circumstances they faced.

In opposition to the motion for summary judgment, the Plaintiff attempts to diminish the magnitude of the search and seizure and the circumstances that the deputies faced. Deputies arrived at scene of the initial Caprock Road search and prepared to seize 42 firearms from a person legally prohibited from owning firearms. Deputies encountered more than 10 times that number. The seizure was by far the largest number of firearms encountered by Deputy Waldron. The seizure took nearly an entire day and deputies still did not retrieve all of the firearms.

In addition to the unexpected magnitude of firearms, the Deputies had to search through hoarder-like conditions in order to retrieve them. Plaintiff contends that deputies violated the Constitution when laying the firearms on blankets and rubber bins outside of the garage during the search but fails to prove that the conduct was unreasonable under the circumstances considering that there was likely not a lot of places to put the firearms during the search. Again, the plaintiff complains about the unreasonableness of this act while offering evidence that the firearms were stored in a cardboard box in the garage before the seizure. *(Plaintiff's Exhibit N-4, page 13, Bates 000628)*.

The Plaintiff also claims that the deputies acts of removing the firearms from boxes, blankets, towels, claimed to have been used by her husband, violated clearly established

law. However, for officer safety, firearms have to be cleared of ammunition before being handled. Moreover, the Plaintiff offers no evidence or case law that by doing so, the deputies violated clearly established law, especially in light of the hundreds of guns that they encountered.

Station deputies followed protocol and contacted Central Property Unit (CPE) to come and retrieve the weapons. When Deputy Waldron realized that CPE would not be coming out to take possession of the firearms, he exercised his discretion and considering the alternatives and came up with the best game plan that he could under the circumstances to process the firearms and transport them from the scene.

Deputy Waldron handled the Fernandez firearms in the same way as any other property. The firearms were cleared to make sure they were not loaded and walked to the person to load them in a vehicle. For handguns, a zip tie was placed through the magazine well and the slide and then the handgun was placed in an envelope. The handguns were stored in a trunk for transport back to the station. [SUF 84.] The Plaintiff offers no evidence that by seizing and transporting the handguns in this manner, Deputy Waldron would have been on notice that he was violating the Constitution.

The Plaintiff also contending that it violated Sheriff's Department policy not to transport the long guns in boxes. The Plaintiff's contention ignores the fact that the deputies were not prepared to seize ten times the number of firearms than they were looking for. The deputies were still obligated to seize and preserve the

evidence. Considering the situation facing them, there was no clearly established law putting the deputies on notice that transporting the firearms in the back of a pick-up truck violated the Constitution.

At Palmdale station, the firearms were carefully removed from the patrol cars and the pick-up truck, then carefully laid out on the station outside covered patio which was the only location large enough to encompass all of the evidence. Each weapon was placed on the ground and facing in a direction were one could observe that there was no live ammunition round in the chamber. The firearms were arranged by category and photographed. The firearms were all uniform, all even and were set down with care. [SUF, 90].

Based on the totality of the circumstances the deputy faced, the unexpected number of firearms, the difficulty pulling the firearms from their various location, CPE's inability to retrieve the firearms from the scene and the consideration of alternatives for transporting the firearms, there is no evidence that Deputy Waldron's conduct violated any clearly established law. The Deputy encountered rapidly evolving circumstances which were clearly out of his control, but he was still required to take possession of the evidence. Assuming that some of the firearms were damaged during the seizure, Deputy Waldron is still entitled to qualified immunity.

(2) Deputy Roth Did not Violate Any Clearly Established Law Under the Circumstances He Faced.

Although he arrived at the initial Caprock Lane search on June 14, 2018, Deputy Roth arrived as the detective who would be submitting the criminal case for filing.

Deputy Roth secured the second warrant and searched the location a second time on June 20, 2018. During the second search, Deputy Roth was prepared to seize the electronics and other indicia of firearm sales. While there, deputies encountered and seized nearly 100 additional firearms, firearm parts and ammunition that were missed during the first search. [SUF, No. 87]. Every item that Deputy Roth handled was handled with care and due regard for the property seized. [SUF, No. 88]. In order to transport the firearms Deputy Roth placed the handguns into manilla envelopes, then into a receptacle to prevent them from sliding or moving around. Long guns were laid down with towels, blankets or cardboard placed between them to prevent damage. [SUF, No. 89].

The Plaintiff offers no evidence of any clearly established law that would have put Deputy Roth on notice that seizing and transporting the firearms to the station in this manner violated the Fourth Amendment.

IV. IN OPPOSITION TO THE SUMMARY JUDGMENTMOTION, PLAINTIFF OFFERS NO EVIDENCE TO PROVE HER CLAIM FOR NEGLIGENCE AGAINST THE DEFENDANTS

In opposition to the motion for summary judgment, the Plaintiff contends that the claim is based on the damage to the firearms while in County custody and is not

limited to the acts of Deputies Waldron and Roth at the time of seizure. However, assuming that the Plaintiff could prove the existence of a duty, she cannot prove that any County employee breached a duty of care, nor that any County employee damaged the firearms.

The undisputed facts are Plaintiff Ana Fernandez has no knowledge of how many handguns or long guns were in her husband's possession in June 2018. [SUF, No. 63]. The Plaintiff is unaware of the condition of the firearms prior to the June 2018. And is unaware of whether her husband's collection of firearms was new or used. [SUF, No. 72]. Manuel Fernandez shot the firearms in his collection; they were not simply sitting idle. [SUF, No. 70]. The Plaintiff has no documentation showing the condition of the firearms prior to June 2018. [SUF, No. 73]. The Plaintiff cannot identify which, if any, of the seized firearms were allegedly damaged by the sheriff's department. [SUF, No. 74]. Many of the firearms were kept in the garage without air conditioning in the Agua Dulce desert. [SUF No. 71]. The Plaintiff has no knowledge of the value of the seized firearms prior to the seizure. [SUF No. 68]. She has no receipts, no appraisals, and no evidence of insurance or insured value of the firearms prior to the seizure. [SUF Nos. 64-].

In opposition to the motion for summary judgment, the Plaintiff offers nothing more than speculation and inadmissible evidence to attempt to prove that the County damaged firearms whose condition prior to the seizure was unknown to her or her expert Carol Watson. The Plaintiff offers a series of unauthenticated photographs of guns as Exhibits N-1, N-2, N-3 which are irrelevant and

inadmissible as they fail to prove who took the photographs; when they were taken; that the firearms depicted belonged to Manuel Fernandez; that the firearms was seized by the deputies and placed in County custody; and most importantly when the damage occurred.

The Plaintiff offers photographs also in exhibit N-4. Some of the photographs depict the Fernandez firearms as they were organized post seizure at the Palmdale Sheriff's Station. *(Plaintiff's Exhibits N-4 Bates 000617-00623 and 000634-000636)*. From these photographs alone, it cannot be inferred that the Fernandez firearms were damaged while in County custody. Again, the Plaintiff has no evidence of the condition of any of the firearms prior to the seizure. No attempt is made by the Plaintiff so authenticate the remaining photographs.

Interestingly, the Plaintiff complains that the firearms were damaged when stacked in bins at the Palmdale station. However, the Plaintiff offers a pre-seizure photograph of the firearms stored in the hot, Agua Dulce garage, stacked inside of a cardboard box. *(Plaintiff's Exhibit N-4, page 13, Bates 000628)*

As set forth in sections III A and B, *supra*, the Plaintiff's self-serving declaration in opposition to the summary judgment motion does not prove any negligent act by the County's employees. In her declaration, Fernandez does not state that she saw the deputies damage any of the firearms. At worst, Fernandez declares that she found it disrespectful that the deputies were excited about the number of guns they were finding.

The Plaintiff offers the declaration of her expert Carol Watson to prove negligence. However, Watson attests to the condition of the firearms when she retrieved them from the Palmdale Station in December 2019. Watson offers no evidence of the condition of the firearms prior to their seizure, at the time of their seizure, nor during the transport, storage and release by the County. She has no knowledge that the firearms were maintained by Fernandez in hoarder-like conditions in both the Caprock and Sweetwater locations prior to their seizure. Watson's opinions are irrelevant to proof of the issue of negligence.

On summary judgment, the Plaintiff must produce more than speculation and conclusions to support the elements upon which she has the burden of proof at trial. In addition, the Plaintiff must provide more than a scintilla of evidence or a mere possibility as proof of her claims.

Here, there is absolutely no evidence that the County of Los Angeles or any County employee breached a duty of care owed to the Plaintiff, nor that the County was the cause of any damages she sustained.

V. THE PLAINTIFF CANNOT PREVAIL ON HER CAUSE OF ACTION FOR BREACH OF A BAILMENT

In opposition to the motion for summary judgment, the Plaintiff argues that her theory is solely one for breach of an involuntary bailment. The Plaintiff offers two California cases under this theory however these two cases do not assist the Plaintiff in the proof of this claim.

The California Supreme Court held in *Minsky v. City of Los Angeles*, 11 Cal. 3d 113, 121, (1974), "we find that the government in effect occupies the position of a bailee when it seizes from an arrestee property *that is not shown to be contraband*." It is undisputed that at the time of the seizure the Fernandez firearms were contraband lawfully seized from a prohibited person. The Plaintiff cites to no cases which hold that an involuntary bailment with the government is created by a seizure of known contraband pursuant to a warrant.

The case of *Gebert v. Yank*, 172 Cal. App. 3d 544 (1985), also does not assist the Plaintiff. In that case, the court held, "[t]he jury in this case was told that "A bailee, the person who received the property, is not an insurer of the goods left in his possession. That is to say, he is not absolutely responsible if he does not re-deliver the goods. He is only responsible if the failure to redeliver is caused by his negligence. When the goods are lost, destroyed or damaged by accident, without any fault on the part of the bailee, the loss must fall on the bailor." This is an accurate statement of California law. (See 3 Witkin, *supra,* § 114, pp. 1705–1706.). *Id.* at p. 551.

Thus, assuming that the Plaintiff can prove an involuntary bailment was created, this claim fails as the plaintiff offers no admissible evidence to prove that the firearms were not delivered to her in the condition in which they were received. Moreover, as set forth in detail above, the Plaintiff offers no evidence to prove that the firearms were damaged while in County custody, nor that they were damaged due to the negligence of a County employee.

Therefore, the County of Los Angeles is entitled to summary judgment on the Plaintiffs' claim for bailment.

VI. THE OPPOSITION FAILS TO SHOW EVIDENCE OF A TRESPASS TO CHATTELS AGAINST THE DEFENDANTS

With regard to the claim for trespass based on the assessment of the $54 per firearm fee, as set forth in detail in *section II, supra*, the California Penal Code permits the County to assess a fee equal to the cost of seizure, storage, impounding and release of the Fernandez firearms. The moving papers and thousands of pages of supporting exhibits set forth the workhours expended by County employees in the seizure from and the storage, impounding and release of the more than 500 firearms, firearm parts and ammunition from Manuel Fernandez.

In opposition the Plaintiff contends that the intent of the legislature was not to permit assessment of a fee for the work incurred in the seizure of the firearms, however the statute does not so provide. In the Legislative history cited by the Plaintiff, "chargeable costs" expressly provides: "a law enforcement agency or court that has taken custody of a firearm may charge the owner or a person claiming title a reasonable fee not to exceed the "actual cost" incurred by the local law enforcement agency or court for taking possession, storing and transferring of firearms. For purposes of this subdivision, 'actual costs' means expenses directly related to taking possession of a firearm, storing the firearm, and surrendering possession of the firearm to a licensed dealer as defined on Section 12071 of the Penal Code or to the respondent." [*Opposition to SUF No. 96*].

As set forth above, the remainder of the Plaintiff's opposition to the fee consists of her opinion of the actual workhours that it should have taken to perform the duties which were actually performed by the County's employees. This is not evidence; it is the Plaintiff's opinion which is based on speculation and not fact. The Plaintiff cannot defeat summary judgment based on conclusion and speculation.

With regard to the alleged trespass to chattels based on the damage to the property, again, the Plaintiff offers no admissible evidence that the acts of any County employee were the proximate cause of any injury or damage to the seized firearms.

CONCLUSION

Defendants COUNTY OF LOS ANGELES, JOHN ROTH and WYATT WALDRON are entitled to summary judgment of all claims on the ground that there are no genuine issues of fact remaining to be tried in this case.

DATED: April 18, 2024

Respectfully submitted,

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