UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

OUTLAWS MOTORCYCLE CLUB, ET AL	:	
Plaintiffs,	:	CIVIL ACTION NO. 3:04-cv-537 (JCH)
v.	:	
RICHARD WILLIAMS, ET AL	:	SEPTEMBER 1, 2004
Defendants.	:	

RULING ON MOTION TO DISMISS [DKT. NO. 20]

Outlaws Motorcycle Club ("OMC"), Gary Piscottano, Allison Piscottano, Domenic F. Papsadore, Christopher K. Curvin, Kelly Hemmeler, Clifford Hemmeler, Philip O. LaBonte, Jr., Barbara Warren, and Marty Warren ("plaintiffs") bring this action pursuant to 42 U.S.C. §§ 1983 and 1988, and the First[1], Fourth, and Fourteenth Amendments to the Constitution of the United States against Richard Williams, Richard Perron, Carmine Verno, Patrick Cauley, Frank Griffin, Peter Terenzi, Thomas Garbidian, Robert Burgess, Lt. Gould, Daniel Lewis, Robert Keeney, Darren Edwards, Karen Gabianelli, Julie Mooney, Chris Alex, Sgt. Mucherino, Tim Wright, James Campbell, Ed Rickevicius Eric Stevens, J.L. Kelley, Joseph Voket, Troopers Dubuc, Wyler, Palen, Orlowski, Walkley, Lunz, Zonghetti, McCarthy, Toney, Mercer, Basak, Alogna, Kodzis, Covello, Rochette, Fitzsimons, Rief, Bednarz, and Brundage in their individual capacities, and the Commissioner, Department of Public Safety, individually and in his official capacity ("defendants"). The defendants move to dismiss this action for failure to state a claim under Rule 12(b) of the Federal Rules of Civil

[1] Plaintiffs concede that it intended to withdraw its First Amendment claim when it amended its complaint, and that Paragraph 35(c) of the Amended Complaint was maintained in error. See Pl's Mem. Opp. Mot. to Dismiss at 1.

Procedure. For the reasons that follow, the defendants' motion is hereby **GRANTED IN PART AND DENIED IN PART**.

I. BACKGROUND[2]

Plaintiffs allege that on December 20, 2003, Outlaws Motorcycle Club held a Christmas Party attended by, *inter alia*, the individual plaintiffs at its Waterbury, Connecticut clubhouse. During the party, the defendants, wearing black clothes and masks, carrying automatic or semi-automatic weaponry, and accompanied by dogs, broke into the clubhouse without previously knocking or announcing their presence. The defendants screamed directives, pointed their weapons at the plaintiffs and other partygoers (collectively the "attendees"), and used their dogs in a threatening manner. The attendees were instructed to lie face down on the ground and were forcefully restrained and handcuffed. Certain attendees were thrown down, kicked, and/or stepped on.

The attendees were forced to remain either lying face down or in a kneeling position for approximately 40 minutes while the defendants conducted their search. The defendants searched the premises, the persons and personal effects of the attendees, searched automobiles owned by the attendees, and ripped open and searched wrapped Christmas presents brought to the party by the attendees. In addition, the defendants damaged the property of plaintiffs, seized property including an address book in the possession of OMC's President Marty Warren, and did not allow the attendees to leave without having their picture taken.

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[2] On a motion to dismiss the court is bound to accept as true all factual allegations in the complaint. See Scheuer v. Rhodes, 416 U.S. 232, 236 (1974).

The plaintiffs also allege that the defendants have engaged in an ongoing pattern of harassment towards certain plaintiffs. In particular, plaintiffs claim that defendants have interfered with plaintiffs' attempts to rent facilities for social gatherings by telling the parties renting out the facilities that the OMC is a criminal or subversive group. This interference has led renters to violate their agreements with the Club, and has caused it inconvenience and financial loss. In addition, the plaintiffs allege that on a number of occasions, the most recent being March 2, 2004, one or more of the defendants have stopped one or more of the individual plaintiffs without reasonable suspicion of wrongdoing or probable cause, questioned them, and forced them to identify themselves or be photographed.

Plaintiffs contend that the defendants are depriving them of equal protection under the law by treating them differently from other similarly situated citizens for reasons unrelated to a legitimate government objective, and based upon a malicious intent to injure the plaintiffs.

II. STANDARD

On a motion to dismiss for failure to state a claim upon which relief can be granted under FED.R.CIV.P. 12(b), courts are bound to accept as true all factual allegations in the complaint and draw all inferences from those allegations in the light most favorable to the plaintiff. See, e.g., Scheuer v. Rhodes, 416 U.S. 232, 236 (1974). The simplified notice pleading standard requires that a complaint contain only "a short and plain statement of the claim showing that the pleader is entitled to relief." FED.R.CIV.P. 8(a)(2); see also Swierkiewicz v. Sorema, N.A., 534 U.S. 506, 512 (2002). "This simplified...standard relies on liberal discovery rules and summary judgment motions to define disputed facts and

issues and to dispose of unmeritorious claims." Swierkiewicz, 534 U.S. at 512.

This is so even if the plaintiff is ultimately unlikely to prevail. "Indeed it may appear on the face of the pleading that a recovery is very remote and unlikely but that is not the test." Branham v. Meachum, 77 F.3d 626, 628 (2d Cir.1996) (quoting Gant v. Wallingford Bd. of Educ., 69 F.3d 6691 673 (2d Cir.1995) (internal quotations omitted)). "A district court may grant a motion to dismiss for failure to state a claim only if it appears beyond doubt that the plaintiff can prove no set of facts in support of [her] claim which would entitle [her] to relief.'" Tarshis v. Riese Org., 211 F.3d 30, 35 (2d Cir. 2000) (quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957)). Otherwise, "claims lacking merit may be dealt with through summary judgment under Rule 56." Swierkiewicz, 534 U.S. at 514.

III. DISCUSSION

1. First Amendment Claim

Defendants first move for dismissal of the plaintiffs' claim found in paragraph 35(c) of the Amended Complaint, which defendants argue is an attempt to "bootstrap" a First Amendment claim into the plaintiffs' equal protection claim. See Def's Mem. Supp. Mot. to Dismiss at 3-4. However, inclusion of paragraph 35(c) in the Amended Complaint appears to have been a clerical oversight by the plaintiffs. See Mem. Opp. Mot. to Dismiss at 1. The plaintiffs have dropped their First Amendment claim. See Withdrawal (Dkt. No. 18). Therefore, this issue is moot. To the extent the clerical error has caused the plaintiffs' First Amendment claim to remain technically at issue, the defendants' motion to dismiss this claim is granted.

2. Fourteenth Amendment Claim

Plaintiffs may bring an equal protection challenge where they allege they are a member of a "class of one", or in this case a "class of several", that has intentionally been "treated differently from others similarly situated and that there is no rational basis for the difference in treatment." Village of Willowbrook v. Olech, 528 U.S. 562, 564 (2000) (noting in a footnote that the plaintiffs constituted a "class of five"). The OMC alleges that it and its members have been treated differently under the law by the defendants than similarly situated citizens on several occasions. (Am. Compl. ¶ 35) Specifically, the plaintiffs allege that defendants' actions during a raid of an OMC Christmas party (Am. Compl. ¶¶ 22-30), their alleged interference in OMC's attempts to secure the use of various properties for social gatherings (Am. Compl. ¶ 31), and defendants' allegedly illegal stops of various OMC members (Am. Compl. ¶ 31) violate both the plaintiffs' Fourth and Fourteenth Amendment rights (Am. Compl. ¶¶ 34-35).[3] The plaintiffs allege that these actions were taken to injure and harass them based on their membership in the OMC. See Am. Compl. ¶¶ 30-31.

Citing Whren v. United States, 517 U.S. 806, 814 (1996), defendants claim that an equal protection claim cannot stand when police have probable cause to institute the search upon which the claim is based, "where, to prove the claim, evidence that the officers' intent was of a discriminatory nature is required." See Mem. Supp. Mot. to

[3] The plaintiffs also allege that the defendant Commissioner of Public Safety violated their Fourth and Fourteenth Amendment rights both directly and through failure to remedy the wrongs of other defendants, creation of a policy or custom under which unconstitutional practices occur, by exercising gross negligence in supervising other defendants, by demonstrating gross indifference to the plaintiffs' rights, and through the Commissioner's position as supervisor of the other defendants. (Am. Compl. ¶37).

Dismiss at 12. However, Whren does not say that a Fourteenth Amendment equal protection claim cannot stand in such a situation. The plaintiffs in Whren challenged a police search solely under the Fourth Amendment, claiming that while the police had probable cause to pull over their vehicle for a traffic violation, the police really pulled them over to investigate a narcotics crime and that the Fourth Amendment prohibited them for performing a search under the "pretext" of a valid traffic stop. See 517 U.S. at 810. The Supreme Court held that "[s]ubjective intent alone...does not make otherwise lawful conduct illegal or unconstitutional." Id. at 813 (internal quotation and citation omitted).

However, the Supreme Court pointed out that its decision did not constitute a foreclosure of Fourteenth Amendment claims. Specifically it said:

> We of course agree with petitioners that the Constitution prohibits selective enforcement of the law based on considerations such as race. But the constitutional basis for objecting to intentionally discriminatory application of the laws is the Equal Protection Clause, not the Fourth Amendment.

Id. Far from blocking the plaintiffs, this case appears to direct the plaintiffs to challenge defendants' actions just as they have: using an equal protection basis.

The defendants also point to two Second Circuit decisions they refer to as Brown I and Brown II. However, the Second Circuit did not find that the Fourth Amendment somehow trumped the Fourteenth Amendment in situations involving police searches based on probable cause. In Brown I, the Second Circuit upheld the dismissal of the plaintiffs' equal protection claim because the plaintiffs failed to allege that the police had a discriminatory motive. See Brown v. City of Oneonta, New York, 221 F.3d 329, 338 (2d Cir. 2000). Rather than an announcement of a constitutional rule, it was merely a situation

where the plaintiffs failed to allege an element of their claim. Here, the plaintiffs have specifically alleged that the defendants treated them differently from others similarly situated "for reasons unrelated to a legitimate government objective" and with "a malicious intent to injure the Plaintiffs". See Am. Compl. ¶ 35 (a) & (b).

Brown II, at base, is merely a summary denial of a petition for rehearing *en banc*. See Brown v. City of Oneonta, New York, 235 F.3d 769, 770 (2d Cir. 2000). The passages of Brown II cited by the defendants as "the Brown II court" (Mem. Supp. Mot. to Dismiss at 14) are, in fact, from a concurring opinion to the Summary Order. See Brown II, 235 F.3d at 770-75 (Walker, C.J., concurring). Even so, the concurrence qualifies its statements regarding the Fourth Amendment by noting that it is referring to situations "where a citizen who is questioned is not deprived of his liberty even for a brief period of time and remains free at all times to walk away from the officer. . . ." Brown II at 776. The plaintiffs allege that the attendees were handcuffed, made to lie on the floor for 40 minutes, and not allowed to leave prior to having their picture taken. See Am. Compl. ¶¶ 23-24, 28. Thus, even the Brown II concurrence appears to be inapposite to the case at bar.

The plaintiffs have alleged a set of facts that meets the elements of a "class of one" equal protection claim under the Fourteenth Amendment. Their complaint "give[s] the defendant[s] fair notice of what the plaintiff[s'] claim is and the grounds upon which it rests." Swierkiewicz, 534 U.S. at 512. The cases cited by the defendants claiming that a Fourteenth Amendment claim *per se* cannot stand in this situation are inapposite. Therefore, the defendants' motion to dismiss the plaintiffs' Fourteenth Amendment equal protection claim is denied.

3. **Defendants' Claim of Qualified Immunity**

The defendants' claim of qualified immunity is based on the rule that government officials are immune from suit for damages based on their performance of official duties "insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." See Mem. Supp. Mot. to Dismiss at 15 (quoting Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). The defendants argue that, because Fourth Amendment analysis trumps the plaintiffs' claims under the First[4] and Fourteenth Amendments, no violation of those amendments could have occurred, and therefore defendants have qualified immunity as to those claims. See Mem. Supp. Mot. to Dismiss at 20-21. However, the plaintiffs' Fourteenth Amendment claim has not been dismissed. In fact, if the defendants, as alleged by the plaintiffs, "treated [the plaintiffs] [differently] from others similarly situated [with] . . . no rational basis for the difference in treatment," then the defendants have violated the Fourteenth Amendment. See Olech, 528 U.S. at 564.

The inquiry does not stop here, however. In Saucier v. Katz, the Supreme Court held that lower courts must also examine whether "the right the [government] official is alleged to have violated [is] 'clearly established'" . . . . 533 U.S. 194, 202 (2001). In Cobb v. Pozzi, the Second Circuit held that the "law pertaining to 'class of one' equal protection claims was clearly established in 1999." 363 F.3d 89, 111 (2d Cir. 2004). Therefore, defendants' motion to dismiss the plaintiffs' Fourteenth Amendment claim based on

[4] Because the First Amendment claim is withdrawn, the qualified immunity assertion as to that claim is moot.

qualified immunity is denied.

IV. CONCLUSION

For the foregoing reasons, the defendants' motion to dismiss is hereby **GRANTED IN PART AND DENIED IN PART**.

SO ORDERED.

Dated at Bridgeport, Connecticut this 1st day of September, 2004.

/s/ Janet C. Hall
Janet C. Hall
United States District Judge