



APR 9 - 1975

United States District Court

FOR THE

SOUTHERN DISTRICT OF CALIFORNIA

CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
BY \_\_\_\_\_

CIVIL ACTION FILE NO. 74-301-T

ALBERT R. GARCIA et al,  
Plaintiffs

vs.

RAYMOND HOOBLER, Chief of Police,  
et al,  
Defendants

JUDGMENT

This action came on for trial (hearing) before the Court, Honorable HOWARD B. TURRENTINE, United States District Judge, presiding, and the issues having been duly tried (heard) and a decision having been duly rendered,

It is Ordered and Adjudged that defendant Chief of Police Hoobler's motion to dismiss is granted, with 30 days leave to amend.

IT IS ORDERED that defendant San Diego Port Commission's motion to dismiss is granted without leave to amend.

IT IS FURTHER ORDERED that defendants Nay's and Dick's motion for summary judgment is granted.

Dated at San Diego, California, this 7th day  
of April, 1975.

WILLIAM W. LUDDY  
Clerk of Court

By  
Cynthia M. Freeman

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FILED

APR 7 1975

CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

*Deputy Clerk*  
DEPUTY

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

ALBERT R. GARCIA, OSCAR MEZTA,  
individually and on behalf of  
all persons similarly situated;  
MEXICAN AMERICAN POLITICAL  
ASSOCIATION (MAPA), National  
City Chapter; UNITED CALIFORNIA  
MEXICAN AMERICAN ASSOCIATION, a  
non-profit organization; and  
MOVIMIENTO ESTUDIANTIL CHICANO  
DE AZTLAN (MECHA), Southwestern  
College Chapter,

Plaintiffs,

v.

RAYMOND HOOBLER, Chief of Police,  
City of San Diego; SAN DIEGO PORT  
COMMISSION; DON NAY, Chairman, San  
Diego Port Commission; WILLIAM L.  
DICK, Director Harbor Police Depart-  
ment,

Defendants.

No. 74-301-T

ORDER ON MOTIONS FOR  
SUMMARY JUDGMENT AND  
TO DISMISS

Background

Four individual Mexican Americans and four Mexican  
American political groups bring this action for declaratory  
relief and to enjoin the Chief of the San Diego City Police  
Raymond Hoobler, the San Diego County Sheriff John Duffy,  
and the San Diego Port Commission (as well as Don Nay as  
Chairman of the Commission and William Dick as Director of

1 the San Diego Port District's Harbor Police Department)  
2 from permitting their subordinates to engage in an alleged  
3 "pattern and practice" of interrogating, detaining, and  
4 arresting Mexican Americans and other Latins who were  
5 thought to be in the country illegally.

6 In the Court's Order on Motions for Summary  
7 Judgment and to Dismiss dated January 8, 1975, defendants  
8 Attorney General Saxbe, Williams, Coffman, Sheriff Duffy,  
9 Attorney General Younger, San Diego Port Commission, Chief  
10 of Police Hoobler, Nay and Dick were dismissed.

11 On February 7, 1975, the plaintiffs filed their  
12 amended complaint for injunctive and declaratory relief,  
13 naming as defendants, Chief of Police Raymond Hoobler,  
14 San Diego Port Commission, Don Nay as Chairman of the  
15 San Diego Port Commission, and William Dick as Director of  
16 the Harbor Police Department.

17 Subsequently, the defendants moved to dismiss or  
18 in the alternative for summary judgment. The hearing  
19 occurred March 17, 1975. At that time the Court took the  
20 matter under submission.

21  
22 I. DEFENDANT HOOBLER:

23 In the Court's January 8, 1975, order, the  
24 Court found that the pleadings were conclusory in nature.  
25 Under the guidelines set forth by the Ninth Circuit Court  
26 of Appeals in Finley v. Rittenhouse, 416 F.2d 1186, (9th  
27 Cir. 1969), the Court dismissed the complaint with leave  
28 to amend.

29 After reviewing the amended complaint, and  
30 after hearing the arguments of counsel, the Court is of  
31 the opinion that the pleadings are still conclusory and,  
32 thusly, inadequate.

1                   In the amended complaint the plaintiffs set  
2 forth six alleged incidents, none of which were related  
3 in time, place, or locale. The incidents are as follows:

4                   1) On January 7, 1973, Juan Luis Rodriguez and  
5 Expedito Madrigal were allegedly stopped, interrogated,  
6 detained, and arrested for a period of four hours by police  
7 officers and agents of the San Diego Police Department for  
8 the alleged purpose of determining and ascertaining their  
9 right to be or remain in the United States. The alleged  
10 event occurred at 9:05 A.M. in the San Ysidro area, a  
11 short distance north of the U.S. Port of Entry, in the  
12 vicinity of a major thoroughfare.

13                   2) On May 3, 1973, plaintiffs allege that  
14 officers of the San Diego Police Department entered the  
15 church school grounds of Our Lady of Guadalupe Church in  
16 the Logan Heights area, to stop and interrogate an  
17 instructor's aide concerning the right of members of  
18 instructor's class to remain in the United States.

19                   3) On June 23, 1973, plaintiff Oscar Mezta  
20 was allegedly stopped, interrogated, and detained by an  
21 officer of the San Diego Police Department as to Mezta's  
22 right to remain within the United States. The officer  
23 interrogated and allegedly prevented plaintiff from  
24 fixing his car. The officer threatened to arrest plain-  
25 tiff if he did not prove his citizenship. At that point  
26 plaintiff challenged the officer's basis for asking the  
27 questions. The officer allegedly grabbed plaintiff's  
28 arm. The aforementioned incidents occurred on some high-  
29 way within the San Diego area.

30                   4) On July 13, 1973, officers of the San Diego  
31 Police Department entered the Full Gospel Mission Church,  
32

1 located at 441 First Street, San Diego, and allegedly  
2 stopped, interrogated and detained seven persons who are  
3 members of plaintiffs' class, for the purpose of deter-  
4 mining and ascertaining whether or not the persons were  
5 illegally within the United States.

6 5) On July 18, 1973, officers of the San  
7 Diego Police Department conducted an alleged "dragnet"  
8 operation during which they allegedly stopped, interroga-  
9 ted and detained all persons of Latin appearance. The  
10 Court notes that this allegation is the epitome of conclu-  
11 sory allegations without a scintilla of fact proffered  
12 to support it.

13 6) On July 29, 1973, plaintiff Albert Garcia,  
14 while at the San Diego International Airport, Boarding  
15 Gate No. 9, was detained for interrogation by a Harbor  
16 Police Officer, who believed that plaintiff Garcia was  
17 an illegal alien. The Harbor Police Officer threatened  
18 to arrest plaintiff Garcia if he did not show proof of  
19 United States citizenship. The officer allegedly  
20 physically prevented plaintiff and his wife from proceeding  
21 to Boarding Gate No. 9; however, the Court notes that in  
22 fact plaintiff did not miss his flight.

23  
24 Plaintiffs' pleadings may be sufficient to state  
25 a claim for individual causes of action under 42 U.S.C.  
26 §1983, but the Court notes that the plaintiffs in the  
27 instant cases are seeking to state a claim of an alleged  
28 "pattern and practice" of infringement of constitutional  
29 rights. Guidelines have been set forth as to what must  
30 be alleged in the pleadings to establish a "pattern and  
31 practice" lawsuit. See, Council of Organizations on  
32 Philadelphia Police Accountability and Responsibility et al.

1 v. L. Rizzo et al., 357 F.Supp. 1289 (E.D. Penn. 1973);  
2 W. Lewis et al. v. F. Kugler, 446 F.2d 1343, (3rd Cir.  
3 1971); H. Wecht et al. v. Marsteller et al., 363 F.Supp.  
4 1183 (W.D. Penn. 1973); Lankford v. Gelston, 364 F.2d  
5 197 (4th Cir. 1966); T. Schnell v. City of Chicago, 407  
6 F.2d 1084 (7th Cir. 1969).

7 In the above cited cases the "pattern and  
8 practice" is established by either a showing of numerous  
9 offenses perpetrated by a single officer or group of  
10 officers, or by a showing of a large number of incidents  
11 tending to evidence the effectuation of a plan conceived  
12 by high ranking officials.

13 The instant case presents only six separate  
14 incidents over a six months' period, which occurred  
15 in totally unrelated locales. While the Court cannot  
16 state a magic number of incidents which must be pleaded  
17 to state a claim, the Court finds that the six incidents  
18 pleaded herein fail to establish a "pättern and practice"  
19 of detaining, interrogating, and arresting plaintiffs  
20 solely on the basis of their Latin appearance.

21 Therefore, defendant Chief of Police Hoobler's  
22 motion to dismiss is hereby granted, with 30 days' leave  
23 to amend.

24  
25 II. DEFENDANT SAN DIEGO PORT COMMISSION:

26 As set forth in the January 8, 1975, opinion  
27 of the Court, there are two possible jurisdictional bases  
28 for equitable relief against the Port Commission: 28  
29 U.S.C. §1343 in conjunction with a cause of action under  
30 42 U.S.C. §1983; and 28 U.S.C. §1331 in conjunction with  
31 an implied cause of action.

32 Regarding the 42 U.S.C. §1983 jurisdictional

1 basis, the Court reaffirms its prior holding at page 10  
2 of the January 8, 1975, order wherein the Court stated  
3 that: "As a subdivision of the state, it (Port Commis-  
4 sion) is not subject to a suit for injunction under  
5 §1983."

6 Regarding the 28 U.S.C. §1331 jurisdictional  
7 basis, the Court cites and reaffirms its earlier position  
8 at pages 13-16 of the January 8, 1975, opinion, wherein the  
9 Court stated:

10 The other potential bar to a claim under  
11 §1331 is the jurisdictional amount. In  
12 injunction suits, the amount in controversy  
13 is not the amount that the plaintiff might  
14 recover at law, but rather the value of the  
15 right to be protected or the extent of the  
16 injury to be prevented. . . .

17  
18 The courts have followed widely divergent  
19 courses in attempting to measure the value  
20 of fundamental constitutional rights. Some  
21 courts have denied jurisdiction on the ground  
22 that it is impossible to assign a dollar value  
23 to basic constitutional rights, while other  
24 courts have found jurisdiction on the belief  
25 that these same rights are worth \$10,000  
26 almost by definition. . . .

27  
28 The Court also stated at pages 15-16 of the January 8,  
29 1975, opinion that:

30 The constitutional rights allegedly  
31 violated in the case sub judice are more  
32 easily susceptible to valuation than



1 the intangible right of free speech.  
2 Illegal interrogations, detentions,  
3 and arrests may have a close similarity  
4 to common law torts like false imprison-  
5 ment, false arrest, battery, and assault,  
6 and may be evaluated accordingly. Measured  
7 by this standard, the complaint in this  
8 case offers hardly a jot of evidence that  
9 Albert Garcia, the class representative,  
10 was injured in the amount of \$10,000.

11 The Court dismissed the first complaint with  
12 leave to file an amended complaint asserting facts  
13 giving rise to a colorable claim of \$10,000. In their  
14 amended complaint, the plaintiffs allege that there was  
15 a 15 minute detention and that there was slight physical  
16 force used to detain the plaintiff. In spite of the  
17 amended allegations by the plaintiffs, the Court finds  
18 that the allegations still do not equate with a \$10,000  
19 amount in controversy. Thus, the Court lacks subject  
20 matter jurisdiction over the action regarding the San  
21 Diego Port Commission.

22 Therefore, the Court hereby grants defendant  
23 Port Commission's motion without leave to amend.

24  
25 III. DEFENDANTS DON NAY and WILLIAM DICK

26 Defendants Nay and Dick made a motion to dismiss  
27 or in the alternative for summary judgment. Plaintiffs  
28 had ample notice and opportunity to answer both the motion  
29 to dismiss and the motion for summary judgment. The  
30 Court has considered both the pleadings and the proffered  
31 affidavits. Therefore, in accordance with the rule set  
32 forth by the Ninth Circuit Court of Appeals in Costen

1 v. Pauline's Sportswear, Inc., 391 F.2d 81 (9th Cir.  
2 1968), the Court must convert defendant's motion to dis-  
3 miss into a motion for summary judgment.

4 Under the appropriate circumstances the Court  
5 may grant a summary judgment in an action under the Civil  
6 Rights Act. Ryan v. Scoggin, 245 F.2d 54 (10th Cir.  
7 1957); Sarelas v. Porikos, 320 F.2d 827 (7th Cir. 1963).

8 In the instant case plaintiffs allege one  
9 instance of Harbor Police involvement in the alleged  
10 "pattern and practice." The one instance alleged does  
11 not contain any facts which lead to the belief that  
12 there will continue to be a threat or that there is any  
13 pattern, practice, or policy of the San Diego Unified Port  
14 District, the Harbor Police, Nay or Dick.

15 In Council of Organizations on Philadelphia  
16 Police Accountability and Responsibility et al., v. L.  
17 Rizzo, et al., supra; Lankford v. Geltson, supra; T.  
18 Schnell v. City of Chicago, supra; H. Wecht et al., v.  
19 Marsteller et al., supra; W. Lewis et al., v. F. Kugler,  
20 supra, the respective courts set forth guidelines for  
21 establishing a viable "pattern and practice" case. The  
22 six incidents alleged fail to follow those guidelines  
23 and are isolated as to time, place, and locale.

24 Therefore, the Court finds that there is no  
25 genuine issue as to any material fact and that defendants  
26 Don Nay and William Dick are entitled to judgment as a  
27 matter of law.

28 Defendants' Nay and Dick's motion for summary  
29 judgment is hereby granted.

30 In summation the Court:

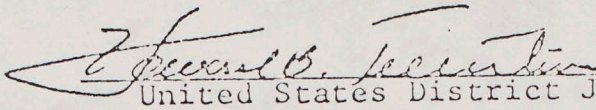
31 a) Grants defendant Chief of Police Hoobler's  
32

1 motion to dismiss, with 30 days leave to amend;

2 b) Grants defendant San Diego Port Commission's  
3 motion to dismiss without leave to amend;

4 c) Grants defendants Nay and Dick's motion for  
5 summary judgment.

6 DATED: April 4, 1975.

7  
8   
9 United States District Judge

10  
11  
12  
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14  
15 COPY TO:

16 Joaquin G. Avila, Esq.  
17 Mexican American Legal Defense and  
18 Educational Fund  
19 145 Ninth Street  
20 San Francisco, California 94103

21 Frank Garcia, Esq.  
22 11229 E. Valley Blvd.,  
23 El Monte, California 91731

24 Albert F. Moreno, Esq.  
25 348 West Market St.,  
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27 Ted Bromfield, Deputy City Atty  
28 City Administration Building  
29 202 C Street  
30 San Diego, Ca 92101

31 Joseph D. Patello, Port Attorney  
32 San Diego United Port District  
San Diego, CA 92112

McInnis, Fitzgerald, Rees & Sharkey  
1301 U.S. National Bank Bldg.,  
San Diego, California 92101

Oscar Mezta et al VS. Raymond Hoobler

74-301-T

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

WILLIAM W. LUDDY  
CLERK

OFFICE OF THE CLERK  
U. S. COURT HOUSE  
SAN DIEGO, CALIFORNIA 92101

SEE Attached List

RE:

You are hereby notified that the court grants defendant Hoobler's  
motion for Summary Judgment.

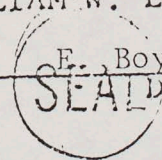
in each of the above-entitled cases was Filed Entered on

X copy enclosed copy not enclosed.

When the time for appeal has expired (without appeal being taken),  
counsel must arrange for pickup of their exhibits without further  
notice. Unless you respond within thirty days, they will be destroyed  
or otherwise disposed of pursuant to Local Rule 20 (a).

I hereby certify that this notice was mailed on 8-7-75.

WILLIAM W. LUDDY, Clerk

By E. Boyer  
 Deputy Clerk

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Los Angeles, Ca 90022

Alfred F. Moreno  
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Suite 100  
San Diego, Ca 92101

FILED

(CIV 32 (7-63))

ENTERED ON BY THE COURT

AUG 7 1975

United States District Court

AUG 7 1975

CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

FOR THE

CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

DEPUTY

SOUTHERN DISTRICT OF CALIFORNIA

BY OSCAR MEZTA, on behalf of all  
persons similarly situated;  
MEXICAN AMERICAN POLITICAL  
ASSOCIATION (MAPA), National  
City Chapter; UNITED CALIFORNIA  
MEXICAN AMERICAN ASSOCIATION, a  
nonprofit organization; and  
MOVIMIENTO ESTUDIANTIL CHICANO  
DE AZTLAN (MECHA), Southwestern  
College Chapter; CASA JUSTICIA,  
an unincorporated association,  
v.

CIVIL ACTION FILE NO. 74-301-T

JUDGMENT

RAYMOND HOOBLER, Chief of Police,  
City of San Diego,

This action came on, for ~~xxxx~~ (hearing) before the Court, Honorable HOWARD B.

TURRENTINE, United States District Judge, presiding, and the issues having been duly ~~xxxx~~  
(heard) and a decision having been duly rendered,

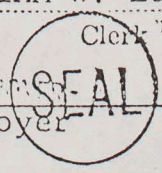
It is Ordered and Adjudged

that the Court grants defendant Hoobler's motion for summary  
Judgment.

Dated at San Diego, California, this 7th day  
of August, 1975.

WILLIAM W. LUDDY  
Clerk of Court

By E. Boyer  
E. Boyer



FILED

AUG 7 1975

CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
BY DEPUTY

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

OSCAR MEZTA, on behalf of all  
persons similarly situated;  
MEXICAN AMERICAN POLITICAL  
ASSOCIATION (MAPA), National  
City Chapter; UNITED CALIFORNIA  
MEXICAN AMERICAN ASSOCIATION, a  
nonprofit organization; and  
MOVIMIENTO ESTUDIANTIL CHICANO  
DE AZTLAN (MECHA), Southwestern  
College Chapter; CASA JUSTICIA,  
an unincorporated association,

Plaintiffs,

v.

RAYMOND HOOBLER, Chief of Police,  
City of San Diego,

Defendant.

No. 74-301-T

ORDER GRANTING MOTION  
FOR SUMMARY JUDGMENT

Background:

One individual Mexican American and four Mexican American political groups bring this action for declaratory relief and to enjoin the Chief of the San Diego City Police Raymond Hoobler from permitting his subordinates to engage in an alleged "pattern and practice" of interrogating, detaining, and arresting Mexican Americans and other Latins who were thought to be in the country illegally.

In the Court's Order on Motions for Summary Judgment and to Dismiss dated January 8, 1975, defendants

1 Attorney General Saxbe, Williams, Coffman, Sheriff Duffy,  
2 Attorney General Younger, San Diego Port Commission, Chief  
3 of Police Hoobler, Nay and Dick were dismissed.

4 On February 7, 1975, the plaintiffs filed their  
5 amended complaint for injunctive and declaratory relief,  
6 naming as defendants, Chief of Police Raymond Hoobler, San  
7 Diego Port Commission, Don Nay as Chairman of the San Diego  
8 Port Commission, and William Dick as Director of the Harbor  
9 Police Department.  
10

11 Subsequently, the defendants moved to dismiss  
12 or in the alternative for summary judgment. The hearing  
13 occurred March 17, 1975. On April 7, 1975, this Court  
14 entered an order wherein the motions of defendants San  
15 Diego Port Commission, Don Nay, and William Dick, were  
16 granted without leave to amend, and defendant Hoobler's  
17 motion to dismiss was granted with 30 days leave to amend.

18 On May 12, 1975, plaintiffs Oscar Metza, Mexican  
19 American Political Association, United California Mexican  
20 American Association, Movimiento Estudiantil Chicano De  
21 Aztlan, and Casa Justicia, filed their second amended  
22 complaint for injunctive and declaratory relief.

23 Subsequently, defendant Chief of Police Hoobler  
24 noticed a motion to dismiss, or in the alternative for  
25 summary judgment for June 9, 1975. During the hearing,  
26 counsel for defendant Hoobler brought to the Court's  
27 attention the fact that the plaintiffs had submitted no  
28 affidavits in contravention to those filed by defendant  
29 pursuant to Fed.R.Civ.P. 56. The Court at that time  
30 granted plaintiffs an extension of time until June 20,  
31 1975 by which time they were to have their opposing affidavit  
32



1 filed. It appears from the record now before the Court  
2 that plaintiffs have failed to proffer any opposition  
3 affidavits in accordance with Fed.R.Civ.P. 56(e), and  
4 therefore the Court enters the following order:

5 I. DEFENDANT HOOBLER:

6 In the Court's January 8, 1975, order, the Court  
7 found that the pleadings were conclusory in nature. Under  
8 the guidelines set forth by the Ninth Circuit Court of  
9 Appeals in Finley v. Rittenhouse, 416 F.2d 1186 (9th Cir.  
10 1969), the Court dismissed the complaint with leave to  
11 amend. Again on April 7, 1975, the Court entered an order  
12 reiterating the earlier holding, that the allegations in  
13 the complaint were too conclusory and thus, inadequate. On  
14 May 12, 1975 the plaintiffs filed their second amended  
15 complaint for injunctive and declaratory relief.  
16

17 After reviewing the second amended complaint, and  
18 after hearing the arguments of counsel, the Court is of the  
19 opinion that plaintiffs have added no substance to the bare  
20 bone conclusory allegations which were alleged in the first  
21 amended complaint. Thus, the Court finds the pleadings to  
22 be inadequate.

23 In this final order of dismissal for failure to  
24 state a claim upon which relief can be granted, it is the  
25 Court's feeling that the earlier orders of January 8, 1975,  
26 and April 7, 1975, shed considerable light on the rationale  
27 underlying the instant dismissal. In the Court's Order on  
28 Motions for Summary Judgment and to Dismiss, dated April 7,  
29 1975, the Court stated at page 4-5:

30 Plaintiffs' pleadings may be sufficient to  
31 state a claim for individual causes of action  
32 pursuant to 42 U.S.C. §1983, but the Court

1 notes that the plaintiffs in the instant  
2 case are seeking to state a claim of an  
3 alleged "pattern and practice" of infringe-  
4 ment of constitutional rights. Guidelines  
5 have been set forth as to what must be  
6 alleged in the pleadings to establish a  
7 "pattern and practice" lawsuit. See,  
8 Council of Organizations on Philadelphia  
9 Police Accountability and Responsibility  
10 et al v. Rizzo et al., 357 F.Supp. 1289  
11 (E.D. Pa.1973); Lewis et al v. Kugler,  
12 446 F.2d 1343 (3d Cir. 1971); Wecht et al.  
13 v. Marsteller et al., 363 F.Supp. 1183  
14 (W.D.Pa. 1973); Lankford v. Geleston, 364  
15 F.2d 197 (4th Cir.1966); Schnell v. City  
16 of Chicago, 407 F.2d 1084 (7th Cir. 1969).

17  
18 In the above cited cases the "pattern and  
19 practice" is established by either a show-  
20 ing of numerous offenses perpetrated by a  
21 single officer or a group of officers, or  
22 by a showing of a large number of incidents  
23 tending to evidence the effectuation of a  
24 plan conceived by high ranking officials.

25  
26 The instant case presents only six separate  
27 incidents over a six months' period, which  
28 occurred in totally unrelated locales. While  
29 the Court cannot state a magic number of in-  
30 cidents which must be pleaded to state a claim,  
31 the Court finds that the six incidents pleaded  
32

1                   herein fail to establish a "pattern and  
2                   practice" of detaining, interrogating,  
3                   and arresting plaintiffs solely on the  
4                   basis of their Latin appearance.

5                   The Court's position has not changed since the April 7, 1975,  
6                   order, and the plaintiff has proffered nothing in the way  
7                   of substance to the Court to alter the Court's opinion  
8                   regarding the conclusory nature of the allegations. There-  
9                   fore, the Court finds that there is no genuine issue as to  
10                  any material fact and that the defendant is entitled to a  
11                  judgment as a matter of law.

12                  Additionally, as discussed earlier in this order,  
13                  at the time of the hearing on June 9, 1975, defendant  
14                  Hoobler raised the fact that plaintiffs had failed to  
15                  proffer affidavits to the Court which were in contravention  
16                  to the defendant's affidavits on file. At that time the  
17                  Court granted plaintiff a 10 day extension, during which  
18                  time plaintiff could, if he so wished, file counter affi-  
19                  davits in accordance with Fed.R.Civ.P. 56(e) In Fed.R.Civ.P.  
20                  56(e), it is stated that:

21                                   . . . . When a motion for summary judgment is  
22                                   made and supported as provided in this rule,  
23                                   an adverse party may not rest upon the mere  
24                                   allegations or denials of his pleading, but  
25                                   his response, by affidavits or as otherwise  
26                                   provided in this rule, must set forth specific  
27                                   facts showing that there is a genuine issue for  
28                                   trial. If he does not so respond, summary  
29                                   judgment, if appropriate, shall be entered  
30                                   against him.  
31  
32

1           See, 6 J. Moore, Federal Practice ¶56.22[2] at 2822, wherein  
2 it is stated:

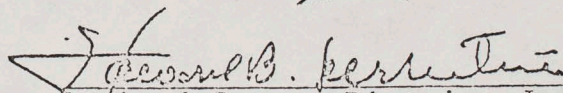
3           And while pleadings are to be construed  
4 liberally in favor of the pleader on a motion  
5 to dismiss or for judgment on the pleadings,  
6 when such a motion is turned into a motion  
7 for summary judgment the party opposing summary  
8 judgment must normally disclose the merits of  
9 his case or defense; and his failure to do so  
10 ends his entitlement to the rule of liberally  
11 construing the pleadings in his favor. Inter-  
12 national Longshoremen's and Warehousemen's  
13 Union v. Kuntz, 334 F.2d 165 (9th Cir. 1964).

14  
15           Plaintiff has failed to proffer any affidavits  
16 in contravention of defendant's affidavits. Therefore,  
17 the Court finds an additional rationale for the granting of  
18 summary judgment in favor of the defendant.

19 In Summation:

20  
21           the Court grants defendant Hoobler's motion for  
22 summary judgment.

23           DATED: August 6, 1975.

24  
25             
26           United States District Judge

27  
28           COPY TO: ALL COUNSEL