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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

B.O.L.T., an unincorporated association of motorcycle riders and enthusiasts; MARK TEMPLE, an individual; NOREEN MCNULTY, an individual; WARREN PEARL, an individual; LYLE DUVAUCHELLE, an individual; GLENN OSBORN, an individual; JEFFREY RABE, an individual; DAVID ZALITSKIY, an individual; WILLIAM LANGHORNE, an individual; THOMAS BELL, an individual; ROBERT BALTHORPE II, an individual,

Plaintiffs,

v.

CITY OF RANCHO CORDOVA, a political subdivision of the state of California; COUNTY OF SACRAMENTO, a political subdivision of the state of California; RANCHO CORDOVA POLICE DEPARTMENT, an independent legal agency of the COUNTY OF SACRAMENTO and the CITY OF RANCHO CORDOVA; SACRAMENTO COUNTY SHERIFF'S DEPARTMENT; MICHAEL GOOLD, in his official capacity as the Chief of Police of the CITY OF RANCHO CORDOVA; RANCHO CORDOVA POLICE TRAFFIC SERGEANT G. LANE, in his

No. 2:14-CV-01588-GEB-DAD

ORDER GRANTING IN PART AND DENYING IN PART DISMISSAL MOTION

1 individual and official
2 capacity as Supervisor of the
3 Traffic Division; SCOTT R.
4 JONES, in his official
5 capacity as the SHERIFF of
6 the COUNTY OF SACRAMENTO;
7 RANCHO CORDOVA POLICE OFFICER
8 S. CARRDOZZO (badge number
9 480); RANCHO CORDOVA POLICE
10 OFFICER M. JAMES (badge
11 number 507); RANCHO CORDOVA
12 POLICE OFFICER S. PADGETT
13 (badge number 1174),

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Each of the following parties seek dismissal of Plaintiffs' Complaint under Federal Rule of Civil Procedure ("Rule") 12(b)(6): City of Rancho Cordova, County of Sacramento, Rancho Cordova Police Department, Sacramento County Sheriff's Department ("collectively the Entity Defendants"), Michael Goold sued in his official capacity as the Chief of Police of the City of Rancho Cordova, Rancho Cordova Police Traffic Sergeant G. Lane sued as Supervisor of the Traffic Division in both his individual and official capacities, Scott R. Jones as the Sheriff of the County of Sacramento in his official capacity, Rancho Cordova Police Officer S. Cardozzo sued in his individual capacity, Rancho Cordova Police Officer M. James sued in his individual capacity, and Rancho Cordova Police Officer S. Padgett sued in his individual capacity (all Defendants are collectively referenced as "Defendants" and the defendants sued in their individual capacities are collectively referenced as "Individual Defendants").

Plaintiffs' Complaint contains claims alleged under the First, Fourth, and Fourteenth Amendments.

1 I. FACTUAL ALLEGATIONS

2 The dismissal motion concerns the following assertions
3 in the Complaint. Plaintiffs are California residents with "class
4 M1 motorcycle license[s]" who "travel through . . . Rancho
5 Cordova and the County of Sacramento on their motorcycles."
6 (Compl. Overview ¶¶ 1-2, ECF No. 1.) Defendants "engaged in a
7 pattern . . . of denying Plaintiffs . . . their constitutional
8 rights . . . [by] arresting [and citing them for non-compliance
9 with California helmet law] without specific probable cause to
10 believe that the motorcyclist has actual knowledge of [his or
11 her] helmet's non-compliance" with that law. (Id.)

12 "The helmet law requires specific intent[,] and "[a]
13 motorcyclist who is wearing a helmet that was certified [as
14 compliant with that law] by the manufacturer at the time of sale
15 must have actual knowledge of the helmet's non-conformity to be
16 guilty of violating the helmet law." (Id. ¶¶ 53-54.) Therefore,
17 "the ticketing officer must have probable cause to believe that
18 [a motorcyclist wearing a helmet that was certified as compliant
19 when purchased, had] actual knowledge of [his or her helmet's]
20 non-conformity" before a citation is issued to the motorcyclist.
21 (Id. ¶ 56.)

22 Each Plaintiff was "at all times riding a motorcycle
23 wearing a manufacturer certified helmet," yet was cited for a
24 helmet law violation. (Id. ¶ 62.) "[P]laintiffs. . . [lacked]
25 actual knowledge of the[ir] helmet[s'] non-conformity [with the
26 legal requirement and had no]. . . decertification information."
27 (Id. ¶ 87.)

28 Plaintiffs allege they "have all been [ticketed or]

1 arrested without probable cause” and suffered injury. (Id. ¶ 57.)

2 **II. LEGAL STANDARD**

3 “To survive a motion to dismiss, a [pleading] must
4 contain sufficient factual matter, accepted as true, to ‘state a
5 claim to relief that is plausible on its face.’” Ashcroft v.
6 Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v.
7 Twombly, 550 U.S. 544, 570 (2007)). “A claim is facially
8 plausible ‘when the plaintiff pleads factual content that allows
9 the court to draw the reasonable inference that the defendant is
10 liable for the misconduct alleged.’” Somers v. Apple, Inc., 729
11 F.3d 953, 959 (9th Cir. 2013) (citation omitted). “Plausibility
12 requires pleading facts, as opposed to conclusory allegations.”
13 Id. “Factual allegations must . . . raise a right to relief
14 above the speculative level.” Twombly, 550 U.S. at 555.

15 **III. DISCUSSION**

16 **A. Statute of Limitations**

17 Defendants seek dismissal of all “claims asserted by
18 Plaintiffs Dalke, McNulty, Bell, Zalutskiy and Balthorpe[,]”
19 arguing the claims are barred by California’s two-year statute of
20 limitations for personal injury actions since the challenged
21 claims accrued before July 4, 2012, which is more than two years
22 before the Complaint was filed. (Defs.’ Mot. Dismiss (“Mot.”)
23 4:23-5:5, ECF No 11.) Defendants also seek dismissal of Plaintiff
24 Temple’s claim that is premised on a stop occurring on December
25 1, 2009. (Id. at 5:6-8.) “Plaintiffs . . . agree the statutory
26 period is 2-years from the date of accrual (i.e. arrest).” (Pls.’
27 Opp’n Mot. Dismiss (“Opp’n”) 5:25-26, ECF No. 17.)

28 “For actions under 42 U.S.C. § 1983, courts apply the

1 forum state's statute of limitations for personal injury actions,
2 along with the forum state's law regarding tolling, including
3 equitable tolling, except to the extent any of these laws is
4 inconsistent with federal law." Jones v. Blanas, 393 F.3d 918,
5 927, 927 (9th Cir. 2004). California's statute of limitations
6 for personal injury actions is two years. Cal. Code Civ. Proc. §
7 335.1.

8 Plaintiffs' Complaint reveals Dalke's claim accrued on
9 September 27, 2011 (Compl. ¶ 64); one of Temple's claims accrued
10 on December 1, 2009 (Id. ¶ 67); McNulty's claim accrued on
11 February 17, 2012 (Id. ¶ 68); Bell's claim accrued on April 29,
12 2010 (Id. ¶ 73); Zalutskiy's claim accrued on June 21, 2012 (Id.
13 ¶ 74); and Balthorpe's claim accrued on October 27, 2010 (Id. ¶
14 75). Therefore, this portion of the motion is granted.

15 **B. Plaintiff B.O.L.T.**

16 Defendants argue Plaintiff B.O.L.T.'s claims should be
17 dismissed because B.O.L.T. "does not claim any direct injury to
18 itself" and does not meet the requirements for associational
19 standing to sue on behalf of its members. (Mot. 8:24-25.)

20 For an organization to sue on behalf of its members, it
21 must satisfy three requirements to secure organizational
22 standing: "(a) its membership would otherwise have standing to
23 sue in their own right; (b) the interests it seeks to protect are
24 germane to the organization's purpose; and (c) neither the claim
25 asserted nor the relief requested requires the participation of
26 individual members of the lawsuit." Hunt v. Wash. Apple Advert.
27 Comm'n, 432 U.S. 333, 343 (1977). "[S]tanding cannot be inferred
28 . . . from averments in the pleadings, but rather must

1 affirmatively appear in the record." FW/PBS, Inc. v. City of
2 Dallas, 493 U.S. 215, 231 (1990).

3 The Complaint lacks any allegations demonstrating
4 associational standing. Therefore, Defendants' motion to dismiss
5 B.O.L.T.'s claims is granted.

6 **C. Official Capacity Claims Against Defendants Goold,**
7 **Jones, and Lane**

8 Defendants Goold, Jones, and Lane each argue the
9 official capacity claims against him should be dismissed since a
10 suit against an officer in his official capacity is tantamount to
11 suing the municipality and a department thereof, thus making the
12 official capacity suit needlessly duplicative.

13 Plaintiffs counter their official capacity claims
14 should not be dismissed because Plaintiffs seek equitable relief
15 and if successful, "the injunction will have to be served on
16 [Goold, Jones and Lane] themselves, and not the county." (Opp'n
17 9:19-20.)

18 Therefore, the motion is denied.

19 **D. Defendants Sacramento County Sheriff's Department and**
20 **the Rancho Cordova Police Department**

21 Sacramento County Sheriff's Department and the Rancho
22 Cordova Police Department seek dismissal of all claims alleged
23 against them, contending they are not subject to suit since a
24 department of a municipality is not considered a "person"
25 amendable to suit for constitutional violations under 42 U.S.C. §
26 1983, and because they are redundant parties. (Mot. 7:19-21, 8:1-
27 4.)

28 Plaintiffs have not responded to the redundancy portion

1 of the motion. Therefore, this portion of the dismissal motion is
2 granted.

3 **E. Privileges and Immunities Clause**

4 Defendants seek dismissal of Plaintiffs' claims
5 alleging violation of Plaintiffs' "right to travel under the
6 Privileges and Immunities Clause of the [Fourteenth] Amendment."
7 (Compl. ¶ 121.) Defendants argue "Plaintiffs vaguely allege that
8 the enforcement of the Helmet Laws somehow impacts their right to
9 travel[, and] fail to present . . . facts . . . support[ing]...
10 this claim." (Mot. 10:26-28.)

11 "The word travel is not found in the text of the
12 Constitution. Yet the constitutional right to travel from one
13 State to another is firmly embedded in our jurisprudence." Saenz
14 v. Roe, 526 U.S. 489, 498 (1999) (internal quotation marks
15 omitted).

16 The "right to travel" . . . embraces at least
17 three different components. It protects the
18 right of a citizen of one State to enter and
19 to leave another State, the right to be
20 treated as a welcome visitor rather than an
21 unfriendly alien when temporarily present in
the second State, and, for those travelers
who elect to become permanent residents, the
right to be treated like other citizens of
that State.

22 Id. at 500.

23 Plaintiffs allege violation of their right to travel in
24 a conclusory manner, which is insufficient to plead plausible
25 right to travel claims. Therefore, Plaintiffs' right to travel
26 claims alleged under the Privileges and Immunities Clause of the
27 Fourteenth Amendment are dismissed.

28 ///

1 **F. First Amendment**

2 Defendants seek dismissal of Plaintiffs' First
3 Amendment claims, arguing they are not supported by "the facts
4 contained in Plaintiffs' Complaint." (Mot. 11:11-12.)

5 Plaintiffs' Complaint contains the following conclusory
6 allegations about the First Amendment claims: "Each individual
7 defendant specifically targeted Plaintiffs, and other motorcycle
8 enthusiasts, simply because of their association and/or how they
9 expressed themselves by the type of helmet they wore in violation
10 of the First Amendment." (Compl. ¶ 135.)

11 The First Amendment protects certain "conduct intending
12 to express an idea . . . only if it is sufficiently imbued with
13 elements of communication to fall within the scope of the First
14 and Fourteenth Amendments, which means that an intent to convey a
15 particularized message is present, and the likelihood is great
16 that the message will be understood by those who view it."
17 Anderson v. City of Hermosa Beach, 621 F.3d 1051, 1058 (9th Cir.
18 2010) (internal citations, quotation marks, and brackets
19 omitted). Further "[i]t is beyond debate that freedom to engage
20 in association for the advancement of beliefs and ideas is an
21 inseparable aspect of the 'liberty' . . . , which embraces
22 freedom of speech." Nat'l Ass'n for Advancement of Colored People
23 v. State of Ala. ex rel. Patterson, 357 U.S. 449, 461 (1958).

24 However, Plaintiffs' conconclusory allegations fail to
25 allege plausible free speech or association claims. Therefore,
26 Defendants' motion to dismiss Plaintiffs' First Amendment claims
27 is granted.

28 ///

1 **G. Individual Defendants**

2 **1. Fourteenth Amendment**

3 The Individual Defendants seek dismissal of Plaintiffs'
4 Fourteenth Amendment claims, arguing Plaintiffs "fail to identify
5 any conduct by the officers that implicates Fourteenth Amendment
6 protections[;]" "a plaintiff cannot invoke . . . the Fourteenth
7 Amendment to prosecute an alleged violation of a fundamental
8 right if that right has explicit constitutional protection under
9 a more specific provision[;]" and "Plaintiffs expressly contend
10 that the officers are responsible for issuing them citations,
11 which Plaintiffs allege are tantamount to arrests under
12 California law." (Mot. 12:10-15, 17-19.)

13 The gravamen of Plaintiffs' allegations is that
14 Plaintiffs were ticketed without probable cause, and that this
15 constituted a seizure proscribed by the Fourth Amendment.

16 A traffic stop is a seizure under the Fourth Amendment.
17 See Del. v. Prouse, 440 U.S. 648, 653 (1979). The Supreme Court
18 has made clear that "we analyze[] the constitutionality of the
19 challenged [seizures] . . . solely by reference to the Fourth
20 Amendment's prohibition against unreasonable seizures of the
21 person," "[b]ecause the Fourth Amendment provides an explicit
22 textual source of constitutional protection against this sort of
23 physically intrusive governmental conduct[; and] that Amendment,
24 not the more generalized notion of 'substantive due process,'
25 must be the guide for analyzing these claims." Graham v. Connor,
26 490 U.S. 386, 395 (1989).

27 Plaintiffs' allegations do not allege plausible
28 Fourteenth Amendment claims, and rather assert that the citations

1 they received constitute arrests under California law. (See
2 Compl. ¶¶ 46, 63-77, 84.) Accordingly, the Individual Defendants'
3 motion to dismiss Plaintiffs' Fourteenth Amendment claims is
4 granted.

5 **2. Qualified Immunity**

6 Each Individual Defendant argues his qualified immunity
7 defense shields him from being exposed to liability for
8 Plaintiffs' Fourth Amendment claims, contending "there is no
9 clearly established law that would have placed. . . [him] on
10 notice that. . . [he] w[as] required to investigate in a
11 particular manner or procedure or what that investigation or
12 evaluation of evidence should include prior to issuing citations
13 regarding helmet use." (Mot. 7:5-8.)

14 Plaintiffs rejoin the "law was clearly established in
15 Easyriders Freedom F.I.G.H.T. v. Hannigan, 92 F.3d 1486 (9th Cir.
16 1996)." (Opp'n 7:22-24.)

17 In Rodis v. City, Cnty. of S.F., 558 F.3d 964, 969 (9th
18 Cir. 2009), the Ninth Circuit summarized a holding in Easyriders
19 as follows: "[an] officer[] must have probable cause of a
20 motorcyclist's actual knowledge that a certified helmet does not
21 comply with helmet safety laws before ticketing [him or her]."

22 "The . . . qualified immunity [affirmative defense]
23 shield[s] an officer from personal liability when an officer
24 reasonably believes that his or her conduct complies with the
25 law." Pearson v. Callahan, 555 U.S. 223, 244 (2009); see also
26 Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). "[T]he Supreme
27 Court has mandated that, in qualified immunity cases, the
28 contours of the right [at issue] must be clearly

1 established . . . , meaning that it must be 'clear to a
2 reasonable officer that his conduct was unlawful in the situation
3 he confronted.'" Moss v. U.S. Secret Serv., 711 F.3d 941, 951
4 (9th Cir. 2013). In other words, "qualified immunity protects
5 [an] officer from liability unless it would be clear to a
6 reasonable officer that his conduct was unlawful in the situation
7 he confronted." Chavez v. U.S., 683 F.3d 1102, 1110 (9th Cir.
8 2012) (citation and internal quotation marks omitted).

9 Here, each movant fails to show that a reasonable
10 police officer could believe probable cause existed in the
11 situation here where Plaintiffs allege in the Complaint that each
12 Plaintiff was ticketed without probable cause, and was "wearing a
13 manufacturer certified helmet" at the time of the citation and
14 did not have actual knowledge of the helmet's non-compliance with
15 California law. (Compl. ¶¶ 62, 87-89.)

16 Therefore, each Individual Defendant's qualified
17 immunity motion is denied.

18 **H. Plaintiffs' Request for Leave to Amend**

19 Lastly, Plaintiffs request in their opposition brief
20 that they be granted "leave to file an amended and supplemental
21 complaint." (Opp'n 13:9.) Plaintiffs state:

22 A supplemental pleading is required to
23 allege relevant facts occurring after the
24 original pleading was filed. F.R.C.P. Rule
25 15(d). Supplemental pleadings are favored
26 because they enable the court to award
27 complete relief in the same action, avoiding
28 the costs and delays of separate suits.
Therefore, absent a clear showing of
prejudice to the opposing parties, they are
liberally allowed. Keith v. Volpe, 858 F2d
467, 473-474 (9th Cir. 1988); Carolina Cas.
Ins. Co. v. Lanahan & Reilley, LLP, 2011 WL
3741004, (ND CA 2011) (citing text) A

1 supplemental pleading is designed to bring
2 the action "up to date" and to set forth new
3 facts affecting the controversy that have
4 occurred since the original pleading was
5 filed. Manning v. City of Auburn, 953 F2d
6 1355, 1359-1360 (11th Cir. 1992).

7
8 As new actions accrued after this action
9 was filed, plaintiffs request leave to file
10 an amended and supplemental complaint based
11 upon these new facts, and this court's order
12 on defendants' motion.

13
14
15 (Id. at 13:10-23.)

16
17 This request is essentially a motion for leave to amend
18 under Rule 15. However, the request does not provide the notice
19 prescribed in Local Rule 230(b). Even assuming arguendo that the
20 request is considered a "related or counter-motion," under Local
21 Rule 230(e), the request is still defective. Rule 7 prescribes,
22 in relevant part: "A request for a court order must be made by
23 motion. The motion must: . . . state with particularity the
24 grounds for seeking the order" Fed. R. Civ. P.
25 7(b)(1)(B). Further, Local Rule 137(c) prescribes: "If filing a
26 document requires leave of court, such as an amended complaint
27 after the time to amend as a matter of course has expired,
28 counsel shall attach the document proposed to be filed as an
29 exhibit to moving papers seeking such leave"
30 Plaintiffs' request for leave to amend contained within its
31 opposition to Defendants' dismissal motion does not comply with
32 these requirements.

33 Therefore, this request is denied.

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2 **IV. CONCLUSION**

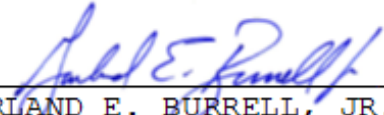
3 For the stated reasons, the motion to dismiss is
4 GRANTED in PART and DENIED in PART. Plaintiffs are granted forty
5 (40) days from the date on which this order is filed to file a
6 First Amended Complaint addressing the pleading deficiencies
7 identified here.

8 Dated: December 5, 2014

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GARIAND E. BURRELL, JR.
Senior United States District Judge

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