

physical touching of plaintiff's truck, which are the only two remaining claims against the defendants. The court also finds that the plaintiff is not entitled to summary judgment on any of his claims, and therefore denies the same.

A. BACKGROUND

Mr. Mendia has only two remaining claims, invasion of privacy and trespass to chattels.

Mr. Mendia came into possession of Abby Harman's cell phone and had it with him in his truck on Sunday, March 8, 2015, as he was driving in Wichita, Kansas. With the help of two companions, Ms. Harman successfully tracked the location of her cell phone through a GPS tracking application. Mr. Mendia's preeminent contention is that Mr. Moyer and Ms. Harman's use of the "Find iPhone app" invaded his privacy when the signal entered his vehicle while operating it on the public roadways and in a Wal-Mart parking lot.

The heart of Mr. Mendia's trespass to chattel claim is that Mr. Moyer and Ms. Harman trespassed into his truck by use of the GPS signal emanating from their "Find iPhone app", and that they altered or hindered his freedom to move his truck around freely.

B. SUMMARY JUDGMENT STANDARDS

The parties have asserted the proper standards for summary judgment. Summary judgment is appropriate where the pleadings, depositions, answers to interrogatories and admissions on file, together

with affidavits, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. *Robbins v. City of Wichita*, 285 Kan. 455, 460, 172 P.3d 1187 (2007); *State ex rel Stovall v. Reliance Ins. Co.*, 278 Kan. 777, 788, 107 P.3d 1219 (2005); *Lehman v. City of Topeka*, 50 Kan. App. 2d 115, 118, 323 P.3d 867 (2014).

When opposing a motion for summary judgment, an adverse party must come forward with evidence to establish a dispute as to a material fact. In order to preclude summary judgment, the facts subject to the dispute must be material to the conclusive issues in the case. *Bergstrom v. Noah*, 266 Kan. 847, 871, 974 P.2d 531 (1999). An issue of fact is not genuine unless it has legal controlling force as to the controlling issue. The disputed question of fact which is immaterial to the issue does not preclude summary judgment. If the disputed fact, however resolved, could not affect the judgment, it does not present a genuine issue of material fact. *Id.* at 872. If there are no factual disputes among the parties, summary judgment is appropriate. See *Lehman*, 50 Kan. App.2d at 118.

Summary judgment is proper where the only question or questions presented are questions of law. *Fletcher v. Nelson*, 253 Kan. 389, 391, 855 P.2d 940 (1993).

The trial court is required to resolve all facts and inferences that may reasonably be drawn from the evidence in favor of the party against whom the ruling is sought. *Robbins v. City of Wichita*, 285 Kan. 455, 460, 172 P.3d 1187 (2007); *State ex rel Stovall v. Reliance Ins. Co.*, 278 Kan. 777, 788, 107 P.3d 1219 (2005). When opposing a motion for summary judgment, an adverse party must come forward with evidence

to establish a dispute as to a material fact. 285 Kan. at 460. In order to preclude summary judgment, the facts subject to the dispute must be material to the conclusive issues of the case. *Id.*

Where reasonable minds could differ as to the conclusions drawn from the evidence, summary judgment must be denied. *Scott v. Hughes*, 281 Kan. 642, 644, 132 P.3d 889 (2006).

A party seeking summary judgment has the obligation to show, based on appropriate evidentiary materials, there are no disputed issues of material fact and judgment may, therefore, be entered in its favor as a matter of law. In addressing a request for summary judgment, the trial court must view the evidence most favorably to the party opposing the motion and give that party the benefit of every reasonable inference that might be drawn from the evidentiary record. *Golden v. Den-Mat Corp.*, 47 Kan. App. 2d 450, Syl. 1, 276 P.3d 773 (2012).

When considering a summary judgment motion, the court must refrain from the temptation to pass on credibility and to balance and weigh evidence, which are proper functions for the factfinder at trial. *Esquivel v. Watters*, 286 Kan. 292, 295-96, 183 P. 3d 847 (2006). In short, summary judgment should not be used to prevent the necessary examination of conflicting testimony and credibility in the crucible of a trial. *Id.*

An issued of fact is genuine when it has legal controlling force as to the controlling issue. A disputed question of fact that is immaterial to the issue does not preclude summary judgment. If a disputed fact, however resolved could not affect the judgment, it does not present a genuine issue of material fact. *Muhl v. Bohi*, 37 Kan. App. 2d 225, 229, 152 P.3d 93 (2007).

C. THE FACTS:

Kansas Supreme Court Rule 141 sets forth the Summary Judgment requirements. When responding to a motion for summary judgment, the responding party must identify which parts of the movants' factual contentions are controverted, and provide references to that portion of the record on which the he relies. After reviewing the defendants' motion for summary judgment and Mr. Mendia's responses, granting him some latitude on his denials, the court adopts the following statements of uncontroverted facts, and finds that there is no genuine issue of material fact as to the following:

1. On March 8, 2015, plaintiff came into possession of an iPhone from a client from Homeless Search Corporation.
2. If it was not a Sunday, plaintiff would have taken the cell phone to the police to find the rightful owner.
3. On March 8, 2015, defendant Abby Harman believed her iPhone was lost or stolen and logged into her iCloud account from defendant Shane Moyer's phone in order to use the "Find iPhone app". This statement is not controverted in any relevant way.
4. Defendants got into Defendant Moyer's vehicle in order to locate Abby Harman's lost or stolen iPhone. Mr. Mendia is correct that Casey Bauer was also in the vehicle, and the court has taken note of that, but it is immaterial for the purposes of this motion, except as set forth below.

5. Defendant Moyer was driving his vehicle and Casey Bauer was his front seat passenger and defendant Harman was seated in the back of his vehicle. This statement is not controverted in any relevant or material way.

6. In attempting to locate the iPhone, the defendant Moyer pulled up to the plaintiff's vehicle. It is controverted that Mr. Mendia showed the defendants the iPhone.

7. Plaintiff refused to give the defendants the iPhone and stated they could follow him to the police station. It is controverted that rather than go to the police station, plaintiff sped off.

8. The defendants recovered the phone from the plaintiff. The rest of paragraph 8 is controverted.

9. Plaintiff remained in the vehicle during the entire time the defendants were tracking the phone that belonged to Abby Harman. Mr. Mendia asserts that during this time he was on public roadways, then in the Wal-Mart parking lot, which he contends is private property.

10. Defendant Moyer never exited his vehicle and never entered plaintiff's vehicle.

11. Defendant Harman never entered plaintiff's vehicle.

12. Neither defendant Harman or Moyer assaulted plaintiff.

13. Mr. Mendia admitted several times in his deposition, on pages 91, 92 and 94, that the basis for his invasion of privacy claim is that defendants' use of the "Find iPhone app" invaded the privacy within his vehicle while operating it on the public roadways.

In his amended motion for summary judgment filed August 6, 2018, Mr. Mendia alleged that the defendants invaded his privacy by activating the "Find my Phone App"

which caused a tangible electronic signal to penetrate his truck, which caused an Iphone in his custodial possession to respond with its own electronic tangible signal to emanate from inside his truck with his speed, direction and real-time location. He alleges no other reasons for his invasion of privacy claim in his amended motion for Summary Judgment.

In his pretrial questionnaire, Mr. Mendia based his invasion of privacy claim on the following: "Mr. Mendia was in his zone of privacy. The GPS had penetrated his chattel causing Iphone to reveal private affairs. That revelation led the vigilantes to the plaintiff's location destroying his constitutional rights, and he was robbed of possession of the cell phone before a lawful determination by the police or courts could be made." He alleges no other reasons for his invasion of privacy claim in the pretrial questionnaire.

It is noted that in his response to the defendants' motion for summary judgment, Mr. Mendia claims that by use of their vehicle, the defendants isolated him from the other traveling vehicles, and interfered with his anonymity while on a public roadway. The court will consider this argument for purposes of this summary judgment motion, although not properly raised by Mr. Mendia.

14. In his response to the defendants' motion for summary judgment, Mr. Mendia states that "The actual basis of the trespass to chattel claim is that defendants had no legal or lawful right to trespass, or act as vigilantes. It had become a police matter. The defendants trespassed INTO plaintiff's vehicle by using the GPS signal generated by the 'Find My

iPhone App', then physically trespassed INTO plaintiff's vehicle to steal the phone, prior to police involvement."

The plaintiff stated in his deposition that the basis for his trespass to chattel claim is that defendants' trespassed into his truck by use of the GPS signal connected with the "Find iPhone app" and by impeding his freedom to move around.

In his amended motion for summary judgment, Mr. Mendia alleges that the trespass occurred when a tangible electronic wave signal penetrated into his truck. He claimed that the GPS wave signal is tangible enough to be a physical intrusion and that this violated his constitutional right to be secure in his chattel, having exclusive possession.

In his pretrial questionnaire, Mr. Mendia alleged that the defendants continued to track the cell phone when they saw it in motion, presuming it to be in someone's possession. He claimed that Mr. Moyer did not have a legal right to continue such stalking. Mr. Mendia provides no other reasons for his trespass to chattels claim in the pretrial questionnaire.

It is noted that Mr. Mendia also claims that he was subjected to GPS radiation signals. The court will also consider this argument for purposes of this summary judgement motion.

It is also noteworthy that Mr. Mendia claims that only Casey Bauer touched his truck and/or entered his truck. He never claims that Ms. Harman or Mr. Moyer touched his truck and/or entered his truck.

D. The Defendants' motion to dismiss the Plaintiff's invasion of privacy claim is granted.

1. The law on invasion of privacy claims is set forth in PIK-Civil 4th, 127.61, which provides:
 - a. The right of privacy is the right to be let alone.
 - b. In order to constitute an invasion of the right of privacy, the act must be of such a nature that would cause mental distress or injury to a person having ordinary feelings and intelligence.
2. Generally, invasion of privacy is actionable where there is: (1) unreasonable intrusion upon the seclusion of another; (2) appropriation of another's name or likeness; (3) unreasonable publicity given to another's private life; or (4) publicity that unreasonably places another in a false light before the public. *Finlay v. Finlay*, 18 Kan. App.2d 479, 485-486, 856 P.2d 183 (1993), citing Restatement (Second) of Torts, Section 652A.
3. Items 2, 3 and 4 above are not factually relevant, have not been alleged, and are not germane. The only issue from *Finlay* is whether there has been an unreasonable intrusion upon Mr. Mendia's seclusion.
4. One who intentionally intrudes upon the solitude or seclusion of another is subject to liability to the other for invasion of his privacy if the intrusion would be highly offensive to a reasonable person. See *Finlay* at 486.
5. There is no liability or intrusion upon the seclusion unless interference with the plaintiff's seclusion is a substantial one, of a kind that would be highly offensive to the ordinary reasonable

person, as a result of conduct to which the reasonable person would strongly object. *Id.*

6. The essence of claims for unreasonable intrusion upon seclusion is that an individual's right to be left alone is interfered with by the defendant's physical intrusion, or by an intrusion of the defendant using his or her sensory faculties, *Finlay* at 486, citing Comment b of the Restatement (Second) of Torts, Section 652B, which reads as follows:

“The invasion may be by physical intrusion into a place in which the plaintiff has secluded himself, as when the defendant forces his way into the plaintiff's room in a hotel or insists over the plaintiff's objection in entering his home. It may also be by the use of the defendant's senses, with or without mechanical aids, to oversee or overhear the plaintiff's private affairs, as by looking into his upstairs windows with binoculars or taping his telephone wires. It may be by some other form of investigation or examination into his private concerns, as by opening his private and personal mail, searching his safe or his wallet, examining his private bank account, or compelling him by a forged court order to permit an inspection of his personal documents.”

7. Kansas courts rely heavily on the Restatement (Second) of Torts, and frequently cite it as a guiding principle.
8. In the *Finlay* case, the only intrusion alleged is that of the smell caused by the activities conducted on defendant's property, and the court found no invasion of privacy.
9. In addition to the *Finlay* case, there are a number of Kansas Cases that help crystallize the issue and lead to the conclusion

that Mr. Mendia's complains do not constitute invasion of privacy.

10. After a bench trial in *Moore v. R.Z. Sims Chevrolet-Subaru, Inc.* 241 Kan. 542, 738 P.2d 852 (1987), the court found that the defendant's employee's actions in entering the kitchen-office area of the plaintiff's business was not such a substantial intrusion upon the plaintiff's employee's seclusion as to entitle recovery for intrusion upon seclusion.
11. In *Froelich v. Werbin*, 219 Kan. 461, 548 P.2d 482 (1976), the court's directed verdict held that the plaintiff's privacy was not invaded by a defendant who hired a hospital orderly to enter the plaintiff's hospital room and obtain a sample of his hair.
12. In *Houck v. Corrections Corporation of America*, 2017 WL747847 (D. Kan. 2017), the incarcerated plaintiff claimed that the Corrections Corporation of America invaded her privacy during her incarceration by publishing information about her minor child on four disciplinary reports disseminated to third-party inmates. The court granted summary judgment for the defendant, concluding that a reasonable jury would not conclude that Plaintiff suffered an intrusion upon seclusion within the meaning of Section 652B of the Restatement (Second) of Torts. This case is important for two reasons, first because the Restatement (Second) of Torts is once again relied on, and second, because it reminds us that the court can grant summary judgment as to what a reasonable jury would or would not do.
13. In *Ali v. Douglas Cable Communications*, 929 F. Supp. 1362 (D. Kan. 1996), the court held that employees could not reasonably claim any offensive privacy intrusion when their employer monitored or recorded their business calls at their workplace. The court ruled that a reasonable person would not

consider such a procedure to be a substantial interference with their seclusion or be highly offensive. The court denied summary judgment, however, as to the plaintiffs' claim that recording their personal calls in the workplace intruded upon their seclusion.

14. The analysis might be different if a defendant was listening in on the plaintiff's phone, or trying to find Mr. Mendia's location through Mr. Mendia's phone, but the phone belonged to Ms. Harman, and she was simply trying to find it.
15. Mr. Mendia remained in his vehicle throughout this matter. He was not on his own real estate and he was not in his residence, although the decision would have been the same had he been.
16. Mr. Mendia did not have Ms. Harman's permission to have her phone.
17. There are no cases which support Mr. Mendia's position and theory.
18. The Restatement (Second) of Torts does not recognize Mr. Mendia's theory, and supports defendants' motion for summary judgment.
19. The simple activation of a location finding app trying to find one's iPhone is not an invasion of privacy as a matter of law.
20. The defendants' use of the "Find iPhone app" within Mr. Mendia's vehicle while operating it on public and private roadways is not an invasion of privacy as a matter of law.
21. Mr. Mendia's claim that through the use of their vehicle, the defendants isolated him from the other traveling vehicles, and interfered with his anonymity, is not an invasion of privacy as a matter of law.

22. Defendants activating the "Find my Phone App" which allegedly caused an electronic tangible electronic signal to penetrate Mr. Mendia's truck, which caused an Iphone in his custodial possession to respond with its own electronic, tangible signal to emanate from inside his truck with his speed, direction and real-time location are not an invasion of privacy as a matter of law.
23. Mr. Mendia's claim that he was robbed of possession of the cell phone before a lawful determination by the police or courts could be made is not an invasion of privacy as a matter of law.
24. Mr. Mendia's claim that the defendants' GPS had penetrated his chattel causing the Iphone to reveal private affairs, and that this revelation led the vigilantes to the plaintiff's location destroying his constitutional rights is not an invasion of privacy as a matter of law.
25. Mr. Mendia's claim that the defendants trespassed into his vehicle by using the GPS signal generated by the "Find My Iphone App" is not an invasion of privacy as a matter of law.
26. Mr. Mendia's claim that the defendants physically trespassed into his vehicle to steal the phone prior to police involvement is not an invasion of privacy as a matter of law.
27. None of the allegations set forth by Mr. Mendia are invasions of privacy as a matter of law.
28. The court makes the following additional rulings as a matter of law:
 - A. There has been no intrusion upon Mr. Mendia's seclusion, much less an unreasonable one.
 - B. There has been no intrusion upon Mr. Mendia's seclusion, much less one which would be highly offensive to an ordinary, reasonable person.

C. There has been no intrusion upon Mr. Mendia's seclusion, much less a substantial one.

D. There has been no intrusion upon Mr. Mendia's seclusion, much less one with which a reasonable person would strongly object.

E. The Defendant's motion to dismiss the Plaintiff's trespass to chattels claim is granted except for the physical contact with Mr. Mendia's truck by Mr. Bauer.

LEGAL PARAMETERS

1. A trespass to chattels claim is a common-law tort.
2. Based on his allegations, there are three possible basis for Mr. Mendia's trespass to chattels claims, which are:
 - a. a trespass to his truck
 - b. an electronic trespass into his truck
 - c. a trespass involving Ms. Harman's Iphone
3. The common-law action for trespass to chattels can be found in the Restatement (Second) of Torts, Section 217, which provides that "A trespass to chattel may be committed by intentionally (a) **dispossessing** another of the chattel, or (b) **using** or **intermeddling** with a chattel in the possession of another."
4. Being "dispossessed" of something means that property or land is taken away from someone, or one is being ousted or evicted from property. See Black's Law Dictionary, Tenth Edition (2014).

5. Restatement of Torts (Second) Section 221, provides that:
A dispossession may be committed by intentionally:
 - (a) taking a chattel from the possession of another without the other's consent, or
 - (b) obtaining possession of a chattel from another by fraud or duress, or
 - (c) barring the possessors access to a chattel, or
 - (d) destroying a chattel while it is in another's possession, or
 - (e) taking the chattel into the custody of the law.
6. Comment e to the Restatement of Torts (Second), Section 217, brings clarity to this issue, when it tells us that "Intermeddling" means intentionally bring about a physical contact with the chattel.

MR. MENDIA'S TRUCK

7. During his deposition, Mr. Mendia referred to the chattel as his truck. He never claims, either in his deposition, or in any of the numerous pleadings he has filed, that the chattel was Ms. Harman's Iphone.
8. Mr. Mendia admits that he was always in possession of his vehicle.
9. There are no claims that either Ms. Harman or Mr. Moyer ever used Mr. Mendia's truck.
10. In his deposition, other than as set forth in # 11 below, there are no claims that either Ms. Harman or Mr. Moyer ever dispossessed Mr. Mendia of his truck.
11. When asked if he was ever dispossessed of his truck, Mr. Mendia answered that the defendants affected his movements, and that he might have done something else when he was in his

vehicle, such as parking in the Walmart parking lot, if nobody was hassling him. He claimed the defendants dispossessed him of his freedom to move around. That, however, is not the legal definition of "dispossessed".

12. Neither Mr. Moyer nor Ms. Harman did any of these things to Mr. Mendia's truck, nor are they accused by him of doing so. They are not even accused of touching or coming in contact with his truck in any way.
13. Mr. Mendia admitted that he was never removed or taken from his vehicle. He admitted that neither Ms. Harman nor Mr. Moyer ever got into his vehicle. One, then, logically concludes that they could not have used his vehicle.
14. It is uncontested that Mr. Mendia was not dispossessed of the use of his truck by Ms. Harman or Mr. Moyer.
15. The remaining question, then, is whether there was any "intermeddling" relative to Mr. Mendia's truck.
16. There was no such contact on the part of either Ms. Harman or Mr. Moyer, but there was by Mr. Bauer.
17. Neither Mr. Moyer nor Ms. Harman directly committed a trespass to Mr. Mendia's truck, but they might be responsible nevertheless, for the trespass to the truck by Mr. Bauer
18. 75 Am. Jur. 2d, Section 55 provides that all persons who "command, instigate, promote, encourage, advise, countenance, cooperate in, aid, or abet the commission of a trespass, or who approve of it after it is done, if done for their benefit, are co-trespassers with the person committing the trespass, and are liable as principals to the same extent and in the same manner as if they had performed the wrongful act themselves." Thus, Mr. Moyer and Ms. Harman could be liable for Mr. Bauer

touching or contacting Mr. Mendia's truck, and the defendants' motion for summary judgment as to that limited factual context only is denied.

THE GPS SIGNAL

19. Mr. Mendia also claims that the trespass was the GPS signal, which was an electronic intrusion into his truck.
20. To support his theory, Mr. Mendia cites *Intel Corporation v. Hamidi*, 30 Cal.4th, 1342, 71 P.3d 296 (S. Ct. of Cal, 2003). The *Intel* case, however, has no precedential value in Kansas because it is a California case. Furthermore, the *Intel* case does not support Mr. Mendia's position. In that case, Mr. Hamidi was a disgruntled former employee who flooded Intel's email system. Intel sought redress on the theories of nuisance and trespass to chattels. Despite thousands of e-mails from Mr. Hamidi, his messages did not prevent Intel from using its computers for any measurable length of time. Intel presented no evidence that its system was slowed or otherwise impaired by the burden of delivering Mr. Hamidi's electronic messages. The court held that the tort of trespass to chattels did not encompass unwanted electronic communications that neither damaged the recipient computer system nor impaired its functioning. The court also held that the common law could not be extended to cover, as a trespass to chattels, an otherwise harmless electronic communication whose contents were objectionable. The court concluded that the temporary use of some portion of the employer's computer processes or storage by the former employee's e-mail messages was not an injury to the employer's interest in its computers, as was required to support the claim of trespass to chattels.

21. No trespass to chattels cases deal with access to someone else's iPhone. Furthermore, no cases could be found that support this theory by Mr. Mendia.

MS. HARMAN'S IPHONE

22. Since the iPhone was Ms. Harman's, not Mr. Mendia's, these defendants could not have **intermeddled** with its use.

23. There was no intermeddling regarding the iPhone.

24. No cases or legal encyclopedias provide help to Mr. Mendia's claims. A trespass to chattels is a wrongful interference with or injury to property that causes actual damage to the property or deprives the owner of its use for a substantial period. There is authority that an actual injury must have occurred to the chattel or the plaintiff's rights in it for a trespass to chattels to be actionable. The trespasser must dispossess the other person of the chattel, impair the chattel as to its condition, quality, or value, deprive the rightful possessor of the use of the chattel for a substantial time, or cause bodily harm to the possessor, or harm to some person or thing in which the possessor has a legally protected interest. Thus, short of dispossession, personal injury, or physical damage, intermeddling is actionable as a trespass to chattels only if the chattel is impaired as to its condition, quality or value, or the possessor is deprived of the use of the chattel for a substantial time. 75 Am. Jur. 2d, Trespass, Section 17. This definition presupposes that the possessor of the chattel has some ownership in it or right to it. Mr. Mendia, of course, has a possessory interest in his truck, but not in Ms. Harman's iPhone.

25. Even if Mr. Mendia claimed that the “Chattel” in question was Ms. Harman’s Iphone, which it is not, Mr. Mendia’s claim of trespass to chattels would also fail because:

a. the Iphone was owned by Ms. Harman, not by Mr. Mendia, and he did not have her permission to have it in his possession; and

b. Mr. Mendia had no rights to or interest in the Iphone; and

c. Mr. Mendia never claims, either in his deposition, or in any of the numerous pleadings he has filed, that the “chattel” was Ms. Harman’s Iphone.

26. Of prime concern in any potential claim that Ms. Harman and Mr. Moyer trespassed relative to the Iphone is quickly dispelled by 75 Am. Jur. 2d, Section 4, which provides:

“Trespass is a direct, physical interference with, or an unlawful or unauthorized physical invasion of another’s property. The character of the defendant’s act in causing an intrusion upon the plaintiff’s interest in the exclusive possession of the premises is an element. The plaintiff must allege a wrongful interference with his or her actual possessory rights in the property.”

But Mr. Medina did not own the Iphone and had no possessory rights to it.

24. Mr. Mendia’s claim that he was robbed of possession of the cell phone before a lawful determination by the police or courts could be made is not a trespass to chattels by Ms. Harman and Mr. Moyer as a matter of law.

25. Mr. Mendia's claim that the defendants physically trespassed into his vehicle to steal the phone prior to police involvement might be a trespass to chattels by Ms. Harman and Mr. Moyer, because of the actual trespass by Mr. Bauer.

26. Mr. Mendia's claim that defendants had no legal or lawful right to trespass, or act as vigilantes because the matter had become a police matter is not a trespass to chattels as a matter of law.

27. Mr. Mendia's claim that the defendants, Ms. Harman and Mr. Moyer, trespassed INTO his vehicle by using the GPS signal generated by the "Find My Iphone App" is not a trespass to chattels as a matter of law.

28. Mr. Mendia's claim that the defendants trespassed into his truck by use of the GPS signal connected with the "Find iPhone app" and by impeding his freedom to move around are not a trespass to chattels as a matter of law.

29. Mr. Mendia's claim that a tangible electronic wave signal penetrated into his truck, and that the GPS wave signal is tangible enough to be a physical intrusion which violated his constitutional right to be secure in and have exclusive possession to his chattel are not a trespass to chattels as a matter of law.

30. Mr. Mendia's claim that the defendants continued to track the cell phone when they saw it motion and presumed it to be in someone's possession, and that the defendants had no legal right to continue such stalking, are not a trespass to chattels as a matter of law.

31. Mr. Mendia's claim that he was subjected to GPS radiation signals is not a trespass to chattels as a matter of law.

32. None of the other allegations set forth by Mr. Mendia are a trespass to chattels as a matter of law.

**F. Mr. Mendia's motion for summary judgment
is denied.**

1. The incident occurred on March 8, 2015.
2. Mr. Mendia filed his original petition on March 7, 2017.
3. Mr. Mendia filed his amended petition on March 22, 2017.
4. Mr. Mendia filed his second amended petition on June 16, 2017.
5. All defendants have already been dismissed except Abby Harman and Shane Moyer.
6. Mr. Mendia's motion to amend his second amended petition and, among other things, add a claim of negligence, was denied by Judge Hernandez-Mitchell on June 22, 2018.
7. Since the last of Mr. Mendia's claims, invasion of privacy and trespass to chattels, have been dismissed by this order, except for the physical contact with Mr. Mendia's truck, there is no surviving basis for his motion for summary judgment, which is therefore denied.
8. Even if the defendants had not filed a motion for summary judgment, Mr. Mendia's motion for summary judgment would still be denied.
9. Mr. Mendia relies heavily on Kansas criminal statutes. Neither the Kansas criminal code nor the Kansas code of criminal procedure provides him with a private cause of action. A statute which does not purport to establish a civil liability but merely makes provision to secure the safety or welfare of the public as an entity is not subject to construction establishing a

civil liability. *Greenlee v. Board of Clay County Comm'rs*, 241 Kan. 802, 804, 740 P.2d 606 (1987); *Loar v. Roletto*, 26 Kan. App.2d 246, 982 P.2d 993 (1999), *Brooks v. Saucedo*, 85 F. Supp. 2d 1115, 1128 (D. Kan.), *aff'd*, 242 F.3d 387 (10th Cir. 2000). For example, statutes prohibiting the aiding and abetting of the purchase of a firearm pursuant to false statements or representations did not create a private right of action. *Shirley v. Glass*, 44 Kan. App.2d 688, 241 P.3d 134 (2010), *aff'd in part and reversed in part*, 297 Kan. 888, 308 P.3d 1 (2013).

10. Relative to Mr. Mendia's proposed statements of uncontroverted facts:

A. Paragraphs 4, 7 and 24 are controverted.

B. Paragraphs 2, 22 and 23 are uncontroverted, but irrelevant.

C. Paragraphs 1, 8, 9, 10, 11, 13, 14, 15, 18, 19, 20 and 21 are controverted but also irrelevant.

D. Paragraphs 3, 5 and 6 are uncontroverted for the purposes of this motion.

E. Paragraphs 12, 16 and 17 are controverted in part and uncontroverted in part, but are not material for the purposes of this motion.

11. Mr. Mendia did not comply with rule 141 to support many of his claims of uncontroverted facts. Assuming, arguendo, that he had fully complied with rule 141, and assuming further that the defendants had not file a motion for summary judgement, Mr. Mendia's motion for summary judgment would still be denied. There are far too many disputed facts.

12. To support his theories, Mr. Mendia advances three principle arguments:

A. The government electronically listening to or recording someone's conversation or communication. The court agrees that this can be improper without a warrant, but these are not the facts in this case.

B. The government tracking another's movements through a GPS, allegedly constituting an illegal search. These are not the facts in this case.

C. A third-party electronically listening to or recording someone's conversation or communication. The court agrees that this can be improper, but these are not the facts in this case.

13. In this case, Ms. Harman is tracking the location of her iPhone, which is in the possession of Mr. Mendia without her permission. There are no cases, treatises, law journal articles or legal encyclopedic analysis supporting Mr. Mendia's claims that his theories constitute an invasion of privacy or a trespass to chattels.

14. The Denver Law Review Article by Hannah L. Cook entitled "(Digital) Trespass: What's Old is New Again", deals with the government's use of a GPS, or electronically gaining access to information. But the article gives no support to Mr. Mendia's theory that the defendants digitally trespassed.

That article also provided that "it is hard to imagine why a directed, wireless signal interacting with another's property would be any less of a trespass." However, a directed, wireless signal was not interacting with Mr. Mendia's property.

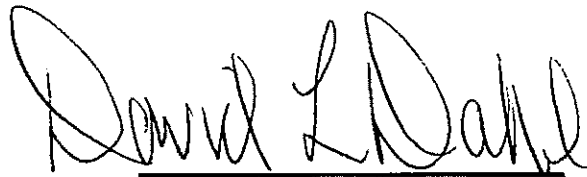
15. The “Find My Phone” reference to David Pogue in the summer of 2012 does not support Mr. Mendia’s proposition.

G. Summary

1. It should be mentioned that Mr. Mendia and Ms. Welch did exhaustive research on these issues. Perhaps, had there been other defendants identified or different theories advanced, Mr. Mendia might have found more fruitful results.
2. Defendants’ motion for summary judgment relative to Mr. Mendia’s claims of invasion of privacy and trespass to chattels is granted except for the physical contact with and touching of Mr. Mendia’s truck by Mr. Bauer.
3. Mr. Mendia’s claims for summary judgment are denied.
4. There are no outstanding claims in this case except for the physical contact with and touching of Mr. Mendia’s truck by Mr. Bauer.
5. The damages portion of Mr. Mendia’s remaining claim shall be limited to the following:
 - a. The actual physical damage to Mr. Mendia’s door and window by Mr. Bauer.
 - b. Mr. Mendia’s medical bills, verified by a medical provider, that the medical bills were a direct result of the contact with Mr. Mendia’s door and window.
 - c. Mr. Mendia’s additional damages, verified by a medical provider, that the additional damages were proximately caused by the contact with Mr. Mendia’s door and window.
 - d. There is no legal support for any additional damages.
 - e. There shall be no punitive or exemplary damages.

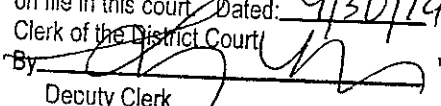
6. There has been no violation of the U.S. Constitution, the Bill of Rights or the Kansas Constitution.
7. The time to add additional claims and/or additional defendants has passed.
8. All prior orders shall remain in full force and effect except as modified by this order.
9. In the event of any discrepancy between this order and any prior orders, this order shall prevail.
10. In the event of any discrepancy between this typed order and the transcript of this hearing, this typed order shall prevail.
11. Judgment is entered as set forth in this disposition.

IT IS SO ORDERED THIS 7th DAY OF SEPTEMBER, 2018.



David L. Dahl,
Judge, Division 2



STATE OF KANSAS
SEDGWICK COUNTY
I hereby certify that the foregoing is a true
and correct copy of the original instrument
on file in this court. Dated: 9/30/19
Clerk of the District Court
By: 
Deputy Clerk