

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUL 1 2011

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

JOANDARK KASSAB,

Plaintiff - Appellant,

v.

SAN DIEGO POLICE DEPARTMENT; et
al.,

Defendants - Appellees.

No. 09-56672

D.C. No. 3:07-cv-01299-MMA-
WMC

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Michael M. Anello, District Judge, Presiding

Submitted June 15, 2011**

Before: CANBY, O'SCANNLAIN, and FISHER, Circuit Judges.

Joandark Kassab appeals pro se from the district court's summary judgment in her 42 U.S.C. § 1983 action arising from the search of her store. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Whitaker v. Garcetti*,

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

486 F.3d 572, 579 (9th Cir. 2007). We affirm.

The district court properly concluded that Kassab's § 1983 claims were *Heck*-barred. *See Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994) (a constitutional claim that necessarily implies the invalidity of a conviction cannot be brought under § 1983 unless the conviction has already been invalidated); *Szajer v. City of Los Angeles*, 632 F.3d 607, 611 (9th Cir. 2011), *petition for cert. filed*, 79 U.S.L.W. 3648 (U.S. Apr. 28, 2011) (No. 10-1343) (a claim alleging an illegal search and seizure of evidence that was used to secure a conviction necessarily implies the invalidity of that conviction).

We construe the judgment to be without prejudice. *See Trimble v. City of Santa Rosa*, 49 F.3d 583, 585 (9th Cir. 1995) (*per curiam*) (stating that dismissals under *Heck* are without prejudice).

Kassab's remaining contentions are unpersuasive.

We do not consider issues not properly raised before the district court. *See Smith v. Marsh*, 194 F.3d 1045, 1052 (9th Cir. 1999).

All pending motions are denied.

AFFIRMED.