Jackson v. Placer County

United States District Court, E.D. California

2007 WL 1429827

May 15, 2007

Summary of Opinion

Plaintiff Jackson had a horse business in Louisiana in which she acquired horses through rescue, sale and breeding. She moved his business and four horses to California leaving 21 horses in the care of a teenager and his father. After notification from officials she returned to move most of the rest of the horses. Following complaints, all of the horses were removed from Plaintiff's California property including some horses that were in good condition. Ownership of some of the horses was transferred without the benefit of either a pre- or post- seizure hearing. This court disagrees with some of the procedures stating that the limited immunity afforded some officials does not apply with regard to constitutional violations and that transfer of ownership after a seizure requires either a pre- or post-seizure hearing.

Text of Opinion

MEMORANDUM AND ORDER

This matter is before the court on a motion for summary judgment, or alternatively, partial summary judgment brought by defendants Placer County, Placer County Animal Control, Richard Ward, Richard Stout, Evelyn Garrett and Brad Banner (collectively "defendants") and a cross-motion for partial summary judgment brought by plaintiff Judi Jackson ("plaintiff"). By their motion, defendants seek adjudication in their favor on plaintiff's complaint, alleging claims for (1) violation of plaintiff's Fourteenth Amendment procedural due process rights pursuant to 42 U.S.C. § 1983 ("Section 1983") based on the seizure of her horses; (2) violation of plaintiff's Fourteenth Amendment substantive due process rights pursuant to Section 1983 based on the seizure of her horses; (3) violation of plaintiff's Fourth Amendment rights to be free from unlawful search and seizure pursuant to Section 1983; (4) failure to train or supervise pursuant to Section 1983; (5) intentional infliction of emotional distress; (6) negligent infliction of emotional distress; (7) conversion; (8) defamation; (9) injunctive relief; (10) fraud/misrepresentation; (11) violation of plaintiff's Fourteenth Amendment procedural due process rights pursuant to Section 1983 based on the transfer of ownership of two of her horses; and (12) violation of plaintiff's Fourteenth Amendment substantive due process rights pursuant to Section 1983 based on the transfer of ownership of two of her horses.

Plaintiff opposes defendants' motion and filed a cross-motion for partial summary judgment on her Section 1983 claims for violation of her Fourteenth Amendment procedural and substantive due process rights based on the transfer of ownership of two of her horses and violation of her Fourth Amendment rights based on the seizure of her property; her conversion claim; her defamation claim; and her fraud/misrepresentation claim.

For the reasons set forth below, the court GRANTS in part and DENIES in part defendants' motion and DENIES plaintiff's cross-motion.

BACKGROUND

I. *Plaintiff's Move to California*

Plaintiff operated a horse business in Louisiana prior to November 1999. As part of the business, plaintiff obtained horses through rescue, sale or breeding and maintained them, up to 60 at a time, on rented property. In November 1999, plaintiff moved from Louisiana to California with four horses. Plaintiff left 21 horses in Louisiana under the care of a fifteen year old student and his father as a trade for services previously provided to them by plaintiff.

In December 1999, after receiving a phone call from a local deputy, plaintiff returned to Louisiana to find all of her 21 horses in poor condition. Plaintiff moved 19 of the horses to California in trailers. The remaining two horses were left in Louisiana under the care of the student and his father. Plaintiff was later informed of the declining condition of the two horses in Louisiana and she returned to move those horses to California as well.

Plaintiff moved her horses to a rented property on Cook-Riolo Road in Roseville, California, which was zoned to allow only seven horses. Plaintiff moved her horses to California to rehabilitate them and to train them for use in her equine training facility.

II. *Plaintiff's Interaction with Placer County Animal Control*

Defendant Richard Stout ("Stout"), an employee of Placer County Animal Control, visited plaintiff on August 23, 24, and 25, 2000. Stout expressed concerns about the underweight condition of 28 horses under plaintiff's care during his visits to plaintiff's property. Stout returned to plaintiff's property on September 7, 2000 after receiving a written complaint from one of plaintiff's neighbors about horses on plaintiff's property dying of starvation. On September 8, 2000, Stout issued a pre-seizure notice to plaintiff. Stout believed the notice was a notice of correction which advised plaintiff to have a veterinarian inspect the horses. Defendants contend the pre-seizure notice advised plaintiff of a right to request a pre-seizure hearing. Plaintiff maintains that she did not see the option to request a hearing on the pre-seizure notice. The pre-seizure notice form asked the animal owner to either request a hearing or waive the right to a hearing by checking a box. Plaintiff did not check either box.

Veterinarian Kris Bartow ("Bartow") examined plaintiff's horses and sent a feed plan to Stout. Stout mailed a copy of the feed plan to plaintiff. Plaintiff did not agree with Bartow's feed plan but she did not ask him to modify it nor did she confer with another veterinarian regarding the feed plan. Plaintiff stopped following Bartow's feed plan on September 29, 2000.

On October 4, 2000, Ken Gentile ("Gentile"), Placer County Animal Control employee, inspected plaintiff's property and discovered feed which violated Bartow's feeding plan. Gentile ordered plaintiff to remove the offending feed from her property and to adhere to Bartow's feed plan. Plaintiff asked Robert Carter ("Carter"), Placer County Animal Control employee on October 9, 2000, to relieve her of Bartow's feed plan Carter declined to do so and reaffirmed that Animal Control would continue to monitor the health of plaintiff's horses.

Defendant Evelyn Garrett ("Garrett"), an Animal Control Officer, met with plaintiff on October 10, 2000. Garrett told plaintiff she wanted to discuss Bartow's feed plan but plaintiff said she would not speak with Garrett unless Garrett would relieve her from Bartow's feed plan. Garrett had reviewed Bartow's feed plan and believed plaintiff could be confused about whether or not her horses should be "free-fed."

III. *The Seizure of Plaintiff's Property*

On November 1, 2000, Garrett applied for a search warrant to seize plaintiff's horses and to obtain records related to the horses including their feeding and veterinarian care. Plaintiff contends that the application omitted relevant information including Garrett's concerns about plaintiff's knowledge and understanding of the feed plan. Defendants maintain that Garrett no longer had concerns about plaintiff's understanding of the feed plan because Bartow assured her that plaintiff understood that her horses should be free-fed. Garrett's "Affidavit in Support of Search Warrant" was reviewed by the Deputy District Attorney and then authorized by the Placer County Superior Court. The warrant was served several days later, on November 6, 2000, because it took several days to arrange the logistics of the seizure including transportation for the horses. Twenty-eight horses, cats, a German Shepard, chickens, and a filing cabinet were seized from plaintiff. Plaintiff was arrested and served a Notice of Post-Seizure Hearing.

Defendants seized every horse on plaintiff's property regardless of physical condition. Two horses seized were not dangerously thin at the time of the seizure. Garrett executed a "Return on Search Warrant" on November 6, 2000, which included a list of the horses and property seized.

IV. *Post-seizure Hearing and Related Court Proceedings*

Plaintiff requested and received a post-seizure hearing. Plaintiff was represented by an attorney, Dirk Amara, at a hearing before Placer County Superior Court Commissioner John Ross. Starting on November 13, 2000, testimony was taken and arguments were presented over the course of several days. Before the commissioner's ruling, on December 5, 2000, a Felony Complaint was filed against plaintiff for animal cruelty. On December 15, 2000, Commissioner Ross issued an order which found the seizure of plaintiff's horses was proper, the seized horses were underweight, and the horses would be forfeited by plaintiff if she were found guilty of animal cruelty. Furthermore, the commissioner ordered a hearing to determine if the horses should be returned to plaintiff. The commissioner indicated that if the horses were returned to plaintiff, she would bear the costs of their care while in county

custody.

Plaintiff, along with a second attorney, Hill Snellings, challenged the December 15, 2000 order. Plaintiff filed a Petition for Writ of Prohibition and Mandate in the California Court of Appeal, Third Appellate District. The court denied relief to plaintiff because she did not first seek relief in the superior court.

Plaintiff next filed a Petition for Writ of Administrative Mandate in the Placer County Superior Court. Superior Court Judge Gaddis heard testimony on the issue and denied the Petition for Mandate, thereby upholding Commissioner Ross' order. Subsequently, plaintiff appealed the superior court's decision to the third district court of appeal. After receiving full briefing on the merits of the case, the court affirmed the superior court's decision.). The court found substantial evidence to support immediate seizure of the horses. Plaintiff did not seek review in the California Supreme Court.

Defendants contend that on January 26, 2001, Placer County Superior Court Judge Roeder issued an order precluding plaintiff from owning or controlling any horses. Plaintiff maintains Judge Roeder's order applied only to new ownership of horsesLater, on July 20, 2001, Judge Roeder, after a contested hearing, issued an order precluding plaintiff from having any horses on her premises and prohibiting her from owning, controlling, or possessing any horse.

V. *Plaintiff's Criminal Trial*

The Placer County Superior Court heard the criminal trial against plaintiff on charges of animal cruelty, perjury, and presenting false evidence in an administrative hearing. Plaintiff was represented by counsel during the jury trial. On November 21, 2001, the jury returned a verdict of guilty on all three felony charges brought against plaintiff.

Plaintiff filed a motion for a new trial in February 2002, asserting ineffective assistance of counsel on the grounds her counsel failed to provide or request a jury instruction regarding the defense of entrapment for the felony charges of perjury and presenting false evidence. In her motion, plaintiff also asserted that the trial judge erroneously failed to grant a motion to dismiss on the ground that the prosecution did not meet its burden of proof on any of the chargesJudge Cosgrove of the Placer County Superior Court granted plaintiff's motion on May 11, 2002.

On July 25, 2002, Placer County filed an appeal of Judge Cosgrove's order in the third district court of appeal. The court affirmed the trial court's grant of a new trial and found that entrapment was a viable affirmative defense. Following the appellate court's decision, the Placer County District Attorney offered plaintiff a plea bargain agreement. On March 15, 2004, plaintiff entered a plea of no contest to two misdemeanors of destroying or concealing evidence. Plaintiff served her sentence by completing

community service, paying a fine and serving probation.

VI. *Other Court Orders Pertaining to Plaintiff's Horses*

After a contested hearing on March 21, 2002, during which plaintiff was represented by an attorney, Placer County Judge Cosgrove issued an order prohibiting plaintiff from having any contact with horses, including teaching or giving lessons. On August 19, 2002, after another hearing in which plaintiff was represented by counsel, Judge Cosgrove issued an order precluding plaintiff from owning a horse and from being involved in any feeding plans or the feeding or care of any other person's horses. On May 3, 2004, Judge Cosgrove ruled that the seizure of plaintiff's horses was done under Penal Code § 597.1 rather than Penal Code § 597, such that plaintiff was responsible for the costs of care of the horses while they were in the custody of the county. On May 17, 2005, Commissioner Ross issued an order requiring return of the horses to plaintiff upon payment of a specified monetary lien.

VII. *Plaintiff's Property in Custody of Animal Control*

Defendants stored the documents and the filing cabinet seized from plaintiff in a trailer at the animal shelter. Plaintiff claims that all employees and volunteers of the animal shelter had access to her documents while they were stored by defendants in the trailer. The “Return on the Warrant” indicates hay receipts were found and seized from plaintiff. However, there were no hay receipts seized from plaintiff's property.

The cats, German shepherd and chickens seized from plaintiff were returned to her after an agreement was made between plaintiff and Carter.

Four of the horses seized by defendants died of natural causes or were euthanized while in defendants' possession.

After the horses were seized from plaintiff, Carolyn Harris (“Harris”), neighbor of animal control volunteer Odette Parker (“Parker”), wrote to the Arabian Horse Association to inquire about the breeding history of one of the seized horses, Baybandee. Harris learned Baybandee was registered to Beverly Marx (“Marx”) and was at one time previously registered to Judi Spencer. Parker, who fostered Baybandee after the horse was seized, also communicated with Marx and asked her to give a declaration stating she is the registered owner of Baybandee. In addition, Garrett contacted Marx to request registration papers and proof of ownership for three of the seized horses, Nartane's Mandate, Baybandee and Atchafalaya. Garrett informed Deputy District Attorney Scott Owens that plaintiff was not the registered owner of three of the seized horses and discussed the legal ownership of the horses with him as well. Subsequently, Marx transferred Baybandee to Carolyn Harris (“Harris”), who has possessed the horse since October 7, 2002. Marx transferred ownership of a second horse, Nartane's Mandate, to Amy Jo Hamilton (“Hamilton”), who had no affiliation with animal control.

Plaintiff paid fees to the county in June or July of 2005 per Commissioner Ross's May 17, 2005 order and twenty-two of the seized horses were returned to her. Plaintiff claims defendants Placer County and Animal Control informed her in a letter that Baybandee would be returned to plaintiff upon payment of the lien. Defendant maintains it was Val Flood, an attorney at the Office of County Counsel, and not Placer County or Animal Control, who wrote the letter. (Baybandee and Nartane's Mandate were never returned to plaintiff.

VIII. *Plaintiff's Civil Lawsuits*

Plaintiff filed her complaint in this action on January 13, 2005. She filed an amended complaint on July 11, 2005 and a second amended complaint on June 30, 2006.

On October 19, 2006, plaintiff filed a complaint in Placer County Superior Court against Carolyn Harris, Amy Jo Hamilton and David Meanor seeking damages for conversion of Baybandee and Nartane's Mandate.

STANDARD

Summary judgment is appropriate when it is demonstrated that there exists no genuine issue as to any material fact, and that the moving party is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c); *Adickes v. S.H. Kress & Co.,* 398 U.S. 144, 157, 90 S.Ct. 1598, 1608, 26 L.Ed.2d 142 (1970).

When parties submit cross-motions for summary judgment, the court must review the evidence submitted in support of *each* cross-motion and consider each party's motion on its own merits. *Fair Housing Council of Riverside County, Inc. v. Riverside Two,* 249 F.3d 1132, 1136 (9th Cir.2001). The court must examine each set of evidence in the light most favorable to the non-moving party. *United States v. Diebold, Inc.,* 369 U.S. 654, 655, 82 S.Ct. 993, 8 L.Ed.2d 176 (1962).

The moving party "always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,' which it believes demonstrate the absence of a genuine issue of material fact." *Celotex Corp. v. Catrett,* 477 U.S. 317, 323, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). If the moving party meets its initial responsibility, the burden then shifts to the opposing party to establish that a genuine issue as to any material fact actually does exist. *Matsushita Elec. Indust. Co., Ltd. v. Zenith Radio Corp.,* 475 U.S. 574, 585-87, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986); *First Nat'l Bank of Ariz. v. Cities Serv. Co.,* 391 U.S. 253, 288-289, 88 S.Ct. 1575, 20 L.Ed.2d 569 (1968). Genuine factual issues must exist that "can be resolved only by a finder of fact, because they may reasonably be resolved in favor of either party." *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 256, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986).

In judging evidence at the summary judgment stage, the court does not make credibility determinations or weigh conflicting evidence. *See* *T.W. Elec. Serv., Inc. v. Pacific Elec. Contractors Ass'n,* 809 F.2d

626, 630-31 (9th Cir.1987) (citing *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.,* 475 U.S. 574, 587, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986)). The evidence presented by the parties must be admissible. Fed.R.Civ.P. 56(e). Conclusory, speculative testimony in affidavits and moving papers is insufficient to raise genuine issues of fact and defeat summary judgment. *See Falls Riverway Realty, Inc. v. City of Niagara Falls,* 754 F.2d 49, 57 (2d Cir.1985); *Thornhill Publ'g Co., Inc. v. GTE Corp.,* 594 F.2d 730, 738 (9th Cir.1979).

ANALYSIS

I. *Statute of Limitations*

Defendants argue plaintiff's Section 1983 claims for violation of her Fourteenth Amendment procedural due process rights, relating to her failure to receive pre-seizure notice or a hearing before her horses were seized, and for violation of her Fourth Amendment rights to be free from unlawful search and seizure are barred by the applicable statute of limitations.

Section 1983 actions must be brought within the statute of limitations for personal injury tort actions in the forum state. *Wilson v. Garcia,* 471 U.S. 261, 276, 105 S.Ct. 1938, 85 L.Ed.2d 254 (1985). The current statute of limitations for personal injury claims in California is two years. Cal.Civ.Proc.Code § 335.1 (Deering 2007). Before January 1, 2003, the applicable statute of limitations was one year. Cal.Civ.Proc.Code § 340(3) (West 1982), amended and redesignated by 2002 Cal. Stat. ch. 448 § 3. The limitations period generally begins to run when the plaintiff knows, or should have known of the injury that is the basis of her cause of action. *Fink v. Shelder,* 192 F.3d 911, 914 (9th Cir.1999).

Several of plaintiff's claims are based on the same underlying event, the search and seizure of her property by Animal Control on November 6, 2000. Plaintiff knew or should have known that she would not receive notice or a pre-seizure hearing no later than that date. Accordingly, the court finds that plaintiff's procedural due process claim and her corollary failure to train/supervise claim accrued on the date of the search and seizure, November 6, 2000. Likewise, plaintiff's Fourth Amendment unlawful search and seizure claim accrued on that date as well.

In November of 2000, the applicable statute of limitations was one year; therefore, plaintiff had until November 6, 2001 to file the aforementioned claims. However, plaintiff filed her claims in federal court on January 13, 2005, well after the statute of limitations expired.

Plaintiff argues nonetheless that her procedural due process and unlawful search and seizure claims are not barred by the statute of limitations because her ongoing criminal prosecution gave "rise to additional issues regarding the process which was due [her] at the time of the alleged wrongdoing by

defendants." (Pl.'s Opp' n to Defs.' MSJ, filed Mar. 9, 2007 [Docket # 103], at 12; Pl.'s Reply, filed Mar. 16, 2007 [Docket # 108], at 3). However, plaintiff does not cite to any legal precedent, nor is the court aware of any, which supports the conclusion that a criminal trial tolls the statute of limitations for a Section 1983 claim.

Accordingly, defendants' motion for summary judgment with respect to plaintiff's first claim for relief for violation of plaintiff's procedural due process rights, plaintiff's third claim for relief for unlawful search and seizure and her fourth claim for relief for failure to supervise or train is GRANTED.

> .Defendants did not argue that plaintiff's Section 1983 procedural due process claim based on the transfer of ownership of two of her horses (her eleventh claim for relief) is barred by the statute of limitations. However, the court notes that any such argument would have been unavailing. Plaintiff alleges in her complaint that she became aware of the transfer in May 2004. In 2004, the statute of limitations applicable to Section 1983 actions was two years. Plaintiff filed a motion to amend her complaint and filed a draft amended complaint which included her procedural and substantive due process claims based on the transfer of the horses on March 14, 2006, and therefore, they were timely filed before the deadline of May 2006. *See Schillinger v. Union Pac. R.R. Co.,* 425 F.3d 330, 334-35 (7th Cir.2005) (holding that courts should look to the date the party filed the motion to amend rather than the date the amended pleading was filed to determine if the statute of limitations has run).

Plaintiff's cross-motion for summary judgment on her unlawful search and seizure claim is DENIED.

II. *Substantive Due Process*

Plaintiff's second and twelfth claims for relief are founded on alleged violations of her substantive due process rights.

The Fourteenth Amendment confers substantive due process rights. *See Foucha v. Louisiana,* 504 U.S. 71, 80, 112 S.Ct. 1780, 118 L.Ed.2d 437 (1992); *United States v. Salerno,* 481 U.S. 739, 746, 107 S.Ct. 2095, 95 L.Ed.2d 697 (1987); *Daniels v. Williams,* 474 U.S. 327, 331, 106 S.Ct. 662, 88 L.Ed.2d 662 (1986).

However, the use of substantive due process to extend constitutional protection to economic and property rights has been largely discredited. *See generally* Gerald Gunther, *Constitutional Law* at 432-65. Rather, recent jurisprudence restricts the reach of the protections of substantive due process primarily to the liberties "deeply rooted in this Nation's history and tradition." *Moore v. East Cleveland,* 431 U.S. 494, 503, 97 S.Ct. 1932, 52 L.Ed.2d 531 (1977).

Armendariz v. Penman, 75 F.3d 1311, 1318-19 (9th Cir.1996). Further, "[w]here a particular Amendment 'provides an explicit textual source of constitutional protection' against a particular source of government behavior, 'that Amendment, not the more generalized notion of substantive due process' must be the guide for analyzing these claims." *Albright v. Oliver,* 510 U.S. 266, 273, 114 S.Ct. 807, 127 L.Ed.2d 114 (1994) (quoting *Graham v. Connor,* 490 U.S. 386, 395, 109 S.Ct. 1865, 104 L.Ed.2d 443 (1989)).

A. Plaintiff's Second Claim for Relief

Plaintiff's claim appears to arise out of the allegation that defendants seized her horses without due process and then maintained custody of them which deprived her of a "liberty" interest by preventing her from pursuing a career as a horse trainer.

> Plaintiff has not fully explained how defendants deprived her of her chosen career as a horse trainer by seizing twenty-eight of her horses without due process. The court assumes plaintiff is alleging she could not pursue a career as a horse trainer because she was not in physical possession of the horses she intended to train.

The deprivation of property without a hearing is the type of government conduct for which the procedural due process clause of the Fourteenth Amendment provides explicit limitations. *See Mathews v. Eldridge,* 424 U.S. 319, 332, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976). The United States Supreme Court has affirmatively held that where explicit text of a Constitutional provision addresses the type of conduct challenged by a plaintiff's claims, that provision, rather than the more general substantive due process protections guaranteed by the Fourteenth Amendment, must govern the plaintiff's claim. *Albright,* 510 U.S. at 273; *Graham,* 490 U.S. at 395; *see Armendariz,* 75 F.3d at 1321. As such, because the conduct plaintiff alleges is the type of government action that the procedural due process clause of the Fourteenth Amendment addresses, her substantive due process claim is precluded. Therefore, defendants' motion for summary judgment regarding plaintiff's second claim for relief is GRANTED.

B. Plaintiff's Twelfth Cause of Action

Similarly, in her twelfth claim for relief, plaintiff alleges that the transfer of two of the horses seized by Animal Control to private owners violated her substantive due process rights.). As discussed above, plaintiff cannot bring this claim as a substantive due process claim because the procedural due process clause of the Fourteenth Amendment is the Constitutional provision which specifically addresses the behavior plaintiff is challenging. *Albright,* 520 U.S. at 273; *Graham,* 490 U.S. at 395; *see Armendariz,* 75 F.3d at 1321. Accordingly, defendants' motion for summary judgment regarding plaintiff's twelfth cause of action is GRANTED. Plaintiff's cross-motion on this claim is accordingly DENIED.

III. *Plaintiff's Section 1983 Claim based on the Transfer of Ownership of Two of Her Horses (Eleventh*

Claim for Relief)

Plaintiff has not clearly plead her eleventh claim for relief as either a claim based on lack of due process or a claim based on a government taking under the Fifth Amendment. On one hand, in her eleventh cause of action, plaintiff alleges the transfer of two horses, Baybandee and Nartane's Mandate, to new owners by defendants violated her procedural due process rights. She further asserts that she was the owner of these two horses at the time of the transfer, and that the transfer of the horses occurred without notice or a hearing, suggesting a due process claim. However, plaintiff also describes the transfer as a "taking by defendants as a government entity and actors" and asserts that she was not compensated for the reasonable value of the horses.

Because of the confusion caused by the allegations in the complaint as well as the way the parties have addressed this claim in their papers, the court will address the claim as both a claim under the Fifth Amendment's Just Compensation Clause and a claim for violation of the Fourteenth Amendment's Procedural Due Process Clause.

A. Violation of Fifth Amendment's Just Compensation Clause

The Fifth Amendment of the United States Constitution states in relevant part, "Nor shall private property be taken for *public use,* without just compensation." U.S. Const. Amend V (emphasis added). The Fifth Amendment applies to the states through the Fourteenth Amendment. *See, e.g., Williamson County Regional Planning Commission v. Hamilton Bank,* 473 U.S. 172, 175, n. 1, 105 S.Ct. 3108, 87 L.Ed.2d 126 (1985). If private property is taken but not taken for public use, the property owner does not have a claim for compensation under the Fifth Amendment but may have a claim under Section 1983 for deprivation of property without due process of law under the Fourteenth Amendment. *Hernandez v. Lafayette,* 643 F.2d 1188, 2000, n. 26 (5th Cir.1981).

Plaintiff has not alleged nor has she provided any evidence that her horses were taken for public use. Indeed, she alleges defendants transferred her horses to other *private* owners thereby "taking" her interest in the horses. Because plaintiff has not alleged, let alone demonstrated, that her property was taken for public use, she does not have a viable Section 1983 claim based on the violation of her Fifth Amendment rights.

B. Violation of Fourteenth Amendment's Procedural Due Process Clause

"Procedural due process imposes constraints on governmental decisions which deprive individuals of 'liberty' or 'property' interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendments." *Mathews v. Eldridge,* 424 U.S. 319, 333, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976). The Due Process Clause of the Fifth Amendment applies to federal government actions. *See, e.g., Public Utilities Commission v. Pollak,* 343 U.S. 451, 461, 72 S.Ct. 813, 96 L.Ed. 1068 (1952). The Fourteenth Amendment's Due Process Clause applies to the states. *See, e.g., Moose Lodge No. 107 v. Irvis,* 407 U.S. 163, 172-73, 92 S.Ct. 1965, 32 L.Ed.2d 627 (1972). The United States Supreme Court has

repeatedly held that "some form of hearing is required before an individual is finally deprived of a property interest." *Mathews,* 424 U.S. at 333. The specific procedures which are required will vary in each case depending on the situation. *Morrissey v. Brewer,* 408 U.S. 471, 481, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972). In *Mathews,* the Court set forth three factors to be considered in determining whether or not a pre-deprivation hearing is required. *Mathews,* 424 U.S. at 335. The three factors are: the private interest which will be affected by the action, the risk of erroneous deprivation, and the government's interest, including administration and financial burdens that the additional procedures would require. *Id.*

As recognized by the court in *Hernandez,* under these facts, plaintiff can state a claim pursuant to Section 1983 based on violation of her Fourteenth Amendment procedural due process rights regarding the transfer of her horses. *See e.g., Hernandez,* 643 F.2d at 2000 n. 26. Defendants did not move for summary judgment on this issue as they treated plaintiff's eleventh claim for relief as a claim under the Fifth Amendment's Just Compensation Clause. As such, the court cannot grant summary judgment in their favor on this claim.

The court notes that defendants did not otherwise demonstrate in their affirmative motion or in opposition to plaintiff's motion, that there was an opportunity for a hearing which plaintiff pursued or could have pursued either pre- or post-deprivation with respect to the transfer of her horses. While plaintiff apparently submitted a written claim to defendant Placer County, in accordance with California Government Code § 910, objecting to the taking of her horses and requesting compensation, and received a "Notice of Rejection of Claim" from the county in response, defendants did not argue that plaintiff's filing of said claim constituted a post-deprivation hearing satisfying the due process requirement.

For other reasons, the court also cannot grant summary judgment to plaintiff on this claim. While plaintiff proffers evidence of her property interest in the transferred horses and that she was neither given notice of the impending transfer nor afforded a hearing on the issue before or after the transfer took place, defendants proffer evidence, on the motions, to dispute that plaintiff had an ownership interest in the subject horses. (DUF ¶ ¶ 146-166). That dispute presents triable issues of fact precluding an award of summary judgment to plaintiff on this claim.

In sum, plaintiff's eleventh claim for relief survives as a procedural due process claim under the Fourteenth Amendment pursuant to Section 1983. No party is entitled to summary judgment of that claim.

C. Transfer of the Two Horses

In their motion for summary judgment, defendants argue, generally, that they cannot be held liable, in any respect, for the transfer of the horses because none of them "transferred registered ownership of

any horses to a third party.” Defendants explain that, according to the Arabian Horse Association, Marx was the registered owner of the two horses. Defendants allege that *Marx* was contacted by private citizens about ownership of the horses and it was Marx who transferred the registration papers to these private citizens. Defendants concede only that Garrett attempted to gain documentation to confirm that Marx was the registered owner but they assert the other defendants “played no role in this process whatsoever ....“

Defendants' argument is unavailing. At the time the horses were transferred to private owners, they were in the custody of Placer County Animal Control. Although Marx may have been the owner registered with the Arabian Horse Association, Placer County Animal Control had the right of possession of the horses at the time of the transfer pursuant to the search warrant. The fact that Marx filed paperwork with the Arabian Horse Association to change the registered ownership of the two horses does not absolve defendants of their involvement in the transfer. Moreover, defendants admit Garrett spoke with District Attorney Scott Owens about the legal issues regarding ownership of the horses. The jury may consider the fact that Garrett sought out legal advice on this issue as evidence that defendants were aware of the possibility that transferring the horses to other persons might violate plaintiff's rights. Ultimately, the transfer could not have taken place without the involvement of Placer County and its employees because the county had custody and control over the horses before the transfer pursuant to the search warrant for plaintiff's property. (PUF ¶ 41). Therefore, defendants' argument that the only parties to the transfer are Marx and the two private parties is not persuasive, and defendants' role in depriving plaintiff of her personal property is a triable issue of fact.

D. Qualified Immunity

Defendants move for summary judgment on this claim as to the individual defendants, arguing they are entitled to qualified immunity with regard to their failure to prevent private parties from transferring the two horses.

Defendants also argued that the individual defendants are entitled to qualified immunity with regard to their activities undertaken pursuant to the court issued warrant and for their failure to provide a pre-seizure hearing. The court will not address these issues because summary judgment has been granted on those claims because the statute of limitations has run.

Public officials are entitled to qualified immunity for acts that do not violate “clearly established ... constitutional rights of which a reasonable person would have known.” *Harlow v. Fitzgerald,* 457 U.S. 800, 818, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982). Thus, when considering a defendant's motion for summary judgment on the ground of qualified immunity, “[t]he threshold question ... is whether, taken in the light most favorable to the party asserting injury, the facts alleged show that the officer's conduct violated a constitutional right.” *Bingham v. City of Manhattan Beach,* 329 F.3d 723, 729 (9th Cir.2003), *superceded by* 341 F.3d 939 (citing *Saucier v. Katz,* 533 U.S. 194, 201, 121 S.Ct. 2151, 150 L.Ed.2d 272 (2001)). If a violation can be made out, the next step is to determine whether the right violated or the law governing the official's conduct was clearly established such that “it would be clear to a

reasonable officer that his conduct was unlawful in the situation he confronted." *Id.* (quoting *Saucier,* 533 U.S. at 202); *Act Up!/Portland v. Bagley,* 988 F.2d 868, 871 (9th Cir.1993). Where a defendant's conduct violates constitutional rights and the law is clearly established, the defendant may not claim qualified immunity.

Defendants argue that no clear legal precedent established that the individual defendants owed a legal duty to "block the transfer of registration papers and possession of animals between private parties because someone else was disputing the ownership or registration claims." However, Placer County Animal Control seized the horses from plaintiff pursuant to the warrant, and therefore, Animal Control had custody and possession of the horses. The appropriate inquiry is whether there was clear legal precedent that Animal Control had a duty not to deprive plaintiff of whatever ownership interest she had in the horses at the time of the seizure without providing either a pre- or post-deprivation hearing.

At the time, the law was clearly established that "some form of hearing is required before an individual is finally deprived of a property interest." *Mathews v. Eldridge,* 424 U.S. 319, 333, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976). Thus, given the established state of the law at the time in question, the individual defendants had "fair warning" that depriving plaintiff of her alleged property interest without either a pre- or post-deprivation hearing was unconstitutional.

Accordingly, because there are triable issues of fact as to whether the individual defendants violated plaintiff's right to due process, and because the individual defendants had fair notice that their alleged conduct was unconstitutional, the court cannot find, on summary judgment, that they are entitled to qualified immunity and defendants' motion is DENIED. Likewise, plaintiff's motion for summary judgment on this issue is also DENIED.

IV. *Defendant Placer County Animal Control*

Defendants argue that plaintiff's Section 1983 claims against Placer County Animal Control should be dismissed because Animal Control is one of several separate divisions of Placer County Health and Human Services Department and is not "a person" for purposes of bringing a claim under Section 1983. The court agrees. A plaintiff may not bring a separate Section 1983 claim against a municipal department. *Vance v. County of Santa Clara,* 928 F.Supp. 993, 996 (N.D.Cal.1996) (holding that the term "persons" for Section 1983 purposes does not encompass municipal departments; specifically county corrections department is not a "person" under Section 1983); *Fields v. District of Columbia Department of Corrections,* 789 F.Supp. 20, 22 (D.D.C.1992) (holding that agencies and departments within the District of Columbia government are not "suable as separate entitites"); *Stump v. Gates,* 777 F.Supp. 808, 815 (D.Colo.1991) (holding the police department and coroner's office are not "persons" against whom a Section 1983 action may be brought); *Umhey v. County of Orange,* 957 F.Supp. 525, 531-32 (S.D.N.Y.1997) (holding that the Board of Ethics is not a separate entity which may be sued under Section 1983). In her opposition to defendants' motion, plaintiff does not challenge said case law or its application to this case. (Pl.'s Opp'n to Defs.' MSJ, at 23). Accordingly, the court finds that Placer County Animal Control is a municipal department in Placer County, and therefore, plaintiff does not have a viable Section 1983 claim against Animal Control. Defendants' motion with respect to this issue

is GRANTED.

V. *Defendant Placer County*

Defendants argue plaintiff does not have a viable cause of action against Placer County under *Monell* and its progeny. *Monell v. Department of Social Servs.,* 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978) (finding a municipality may be liable under Section 1983 as a result of a governmental policy or custom). The Ninth Circuit has recognized three ways that a municipality can be held liable under Section 1983:

> A section 1983 plaintiff may establish municipal liability in one of three ways. First, the plaintiff may prove that a city employee committed the alleged constitutional violation pursuant to a formal governmental policy or a longstanding practice or custom which constitutes the standard operating procedure of the local governmental entity. Second, the plaintiff may establish that the individual who committed the constitutional tort was an official with final policy-making authority and that the challenged action itself thus constituted an act of official governmental policy. Whether a particular official has final policy-making authority is a question of state law. Third, the plaintiff may prove that an official with final policy-making authority ratified a subordinate's unconstitutional decision or action and the basis for it.

Gillette v. Delmore, 979 F.2d 1342, 1346-47 (9th Cir.1992) (internal citations and quotations omitted).

Plaintiff fails to establish municipal liability for Placer County through any of the three modes described in *Gillette.* Even construed in the light most favorable to plaintiff, only the first theory is potentially applicable to plaintiff's allegations under Section 1983. In her opposition to defendants' motion, plaintiff states a municipality is liable under Section 1983 when their "policy or custom" inflicts the injury. Plaintiff, however, provides no evidence to support her allegation that Placer County had a policy or custom which inflicted injury upon her. As such, defendants' motion with respect to this issue is GRANTED; plaintiff's Section 1983 claims against the County of Placer are dismissed.

VI. *Plaintiff's State Law Claims*

A district court has supplemental jurisdiction over state law claims arising from the same case or controversy as a federal claim providing original jurisdiction. 28 U.S.C. § 1367(a); *City of Chicago v. Int'l Coll. of Surgeons,* 522 U.S. 156, 173, 118 S.Ct. 523, 139 L.Ed.2d 525 (1997). As one of plaintiff's federal claims survives summary judgment, the court exercises supplemental jurisdiction over plaintiff's state law claims.

A. Intentional Infliction of Emotional Distress

Defendants argue that plaintiff's claim for intentional infliction of emotional distress ("IIED") should be dismissed because defendants have not engaged in "outrageous" activity. (Defs.' MSJ, at 28). To succeed on a claim of IIED, plaintiff must demonstrate:

(1) extreme and outrageous conduct by the defendant with the intention of causing, or reckless disregard of the probability of causing, emotional distress; (2) the plaintiff's suffering severe or extreme emotional distress; and (3) actual and proximate causation of the emotional distress by the defendants' outrageous conduct.

Christensen v. Superior Court, 54 Cal.3d 868, 903, 2 Cal.Rptr.2d 79, 820 P.2d 181 (1991). "Outrageous conduct" requires that the conduct must be so extreme "as to exceed all bounds of that usually tolerated in a civilized community." *Id.* California courts have held that the question of whether the conduct alleged in the complaint is sufficiently "extreme and outrageous" is generally a factual issue for the jury. *See* *Angie M. v. Superior Court,* 37 Cal.App.4th 1217, 1226, 44 Cal.Rptr.2d 197 (1995).

In her complaint, plaintiff alleges defendants' conduct, including failing to provide care for plaintiff's horses after they were seized and transferring multiple horses to private individuals, was "undertaken intentionally or recklessly with the design to injure plaintiff emotionally." (Compl.¶ 103). Plaintiff asserts defendants' conduct caused her "extreme and severe emotional distress ....“ (Compl.¶ 107).

1. Failure to care for horses after the seizure

Defendants maintain that plaintiff's horses were underfed at the time of the seizure and after plaintiff's horses were seized by Animal Control, "they were cared for thereafter by [county] personnel and volunteer foster care families, that the weight and body scores of every horse improved after seizure from [p]laintiff, that none were gelded, and yet four died as a result of either independent accidents or systemic illness without fault of any [d]efendant." Defendants assert that no named defendant is responsible for the death of any of plaintiff's horses, and therefore, plaintiff does not have a viable claim for intentional infliction of emotional distress based on this alleged conduct.

Specifically, defendants proffer the declaration of Michael McRae, D.V.M., a veterinarian with twenty-two years experience in a general ambulatory equine practice, who explains the death of each of the four underweight horses seized from plaintiff that died while in defendants' custody. Diablo, who was approximately 200 pounds underweight at the time of the seizure, was euthanized by a veterinarian on May 4, 2001 after suffering a broken leg. Marcie, who was underweight and not in good health at the time of the seizure, was euthanized by a veterinarian on June 22, 2003 after suffering neurological problems. Flower was found dead on April 18, 2001. Raiser was euthanized by a veterinarian after suffering injuries as a result of catching his left foot in a fence on January 1, 2003. With respect to all of the horses' deaths, McRae concluded that their deaths were not attributable to any deficiencies or negligence in the feeding, grooming or veterinary care of the horses after seizure. As the moving party, based on said evidence, defendants have met their burden of demonstrating the absence of a genuine issue of material fact on the issue of "outrageous conduct."

In response to defendants' motion, plaintiff simply *argues,* without citation to supporting evidence, that “the undisputed evidence establishes that defendants allowed, if not directly caused, the death of at least four (4) horses which they had seized from plaintiff ....“ Plaintiff does not, however, proffer any evidence to support this argument. As plaintiff has wholly failed to meet her burden to produce *evidence* to demonstrate a genuine issue for trial, defendants' motion as to this basis for plaintiff's IIED claim must be GRANTED.

2. Transfer of horses to private owners

Defendants assert that the horses' registered owner, Marx, transferred ownership of the horses to private individuals and that no named defendant is responsible for the transfer of any horse. As discussed previously, defendants had custody of the horses after they were seized from plaintiff, and therefore, the transfer of the horses could not have occurred without some involvement by defendants. As defendants' role in the transfer of the horses presents triable issues of fact, their motion for summary judgment is DENIED with respect to this claim as well.

The court notes that defendants did not move for summary judgment as to this claim on any other basis. As such, the court does not consider the sufficiency of the evidence with regard to plaintiff's claimed “severe emotional distress” or whether defendants' conduct with respect to the transfer of the horses *caused* plaintiff's distress.

B. Negligent Infliction of Emotional Distress

In California, there is no independent tort of negligent infliction of emotional distress (“NIED”). *Potter v. Firestone Tire & Rubber Co.,* 6 Cal.4th 965, 984-85, 25 Cal.Rptr.2d 550, 863 P.2d 795 (1993). Courts analyze a claim for negligent infliction of emotional distress as a claim for the tort of negligence. *Id.* at 984, 25 Cal.Rptr.2d 550, 863 P.2d 795. A plaintiff must set forth each of the elements of negligence: 1) duty, 2) breach of duty, 3) causation, and 4) damages. *Huggins v. Longs Drug Stores California, Inc.,* 6 Cal.4th 124, 129, 24 Cal.Rptr.2d 587, 862 P.2d 148 (1993); *Burgess v. Superior Court,* 2 Cal.4th 1064, 1072, 9 Cal.Rptr.2d 615, 831 P.2d 1197 (1992). “Whether a defendant owes a duty of care is a question of law. Its existence depends upon the foreseeability of the risk and upon a weighing of policy considerations for and against imposition of liability.” *Marlene F. v. Affiliated Psychiatric Medical Clinic,* 48 Cal.3d 583, 588, 257 Cal.Rptr. 98, 770 P.2d 278 (1989) (quoting *Slaughter v. Legal Process & Courier Service,* 162 Cal.App.3d 1236, 1249, 209 Cal.Rptr. 189 (1984)).

Defendants did not separately address plaintiff's NIED claim in their motion for summary judgment but combined their discussion of this cause of action with their discussion of plaintiff's IIED claim. As such, the same arguments defendants made with respect to plaintiff's IIED claim apply to this claim as well. Thus, for the same reasons set forth above, plaintiff's NIED claim survives with respect to the transfer of her horses to other persons. Accordingly, defendants' motion for summary judgment with respect to this claim is DENIED as to that basis for plaintiff's claim.

C. Conversion

Defendants move for summary judgment with respect to plaintiff's conversion claim, arguing four of plaintiff's horses died without fault on the part of defendants and two were transferred to private owners by someone other than defendants. (Defs. MSJ, at 25).

The tort of conversion is “any act of dominion wrongfully exerted over another's personal property in denial of or inconsistent with his rights therein.” *Iguaye v. Howard,* 114 Cal.App.2d 122, 126, 249 P.2d 558 (1952). The elements of a cause of action for conversion of personal property are: “1) plaintiff['s] ownership or right to possession of the property at the time of the conversion; 2) defendants' conversion by a wrongful act or disposition of plaintiff['s] property rights; and 3) damages.” *Baldwin v. Marina City Properties, Inc.,* 79 Cal.App.3d 292, 410 (1978). Legal title to the property is not a requirement to bring a viable claim for conversion. *Messerall v. Fulwider,* 199 Cal.App.3d 1324, 1329, 245 Cal.Rptr. 548 (1988). A plaintiff must show only that she was entitled to immediate possession of the item at the time of the conversion. *Id.*

For the reasons set forth above, defendants have proffered evidence to show they did not commit a wrongful act which caused the death of plaintiff's four horses. Plaintiff has not offered any evidence in rebuttal. Accordingly, she cannot maintain a cause of action for conversion based on the four horses that died while in defendants' custody. Defendants' motion as to this basis for plaintiff's conversion claim must therefore be GRANTED; plaintiff's cross-motion on the issue is accordingly DENIED.

However, as to the transfer of plaintiff's two horses to other persons, for the reasons set forth above, triable issues of fact remain as to whether defendants acted wrongfully in facilitating and/or allowing the transfer to take place. Therefore, the court cannot grant summary judgment to either party with respect to this basis for plaintiff's conversion claim; both parties' motions for summary judgment are DENIED.

D. Defamation

Defendants argue summary judgment should be granted with respect to plaintiff's defamation claim because plaintiff admitted in her deposition that none of the named defendants made a defamatory statement about her. The tort of defamation involves the intentional publication of a statement of fact which is false, unprivileged, and has a natural tendency to injure or which causes special damage. *Gilbert v. Sykes,* 147 Cal.App.4th 13, 27, 53 Cal.Rptr.3d 752 (2007). “ ‘There can be no recovery for defamation without a falsehood.’ “ *Id.* (citation omitted).

In her opposition to defendants' motion for summary judgment, plaintiff does not persuasively dispute her deposition testimony,

In her opposition, plaintiff tries to dispute that she admitted in her deposition that neither Garrett, Stout, Ward, Carter or Gentile made comments detrimental to her reputation. (PUF ¶ 118). She argues when she said in her deposition that none of the defendants made comments detrimental to her reputation, she was referring only to comments made by defendants *after* her conviction. (PUF ¶ 118). Plaintiff's argument is unavailing. In plaintiff's complaint, she alleges defendants made defamatory statements in October 2004 and within twelve months prior to June 2005. (Compl.¶ ¶ 129, 131). Plaintiff was convicted in November 2001, and therefore, plaintiff has not alleged defendants made defamatory statements about her *before* her conviction. (PUF ¶ 54). In fact, plaintiff admits in her opposition to the motion for summary judgment that the criminal proceedings against plaintiff had concluded when defendants made the alleged defamatory statements. (Pl.'s Opp'n to Defs.' MSJ, at 26).

and she otherwise fails to identify a specific defamatory statement made by one of the defendants. As plaintiff has offered no evidence supporting her allegation that defendants made defamatory statements against her, defendants' motion for summary judgment on this claim is GRANTED. Plaintiff's cross-motion for summary judgment on this claim is accordingly DENIED.

E. Misrepresentation

Plaintiff alleges defendants represented to her that her horses would be returned upon payment of a lien as to each horse as set forth in the order signed by Placer County Court Commissioner Ross on May 17, 2005. Plaintiff claims she paid the specified fee for two of her horses, Nartane's Mandate and Baybandee, and those horses were not returned to her. Further, plaintiff contends defendants knew two of her horses would not be returned to her and therefore they intentionally made the misrepresentation.

Defendants move for summary judgment on this claim, arguing plaintiff does not have a viable cause of action because she cannot prove one of the elements of a claim for misrepresentation-justifiable reliance on the misrepresentation. The elements of a cause of action for misrepresentation or fraud under California law are: "1) a misrepresentation (false representation, concealment, or nondisclosure); 2) knowledge of falsity (or scienter); 3) intent to defraud, i.e., to induce reliance; 4) justifiable reliance; and 5) resulting damage." *Robinson Helicopter Co., Inc. v. Dana Corp.*, 34 Cal.4th 979, 990, 22 Cal.Rptr.3d 352, 102 P.3d 268 (2004).

Defendants argue plaintiff concedes she was informed in May 2004 that four of her seized horses had died and two of them had been transferred to other owners. Commissioner Ross' order was issued in May 2005. (PUF ¶ 58). Thus, defendants contend plaintiff clearly knew *before* she paid the liens that two of her horses had been transferred to other persons.

The court agrees. Indeed, plaintiff does not address this argument in her opposition to defendants' motion for summary judgment. She has provided no evidence to support the essential element of

justifiable reliance on defendants' representation (even assuming the representation was made). Accordingly, defendants' motion for summary judgment is GRANTED on this claim. Plaintiff's cross-motion for summary judgment on this claim is thus DENIED.

CONCLUSION

For the foregoing reasons, defendants' motion for summary judgment is GRANTED in part and DENIED in part. Plaintiff's cross-motion for partial summary judgment is DENIED. In sum, the following of plaintiff's claims survive: (1) violation of plaintiff's Fourteenth Amendment procedural due process rights pursuant to Section 1983 based on the transfer of ownership of two of plaintiff's horses (against the individual defendants); (2) IED based on the transfer of ownership of two of plaintiff's horses (against all defendants); (3) NIED based on the transfer of ownership of two of plaintiff's horses (against all defendants); and (4) conversion based on the transfer of ownership of two of plaintiff's horses (against all defendants).

IT IS SO ORDERED