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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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Sons of Hell Motorcycle Club, an Arizona  
Limited Liability Company, et al.

No. CV-12-08145-PCT-JAT

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**ORDER**

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Plaintiffs,

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v.

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Arizona Department of Public Safety, an  
Arizona Law Enforcement Agency, acting  
as an Agency, and through its Director and  
his Officers, et al.

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Defendant.

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Pending before the Court are: (1) the County Defendants’<sup>1</sup> Motion to Dismiss  
(Doc. 23) and (2) the State Defendants’<sup>2</sup> Motion to Dismiss Pursuant to Rule 12(c) and  
Request for Expedited Hearing (Doc. 24). Plaintiffs have not filed a response to either

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<sup>1</sup> The Court collectively refers to the following Defendants as the “County  
Defendants:” Coconino County Sheriff’s Office, Bill Pribil, Mark Pierz, William  
Rackley, Jason Lurkins, Gerrit Boeck, Michael Curtis, Ethan Mitkowski, Robert Gambee,  
Jason Bond, James Coffee, and Jane Doe spouses.

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<sup>2</sup> The Court collectively refers to the following Defendants as the “State  
Defendants:” Arizona Department of Public Safety (“DPS”), Robert Halliday, Brad  
Elliot, Brian Barnes, Nate Gould, the Gang and Immigration Intelligence Team  
Enforcement Mission (“GIITEM”), Dan Wells, Frank Stewart, Douglas Wheeler, and  
Jane Doe spouses.

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1 Motion. The Court now rules on the Motions.<sup>3</sup>

2 **I. BACKGROUND**

3 On November 9, 2012, Plaintiffs filed an Amended Complaint against Defendants  
4 in this Court. (Doc. 13). In their Complaint, Plaintiffs allege that, on July 22, 2011,  
5 Plaintiffs were attending the “Too Broke for Sturgis Motorcycle Rally,” (the “Rally”),  
6 which was being held at Mormon Lake Lodge Campground. (*Id.* at 5). Plaintiffs allege  
7 that, around 11:00 p.m. on July 22, Christian Tejada shot and wounded his wife and shot  
8 and killed Edgar Atzin and Trina Atzin, and then shot and killed himself. (*Id.*). Plaintiffs  
9 allege that this incident occurred “a significant distance” from the group camping area  
10 where Plaintiffs were camping. (*Id.*).

11 Plaintiffs allege that deputies and officers from the Coconino County Sheriff’s  
12 Office, DPS, and the GITEM responded to the shooting scene. (*Id.*). Plaintiffs allege  
13 that, on the basis of conflicting stories provided by intoxicated members of the Rally,  
14 which Defendants immediately determined to be unreliable, Defendants ordered Plaintiffs  
15 out of their tents and motorhomes at gunpoint despite a complete lack of threat to officer  
16 safety. (*Id.* at 6). Plaintiffs allege that the officers and deputies threatened Plaintiffs,  
17 insulted them, took photographs of them, interrogated them, refused to let them dress or  
18 use the bathroom, and held them at gunpoint without lawful reason or consent. (*Id.*).

19 Plaintiffs allege that, after three hours, Defendant officers and deputies confirmed  
20 that Plaintiffs had no involvement in the shootings. (*Id.*). Plaintiffs allege that Defendant  
21 officers’ and deputies’ only reason for investigating Plaintiffs in connection with the  
22 shooting was to fulfill the de facto policy of the law enforcement agencies of gathering  
23 information on people suspected to be members of “outlaw motorcycle gangs” for  
24 inclusion of such information in electronic databases of suspected criminal street gang

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26 <sup>3</sup> Although Defendants requested oral argument on the Motions, because  
27 Plaintiffs have not responded, oral argument would not aid the Court’s decisional  
28 process. Accordingly, the Defendants’ requests for oral argument are denied. *See*  
*Partridge v. Reich*, 141 F.3d 920, 926 (9th Cir. 1998); *Lake at Las Vegas Investors*  
*Group, Inc. v. Pac. Dev. Malibu Corp.*, 933 F.2d 724, 729 (9th Cir. 1991).

1 members maintained by law enforcement agencies. (*Id.* at 7).

2 As a result, Plaintiffs allege eight claims against Defendants: (1) violations of  
3 Plaintiffs' rights under the Fourteenth Amendment of the United States Constitution and  
4 Article 2, Section 13 of the Arizona Constitution to equal protection of the laws; (2)  
5 violations of Plaintiffs' rights under the Fourth and Fourteenth Amendments of the  
6 United States Constitution and Article 2, Section 8 of the Arizona Constitution to be free  
7 from unlawful detention and arrest; (3) violations of Plaintiffs' rights to freely associate  
8 under the First and Fourteenth Amendments of the United States Constitution and Article  
9 2, Section 5 of the Arizona Constitution; (4) violations of Plaintiffs' rights under the Fifth  
10 and Fourteenth Amendments to the United States Constitution and Article 2, Section 4 of  
11 the Arizona Constitution to due process of law; (5) violations of 42 U.S.C. section 1983  
12 by violating Plaintiffs' rights to equal protection, to be free from unlawful detention and  
13 arrest, to freely associate, and to due process of law; (6) violations of Plaintiffs' right to  
14 full and equal enjoyment of goods, services, facilities, privileges, and advantages of the  
15 Mormon Lake Lodge Campground in violation of 42 U.S.C. section 2000a, et seq.; (7)  
16 false imprisonment of Plaintiffs; and (8) assault and battery of Plaintiffs.

17 On December 11, 2012, Plaintiffs failed to appear at a show cause hearing to  
18 explain why Defendant Michael Wischman and Jane Doe Wischman should not be  
19 dismissed for failure to serve within the time limits of Federal Rule of Civil Procedure  
20 4(m) and those Defendants were dismissed without prejudice. (Doc. 20). Further,  
21 Plaintiffs failed to comply with this Court's January 3, 2013 Order (Doc. 22), which  
22 directed them to initiate communications with Defendants to prepare a Joint Proposed  
23 Case Management Plan, and failed to file any Proposed Case Management Plan in  
24 accordance with that Order.

25 Pursuant to Federal Rules of Civil Procedure 12(b)(6) and 12(c), the remaining  
26 Defendants now move to dismiss Plaintiffs' claims against them. Plaintiffs have not  
27 responded to the Motions to Dismiss.

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1                   **II.     LEGAL STANDARDS AND ANALYSIS**

2                   It appears that Plaintiffs have abandoned prosecution of this case. Plaintiffs failed  
3 to appear at a show cause hearing set by the Court, failed to comply with this Court’s  
4 January 2, 2013 Order, and failed to respond to Motions to Dismiss that were filed by  
5 Defendants over a month ago.

6                   Pursuant to Local Rule of Civil Procedure 7.2(i), the Court has the discretion to  
7 grant Defendants’ motions in light of Plaintiffs’ failure to respond. *See* LRCiv 7.2(i)  
8 (stating that if the required answering memoranda are not served and filed, such non-  
9 compliance may be deemed a consent to the granting of the motion and the Court may  
10 dispose of the motion summarily). Failure to comply with a district court’s local rule is a  
11 proper ground for dismissal. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (affirming  
12 district court’s dismissal pursuant to Nevada’s local rule that “[t]he failure of the  
13 opposing party to file a memorandum of points and authorities in opposition to any  
14 motion shall constitute a consent to the granting of the motion.”)

15                   Before dismissal on this basis, the Court must weigh “(1) the public’s interest in  
16 expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the risk  
17 of prejudice to the defendants; (4) the public policy favoring disposition of cases on their  
18 merits; and (5) the availability of less drastic sanctions.” *Id.* at 53 (quoting *Henderson v.*  
19 *Duncan*, 779 F.2d 1421, 1423 (9th Cir. 1986)).

20                   The first two factors, the public’s interest in expeditious resolution of litigation  
21 and the court’s need to manage its docket, favor dismissal in most cases. *Wanderer v.*  
22 *Johnston*, 910 F.2d 652, 656 (9th Cir. 1990). In the instant case, the Court finds that the  
23 public’s interest in expeditiously resolving this litigation and the Court’s interest in  
24 managing the docket weigh in favor of dismissal. In December 2012, Plaintiffs failed to  
25 appear at a show cause hearing. Thereafter, Plaintiffs failed to comply with the Court’s  
26 January 3, 2013 Order and, thereafter, failed to respond to the Motions to Dismiss, which  
27 were filed in February. As such, it appears Plaintiffs have abandoned their claims and,  
28 therefore, the public’s interest in expeditiously resolving this litigation and the Court’s

1 interest in managing the docket weigh in favor of dismissal.

2 The third factor also favors dismissal. It would be prejudicial to Defendants to  
3 allow this case to proceed without participation from the Plaintiffs.

4 Public policy favors disposition of cases on their merits, so the fourth factor  
5 weighs against dismissal. *Pagtalunan v. Galaza*, 291 F.3d 639, 643 (9th Cir. 2002).  
6 However, in this case, Defendants assert that dismissal would be appropriate based on  
7 various other grounds going to the merits of Plaintiffs' claims, and Plaintiffs have failed  
8 to dispute those arguments. Accordingly, this factor weighs only slightly against  
9 dismissal.

10 The final factor requires the Court to consider the availability of less drastic  
11 sanctions. Plaintiffs have been given ample time to respond to Defendants' Motion to  
12 Dismiss or to move for an extension of time to file a response and have not done so.  
13 Thus, in weighing this last factor, the Court finds that dismissal without prejudice is the  
14 only acceptable less drastic sanction in this case.

15 In sum, the five-factor analysis supports dismissal without prejudice for failure to  
16 respond to the Motions to Dismiss. The Court's decision to grant the motions in these  
17 circumstances is further supported by the fact that it is premised upon a local rule that  
18 expressly permits the Court to summarily grant unopposed motions. *Ghazali*, 46 F.3d at  
19 53 ("Only in rare cases will we question the exercise of discretion in connection with the  
20 application of local rules") (quoting *United States v. Warren*, 601 F.2d 471, 474 (9th  
21 Cir.1979)).

22 The County Defendants' Motion to Dismiss (Doc. 23) and the State Defendants'  
23 Motion to Dismiss Pursuant to Rule 12(c) and Request for Expedited Hearing<sup>4</sup> (Doc. 24)  
24 are therefore granted as set forth herein based on Plaintiffs' failure to respond. *See*  
25 LRCiv 7.2(i). The Court, therefore, need not consider the other arguments for dismissal  
26 in Defendants' Motions.

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28 <sup>4</sup> The Request for Expedited Hearing is denied as moot.

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**III. CONCLUSION**

Based on the foregoing,

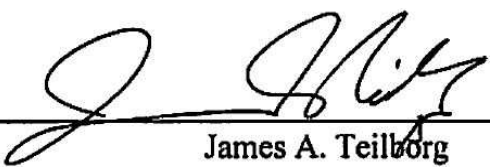
**IT IS ORDERED** that the County Defendants' Motion to Dismiss (Doc. 23) is granted.

**IT IS FURTHER ORDERED** that the State Defendants' Motion to Dismiss Pursuant to Rule 12(c) and Request for Expedited Hearing (Doc. 24) is granted in part and denied in part as set forth herein.

**IT IS FINALLY ORDERED** that this case is dismissed without prejudice.

The Clerk of the Court shall enter judgment accordingly.

Dated this 19th day of March, 2013.

  
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James A. Teilborg  
Senior United States District Judge