UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

BRENDAN WHITE, Petitioner, v. UNITED STATES OF AMERICA, Respondent.	Case No. 2:24-cv-02159-MAR ORDER RE: MOTION TO DISMISS, DKT. 31

I.

SUMMARY OF ORDER

Plaintiff Brendan White ("Plaintiff"), proceeding with counsel, filed the operative First Amended Complaint ("FAC") on July 12, 2024, bringing various tort claims against the government ("Defendant") under the Federal Tort Claims Act ("FTCA"). ECF Docket No. ("Dkt.") 19. Defendant has filed a motion to dismiss the FAC. Dkt. 31. The motion has been fully briefed.

For the reasons below, the motion is **GRANTED** in part and **DENIED** in part.

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II.

BACKGROUND

A. FACTUAL BACKGROUD

Plaintiff alleges as follows:

On April 3, 2023, Plaintiff traveled by plane from Dallas Fort Worth International Airport ("DFW") to John Wayne Airport in Orange County ("SNA"), carrying approximately $332,000 in U.S. currency that he obtained in the course of operating his money services business that trades cryptocurrency for cash. FAC ¶¶ 9–12. During the U.S. Transportation Security Administration ("TSA") screening, TSA agents took notice of Plaintiff's cash and apparently reported it to the U.S. Drug Enforcement Administration ("DEA") along with Plaintiff's name and travel itinerary. Id. ¶¶ 15, 22. When Plaintiff landed in Orange County, DEA officers stopped Plaintiff and told him he could not leave with his bags unless he allowed the officers to search them. Id. ¶¶ 24–26. Plaintiff explained his business and showed the DEA officers a Currency Transaction Report related to the currency, but the DEA officers searched his bags anyway and seized Plaintiff's currency. Id. ¶¶ 30–31, 38–39. On May 5, 2023, Plaintiff filed a notice of a claim pursuant to the FTCA's presentment requirements seeking $2,500,000 but has yet to receive a response to the claim. Id. ¶¶ 41–42. Plaintiff eventually obtained the return of his funds in December 2023 after filing an administrative claim. Id. ¶ 40.

On October 10, 2024, Plaintiff was traveling from Boston-Logan International Airport ("BOS") to Los Angeles International Airport ("LAX") via DFW, carrying approximately $65,000 in U.S. currency obtained from Plaintiff's money services business. Id. ¶¶ 43, 45. TSA officers again apparently noticed Plaintiff's cash and tipped off the DEA. Id. ¶ 46. Upon attempting to board his connecting flight from DFW to LAX, DEA officers again stopped Plaintiff and searched his bags using a dog. Id. ¶¶ 48–56. The DEA officers seized the bag and the currency inside. Id. ¶

57–58. On November 30, 2023, Plaintiff again filed a notice of claim pursuant to the FTCA seeking a sum of $2,500,000, but he did not receive a response. Id. ¶¶ 62–63. Plaintiff received an "agreement" to return his funds in April 2024 after filing an administrative claim, but had not received his funds by the time of filing the FAC. Id. ¶ 61 n.1.

Based on these allegations, Plaintiff brings the following claims:

(1) Two counts of False Arrest based on his detention during each incident ("Claims One and Two") (Id. ¶¶ 64–74);

(2) Two counts of trespass to chattels based on each incident ("Claims Three and Four") (Id.¶¶ 75–80); and

(3) Two counts of invasion of privacy based on each incident ("Claims Five and Six") (Id.¶¶ 81–88).

B. PROCEDURAL HISTORY

On March 16, 2024, Plaintiff initiated this action. Dkt. 1. Defendant filed a motion to dismiss on July 5, 2024, which was mooted by the filing of Plaintiff's FAC on July 12, 2024. Dkts. 16, 19. Defendant filed a motion to dismiss the FAC on September 6, 2024. Dkt 31. Plaintiff filed an opposition on October 4, 2024. Dkt. 36. Defendant filed a reply on October 11, 2024. Dkt. 37. The Court finds this matter suitable for resolution without oral argument. See Fed. R. Civ. P. 78(b); Local Rule 7-15. Thus, the matter stands submitted.

III.

STANDARD OF REVIEW

A. RULE 12(B)(1)

"Federal courts are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute[.]" Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375, 377 (1994). The burden of establishing that subject matter jurisdiction exists "rests upon the party asserting jurisdiction[.]" Id.at 377.

Accordingly, a defendant may move to dismiss a complaint for lack of subject matter jurisdiction under Fed. R. Civ. P. 12(b)(1). "A Rule 12(b)(1) jurisdictional attack may be facial or factual. In a facial attack, the challenger asserts that the allegations contained in a complaint are insufficient on their face to invoke federal jurisdiction." Safe Air for Everyone v. Meyer, 373 F.3d 1035, 1039 (9th Cir. 2004) (citations omitted). When considering a facial attack, the court considers the complaint's allegations to be true and draws all reasonable inferences in the plaintiff's favor. Doe v. Holy See, 557 F.3d 1066, 1073 (9th Cir. 2009) (citation omitted). In resolving a factual attack, the district court may review evidence beyond the complaint without converting the motion to dismiss into one for summary judgment. See Safe Air, 373 F.3d at 1039; White v. Lee, 227 F.3d 1214, 1242 (9th Cir. 2000).

B. RULE 12(B)(3)

Pursuant to Fed. R. Civ. P. 12(b)(3), a defendant may move to dismiss a complaint for "improper venue." When venue is improper, the court "shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought." 28 U.S.C. § 1406(a). In ruling on a motion to dismiss for improper venue under Rule 12(b)(3), the Court may consider facts outside the pleadings and the pleadings need not be accepted as true; however, because a 12(b)(3) motion has a dramatic effect on plaintiff's forum choices, the Court "must draw all reasonable inferences in favor of the non-moving party and resolve all factual conflicts in favor of the non-moving party [.]" See Murphy v. Schneider Nat'l, Inc., 362 F.3d 1133, 1137 (9th Cir. 2004) (as amended); Richards v. Lloyd's of London, 135 F.3d 1289, 1292 (9th Cir. 1998) (en banc).

C. RULE 12(B)(6)

Under Rule 12(b)(6), a party may move to dismiss a pleading for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). A claim should be dismissed under Rule 12(b)(6) if the plaintiff fails to proffer "enough facts

to state a claim to relief that is plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009).

Dismissal for failure to state a claim can be warranted based on either a lack of a cognizable legal theory or the absence of factual support for a cognizable legal theory. See, e.g., Mendiondo v. Centinela Hosp. Med. Ctr., 521 F.3d 1097, 1104 (9th Cir. 2008). A complaint may also be dismissed for failure to state a claim if it discloses some fact or complete defense that will necessarily defeat the claim. Franklin v. Murphy, 745 F.2d 1221, 1228–29 (9th Cir. 1984), abrogated on other grounds by Neitzke v. Williams, 490 U.S. 319 (1989). Although the plaintiff must provide "more than labels and conclusions," Twombly, 550 U.S. at 555, "[s]pecific facts are not necessary; the [complaint] need only give the defendant[s] fair notice of what the . . . claim is and the grounds upon which it rests." Erickson v. Pardus, 551 U.S. 89, 93 (2007) (per curiam) (citations and quotation marks omitted). In considering whether a complaint states a claim, a court must accept as true all of the material factual allegations in it. Hamilton v. Brown, 630 F.3d 889, 892–93 (9th Cir. 2011). However, a court need not accept as true "allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences." In re Gilead Scis. Sec. Litig., 536 F.3d 1049, 1055 (9th Cir. 2008). The court must also construe the pleading in the light most favorable to the pleading party and resolve all doubts in the pleader's favor. See, e.g., Berg v. Popham, 412 F.3d 1122, 1125 (9th Cir. 2005). Pro se pleadings are "to be liberally construed" and are held to a less stringent standard than those drafted by a lawyer. Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir. 2010) ("Iqbal incorporated the Twombly pleading standard and Twombly did not alter courts' treatment of pro se filings; accordingly, we continue to construe pro se filings liberally when evaluating them under Iqbal.").

IV.

DISCUSSION

A. THE DETENTION OF GOODS EXCEPTION BARS PLAINTIFF'S CLAIMS ONLY TO THE EXTENT THEY ARE BASED ON THE SEIZURE OF HIS PROPERTY

"Absent a waiver, sovereign immunity shields the Federal Government and its agencies from suit." FDIC v. Meyer, 510 U.S. 471, 475 (1994) (citations omitted). The FTCA waives the United States' sovereign immunity for certain tort actions, allowing claimants to sue the government in district court after they have sought resolution of the claim with the appropriate federal agency. 28 U.S.C. § 1346(b)(1); see also Cadwalder v. United States, 45 F.3d 297, 300 (9th Cir. 1995). A defendant may raise the question of whether the United States has waived its sovereign immunity under the FTCA on a Rule 12(b)(1) motion. See McCarthy v. United States, 850 F.2d 558, 560 (9th Cir. 1988) (applying Rule 12(b)(1) to motion to dismiss FTCA claim).

Critically here, the FTCA's "broad waiver of sovereign immunity is subject to a number of exceptions set forth in § 2680." Millbrook v. United States, 569 U.S. 50, 52 (2013). One of these exceptions is the "detention of goods" exception, which applies to "[a]ny claim arising in respect of . . . the detention of any goods, merchandise, or other property by any officer of customs or excise or any other law enforcement officer." 28 U.S.C. § 2680(c).[1]

Here, Defendant argues that the detention of goods exception bars Plaintiff's trespass to chattels and invasion of privacy claims because they relate to the detention of his cash. Dkt. 31 at 13–14. Plaintiff argues that the claims are not wholly barred

[1] This section does restore § 1346(b)'s waiver of sovereign immunity for certain claims arising from property "seized for the purpose of forfeiture." See 28 U.S.C. § 2680(c). However, neither party argues, and the record does not indicate, that Plaintiff's property was subject to an applicable forfeiture proceeding.

by the exception because the claims are based on the search and seizure leading up to the detention of cash, rather than merely the detention itself. Dkt. 34-1 at 5–7.

The Ninth Circuit has not clearly defined the scope of claims barred by the detention of goods exception. The "detention of goods exception . . . generally is interpreted broadly," such that it "maintain[s] sovereign immunity for the entire universe of claims against law enforcement officers . . . 'arising in respect of' the 'detention' of property." Foster v. United States, 522 F.3d 1071, 1074 (9th Cir. 2008) (emphasis in original) (quoting Ali v. Fed. Bureau of Prisons, 552 U.S. 214, 228 (2008)). District courts in the Ninth Circuit have held that claims based on the seizure of goods that are ultimately detained obviously "arise out of" the detention of the goods and thus are barred by the exception. Quinonez v. United States, 667 F. Supp. 3d 1015, 1027 (N.D. Cal. 2023) (citing DaVinci Aircraft, Inc. v. United States, 926 F.3d 1117, 1124–25 (9th Cir. 2019)). Whether the exception bars claims based on an allegedly unlawful search that ultimately results in the detention of goods is a closer question. The Court finds that the weight of authority indicates that not all such claims are barred by the detention of goods exception.

As an initial matter, the Court notes that the detention of goods exception is not boundless; the Ninth Circuit has held that the exception does not bar claims based on conduct that was subsequent to and independent of the original detention of the goods. See Cervantes v. United States, 330 F.3d 1186, 1188–91 (9th Cir. 2003) (finding that exception did not bar the plaintiff's negligence claim because the alleged conduct "had nothing at all to do with" the detention of the goods and occurred wholly subsequent to the detention, as to become an "independent and intervening event from the detention itself"); see also Quinonez v. United States, No. 22-CV-03195-WHO, 2024 WL 4730548, at *9 (N.D. Cal. Nov. 8, 2024) (relying on Cervantes to hold that exception did not bar claims related to USPIS "misrepresentations and cover-up" regarding the reasons for the detention of packages because the conduct

occurred "subsequent to" the detention and was "independent" of the detention). While the Ninth Circuit has not explicitly discussed whether the exception bars claims based on independent conduct occurring before the detention of goods, it is not apparent why the general principle announced in Cervantes should apply only to independent conduct that occurs after the detention of goods. Provided that the challenged conduct is sufficiently independent of the detention of goods such that the resulting claims would not be considered to have "arisen out of" the detention, otherwise tortious conduct should not be barred merely because the encounter ended with the detention of goods.

Indeed, other district courts have held that the exception does not bar claims based on conduct that was independent of the seizure of goods, even when the conduct occurred during the same encounter that resulted in the seizure. See Castellanos v. United States, 438 F. Supp. 3d 1120, 1138–39 (S.D. Cal. 2020) (holding exception did not bar claims related to alleged assault on a person in the process of detaining him while other officers were simultaneously detaining his family vehicle). Critically, at least one other district court has explicitly found that the detention of goods exception does not bar claims related to an allegedly unconstitutional search that later results in the seizure and detention of goods. Quinonez, 667 F. Supp. 3d at 1027 ("Given the Supreme Court's caution that section 2680(c) does not preserve sovereign immunity 'for the entire universe of claims against law enforcement officers' and 'only for claims "arising in respect of" the "detention" of property,' I am not inclined to find that this exception extends to any search."). Ultimately, the Court agrees with this conclusion. If the detention of goods exception barred all claims related to an unlawful search simply because the search ultimately resulted in the detention of goods, law enforcement would be able to easily abuse this principle, even at the expense of an individual's constitutional rights.

In their opposition, Plaintiff provides the following hypothetical:

> [L]et us imagine an FBI agent who has a disagreement with his neighbor. The FBI agent drives to his office and opens an investigative file on his neighbor, then returns back, breaks down his neighbor's door, shoots his neighbor's dog, searches the neighbor's home by ransacking it, and takes a $20 bill on his way out. He leaves a receipt behind that says, "Twenty dollars of U.S. Currency seized by FBI as suspected proceeds of drug trafficking." The agent hands the $20 to the appropriate department back at his office, and the agency returns the twenty dollars the next day with a note indicating that it was declining to initiate forfeiture proceedings.

Opp. at 6. This hypothetical is instructive in the sense that it demonstrates why the detention of goods exception must not bar all claims related to potentially unlawful conduct as long as the conduct ultimately resulted in the detention of goods. However, this outsized hypothetical does little to help guide the application of the exception in Plaintiff's case. The Court agrees with Plaintiff that this hypothetical includes one or more instances of independent conduct that would clearly be actionable and should not be covered by the detention of goods exception. However, unlike the hypothetical, the links in the chain of events in Plaintiff's allegations are fairly direct, and, while Plaintiff disputes the motivation for the seizure of his cash, it seems indisputable that the inciting event here was a neutral, administrative TSA search rather than something targeted at Plaintiff, specifically. Furthermore, the unlawful conduct that Plaintiff alleges here is far more closely related to the seizure and detention of goods than the conduct in Plaintiff's hypothetical. Therefore, in the instant case, it is not facially obvious what conduct should be considered "independent" of the detention of goods, and thereby outside the reach of the detention of goods exception.

Ultimately, the Court makes the general finding that the detention of goods exception bars Plaintiff's claims to the extent that they are based on the agent's seizure of Plaintiff's cash but does not bar Plaintiff's claims that they are based on the search of his bags or any temporary seizure of his person. The Court will discuss how

this principle specifically applies to each of Plaintiff's claims throughout the remainder of this order.

B. THE DISCRETIONARY FUNCTION EXCEPTION BARS PLAINTIFF'S INVASION OF PRIVACY CLAIM

Another exception to the United States's waiver of sovereign immunity is the discretionary function exception, which bars:

> Any claim based upon an act or omission of an employee of the Government, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation be valid, or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the Government, whether or not the discretion involved be abused.

28 U.S.C. § 2680(a). The exception applies if: (1) the act or omission on which the claim is based "involves an element of judgment or choice"; and (2) "that judgment is of the kind that the discretionary function exception was designed to shield." Miller v. United States, 992 F.3d 878, 887 (9th Cir. 2021) (quoting Berkovitz v. United States, 486 U.S. 531, 536 (1988)).

With respect to the first element, an act is not discretionary when "the employee in question was bound to act in a particular way" because a "federal statute, regulation, or policy specifically prescribes a course of action." Id. at 885–86 (quoting United States v. Gaubert, 499 U.S. 315, 322, 329 (1991)) (internal quotation marks omitted). While the government bears the ultimate burden of establishing that the discretionary function exception applies, that burden arises only if the plaintiff has first "advanced a claim that is facially outside the discretionary function exception." Broidy Cap. Mgmt., LLC v. Qatar, 982 F.3d 582, 591 (9th Cir. 2020) (quoting Holy See, 557 F.3d at 1084). Thus, the plaintiff "ha[s] the [initial] burden to identify a 'federal statute, regulation, or policy' that constrain[s] the [agency's] substantive discretion in a way that precludes applying the discretionary function exception[.]" Miller, 992 F.3d at 886 (quoting Berkovitz, 486 U.S. at 536).

With respect to the second element, the conduct in question must be "based on considerations of public policy." Id. at 888 (quoting Gaubert, 499 U.S. at 323). The relevant inquiry is not whether the federal employee's actions are "actually based on policy considerations, but whether the actions taken by the employee 'are susceptible to policy analysis.' " Id. (emphasis in original) (quoting Gaubert, 499 U.S. at 325).

Here, Plaintiff argues that his invasion of privacy claim is based on the search of his bag rather than the seizure and subsequent detention of his cash. Opp. at 6–8. 7. Indeed, the FAC alleges that Plaintiff's reasonable expectation of privacy was violated when TSA shared the contents of his bag with law enforcement. FAC ¶¶ 81–88. To be sure, it is not clear to the Court that this conduct is sufficiently independent of the subsequent detention of Plaintiff's goods to fall outside of the Court's interpretation of the detention of goods exception described above. However, in any case, the claim appears barred by the discretionary function exception.

With regard to the first element, Plaintiff has failed to meet his burden of identifying a policy that constrains the TSA's discretion in a way that precludes applying the discretionary function exception. It is undisputed that TSA regulations do not require TSA agents to report large amounts of cash as indicative of criminal activity—indeed, this fact is critical to Plaintiff's claim. Furthermore, Plaintiff explicitly concedes that TSA agents have discretion to report contraband that it incidentally uncovers while searching for dangerous items. Dkt. 34-1 at 8. However, Plaintiff appears to argue that the applicable TSA regulations do not give TSA agents discretion to report cash without other indicia of criminal activity because cash is not in and of itself obviously evidence of a crime and making this determination would require special law enforcement training that TSA agents do not have. Id.

However, the TSA directive at issue here instructs TSA agents to report cash to the appropriate authorities if "it appears indicative of criminal activity," considering

several factors such as "quantity, packaging, circumstances of discovery, or method by which the cash is carried, including concealment." TSA, TSA Management Directive No. 100.4, https://www.tsa.gov/sites/default/files/foia-readingroom/transportation_security_searches_100.4.pdf (last visited August 14, 2024). While the directive "requires" TSA agents to report cash that is indicative of criminal activity, an agent must determine whether cash "appears" indicative of criminal activity by considering several factors. It simply seems impossible to dispute that the language of this regulation provides TSA agents with a certain amount of discretion to determine whether a large amount of cash "appears indicative of criminal activity," and thus warrants referral to law enforcement. Indeed, other courts in this district have similarly found that a federal agency's decision to report "suspicious circumstances" to law enforcement agencies "involves an element of judgment of choice." Lauria v. United States, No. 3:20-CV-00210-SLG, 2024 WL 2133607, at *12 (D. Alaska May 13, 2024) (noting that federal statute which required Department of Homeland Security officer to report "'crimes and suspicious circumstances' to the local responding law enforcement authority 'as appropriate'," left "the agency with discretion in deciding whether doing so would be 'appropriate'.").

Turning to the second element, the Court joins other courts in this district in finding that "deciding whether to report certain crimes or suspicious circumstances to local law enforcement 'involve[s] the kind of policy judgment that the discretionary function exception was designed to shield'." Lauria, 2024 WL 2133607, at *12; see also Callahan v. United States, 329 F. Supp. 2d 404, 409 (S.D.N.Y. 2004) ("Several Circuit Courts of Appeal have concluded that security related decisions, including decisions involving how much security to provide and the manner in which to provide it, are the types of public policy judgments that fall within the discretionary function

exception.").[2] To the extent Plaintiff argues that it is not yet clear what the TSA officers actually considered before reporting Plaintiff's bag, as noted above, the proper focus of the analysis is not what the agents actually considered, but simply whether their actions were susceptible to policy analysis. See Holy See, 557 F.3d at 1085 ("The Holy See's failure to present any evidence that its actions were actually based on policy considerations is not relevant to whether the discretionary function exception applies.").

Plaintiff also argues that this issue should not be resolved on a motion to dismiss because it is the government's burden to prove that the exception applies, which would require them to submit evidence on a motion for summary judgment. However, this appears to be a misunderstanding of the parties' respective burdens here. As noted above, while the government bears the ultimate burden of proving the exception should apply, Plaintiff has the initial burden of proving the claim is facially outside the scope of the exception, such that the Court would have jurisdiction over the claim. Miller, 992 F.3d at 886. Ultimately, Plaintiff has failed to "point to a statute" that constrains the TSA's explicit discretion to report large amounts of cash to law enforcement as possible evidence of criminal activity. See id. It follows that

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[2] Importantly, Plaintiff does not argue that the TSA agents were negligent here, which distinguishes this case from others where courts have found that certain TSA activities fell outside the discretionary function exception. See Ying Jing Zeng v. United States, No. 14-CV-3924-DLI (MDG), 2016 WL 8711090, at *6 (E.D.N.Y. Sept. 30, 2016) ("The decision of whether or not to select a certain piece of baggage for inspection is clearly grounded in the public policy of keeping airports and airplanes safe. The DFE also shields Defendant from Plaintiff's unsupported claims that Defendant's employees 'irresponsibly and wrongfully repackaged the baggage,' as the manner in which bags are repacked are discretionary acts guided by policy considerations to efficiently and effectively inspect baggage . . . However, given the liberal pleading standard conferred to pro se plaintiffs, the Court also must read the Complaint to allege that TSA employees 'broke' Plaintiff's Dragon due to their own carelessness or inattentiveness during the inspection."), aff'd, 696 F. App'x 42 (2d Cir. 2017); see also Zandi v. United States, No. 3:18-CV-02235-SB, 2019 WL 6619854, at *3 (D. Or. Dec. 5, 2019) (quoting Zeng, 2016 WL 8711090, at *6) ("Like in Zeng, Zandi's allegations suggest that TSA officers damaged and lost his property due to their own carelessness or inattentiveness during inspection. This is 'not the type of tort that is protected by the [discretionary function exception].' . . . Instead, Zandi's negligence theory 'sounds more in "laziness or haste" or "distract[ion] or inattentive[ness]," than a "considered judgment grounded in . . . policy." ' ").

Plaintiff has failed to meet his initial burden to justify the Court exercising jurisdiction over the invasion of privacy claim related to the TSA's search of his bag. See Bazant v. U.S. Transp. Sec. Admin., No. CV 23-135-BLG-SPW-TJC, 2024 WL 5118534, at *6 (D. Mont. Oct. 23, 2024), report and recommendation adopted, No. CV 23-135-BLG-SPW, 2025 WL 27588 (D. Mont. Jan. 3, 2025) (finding the plaintiff had failed to allege facts that could show his negligence claims based on TSA screening fell outside the discretionary function exception and dismissing claims on motion to dismiss).

C. PLAINTIFF HAS FAILED TO ALLEGE A CLAIM FOR INVASION OF PRIVACY

Even assuming the discretionary function exception does not bar Plaintiff's invasion of privacy claim, Plaintiff has failed to state such a claim. To state a claim for invasion of privacy/intrusion under California, Massachusetts, or Texas law,[3] Plaintiff must establish that he had a reasonable expectation of privacy as to the contents of his bag. See Wise v. Experian Info. Sols., Inc., No. CV 23-5513-KK (RAOx), 2024 WL 3337128, at *6 (C.D. Cal. June 18, 2024) (noting that, to state a claim for intrusion under California law, a plaintiff must establish that the defendant "intentionally intrude[d] into a place, conversation, or matter as to which the plaintiff has a reasonable expectation of privacy"), appeal dismissed, No. 24-4147, 2024 WL 4512081 (9th Cir. Sept. 11, 2024); Graham v. JPMorgan Case Bank, Nat. Ass'n, No. 4:13-CV-1410, 2015 WL 4431199, at *12 (S.D. Tex. July 17, 2015) (noting that under Texas law, "there cannot be an 'intrusion' where there is no legitimate expectation of privacy"); Burns v. City of Worcester, No. 4:23-CV-40001-MRG, 2025 WL 871364, at *18 (D. Mass. Mar. 20, 2025)(" To raise a viable claim of invasion of privacy, a plaintiff must demonstrate 'that there was 1) a gathering and dissemination of facts of

[3] It is not entirely clear which state's law should apply here, since, in both incidents, Plaintiff alleges his bags were initially searched in one state, and he was detained in another; furthermore, it is not clear what was communicated to whom in which state. As discussed in this section, however, the result is the same, whether Texas, Massachusetts, or California law is applied.

a private nature that 2) resulted in an unreasonable, substantial or serious interference with his privacy'.").

Again, here, both the FAC and Plaintiff's opposition clarify that his claim is based on the TSA's communication of the contents of his bag to law enforcement rather than the initial security screening. FAC ¶¶ 81–88; Opp. at 6–8. Indeed, Plaintiff could not credibly argue that he had a reasonable expectation that the contents of his bag would remain wholly private when it went through a TSA security screening. Rather, Plaintiff argues that he had an expectation that the contents of his bag would remain private (i.e., not disclosed to anyone other than the TSA agents conducting the screening) as long as nothing in his bag presented security concerns. Even still, Plaintiff admits that TSA may still turn over to law enforcement "contraband that it incidentally uncovers while engaged in its limited mission [to search for dangerous items]." Opp. at 7–9. However, as discussed above, Plaintiff maintains that a large amount of cash itself is not contraband, and therefore he argues that he had a reasonable expectation that the TSA would not disclose the cash to law enforcement. Id..

There are a line of cases dealing with Fourth Amendment claims that are instructive here, given that Fourth Amendment claims also require that the claimant had a reasonable expectation of privacy. See Kyllo v. United States, 533 U.S. 27, 33 (2001) ("[A] Fourth Amendment search occurs when the government violates a subjective expectation of privacy that society recognizes as reasonable.").

In U.S. v. Davis, the Ninth Circuit approved warrantless airport security checks as valid administrative searches under the Fourth Amendment. 482 F.2d 893 (9th Cir. 1973), overruled by United States v. Aukai, 497 F.3d 955 (9th Cir. 2007).[4] A particular

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[4] Aukai clarified that the validity of these searches is not based on a theory of ongoing consent, as Davis had been read to imply. Aukai, 497 F.3d. at 961–962. In other words, a prospective passenger cannot revoke consent to a search after attempting to enter a secured area; provided that the searches are otherwise reasonable and conducted pursuant to statutory authority, all that is required to trigger a valid search is the passenger's initial election to pass through the security

airport security screening search is constitutionally reasonable provided that it "is no more extensive nor intensive than necessary, in the light of current technology, to detect the presence of weapons or explosives [ ][and] that it is confined in good faith to that purpose." Davis, 482 F.2d at 913.

In U.S. v. Canada, the appellant argued that her Fourth Amendment rights were violated when her companion's suitcase was searched by an airline employee. 527 F.2d 1374, 1376–79 (9th Cir. 1975). Part of the suitcase was dark in the x-ray machine, so the employee asked appellant's companion if they could do a visual inspection; neither appellant nor her companion objected. Id. During the visual inspection, the employee noticed a large amount of cash in a grocery bag with the figure $68,000 inked on the front of the bag; as the couple walked away, the employee heard the companion tell appellant, "Don't worry about it; it's okay." Id. The airline employee reported this information to an agent of the DEA at the airport, and DEA agents in appellant's arrival destination subsequently surveilled appellant and eventually stopped and searched her car, finding drugs. Id. The Ninth Circuit relied on Davis to find that appellant had effectively consented to the search by voluntarily placing the suitcase on the x-ray machine and failing to object to the physical inspection. Id.

Similarly, in U.S. v. $124, 570 U.S. Currency, part of the appellant's suitcase was dark in the x-ray machine, so the airport security officer physically inspected its contents and discovered a large quantity of cash. 873 F.2d 1240, 1241 (9th Cir. 1989). Pursuant to an established arrangement, the officer notified agents of the United States Customs Service who paid her $250 for the tip, which eventually led to the

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screening. Id. This distinction does not appear to affect the analysis in this case, because there is no dispute that Plaintiff voluntarily passed through the initial screening and his cash was permissibly discovered during the screening. Indeed, the alleged invasion of privacy occurred after Plaintiff passed through screening, and before he explicitly refused to give consent to open his bags (during the seizure in his arrival destination). The Cout notes that Aukai otherwise affirmed the permissible scope of the search as outlined in Davis. Id.

appellant's detention and confiscation of the currency at his arrival destination. Id. The Ninth Circuit found that "[t]o the extent that [appellant] was identified by FTS officials and reported to customs agents pursuant to an established policy of encouraging such reporting, the search can no longer be justified as an administrative search on the basis approved by us in Davis." Id. at 1247. In a footnote, the Ninth Circuit noted that its holding was not contrary to Canada, noting that, in Canada, there was no indication of a cooperative relationship between airport security and law enforcement officials or reward involved. Id. at 1247, n. 7. The court clarified that its holding should not preclude airport security "from reporting information pertaining to criminal activity, as would any citizen," because this would be "materially different [from situations] where the communication is undertaken pursuant to an established relationship, fostered by official policy, even more so where the communication is nurtured by payment of monetary rewards." Id. The court concluded the footnote by observing that, "[t]he line we draw is a fine one but, we believe, one that has constitutional significance." Id.

Synthesizing these cases, the Court finds that Plaintiff has not sufficiently alleged that his reasonable expectation of privacy was violated by the TSA's report to law enforcement. While the Ninth Circuit has not directly addressed the issue in this specific context, the cases described above firmly establish that Plaintiff had no reasonable expectation that the contents of his bag would not be exposed to TSA screeners when he went through airport security. Furthermore, these cases strongly imply that there was also no reasonable expectation that TSA would not disclose the presence of large amounts of cash to law enforcement. While the Ninth Circuit has found the Fourth Amendment is violated when the TSA has a paid cooperative scheme with law enforcement that encourages such reports, there are no allegations of such a scheme here. In fact, the Ninth Circuit has taken care to clarify that airport security officers should not be generally prevented "from reporting information

pertaining to criminal activity" to law enforcement if the evidence is discovered during the normal course of an otherwise reasonable and neutral screening. $124, 570 U.S. Currency, 873 F.2d at 1247, n.7. Notably, here Plaintiff does not allege that he was singled out for a more intensive screening or that the screening he went through was somehow impermissible.

To be sure, Plaintiff argues that he still maintained a reasonable expectation that the contents of his bag would not be disclosed to law enforcement because he should not expect TSA to disclose his belongings if there is no contraband, and there were no indicia that his large amount of cash was contraband or otherwise involved in criminal activity. However, as discussed above, the Ninth Circuit has clarified that airport security may report "information pertaining to criminal activity" in a similar case where a large quantity of cash was the only initial indication of potential criminal activity. $124, 570 U.S. Currency, 873 F.2d at 1247, n.7. This strongly suggests that the Ninth Circuit considers a large quantity of cash a reasonable item to report to law enforcement as potential evidence of a crime, provided that it was discovered in the course of an otherwise permissible search.

Indeed, the Court notes that the Ninth Circuit used the term "information pertaining to criminal activity," rather than "evidence of a crime" or "contraband." This reflects the understanding that, as Plaintiff argues, TSA officers are not necessarily in a position to decide whether a large quantity of cash is evidence of a crime. Nonetheless, they may report the presence of cash to law enforcement as potential indicia of criminal activity, just as any citizen could, if they observed it on the street.[5] And, just like the municipal police receiving a tip about something observed

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[5] The Ninth Circuit has explicitly adopted a similar interpretation of the TSA policy directive at issue here in at least one other case. See United States v. McCarty, 648 F.3d 820, 825, n.3 (9th Cir. 2011), as amended (Sept. 9, 2011) ("The item need not actually be contraband [for the TSA to report it to law enforcement]; Collins testified that screeners are required under the TSA policy to notify a law enforcement officer and turn the item over for further action if they simply 'feel it possibly could be contraband.' McCarty does not challenge the TSA policy on this matter.").

on the street, once TSA reports the information to law enforcement, it is up to the law enforcement agency to determine whether that information warrants taking any action. Importantly, as discussed below, it is law enforcement who is then held to the higher standard of reasonable suspicion or probable cause when acting based on the information that is reported to them. There is no such constitutional standard governing when a random citizen, or a TSA officer at a screening checkpoint, may or may not report information to law enforcement. Accordingly, it makes sense from a policy perspective that it is the law enforcement officers who act on information, rather than the reporter of the information, who should bear primary liability from any wrongs suffered as result of the perceived violation of privacy. Indeed, if TSA had reported information about Plaintiff's cash, and law enforcement had taken no action, Plaintiff presumably would not have any cause to instigate this suit. This demonstrates that the ultimate harm that Plaintiff seeks to remedy here is not the TSA's decision to reveal information that Plaintiff had volunteered to them, but rather the DEA's decision to detain him and ultimately seize his cash.[6]

Ultimately, as noted above, Plaintiff does not argue that the screening here was excessive in scope or improperly motivated. During this seemingly valid screening, TSA officers observed Plaintiff's large quantity of cash in plain view and subsequently reported the cash, along with Plaintiff's name and travel destination, to law enforcement as potential evidence of a crime. Plaintiff does not allege that the TSA was motivated by a paid cooperative scheme in place between the TSA and law enforcement. Under these circumstances, the Court's best interpretation of applicable

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[6] The Court emphasizes that it is not implying that the law enforcement officers themselves should be held liable for the specific tort of invasion of privacy. Rather, the Court simply reasons that it makes intuitive sense why there is no claim for invasion of privacy here, in part because the ultimate harm resulting from this alleged invasion of privacy is more properly redressed in a different context (e.g., Plaintiff's false arrest claim). See United States v. $557,933.89, More or Less, in U.S. Funds, 287 F.3d 66, 81–87 (2d Cir. 2002) (discussing the precise issue Plaintiff raises in the context of the alleged improper seizure of a large amount of money orders).

Ninth Circuit precedent compels the conclusion that the reporting of his cash to law enforcement did not violate Plaintiff's reasonable expectation of privacy. Accordingly, Plaintiff's allegations cannot sustain a claim for invasion of privacy under any applicable state law.

D. PLAINTIFF HAS FAILED TO STATE A CLAIM FOR TRESPASS TO CHATTELS

"Trespass to chattel . . . lies where an intentional interference with the possession of personal property has proximately caused injury." Thrifty–Tel, Inc. v. Bezenek, 46 Cal.App.4th 1559, 1566 (1996). "A mere momentary or theoretical deprivation of use is not sufficient unless there is a dispossession." Intel Corp. v. Hamidi, 30 Cal. 4th 1342, 1350–51 (2003) (citation omitted). As discussed above, the detention of goods exception to the FTCA bars Plaintiff's trespass to chattels claim to the extent it is based on total dispossession of his cash resulting from its detention. To the extent that Plaintiff's claim is based on the temporary dispossession resulting from the search and seizure of his bags, this would be insufficient to state a claim because temporary dispossession, without more, is insufficient to constitute an injury from trespass to chattel. See Lundquist v. United States, No. 22-55709, 2023 WL 5817635 (9th Cir. Sept. 8, 2023) (finding momentary deprivation of phone during TSO pat down was not trespass to chattels). Accordingly, Plaintiff has failed to state a claim for trespass to chattels.

E. PLAINTIFF HAS SUFFICIENTLY ALLEGED A CLAIM FOR FALSE ARREST

" '[F]alse arrest' and 'false imprisonment' are not separate torts. False arrest is but one way of committing a false imprisonment." Asgari v. City of Los Angeles, 15 Cal. 4th 744, 752 (1997). "The elements of a tortious claim of false imprisonment are: (1) the nonconsensual, intentional confinement of a person, (2) without lawful privilege, and (3) for an appreciable period of time, however brief." Lyons v. Fire Ins.

Exch., 161 Cal. App. 4th 880, 888 (2008) (quoting Easton v. Sutter Coast Hosp., 80 Cal. App. 4th 485, 496 (2000)).

Plaintiff alleges that he was falsely arrested when he was briefly detained at his arrival destinations. Specifically, Plaintiff alleges that he was told that he could not leave with his bags and that, despite his verbal objections, he must allow DEA officers to search his bags; due to the officers' tone and demeaner, Plaintiff did not believe he was free to leave. FAC ¶¶ 25–29, 49–54. While the seizure of Plaintiff's bags is not the focus here, given that any such claims would likely be barred by the detention of goods exception, the Court is inclined to find that the seizure of Plaintiff's bags would have effectively resulted in the detention of his person for some period of time. See United States v. Gonzalez-Moreno, No. 8:23CR02, 2023 WL 9547925, at *10–11 (D. Neb. Dec. 22, 2023) (remaining "unconvinced that Defendant felt free to leave while his bags were in the custody of law enforcement" and noting that the Supreme Court recognized that "the seizure of a traveler's luggage may also have the practical result of preventing an individual from leaving, therefore amounting to a seizure of their person as well"), report and recommendation adopted, No. 8:23CR2, 2024 WL 278470 (D. Neb. Jan. 25, 2024); United States v. Place, 462 U.S. 696, 708, n. 3 (1983) (noting that seizure of luggage "can effectively restrain the person since he is subjected to the possible disruption of his travel plans in order to remain with his luggage or to arrange for its return" and "[a]t least when the authorities do not make it absolutely clear how they plan to reunite the suspect and his possessions at some future time and place, seizure of the object is tantamount to seizure of the person. This is because that person must either remain on the scene or else seemingly surrender his effects permanently to the police."). It follows that Plaintiff has sufficiently alleged the first and third elements of a false arrest claim

Defendant argues that Plaintiff has failed to allege the second element of a false arrest claim because the DEA officers had reasonable suspicion to search his bags.

Dkt. 31 at 20–21. Defendant cites a case from the Second Circuit, where airport screeners briefly detained a passenger's luggage after observing a large amount of money orders. United States v. $557,933.89, More or Less, in U.S. Funds, 287 F.3d 66, 71 (2d Cir. 2002). In that case, airport security reported the orders to local law enforcement, who came two minutes later, inspected the money orders, and called a DEA agent. Id. Pursuant to DEA instructions, local law enforcement took possession of the money orders. Id. The court found that the initial detention was reasonable under the Fourth Amendment because the airport security personnel, even as laymen, had reasonable suspicion to briefly detain the claimant's luggage "to allow trained police officers to 'quickly confirm or dispel [that] suspicion.'" Id. at 81–87. The court based its finding on the volume of the money orders, "along with the fact that they were unsigned, undesignated, and in relatively small denominations." Id. at 85. The court found that these same facts gave local law enforcement probable cause to detain the money orders. Id. at 88–89. The court noted, however, that "a large sum of money is not by itself sufficient to establish probable cause," and placed significant weight on the fact that the sum in this case was represented by money orders of small denomination, which demonstrated evidence of intent to evade currency transaction reporting requirements. Id.

Here, Plaintiff has sufficiently alleged a lack of legal justification for his detention. Unlike United States v. $557,933.89, Plaintiff was not traveling with money orders. He was travelling with a large amount of cash; however multiple courts have held that a large amount of cash is not sufficient, on its own, to support a finding of probable cause. See, e.g., United States v. Currency, U.S. $42,500.00, 283 F.3d 977, 981–82 (9th Cir. 2002) ("A large amount of money standing alone, however, is insufficient to establish probable cause."). Furthermore, courts often hold that a large sum of cash can be considered suspicious, but it usually takes the presence of other suspicious facts to establish reasonable suspicion. See, e.g., United States v. 22,800.00

in U.S. Currency, No. CV 17-04611-SVW (AS), 2018 WL 2077945, at *3 (C.D. Cal. May 1, 2018) (quoting United States v. $22,474 in U.S. Currency, 55 F.Supp.2d 1007, 1012 (D. Ariz. 1999), aff'd, 246 F.3d 1212 (9th Cir. 2001)) (noting that "[t]he possession of a 'large sum of money' is 'strong evidence of some relationship with illegal drugs'" and finding agents had reasonable suspicion to detain currency, but also noting that the claimant provided evasive answers to agents questions and had previous drug convictions); United States v. Calderon, No. 2:19-CR-00035-ACA-JHE1, 2019 WL 6339916, at *7 (N.D. Ala. Oct. 21, 2019) (finding "[i]t was reasonable for [an officer] to infer that the large stack of cash amounted to a large sum of currency, and reasonable for him to consider that suspicious" in light of other suspicious facts, but distinguishing United States v. Snowden, No. CR 15-00134-CG, 2015 WL 5090703, at *3 (S.D. Ala. Aug. 26, 2015), where the court "dismissed each other indication of reasonable suspicion" and thus "effectively concluded that the large amount of cash, standing alone, could not support reasonable suspicion"), report and recommendation adopted, No. 2:19-CR-00035-ACA-JHE1, 2019 WL 6328905 (N.D. Ala. Nov. 26, 2019).

Here, Plaintiff alleges that TSA noticed his cash and reported the cash, along with his flight itinerary, to the DEA, who stopped him at his arrival destination—seemingly without conducting much further investigation, given that Plaintiff had registered both transactions with the U.S. Department of Treasury. FAC ¶¶ 10–13. 44–47. These allegations invite the inference that DEA stopped Plaintiff solely on the basis of the large sum of cash he had in his luggage. To find that Plaintiff has failed to allege that the DEA had no lawful basis to detain him on these facts would essentially require the Court to find that a large sum of cash, without more, can constitute reasonable suspicion. The Court will not take such a leap, particularly where several other courts have similarly refrained from doing so. Perhaps discovery may reveal the presence of other suspicious facts that, taken together with the cash,

may be sufficient to defeat this element of Plaintiff's false arrest claim. But at the pleading stage, the Court cannot conclude that Plaintiff's allegations are wholly insufficient to state a claim for false arrest.

F. DISMISSAL IS NOT WARRANTED BASED ON FAILURE TO EXHAUST OR IMPROPER VENUE

Defendant argues that Plaintiff's claims relating to the second incident—where Plaintiff was screened in Boston and detained in Dallas—should be dismissed for improper venue or for failure to exhaust administrative remedies.

1. Exhaustion

Because the government's waiver of sovereign immunity is contingent on the claimant first seeking resolution with the federal agency, this Court may not exercise subject matter jurisdiction under the FTCA until federal administrative remedies have been exhausted. See 28 U.S.C. § 2675(a); Brady v. United States, 211 F.3d 499, 502 (9th Cir.), cert. denied, 531 U.S. 1037 (2000). Accordingly, exhaustion must be affirmatively alleged in the complaint. Gillespie v. Civiletti, 629 F.2d 637, 640 (9th Cir. 1980) ("The timely filing of an administrative claim is a jurisdictional prerequisite to the bringing of a suit under the FTCA, and as such, should be affirmatively alleged in the complaint." (citations omitted)). It follows that, generally, subsequent receipt of a formal administrative denial does not cure a premature FTCA filing in district court. McNeil v. United States, 508 U.S. 106, 112 (1993).

Here, Plaintiff alleges two separate incidents in the FAC. Plaintiff filed his original complaint alleging only the first incident. See Dkt. 1. After the administrative remedies became exhausted as to the second incident,[7] Plaintiff amended his

[7] Administrative remedies are exhausted under the FTCA when a claim "is first presented to the appropriate Federal agency and one of the following conditions is met: the claim is finally denied, or six months have passed without a final resolution having been made." Burns v. United States, 764 F.2d 722, 724 (9th Cir. 1985); 28 U.S.C. § 2675(a). Here, Plaintiff added the claims relating to the second incident after six months passed from filing his administrative claim with no response.

complaint to include the second incident. See FAC. Defendant does not dispute that the administrative remedies for the first incident were exhausted at the time of filing of the original complaint, nor does Defendant dispute that administrative remedies for the second incident were exhausted at the time of filing the FAC. Rather Defendant argues that Plaintiff's inclusion of the claims regarding the second incident in the FAC was improper because the administrative remedies with respect to the second incident were not exhausted at the time of the original complaint—despite the fact that the original complaint did not even include the second incident.

The Court finds Defendant's argument unpersuasive. In Valdez-Lopez v. Chertoff, the Ninth Circuit granted a plaintiff leave to amend a complaint with FTCA claims where the original complaint, which contained other constitutional claims but no FTCA claims, had been filed before administrative remedies were exhausted as to the FTCA claims. 656 F.3d 851, 857 (9th Cir. 2011). The court reasoned that McNeil "ought not be read as preventing a plaintiff who wishes to state a number of federal and state law claims against an array of defendants from filing a complaint alleging common facts and amending it after exhaustion to state an additional claim under the FTCA" because "such a reading would require undue acrobatics" of plaintiffs. Id.

Here, as in Valdez-Lopez, Plaintiff filed a complaint that only alleged claims that were properly exhausted and amended the complaint to add further claims based on similar facts once those claims became exhausted. One meaningful distinction between this case and Valdez-Lopez is that the original complaint in Valdez-Lopez did not contain any FTCA claims, whereas the original complaint here contained only FTCA claims. However, the Court does not find this distinction dispositive. The important similarity is that, here, just as in Valdez-Lopez, the Court had jurisdiction over the distinct claims in Plaintiff's original complaint at the time of filing all the way up until Plaintiff filed the amended complaint (because the FTCA claims with respect to the first incident were exhausted at the time of filing the original complaint). This

is distinct from cases where plaintiffs prematurely file a complaint containing only unexhausted claims, and then later attempt to amend the complaint to cure the exhaustion issue. In those cases, the Court never had jurisdiction to begin with.

There is, however, one other meaningful distinction between Valdez-Lopez and this case that warrants discussion—the claims that Plaintiff has added allege separate, though substantially similar, conduct that appears to have taken place in airports in either Boston or Dallas, as opposed to the first incident, which is alleged to have occurred at least partially in Los Angeles. This presents the related, but distinct issue of whether the Central District of California is the proper venue for Plaintiff's claims related to the second incident. In any case, assuming this Court may serve as a proper venue for these claims, the Court finds that the claims should not be dismissed for being previously unexhausted. If venue is proper here, then, just as in Valdez-Lopez, Plaintiff's presumed course of action would be to file a new suit and subsequently move to consolidate it with this one, given the common law and facts. Just as in Valdez-Lopez, these "undue acrobatics" would "undermine the objectives of the exhaustion requirement as recognized by the Supreme Court and [district courts]: saving judicial resources and promoting settlement." Whitney v. United States, No. CV-11-2256-PHX-GMS, 2012 WL 1880609, at *3 (D. Ariz. May 22, 2012) (applying Valdez-Lopez in a case where the court dismissed a complaint containing FTCA claims for lack of exhaustion, but, upon the ripening of the claims, allowed the plaintiff to file an amended complaint in the same action instead of paying a filing fee to file a new complaint). The Court addresses the venue issue below.

2. Venue

As noted above, a party may move to dismiss a complaint for improper venue under Rule 12(b)(3), and if venue is improper, the court "shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought." 28 U.S.C. § 1406(a). "When there are multiple parties and/or

multiple claims in an action, the plaintiff must establish that venue is proper as to each defendant and as to each claim." Allstar Mktg. Grp., LLC v. Your Store Online, LLC, 666 F. Supp. 2d 1109, 1126 (C.D. Cal. 2009) (citation omitted). In determining whether venue is proper for a particular claim, courts are guided by the provisions of 28 U.S.C. § 1391, unless there is a special venue provision. See Johnson v. Payless Drug Stores Nw., Inc., 950 F.2d 586, 587 (9th Cir. 1991). For FTCA claims, venue is proper "in the judicial district where plaintiff resides or wherein the act or omission complained of occurred." 28 U.S.C. § 1402(b).

Here, there is no dispute that venue is proper in the Central District for the claims related to the first incident, give that Plaintiff alleges that he was detained upon arrival in Santa Ana, which is located in the Central District. As noted above, Defendant argues that venue is not proper for the claims related to the second incident because Plaintiff was initially screened in Boston and detained upon his arrival in Dallas, which raises the inference that none of the complained of acts occurred in the Central District.

Plaintiff appears to argue that the fact that his ultimate destination for his second flight was in the Central District justifies this Court exercising jurisdiction over his claims, even where the search and seizure occurred outside the district. Dkt. 34-1 at 13–14. The Court is not entirely persuaded by Plaintiff's logic, though it need not make a determination on this point now because the venue statute for FTCA claims provides another basis for venue in addition to the location of the acts alleged—the residence of the Plaintiff.

Here, Plaintiff alleges that he resides in California. FAC ¶ 4. Defendant argues that this may not be true, given that he provided a Florida address to the DEA when seeking the return of his cash. Dkt. 31 at 7. Plaintiff alleges that he simply has multiple addresses, though he does not produce any further evidence of his residence in California. Dkt. 34-1 at 13.

The Court notes that it has the discretion to hold Defendant's motion "in abeyance" until it holds an evidentiary hearing to establish Plaintiff's residence. See Cochran Firm P.C. v. McMurray, No. CV 12-05868-BRO (MRWx), 2014 WL 12564355, at *3 (C.D. Cal. Aug. 29, 2014) (citing Murphy, 362 F.3d at 1139). Alternatively, the court "may deny the Rule 12(b)(3) motion while granting leave to refile it if further development of the record eliminates any genuine factual issue." Id. Given that the Court has jurisdiction over Plaintiff's other claims related to the first incident anyway, the Court finds that the latter course would be more prudent and efficient here.

In coming to this conclusion, the Court also places some weight on the fact that "the obvious purpose behind [the] broad venue statute" for FTCA claims is to "protect the plaintiff from abuse by the United States forcing the plaintiff to litigate the controversy in an inconvenient forum." Dale v. United States, 846 F. Supp. 2d 1256, 1258 (M.D. Fla. 2012). Transferring[8] the claims related to the second incident would result in Plaintiff having to litigate two essentially identical actions against the same defendant in different states. This would obviously prejudice Plaintiff more than the government, and therefore, in light of the protective purpose of the FTCA special venue statute, the Court is reluctant to order this course of action.[9]

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[8] The Court notes that, if venue does not properly lie in the district where the action is filed, the Court can either dismiss the action, or transfer the action to the proper district, if it is in the interests of justice. 28 U.S.C. § 1406(a). If the Court found that one or more of Plaintiff's claims were not properly filed in this district, the Court would likely transfer them, rather than dismiss.

[9] The Court also notes that, under the pendent venue doctrine, where venue exists for the principal claim, federal courts may adjudicate closely related claims, even if there is no independent source of venue for the related claims. Adobe Sys. Inc. v. Childers, No. 5:10-CV-03571 JF/HRL, 2011 WL 566812, at *7 (N.D. Cal. Feb. 14, 2011) (citation omitted). Given that the claims related to the second incident are virtually identical to the claims related to the first incident, the Court would be inclined to adjudicate the claims related to the second incident under the pendent venue doctrine even if Plaintiff could not establish venue independently. However, there is a dispute as to whether the pendant venue doctrine should apply in FTCA cases. See Boggs v. United States, 987 F. Supp. 11, 18–19 (D.D.C. 1997) (noting that there is a strong negative presumption against finding pendent venue for FTCA claims, and refusing to find pendent venue because doing so would have "place[d] th[e] court in the position of circumventing otherwise clear congressional intent as to where FTCA claims are to be heard"); but see Serpico v. Laborers' Int'l Union of N. Am. (LIUNA), No. 95 C

Accordingly, the Court makes the preliminary finding that venue is proper in the Central District for all of Plaintiff's claims and therefore will deny Defendant's motion to dismiss for improper venue without prejudice to refiling if the record warrants it. As discussed above, this ruling also compels the conclusion that Plaintiff's claims should not be dismissed for failure to exhaust administrative remedies.

G. LEAVE TO AMEND

If a court finds the complaint should be dismissed for failure to state a claim, a court has discretion to dismiss with or without leave to amend. Lopez v. Smith, 203 F.3d 1122, 1126–30 (9th Cir. 2000) (en banc). Leave to amend should be granted if it appears possible the defects in the complaint could be corrected, especially if the plaintiff is pro se. Id. at 1130–31; see also Cato v. United States, 70 F.3d 1103, 1106 (9th Cir. 1995). However, if, after careful consideration, it is clear a complaint cannot be cured by amendment, a court may dismiss without leave to amend. Cato, 70 F.3d at 1105, 1107–11.

As discussed above, the Court finds that Plaintiff's invasion of privacy and trespass to chattels claims likely fall within one or more exceptions to the FTCA's waiver of sovereign immunity and therefore the Court lacks jurisdiction to hear these claims. Furthermore, to the extent that portions of any of these claims fall outside the exceptions, Plaintiff has failed to state a claim. The Court finds that Plaintiff will not be able to cure these deficiencies by amendment and thus dismisses these claims without leave to amend.

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0614, 1995 WL 479569, at *5 (N.D. Ill. Aug. 4, 1995) (applying pendent venue to claims with special venue provisions, reasoning that, while courts do not usually apply pendent venue in cases with specific venue provisions, "the general venue provision at 28 U.S.C. § 1391 seems to express Congressional intent no less than special venue provisions in particular statutes. If pendant venue serves to cure inefficiency and unfairness created by the general statutory rule, [the court] see[s] no reason why it should not cure the same ills in cases governed by statutory exceptions.").

V.

CONCLUSION AND ORDER

As discussed above, Plaintiff's invasion of privacy claims are either barred by the discretionary function exception or are subject to dismissal for failure to state a claim. Plaintiff's trespass to chattels claims are either barred by the detention of goods exception or subject to dismissal for failure to state a claim. Plaintiff's false arrest claims do not appear barred by any applicable exception, and Plaintiff has stated a claim. Finally, the Court finds that Plaintiff's remaining claims should not be dismissed for failure to exhaust or for improper venue.

IT IS THEREFORE ORDERED:

(1) Defendant's motion to dismiss, Dkt. 28, is **GRANTED** with respect to Claims Three, Four, Five, and Six;

(2) Claims Three, Four, Five, and Six are **DISMISSED** without leave to amend; and

(3) Defendant's motion is **DENIED** with respect to Claims One and Two. Defendant shall file a responsive pleading within fourteen days.

Dated: May 6, 2025

HONORABLE MARGO A. ROCCONI
United States Magistrate Judge