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5 IN THE UNITED STATES DISTRICT COURT
6 FOR THE EASTERN DISTRICT OF CALIFORNIA
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8 Markus M. Hall, Monique G.)
Rankin, Lindsey K. Sanders,) 2:10-cv-00508-GEB-DAD
9 Plaintiffs,)
10 v.) ORDER GRANTING PARTIAL
11 City of Fairfield, Officer Nick) SUMMARY JUDGMENT IN FAVOR OF
McDowell, Officer Chris Grimm,) DEFENDANTS ON PLAINTIFFS'
12 Officer Tom Shackford, Officer) STATE LAW FALSE ARREST
Zack Sandoval, and Sergeant) CLAIMS*
13 Steve Crane,)
14 Defendants.)
15 _____)

16 A Tentative Ruling granting partial summary judgment *sua*
17 *sponte* in favor of Defendants on Plaintiffs' state law false arrest
18 claims was filed on April 11, 2012. (ECF No. 169.) The April 11, 2012
19 Tentative Ruling ("Tentative Ruling") gave the parties an opportunity to
20 file and serve written objections to any part of the Tentative Ruling.

21 Plaintiffs filed objections to the Tentative Ruling on May 14,
22 2012. Defendants filed a "Response" to the Tentative Ruling on May 14,
23 2012, in which they state that they "agree with the Court's tentative
24 ruling[,] " but "contend [the] ruling necessarily requires the Court to
25 also grant summary judgment in Defendants' favor as to the federal false
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28 * This matter is deemed suitable for decision without oral
argument. E.D. Cal. R. 230(g).

1 arrest claims pursuant to the qualified immunity doctrine.” (Defs.’
2 Resp. 1:5-9, ECF No. 170.)

3 After considering the parties’ filings, the Court will grant
4 partial summary judgment in favor of Defendants on Plaintiffs’ state law
5 false arrest claims. Defendants’ request to expand the scope of the
6 Tentative Ruling will be denied.

7 I. LEGAL STANDARD

8 “District courts unquestionably possess the power to enter
9 summary judgment *sua sponte*, even on the eve of trial.” Norse v. City of
10 Santa Cruz, 629 F.3d 966, 971 (9th Cir. 2010). As prescribed in Federal
11 Rule of Civil Procedure 56(f)(3): “[a]fter giving notice and a
12 reasonable time to respond, the court may . . . consider summary
13 judgment on its own after identifying for the parties material facts
14 that may not be genuinely in dispute.”

15 “A fact is ‘material’ when, under the governing substantive
16 law, it could affect the outcome of the case.” Thrifty Oil Co. v. Bank
17 of Am. Nat. Trust & Sav. Ass’n, 322 F.3d 1039, 1046 (9th Cir. 2003)
18 (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986)). An
19 issue of material fact is “genuine” when “‘the evidence is such that a
20 reasonable jury could return a verdict for the nonmoving party.’” Id.
21 (quoting Anderson, 477 U.S. at 248).

22 The evidence must be viewed “in the light most favorable to
23 [Plaintiffs],” and “all reasonable inferences” that can be drawn from
24 the evidence must be drawn “in [Plaintiffs’] favor” Nunez v.
25 Duncan, 591 F.3d 1217, 1222-23 (9th Cir. 2010) (internal quotation marks
26 omitted). However, “[t]he district court must . . . undertake some
27 initial scrutiny of the inferences that could be reasonably drawn from
28 the evidence” to determine “whether there remains sufficient probative

1 evidence which would permit a finding in favor of [Plaintiffs] based on
2 more than mere speculation, conjecture, or fantasy." Barnes v. Arden
3 Mayfair, Inc., 759 F.2d 676, 680-81 (9th Cir. 1985).

4 **II. FACTUAL SUMMARY**

5 This litigation concerns Plaintiffs' arrests at an In-N-Out
6 Burger restaurant in Fairfield, California during the early morning
7 hours of July 4, 2009.

8 It is undisputed that all three Plaintiffs were arrested
9 pursuant to the citizen's arrests of In-N-Out Burger's manager, Marc
10 Young. (Pls.' Objections 5:6-9, ECF No. 171; Am. Joint Pretrial
11 Statement 3:4, 4:12-19, ECF No. 98; Arrest Reports of Monique Rankin,
12 Markus Hall & Lindsey Sanders pp. 000403-000410, filed as Ex. E to the
13 Decl. of Garret D. Murai in Supp. of Pls.' Mot. for Summ. Adjudication,
14 ECF No. 56-2.) However, Plaintiffs dispute the legality of Mr. Young's
15 citizen's arrests and the circumstances surrounding the citizen's
16 arrests, i.e., whether Mr. Young or the defendant officers initiated
17 them. (Pls.' Objections 2:8-10, 5:14-15, 8:11-27.)

18 **III. DISCUSSION**

19 "[T]he federal Constitution requires police officers to have
20 independent probable cause when effectuating a citizen's arrest"
21 Hopkins v. Bonvicino, 573 F.3d 752, 774 (9th Cir. 2009). In contrast,
22 "California law explicitly exempts officers effectuating a citizen's
23 arrest from civil liability." Id. (citing Cal. Penal Code § 847(b)(3));
24 see also Meyers v. Redwood City, 400 F.3d 765, 772-73 (9th Cir. 2005)
25 (stating "California courts have held that . . . an officer cannot be
26 sued civilly if he makes [an arrest pursuant to a citizen's arrest] and,
27 it turns out, there were no grounds for the citizen's arrest"). Since
28 the undisputed facts establish Defendants arrested Plaintiffs pursuant

1 to Mr. Young's citizen's arrests, the Tentative Ruling issued granting
2 partial summary judgment in favor of Defendants on Plaintiffs' state law
3 false arrest claims. (Tentative Ruling 4:3-6.)

4 Plaintiffs object to the Tentative Ruling, arguing "there
5 [are] genuine issue[s] of material fact" as to "the lawfulness of Marc
6 Young's citizen's arrest[s]" and as to who initiated the citizen's
7 arrests, which prevent the Court from granting partial summary judgment
8 in favor of Defendants on their state false arrest claims. (Pls.'
9 Objections 2:9-10, 2:16-19.) Plaintiffs' arguments are addressed in
10 turn.

11 **A. The Lawfulness of Marc Young's Citizen's Arrests**

12 Plaintiffs state the Tentative Ruling "correctly distinguishes
13 the federal and state requirements in effectuating a citizen's arrest."
14 (Pls.' Objection 2:24-25.) However, Plaintiffs argue that under Bobol v.
15 City of Daly City, "in order for a police officer not to be held liable
16 for a state law false arrest claim, the citizen's arrest must be lawful
17 under state law." (Id. at 5:9-11 (citing Bobol v. City of Daly City, 754
18 F. Supp. 2d 1095, 1115 (N.D. Cal. 2010)). Plaintiffs further argue:
19 "[b]ecause the Court must view all facts in favor of Plaintiffs, the
20 Court can only conclude that there is a genuine issue of material fact
21 as to the lawfulness of Young's citizen arrest[s] and, ultimately, not
22 adopt its Tentative Ruling." (Id. at 5:14-17.)

23 The following statements from the Bolbol v. City of Daly City
24 decision appear to support Plaintiffs' position:

25 [I]n California, where the citizen's arrest is
26 valid under state law, the officer effectuating the
27 citizen's arrest may not be held liable. [Kesmodel
28 v. Rand, 119 Cal. App. 4th 1128, 1137 (2004)]
(citing Cal. Penal Code § 847(b)). Accordingly, for
the purposes of determining both a state
constitutional unlawful seizure and a state section
236 false imprisonment/false arrest claim, the

1 court addresses whether the underlying citizen's
2 arrest on its own was reasonable, and thus lawful.

3 Bolbol, 754 F. Supp. 2d at 1115. Further, the Bolbol court denied the
4 officer defendant summary judgment on Plaintiff's state law false
5 imprisonment claim stating, "whether [the officer defendant] arrested
6 [Plaintiff] pursuant to a lawful citizen's arrest under state law, and
7 thus whether [the officer defendant] unlawfully seized and falsely
8 imprisoned [Plaintiff] as a matter of state law, is a genuine issue of
9 material fact." Id. However, the California decision cited by the
10 Bolbol Court in support of its ruling on this issue, Kesmodel v. Rand,
11 does not discuss the validity of the citizen's arrest at issue anywhere
12 in its opinion. To the contrary, the Kesmodel decision states on page
13 1137 of the decision: "[a] peace officer who accepts custody of a person
14 following a citizen arrest is not required to correctly determine
15 whether the arrest as justified, and **cannot be held liable for the**
16 **arrest if it was improper.**" Id. at 1137 (emphasis added). Therefore the
17 Court finds the Bolbol decision on this issue unpersuasive and declines
18 to follow its ruling.

19 Moreover, Ninth Circuit and California state court decisions,
20 which discuss police officer liability under state law in arresting
21 individuals pursuant to citizen's arrests, indicate the officer's
22 liability does not depend upon the validity of the underlying citizen's
23 arrest. For example, the Ninth Circuit states in Arpin v. Santa Clara
24 Valley Transportation Agency:

25 In Kinney v. County of Contra Costa, . . . , the
26 California Court of Appeal held that a peace
27 officer who accepts delivery of a person following
28 a citizen's arrest is not liable for false arrest
or false imprisonment **even if the officer**
determines that there is no grounds for making a
criminal complaint. . . . Because the undisputed
facts indicate that [the] Officers . . . accepted

1 delivery of [Plaintiff] after Ruiz made a citizen's
2 arrest, the district court did not err in granting
3 summary judgment to [the Officers] on the state law
4 claims of false arrest and unlawful imprisonment.

5 Arpin v. Santa Clara Valley Transp. Agency, 261 F.3d 912, 920-21 (9th
6 Cir. 2001) (emphasis added) (citing Kinney v. Cnty. of Contra Costa, 8
7 Cal. App. 3d 761, 767-68 (1970)). In Arpin, the parties disputed the
8 validity of the underlying citizen's arrest. Id. at 918. However, this
9 factual dispute did not affect the Ninth Circuit's review of the
10 district court's summary judgment ruling in favor of Defendants on
11 Plaintiff's state law false arrest claim. Similarly, in Hamburg v. Wal-
Mart Stores, Inc., the California Court of Appeal states:

12 A peace officer who accepts custody of a person
13 following a citizen's arrest **is not required to**
14 **correctly determine whether the arrest was**
15 **justified and cannot be held liable for the arrest**
16 **if it was improper.** Therefore, while a person
17 falsely arrested by a citizen ordinarily has no
18 remedy against the peace officer who took him or
19 her into custody as a result of the arrest, he or
20 she has a tort remedy against the offending
21 citizen.

22 Hamburg v. Wal-Mart Stores, Inc., 116 Cal. App. 4th at 573-74 (2004)
23 (emphasis added) (internal citations and footnote omitted).

24 The legislative history of California Penal Code sections 142
25 and 847 also indicates the validity of a citizen's arrest is not
26 material in determining whether a police officer is liable for false
27 arrest under state law. California Penal Code section 142 previously
28 "imposed criminal liability on peace officers who willfully refused to
receive, *inter alia*, persons placed under citizen's arrest." Hamburg,
116 Cal. App. 4th at 573 n.2. California Assembly Bill 1835, 2002 Cal.
Stats. ch. 526 ("AB 1835") amended section 142 "so as to make it
inapplicable to arrests made by private persons." Id.

1 AB 1835 also amended California Penal Code section 847 "to
2 provide that [subsection (b)'s limitations to] the civil liability of a
3 peace officer . . . shall apply to arrests made pursuant to the
4 provisions authorizing a private person to make a citizen's arrest."
5 Legislative Counsel's Digest, Assembly Bill 1835 (2002). The staff
6 analysis for the Assembly Committee on Public Safety, which related the
7 "need for [AB 1835]" stated:

8 This bill . . . provides that an officer cannot be
9 sued for false arrest or false imprisonment under
10 state law if the officer arrests or takes custody
11 of a person who has been arrested by a citizen. Two
12 California cases have already addressed the issue
13 of whether an officer who arrests a person pursuant
14 to a citizen's arrest can be sued under state law
15 for false arrest and false imprisonment. Both cases
16 concluded that the officer was immune from civil
17 liability. Shakespeare v. Pasadena (1964) 230 Cal.
18 App. 2d 375, and Kinney v. County of Contra Costa
19 (1970) 8 Cal. App. 3d 761.

20 Hearings on AB 1835 before the Assembly Committee on Public Safety
21 (March 12, 2002). The Senate Committee on Public Safety related similar
22 objectives of the proposed legislation: "[A] purpose[] of this bill is
23 to . . . clarify or reiterate that an officer is immune from civil
24 liability for accepting or receiving a citizen's arrest." Hearings on AB
25 1835 before the Senate Committee on Public Safety (June 11, 2002).

26 For the stated reasons, Plaintiffs have not shown that any
27 factual dispute concerning the validity of Mr. Young's citizen's arrests
28 is material to Plaintiffs' state law false arrest claims.

29 **B. Initiation of the Citizen's Arrest**

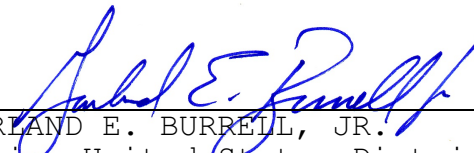
30 Plaintiffs also argue the Court should not adopt its Tentative
31 Ruling because "there is a genuine issue of material fact as to whether
32 Defendants initiated the arrests[,] and "an officer's obligation to
33 accept custody of the person placed under a citizen's arrest and thus,

1 immunity from a [state] false arrest claim, is triggered by a citizen's
2 arrest already in effect." (Pls.' Objections 2:16-19, 8:7-9.) However,
3 Plaintiffs have not cited any authority to support their contention that
4 an officer is immune from a state false arrest claim only when they
5 accept custody of a person who has already been arrested by a citizen.
6 Therefore, Plaintiffs have not shown that any factual dispute concerning
7 the initiation of Mr. Young's citizen's arrests is material to
8 Plaintiffs' state false arrest claims.

9 **IV. CONCLUSION**

10 For the stated reasons, partial summary judgment is granted in
11 favor of Defendants on Plaintiffs' state law false arrest claims.
12 Further, Defendants' request to expand the Tentative Ruling to grant
13 summary judgment on Plaintiffs' federal false arrest claims is denied.

14 Dated: January 7, 2013

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18 GARLAND E. BURRELL, JR.
19 Senior United States District Judge
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