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U.S. COURT OF APPEALS

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

VINCENT OTYANG, Plaintiff - Appellant, v. CITY AND COUNTY OF SAN FRANCISCO; JOSE MITRA, Defendants - Appellees.	No. 13-15639 D.C. No. 3:12-cv-00577-MEJ MEMORANDUM[*]

Appeal from the United States District Court
for the Northern District of California
Maria-Elena James, Magistrate Judge, Presiding[**]

Submitted July 21, 2015[***]

Before: CANBY, BEA, and MURGUIA, Circuit Judges.

Vincent Otyang appeals pro se from the district court's summary judgment in his 42 U.S.C. § 1983 action alleging First Amendment and state law violations

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

[**] The parties consented to proceed before a magistrate judge. *See* 28 U.S.C. § 636(c).

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

in connection with the enforcement of a city ordinance. We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *Blankenhorn v. City of Orange*, 485 F.3d 463, 470 (9th Cir. 2007), and we affirm.

The district court properly granted summary judgment on Otyang's § 1983 claim against the City and County of San Francisco because Otyang failed to raise a genuine dispute of material fact as to whether there was a municipal policy, custom, or practice that was the moving force behind the alleged constitutional violation. *See Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 694 (1978) (explaining municipal liability under § 1983). To the extent that Otyang challenges the city ordinance requiring a permit to erect a table, the district court properly concluded that the ordinance was a reasonable time, place, and manner restriction. *See Menotti v. City of Seattle*, 409 F.3d 1113, 1129-31 (9th Cir. 2005) (setting forth the factors for determining the constitutionality of time, place, and manner restrictions under the First Amendment).

The district court properly granted summary judgment on Otyang's § 1983 claim against Mitra on the basis of qualified immunity. *See Cmty. House, Inc. v. City of Boise, Idaho*, 623 F.3d 945, 967 (9th Cir. 2010) (discussing qualified immunity analysis); *Grossman v. City of Portland*, 33 F.3d 1200, 1209 (9th Cir. 1994) ("[T]he existence of a statute or ordinance authorizing particular conduct is a

factor which militates in favor of the conclusion that a reasonable officer would find that conduct constitutional.").

The district court properly granted summary judgment on Otyang's state law claims because Otyang failed to raise a genuine issue of material fact as to the existence of essential elements of each claim. *See Corales v. Bennett*, 567 F.3d 554, 572 (9th Cir. 2009) (elements of negligence under California law); *Marlene F. v. Affiliated Psychiatric Med. Clinic, Inc*., 770 P.2d 278, 281 (Cal. 1989) (elements of negligent infliction of emotional distress under California law); *So v. Shin*, 151 Cal. Rptr. 3d 257, 268-70 (Ct. App. 2013), *as modified on denial of reh'g* (Jan. 28, 2013) (elements of assault, battery, and intentional infliction of emotional distress under California law).

We do not consider facts not presented to the district court. *See United States v. Elias*, 921 F.2d 870, 874 (9th Cir. 1990) ("[F]acts not presented to the district court are not part of the record on appeal.").

We reject Otyang's contentions regarding the inapplicability of the permitting ordinance.

AFFIRMED.