IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

ANGELA SWAGLER, et al.,	*	
Plaintiffs,	*	
		Civil No. RDB 08-2289
v.	*	
HARFORD COUNTY, et al.,	*	
Defendants.	*	
	*	

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MEMORANDUM OPINION

Plaintiffs Angela Swagler, Elizabeth Walsh and Joan Walsh have brought this action asserting numerous constitutional and common law claims against Harford County (the "County"), the Town of Bel Air, the Superintendent of the Maryland State Police, the Sheriff of Harford County, three Maryland State Police troopers, three Bel Air Police officers, an unnamed employee of the State of Maryland ("Jane Doe 1"), and an unnamed employee of Harford County ("Jane Doe 2"). Plaintiffs' claims relate to their arrest, search, and detainment that occurred after their engagement in an anti-abortion protest in Harford County on August 1, 2008. Plaintiffs challenge the constitutionality of Defendants' actions and policies and seek declaratory and injunctive relief as well as damages. Defendants have moved separately to dismiss the Amended Complaint, and some of the Defendants have moved, in the alternative, for summary judgment. The issues have been fully briefed and no hearing is necessary. *See* Local Rule 105.6 (D. Md. 2008).

BACKGROUND

In ruling on a motion to dismiss, "[t]he factual allegations in the Plaintiff[s'] complaint must be accepted as true and those facts must be construed in the light most favorable to the plaintiff[s]." *Edwards v. City of Goldsboro*, 178 F.3d 231, 244 (4th Cir. 1999).

Plaintiffs Angela Swagler, Elizabeth Walsh, and Joan Walsh were participants and organizers in the 2008 "Face the Truth" tour, a week-long demonstration event sponsored by Defend Life, a non-profit pro-life advocacy group. (Am. Compl. ¶ 21.) On the final day of the tour, on Friday, August 1, 2008, at approximately 4:00 p.m., Plaintiffs and several other individuals staged an abortion protest on a grassy shoulder along Route 24, near the intersection of Routes 24 and 924 in Harford County. (*Id.* ¶ 22.) The demonstrators stood approximately 20 to 40 feet apart from each other and they held signs of varying sizes, between 4 and 5 feet in height and 2 and 3 feet in width that contained pictures and words that conveyed an anti-abortion message. (*Id.* ¶¶ 26-28.)

After receiving calls from complaining motorists, Defendant State Troopers Christopher Bradley, Charles Neighoff, and Walter Rasinski ("Defendant Troopers") arrived at the scene of the demonstration at 4:45 p.m. (*Id.* ¶ 32.) Bradley informed the demonstrators that they needed a permit to protest on Harford County property and he threatened to place them under arrest unless they disbanded. (*Id.* ¶¶ 33-38.)

The demonstrators then moved their protest two miles away, to the corner of Route 24 and Marketplace Drive inside the Bel Air town limits. (*Id.* ¶ 42.) They resumed their demonstration on a wide grassy shoulder that was separated from the flow of traffic by a paved emergency lane. (*Id.* ¶ 43.) At approximately 5:30 p.m., the Defendant Troopers returned with three other State Troopers, three Harford County deputies, and the three Bel Air police officers

named Donald Ravadge, Mark Zulauf, and Armand Dupre. (*Id.* ¶ 45.) Plaintiffs allege that upon arrival, Trooper Neighoff and the Bel Air police officer Defendants immediately arrested eighteen of the demonstrators, including the Plaintiffs. (*Id.* ¶¶ 49-50.) For over half an hour the Plaintiffs were held in handcuffs alongside the heavily trafficked public road, and despite their repeated requests, no reason was provided for their arrest. (*Id.* ¶¶ 51-53.)

Plaintiffs were then transported to a police station, where they allege they were subjected to a strip search in the station's parking lot. (*Id.* ¶ 57.) Defendant Jane Doe 1, a female officer, inspected each of the female Plaintiffs (except Plaintiff Angela Swagler) by looking down their shirts and by manually reaching down their pants and feeling below their waist lines. (*Id.* ¶¶ 58-63.) The searches were conducted publicly, in the presence of male police officers and the Plaintiffs' male companions. (*Id.* ¶ 57.) Plaintiffs claim that these searches were sexually invasive and resulted in their embarrassment and humiliation. (*Id.* ¶¶ 60-62.)

The arrested demonstrators were then separated by gender and placed in two isolated holding cells, where they were detained for nearly six hours. (*Id.* ¶¶ 64-65, 67.) During this time, the demonstrators had not been told why they had been arrested or what charges they might be facing. (*Id.* ¶ 68.) Between midnight and 2:30 a.m., the demonstrators were placed back in handcuffs and transferred to the Harford County Detention Center. (*Id.* ¶ 71.) Upon arrival, Plaintiffs were put in shackles and again subjected to a strip search. (*Id.* ¶ 72.) The Plaintiffs were individually taken into a bathroom by a female officer, Defendant Jane Doe 2, who ordered them to lift their shirts and their brassieres. (*Id.* ¶¶ 72-80.) During the inspections, the bathroom door was left partially ajar, leading Plaintiffs to fear that their privacy had been compromised. (*Id.* ¶ 77.) Between the hours of 2:00 a.m. and 9:30 a.m., the plaintiffs were interviewed individually by the Harford County Commissioner, who presented the Plaintiffs with their formal

charges and required them to sign several forms. (*Id.* ¶ 88.) After their interview with the Commissioner, the Plaintiffs and demonstrators were individually released. (*Id.* ¶ 94.) The final demonstrator was released at or around 11:00 a.m. (*Id.* ¶ 95.)

Plaintiffs were charged with loitering, Harford County Code, § 193-4(B)(1), disorderly conduct, MD Code Ann., Crim. Law Art., § 10-201(c)(2), and failure to obey a lawful order, MD Code Ann., Crim. Law Art., § 10-201(c)(3). (*Id.* ¶ 89.) However, they were not charged under the Harford County permit requirement, despite the fact that Defendant Neighoff's arrest report cites the permit requirement as a basis for the arrest. (*Id.* ¶¶ 90-92.) On August 12, 2008, the State entered a *nolle prosequi* of the entire case against all demonstrators in the District Court of Maryland for Harford County. (*Id.* ¶ 98.)

In their Amended Complaint (Paper No. 32), Plaintiffs assert seven claims under 42 U.S.C. § 1983 alleging constitutional violations of their First, Fourth, Fifth, Ninth, and Fourteenth Amendment rights, as well as two common law claims for false arrest and false imprisonment and assault and battery. Defendants have moved separately to dismiss the Plaintiffs' action. Pending before this Court is the Town of Bel Air and Officers Ravadge, Zulauf and Dupre's Motion to Dismiss or, Alternatively, for Summary Judgment (Paper No. 24), Harford County's Motion to Dismiss (Paper No. 25), Maryland State Police ("MSP") Defendants' Motion to Dismiss and/or for Summary Judgment (Paper No. 44), and Sheriff L. Jesse Bane's Motion to Dismiss First Amended Complaint (Paper No. 45).

STANDARD OF REVIEW

Under Rule 12(b)(6) of the Federal Rules of Civil Procedure, a complaint may be dismissed for failure to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). A Rule 12(b)(6) motion tests the legal sufficiency of a complaint. *Edwards v. City of Goldsboro*,

178 F.3d 231, 243 (4th Cir. 1999). Therefore, the court accepts all well-pleaded allegations as true and construes the facts and reasonable inferences derived therefrom in the light most favorable to the plaintiff. *Ibarra v. United States*, 120 F.3d 472, 474 (4th Cir. 1997). A complaint must meet the "simplified pleading standard" of Rule 8(a)(2), *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 513 (2002), which requires only a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a).

Although Rule 8(a)(2) requires only a "short and plain statement," a complaint must contain "more than labels and conclusions" or a "formulaic recitation of the elements of a cause of action." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). The factual allegations contained in a complaint "must be enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." *Id.* Thus, a complaint must allege "enough facts to state a claim to relief that is plausible on its face." *Id.* at 570. "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Ashcroft v. Iqbal*, No. 07-1015, 2009 U.S. LEXIS 3472, at *29 (May 18, 2009) (quoting *Twombly*, 550 U.S. at 556).

However, where, as here, the defendant seeks to dismiss the plaintiff's civil rights complaint, this Court "must be especially solicitous of the wrongs alleged" and "must not dismiss the claim unless it appears to a certainty that the plaintiff would not be entitled to relief *under any legal theory which might plausibly be suggested by the facts alleged*." *Edwards v. City of Goldsboro*, 178 F.3d 231, 244 (4th Cir. 1999) (quoting *Harrison v. U.S. Postal Serv.*, 840 F.2d 1149, 1152 (4th Cir. 1988)) (emphasis in original); *see also Presley v. City of Charlottesville*, 464 F.3d 480, 483 (4th Cir. 2006).

I. Common Law Claims

A. Individual Defendants

Plaintiffs allege state law torts of false arrest and imprisonment (Count Eight) and assault and battery (Count Nine) against each of the individual defendants.[1] The individual defendants each claim that they are entitled to qualified statutory immunity under Maryland law. The MSP Defendants and Sheriff Bane[2] claim immunity under the Maryland Tort Claims Act ("MTCA"), Md. Code Ann., State Gov't §§ 12-101, *et seq.*, whereas the Bel Air officers seek protection under the statutory grant of immunity for municipal officials. Md. Code Ann., Cts & Jud. Proc. § 5-507(b)(1).

The MTCA serves as a limited waiver of sovereign immunity and it provides the sole means by which the State of Maryland and its personnel may be sued in tort. The statute grants immunity to state personnel "from liability in tort for a tortious act or omission that is within the scope of [their] public duties . . . and is made without malice or gross negligence . . . ." Md. Code Ann., Cts & Jud. Proc. § 5-522(b).

Municipal officers similarly enjoy immunity from suit when they act "in a discretionary capacity, without malice, and within the scope of [their] employment or authority." Md. Code Ann., Cts & Jud. Proc. § 5-507(b)(1). This statute codified Maryland common law immunity as it pertains to public officials of Maryland counties, such as police officers. *Livesay v. Baltimore County*, 384 Md. 1, 12 (2004). It is well-established that "the actions of police officers within the scope of their law enforcement function are quintessential discretionary acts." *Williams v. Prince George's County*, 112 Md. App. 526, 550 (1996).

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[1] Plaintiffs originally asserted state law causes of action against the Town of Bel Air and Harford County, but withdrew these claims in their Amended Complaint upon the recognition that they are barred due to governmental immunity. *See Williams v. Prince George's County*, 157 F. Supp. 2d 596, 604 (D. Md. 2001) (holding that a Maryland municipality is "immune as to common law tort claims asserted against it based on torts committed by its police officers").

[2] For the purposes of governmental immunity, County Sheriffs are considered to be "state personnel" and are protected by the MTCA. Md. Code Ann., State Gov't § 12-101(a)(6).

Under both state statutory immunity and statutory public official immunity, the protection afforded is of a qualified nature—that is, defendants are shielded from liability as long as they act without malice. Under Maryland law, "malice" is defined by reference to "actual malice," as "an act without legal justification or excuse, but with an evil or rancorous motive influenced by hate, the purpose being to deliberately and willfully injure the plaintiff." *Shoemaker v. Smith*, 353 Md. 143, 163 (1999) (quoting *Leese v. Baltimore County*, 64 Md. App. 442, 480 (1985)). Plaintiffs asserting malice are held to a high pleading standard that may not be satisfied by conclusory allegations. *See Elliott v. Kupferman*, 58 Md. App. 510, 528 (1984) ("[m]erely asserting that an act was done maliciously, or without just cause, or illegally, or for improper motive does not suffice. To overcome a motion raising governmental immunity, the plaintiff must allege with some clarity and precision those facts which make the act malicious); *Hovatter v. Widdowson*, No. CCB-03-2904, 2004 U.S. Dist. LEXIS 18646, at *23 (D. Md. Sept. 15, 2004) ("although the amended complaint repeatedly states that all of the defendants acted with malice towards [Plaintiff] . . . these bare legal conclusions are not binding on the court.").

In Counts Eight and Nine of the Amended Complaint, Plaintiffs have inserted boilerplate language stating that the police officer Defendants' "actions were undertaken with malice and intent to violate the constitutional and statutory rights of the Plaintiffs."[3] (Am. Compl. ¶¶ 167, 172.) Such allegations are conclusory in nature and do not provide a sufficient factual basis for raising an inference of malice. For instance, Sheriff Bane and Colonel Sheridan are not alleged to have participated in, or to have had any knowledge of, the conduct affecting the Plaintiffs. As for the remaining Trooper Defendants and the Bel Air police officers, it is not alleged that any of them acted in a violent manner or were verbally abusive to the Plaintiffs. In sum, this Court cannot infer from the allegations the necessary subjective intent showing that these defendants

[3] Plaintiffs do not allege that Defendants acted with gross negligence.

were "motivated by ill will, by an improper motive, or by an affirmative intent to injure." *Shoemaker*, 353 Md. at 164.

The only allegations that could potentially support a finding of malice relate to the two strip searches. During the first incident, Jane Doe 1 is alleged to have conducted a sexually invasive search on some of the Plaintiffs in the presence of both male companions and male police officers. (Am. Compl. ¶ 57.) In the second incident, Jane Doe 2 is alleged to have subjected Plaintiffs to another sexually invasive search in a room while the door was left partially ajar. (*Id.* ¶ 77.) On the basis of these allegations, Plaintiffs could possibly present facts showing that the searches were unduly invasive, repetitive, or exposed, and therefore indicative of malice.

Accordingly, Count Eight, which presents a cause of action for false arrest and imprisonment, is dismissed as to all Defendants. Count Nine, which presents a cause of action for assault and battery is dismissed as to all of the Defendants except Jane Doe 1 and Jane Doe 2, for their alleged role in the strip searches.

B. Harford County is a Proper Defendant under the Local Government Tort Claims Act

Plaintiffs also seek to hold Harford County liable under the Local Government Tort Claims Act ("LGTCA"), Md. Code Ann., Cts & Jud. Proc., Art. Sec. 5-301, *et seq.* for any judgment of damages that may be rendered against Jane Doe 2 under Count Nine for her alleged role in conducting the strip searches at the Harford County Detention Center. In response, the County maintains that it cannot be held liable under the LGTCA because Plaintiffs failed to conform to the statute's notice requirements.

The LGTCA requires local governments to defend and indemnify its employees for the tortious acts they commit within the scope of their employment and without malice. Md. Code

Ann., Cts & Jud. Proc. § 5-302; *Ashton v. Brown*, 339 Md. 70, 107-08 (1995). Under the Act, the local government retains sovereign immunity, but is required to insure its employees, to a limited extent, for the payment of any adverse judgments.

The LGTCA generally provides that plaintiffs must give local government defendants notice of claims within 180 days of injury. § 5-304(a). In addition, the notice must be in writing and state the time, place, and cause of the injury, and it must be given in person or by certified mail to the county solicitor or county attorney. § 5-304(b)(2)-(3). The notice requirement is intended to protect a government entity from "meretricious claimants and exaggerated claims by providing a mechanism whereby the municipality or county would be apprised of its possible liability at a time when it could conduct its own investigation . . . ." *Williams v. Maynard*, 359 Md. 379, 389-90 (2000). (internal citations omitted). Courts have held that substantial compliance with the LGTCA's statutory notice requirements may suffice where the purpose of the notice requirement is fulfilled. *Maynard*, 359 Md. at 390; *Moore v. Norouzi*, 371 Md. 154, 171 (2002). Finally, section 5-304(d) provides that "unless the defendant can affirmatively show that its defense has been prejudiced by lack of required notice, upon motion and for good cause shown the court may entertain the suit even though the required notice was not given."

Plaintiffs have satisfied the LGTCA's statutory notice requirements. The County received formal notice consisting of a cover letter attached to a copy of the original Complaint, via certified mail on October 9, 2008. (Am. Compl. ¶ 7.) The County therefore received timely written notice within the 180 day limit, as the injuries are alleged to have occurred on August 1, 2008, and the original Complaint properly set forth the time, place, and cause of injury. Finally, this Court rejects the County's contention that the claims under the LGTCA should be dismissed as untimely because notice was not given before the original filing of suit. Instead, this Court is

persuaded by *Smith v. Danielczyk*, 400 Md. 98, 111-12 (2007), where the Court of Appeals of Maryland found that notice of a claim brought after the date of its original filing, but within the 180 period, satisfied the LGTCA. As in *Smith*, the purpose of the LGTCA's notice requirements—to ensure that the local government is apprised of its possible liability in order to conduct an investigation—have been served in this case. *See id.* at 112. Moreover, the County has not affirmatively shown that it was prejudiced in any way by receiving formal notice of suit after the original Complaint was filed. *See id.* at 113.

Because Plaintiffs have at least substantially complied with the notice requirements of the LGTCA, Harford County is properly named as a defendant in Count Nine of the Amended Complaint.

II. Constitutional Claims under Section 1983

Plaintiffs have asserted seven causes of action under 42 U.S.C. § 1983[4] for constitutional violations of the First, Fourth, Fifth, Ninth, and Fourteenth Amendments. These constitutional claims may be considered separately on the basis of the conduct to which they are related—Counts One, Two, Three and Five pertain to the Plaintiffs' arrest, whereas Counts Four, Six and Seven pertain to the strip searches conducted on Plaintiffs. The Defendants' separate challenges to the constitutional claims are considered in turn.

A. Maryland State Police Defendants

Maryland State Police Troopers Christopher Bradley, Charles Neighoff, and Walter Rasinski ("Trooper Defendants"), and Colonel Terrence Sheridan (collectively, "MSP

[4] Section 1983 provides that "every person who, under color of any statute, ordinance, regulation, custom, or usage . . . subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights . . . secured by the Constitution and laws, shall be liable to the party injured in an action at law . . . [or] suit in equity." 42 U.S.C. § 1983.

Defendants") move both to dismiss certain of the Plaintiffs' claims and move for summary judgment on all claims.

1) Claims against the Arresting Officers in their Individual Capacities (Counts I, III, and V)

Plaintiffs seek to hold the Trooper Defendants personally liable under § 1983 for their conduct in arresting and detaining Plaintiffs. "To state a claim under § 1983, a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law." *West v. Atkins*, 487 U.S. 42, 48 (1988). *See also Kentucky v. Graham*, 473 U.S. 159, 166 (1985) ("to establish personal liability in a § 1983 action, it is enough to show that the official, acting under color of state law, caused the deprivation of a federal right."). In their Amended Complaint, Plaintiffs have properly stated claims against the Trooper Defendants under § 1983 with respect to their arrest. Nevertheless, in moving for summary judgment on the constitutional claims, the Trooper Defendants contend that they are shielded from liability because they are entitled to qualified immunity and because they acted with probable cause.

i. Qualified Immunity

Government officials are generally protected by qualified immunity when they perform the discretionary duties of their offices. *See Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). The affirmative defense of qualified immunity shields an officer from monetary damages as long as his conduct "does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Id.*

Courts have traditionally engaged in a two-step analysis when determining whether an officer is protected by qualified immunity. *Wilson v. Layne*, 526 U.S. 603, 609 (1999). First, a court determines whether a constitutional right has been violated. Second, "assuming that the

violation of the right is established, courts must consider whether the right was clearly established at the time such that it would be clear to an objectively reasonable officer that his conduct violated that right." *Brown v. Gilmore*, 278 F.3d 362, 367 (2002) (citing *Saucier v. Katz*, 533 U.S. 194, 201 (2001)). The United States Supreme Court has recently modified this rigid, two-tiered approach, by allowing reviewing judges to evaluate the two factors in whatever order they wish, in view of the unique facts of a case. *Pearson v. Callahan*, 129 S. Ct. 808, 818 (2009) ("[t]he judges of the district courts and courts of appeals should be permitted to exercise their sound discretion in deciding which of the two prongs of the qualified immunity analysis should be addressed first in light of the circumstances in the particular case at hand.").

This Court is mindful of "the importance of resolving immunity questions at the earliest possible stage in the litigation." *Hunter v. Bryant*, 502 U.S. 224, 227 (1991). However, it would be premature to rule upon the issue of qualified immunity at this juncture due to the undeveloped nature of the record. Indeed, the issues of whether there was a constitutional violation and "whether it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted," *Saucier*, 533 U.S. at 202, are highly fact-dependent. Moreover, while Defendants have submitted materials and affidavits with their briefs, and urge a summary judgment decision, this Court recognizes that Plaintiffs deserve an opportunity to conduct a thorough discovery.[5] *See Harrods v. Sixty Internet Domain Names*, 302 F.3d 214, 244 (4th Cir. 2002) ("[g]enerally speaking, 'summary judgment [must] be refused where the nonmoving party has not had the opportunity to discover information that is essential to his opposition.'") (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986)).

[5] Plaintiffs have properly filed a Fed. R. Civ. P. 56(f) affidavit stating that they need to conduct discovery in order to effectively oppose the motion for summary judgment. *See Evans v. Technologies Applications & Service Co.*, 80 F.3d 954, 961 (4th Cir. 1996) (noting that reviewing courts "place great weight on the Rule 56 affidavit" when considering whether to defer a ruling on summary judgment).

ii. Probable Cause

The Fourth Circuit has stated that "[w]hether probable cause exists in a particular situation . . . always turns on two factors in combination: the suspect's conduct as known to the officer, and the contours of the offense thought to be committed by that conduct." *Pritchett v. Alford*, 973 F.2d 307, 314 (4th Cir. 1992). While the qualified immunity and probable cause inquiries are related, defendants must make a greater showing to demonstrate probable cause. *See Torchinsky v. Siwinski*, 942 F.2d 257, 261 (4th Cir. 1991) ("the standard for probable cause . . . is more stringent than is the requirement for qualified immunity").

The Troopers Defendants contend that they arrived at the initial scene of the protest after receiving commuter complaints that the demonstrators were impeding and obstructing traffic. They claim that this conduct violated Harford County Code, § 193-4(B)(1), which prohibits the "obstruct[ion of] a public highway by hindering or impeding or tending to hinder or impede the free and uninterrupted passage of vehicles." In addition, they note that the demonstrators disobeyed the officers' order to disband by resuming their protest at a nearby intersection, in violation of Md. Code Ann., Crim. Law § 10-201(c)(3), which provides that "[a] person may not willfully fail to obey a reasonable and lawful order that a law enforcement officer makes to prevent a disturbance to the public peace." This sequence of events, the Trooper Defendants maintain, supplied them with probable cause to make the arrest.

However, Plaintiffs have alleged that they were obeying traffic rules and that they did not adversely impact traffic. (Am. Compl. ¶¶ 43-44, 48.) With the exception of Plaintiff Walsh's short walk on the median, the entire demonstration took place on the wide road shoulder. (*Id.* ¶¶ 23-25.) They claim that after moving their demonstration to the corner of Route 24 and Marketplace Drive, no traffic congestion occurred until after the arresting officers arrived. (*Id.* ¶

48.) Plaintiffs maintain that the Troopers were responding to callers' concerns over the content of their message and that the Troopers were serving to censor their protest.

The story presented by the Defendants in their motion for summary judgment clearly conflicts with the account set forth in the Plaintiffs' allegations. For the same reasons noted above with respect to the issue of qualified immunity, Plaintiffs must be afforded a full opportunity to engage in discovery before a ruling is made on summary judgment. *See Harrods*, 302 F.3d at 244. At the present stage, this Court determines that Plaintiffs' claims against the Trooper Defendants in Counts One, Three and Five survive the motion to dismiss.

2) Policies Allegedly in Violation of the Fourteenth Amendment (Count II)

Plaintiffs claim that "Defendants' policies and actions against Plaintiffs' speech are unconstitutionally vague, in that they neither define sufficiently the standards utilized in governing citizens' speech in public fora, nor do they protect against arbitrary and discriminatory enforcement." (Am. Compl. ¶ 134.) The MSP Defendants argue that Plaintiffs have not properly identified any "policies" or "actions" of the MSP Defendants, nor have they specifically shown how they are "unconstitutionally vague."

The Amended Complaint sets forth sufficient facts to suggest that the Trooper Defendants, through their arrest of Plaintiffs, executed a policy of suppressing free speech that was based upon an unconstitutionally vague and overbroad ordinance. As a result, Plaintiffs have stated a claim in Count Two against the Trooper Defendants.

3) Constitutional Claims against the Arresting Officers in their Official Capacities (Counts I, II, III and V)

Plaintiffs have sued the Trooper Defendants in their official, as well as their individual, capacities. These official capacity claims are barred to the extent that they seek monetary damages since the State's Eleventh Amendment immunity extends to state officials sued in their

official capacities. *See Kentucky v. Graham*, 473 U.S. 159, 169-70 (1985). *See also, Will v. Mich. Dep't of State Police*, 491 U.S. 58, 71 (1989) ("a suit against a state official in his or her official capacity is not a suit against the official but rather is a suit against the official's office.") However, the claims are permitted against the Trooper Defendants, insofar as they seek prospective injunctive relief to prevent ongoing violations of federal law. *See Ex Parte Young*, 209 U.S. 123 (1908) (holding that the Eleventh Amendment does not preclude suits against state officers for injunctive relief). Therefore, this Court construes the Amended Complaint as seeking injunctive relief against the Troopers in their official capacities. *See Graham*, 473 U.S. at 167 ("implementation of state policy or custom may be reached in federal court [] because official-capacity actions for prospective relief are not treated as actions against the State").

Nevertheless, parties can be held liable in their official capacities "only when an injury was inflicted by a government's lawmakers or by those whose edicts or acts may fairly be said to represent official policy." *City of St. Louis v. Praprotnik*, 485 U.S. 112, 121-22 (1988) (internal quotations and citation omitted). "Whether a particular defendant has final policy making authority is a question of state law." *Id.* at 123 & 124 n.1. Plaintiffs have not alleged, nor does this Court find, that the Trooper Defendants espoused any final policy making authority. Because the Trooper Defendants are not proper parties to represent the State of Maryland or any other official entity in this case, the claims asserted against the Trooper Defendants in their official capacities must be dismissed. *See Lytle v. Gilmore*, 77 F. Supp. 2d 730, 741-42 (E.D. Va. 1999) (dismissing official-capacity suit against the Lieutenant of the Norfolk Police Department upon a finding that the Lieutenant was not an official policy maker for the City of Norfolk).

4) Claims Relating to the Strip Searches (Counts IV, VI, and VII)

Plaintiffs claim that they were subjected to two rounds of sexually invasive strip searches. The first search is alleged to have occurred outside a State Police barrack, and was conducted by Defendant Jane Doe 1, a female officer and employee of the State of Maryland. (Amend. Compl. ¶¶ 57-63.) The second search is alleged to have occurred at the Harford County Detention Center by Jane Doe 2, a female officer and an employee of Harford County. (*Id.* at ¶¶ 72-80.) Because there are no allegations that any of the Trooper Defendants participated in these searches, Counts Four, Six and Seven are hereby dismissed against the Trooper Defendants.

5) Official-Capacity Claims against Defendant Sheridan

The Plaintiffs bring suit against Colonel Sheridan in his official capacity as Superintendent of the Maryland State Police. As with the official capacity claims against the Trooper Defendants, Plaintiffs' suit is permitted against Sheridan insofar as it seeks prospective injunctive relief to prevent ongoing violations of federal law. *See, e.g, Will*, 491 U.S. at 71; *Graham*, 473 U.S. at 167, n.14; *Ex Parte Young*, 209 U.S. 159-60.

In an official-capacity action, plaintiffs must show that the government entity was the "moving force" behind the deprivation, in that the "policy or custom" of the entity or official, "played a part in the violation of federal law." *Graham*, 473 U.S. at 166 (quoting *Monell v. Department of Social Services*, 436 U.S. 658, 694 (1978)). Towards this end, the government official being sued must be shown to be a final policy-making authority for the governmental entity that he represents, and the entity's policy must be shown to have played a role in the constitutional violation. *Graham*, 473 U.S. at 166. Finally, "[w]hile municipal policy is most easily found in municipal ordinances, 'it may also be found in formal or informal ad hoc 'policy' choices or decisions of municipal officials authorized to make and implement municipal

policy.'" *Edwards v. City of Goldsboro*, 178 F.3d 231, 244 (4th Cir. 1999) (quoting *Spell v. McDaniel*, 824 F.2d 1380, 1385 (4th Cir. 1987)).

In support of their official capacity claim against Sheridan, Plaintiffs claim that he "oversees the enforcement of county and state law," Am. Compl. ¶ 9, and that he bears responsibility for the policies which the State Police used to suppress Plaintiffs' free speech rights. Pls.' Opp. Br., at 8 (citing Am. Compl. ¶ 119.) Defendants counter that the claim against Sheridan should be dismissed because Plaintiffs have not sufficiently alleged a policy behind the violations of Plaintiffs' constitutional rights.

"Whether a particular defendant has 'final policy making authority' is a question of state law." *Praprotnik*, 485 U.S. 112, 123 (1988) (quoting *Pembaur v. City of Cincinnati*, 475 U.S. 469, 483 (1986)). Courts appropriately address this legal question in reviewing dispositive motions. *See Jett v. Dallas Ind. Sch. Dist.*, 491 U.S. 701, 737 (1989). Under Maryland law, the Superintendent is now referred to as the Secretary of the Department of State Police. *See Mohan v. Norris*, 386 Md. 63, 71 (2005). The Secretary, who is appointed by the Governor, supervises and directs the affairs and operations of the State Police.[6] *Id.* at 70 (citing Md. Code Ann., Pub. Safety § 2-202). In addition, the Secretary is provided the authority to "adopt rules necessary to . . . promote the effective and efficient performance of the duties of the [State Police] [and to] ensure the good government of the [State Police] and its employees." Md. Code Ann., Pub. Safety § 2-205. Thus, it is clear that Sheridan is correctly identified as the final policy maker for the Maryland State Police.

[6] The website for the Maryland State Police provides:

> The Superintendent of the Maryland State Police holds the rank of Colonel. Within State government, the Superintendent is the Secretary of the Department of State Police and a member of the Governor's Cabinet. The Superintendent is responsible for all facets of the Maryland State Police and he is the ultimate authority within the Agency. The Superintendent is appointed by the Governor and must be confirmed by the Maryland Senate.

See http://www.msp.maryland.gov/about_us/ranks.asp

The Fourth Circuit has established a lenient pleading standard for official capacity suits, requiring plaintiffs to only "set forth a plain statement of his claims giving the [official] fair notice of what his claims [were] and the grounds upon which they [rested]." *Edwards*, 178 F.3d at 244. *See also, Jordan by Jordan v. Jackson*, 15 F.3d 333, 339 (4th Cir. 1994) ("[t]here is no requirement that [Plaintiff] detail the facts underlying his claims, or that he plead the multiple incidents of constitutional violations that may be necessary at later stages to establish the existence of an official policy or custom and causation."). With respect to the alleged violations of Plaintiffs' First Amendment rights, the Amended Complaint sets forth facts that the Maryland State Police have a policy, overseen by Sheridan, of enforcing an unconstitutional Harford County ordinance in a manner that proximately caused Plaintiffs' constitutional deprivations. In addition, they allege that Sheridan "failed to provide proper training to [his] subordinates on the issue of freedom of speech in traditional public forums, which has contributed to the violation of the constitutional rights of Plaintiffs and others not before the Court." (Am. Compl. 121.) *See City of Canton v. Harris*, 489 U.S. 378, 387 (1989). While the allegations against Sheridan are not especially thorough, they do rise above the level of being conclusory. *Cf. Lee v. O'Malley*, 533 F. Supp. 2d 548, 553 (D. Md. 2007) (dismissing a *Monell* claim on the basis that the Complaint "merely offer[ed] the conclusory statement that 'said arrests are a matter of policy, tradition and custom within the Baltimore City Police Department.'"). Therefore, Plaintiffs' official capacity claim against Sheridan seeking prospective relief survives with respect to Counts One, Two, Three and Five.

Finally, Plaintiffs claim in their opposition brief that Sheridan "is responsible for the policies and practices which led to the sexually invasive search of Plaintiffs at the hands of the State Troopers." Pls' Opp. Br. at 2. However, nowhere in the Amended Complaint is it alleged

that the strip search at the police station was operated pursuant to any policy of the State Police. Because Plaintiffs have failed to state an official-capacity claim with respect to the strip search conducted by Jane Doe 1, Counts Four, Six and Seven are dismissed as to Sheridan.

B. The Bel Air Defendants

1) Constitutional Claims (Counts I, II, III, and V)

Plaintiffs allege that the Defendant Bel Air police officers Ravadge, Zulauf, and Captain Dupree ("Bel Air officers") participated in the Plaintiffs' unlawful and unconstitutional arrest "either by handcuffing, transporting, and/or searching them." (Am. Compl. ¶ 50.) The Bel Air officers, on the other hand, deny playing any role in the Plaintiffs' arrest, transport or search, and claim that, even if they did participate, they are entitled to qualified immunity. *See Harlow v Fitzgerald*, 457 U.S. 800, 818 (1982).

The extent of the Bel Air officers' participation in the arrest—if any—and their entitlement to qualified immunity are hotly contested and highly fact-dependent issues.[7] Before this Court makes a ruling on summary judgment, discovery must be conducted in order to further develop the record and to allow the Plaintiffs to mount a proper opposition. *See Harrods v. Sixty Internet Domain Names*, 302 F.3d 214, 244 (4th Cir. 2002). For purposes of ruling on a motion to dismiss, this Court finds that Plaintiffs could possibly establish facts supporting their constitutional claims that would entitle them to relief.

Plaintiffs also seek to hold the Town of Bel Air liable under a theory of municipal liability. *Monell v. Department of Social Services*, 436 U.S. 658 (1978). While a *Monell* claim for municipal liability under § 1983 may not rest upon a theory of *respondeat superior*, it may be

[7] In support of their claim, the Bel Air officers attached affidavits to their motion to dismiss or for summary judgment in which they claimed that they played no significant role in the arrest. (Ex. 1, 2 & 3; Mot. to Dismiss/Summary Judgment.) On the other hand, Plaintiffs have attached the arrest report, which identifies each of the Defendant officers as being present and as assisting in the arrest. (Ex. 4; Am. Compl.)

established "when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury." *Id.* at 694.

Plaintiffs have alleged that the Bel Air officers' unconstitutional conduct resulted from Bel Air's policy or custom of suppressing speech. In addition, it is alleged that the Town of Bel Air failed to properly train its officers "on the issue of freedom of speech in traditional public forums, which has contributed to the violation of the constitutional rights of Plaintiffs and others not before the Court." (Am. Compl. ¶ 121.) *See City of Canton, Ohio v. Harris*, 489 U.S. 378, 387 (1989) (concluding that an "inadequate training" claim could serve as a basis for § 1983 liability in "limited circumstances"). In light of the lenient standard for pleading § 1983 claims, this Court finds that Plaintiffs could possibly establish facts supporting their *Monell* claim against the Town of Bel Air. *See Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit*, 507 U.S. 163, 168-69 (1993) (ruling that notice pleading is adequate for § 1983 suits against municipalities and that "federal courts and litigants must rely on summary judgment and control of discovery to weed out unmeritorious claims sooner rather than later"); *Jordan by Jordan v. Jackson*, 15 F.3d 333, 340 (4th Cir. 1994) (holding that a *Monell* claim survives motion to dismiss as long as allegations provide the municipality with "notice of the nature of the claim against them and the grounds on which it rests").

2) Sexually Invasive Searches (Counts IV, VI, and VII)

There are no allegations that the Bel Air officers participated in the allegedly unconstitutional strip searches of the Plaintiffs. Accordingly, Counts Four, Six and Seven are dismissed as to the Bel Air officers and the Town of Bel Air.

C. Sheriff L. Jesse Bane

Plaintiffs seek to sue Sheriff Bane in his individual capacity.[8] However, to state a claim against Bane in his personal capacity, Plaintiffs are required to allege that he was personally involved in acts or omissions that caused the deprivation of constitutional rights. *See Zatler v. Wainwright*, 802 F.2d 397, 401 (11th Cir. 1986). In the Amended Complaint, Bane is only alleged to be "partially responsible for the policies" of the Harford County Detention Center. (Am. Compl. ¶ 16, 116.) Plaintiffs do not allege that Bane was personally involved, either in the arrest or in the strip search at the Detention Center. The only person alleged to have committed a constitutional violation at the Detention Center is Jane Doe 2, and Bane cannot be held vicariously liable for her actions under the theory of *respondeat superior*. *See Monell*, 436 U.S. at 694. Therefore, all constitutional claims are dismissed as to Sheriff Bane.

D. Harford County

Plaintiffs also seek to hold Harford County liable under a *Monell* theory of municipal liability. In *Monell*, the United States Supreme Court stated that "[l]ocal governing bodies . . . can be sued directly under § 1983 . . . [where] the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers." 436 U.S. at 690. Such a municipal "policy" is found "most obviously in municipal ordinances, regulations and the like which directly command or authorize constitutional violations . . . ." *Spell v. McDaniel*, 824 F.2d 1380, 1385 (4th Cir. 1987).

[8] In their Brief in Opposition to Defendant Bane's Motion to Dismiss, Plaintiffs claim that they are seeking to hold Bane liable in his official capacity. However, the case caption of the Amended Complaint expressly provides that Bane is being sued in his individual capacity. The Fourth Circuit has stated that in determining whether a defendant is being sued in his official or individual capacity, a court should "examine the nature of the plaintiff's claims, the relief sought, and the course of proceedings to determine whether a state official is being sued in a personal capacity." *Briggs v. Meadows*, 66 F.3d 56, 61 (4th Cir. 1995). However, this rule only applies "when a plaintiff does not allege capacity specifically." *Id.*

Plaintiffs have alleged that Harford County's permit ordinance, Harford County Code, § 219, constitutes an unconstitutional policy, the execution of which resulted in the violation of Plaintiffs' constitutional rights. When a municipal policy is alleged to be unconstitutional in isolation, a plaintiff need not affirmatively plead (or prove) the causal connection between the policy and the violation. *See Spell*, 824 F.2d at 1387 ("[w]hen a municipal 'policy or custom' is itself unconstitutional, *i.e.*, when it directly commands or authorizes constitutional violations . . . the causal connection between the policy and violation is manifest and does not require independent proof"). Plaintiffs have therefore satisfied the lenient pleading requirements for stating a *Monell* claim against Harford County with respect to Counts One, Two, Three and Five that relate to the arrest.

In addition, Plaintiffs assert that the County is responsible for the conduct of its employee, Jane Doe 2, who conducted the strip search at the Harford County Detention Center. (Am. Compl. ¶ 116.) It is alleged that Harford County funds and operates the Detention Center, hires its employees (*Id.* ¶¶ 75, 115), and is "at least partially responsible for the policies of the Harford County Detention Center." (*Id.* ¶ 116.) This Court finds that with respect to the alleged sexually invasive strip search at the Detention Center, Plaintiffs have sufficiently stated a claim in Counts Four, Six, and Seven against the County under a *Monell* theory of liability.

E. Jane Doe 1 and Jane Doe 2

In the Amended Complaint, Jane Doe 1, an unnamed female employee of the State of Maryland, and Jane Doe 2, an unnamed female employee of Harford County, have been named as Defendants. Jane Doe 1 is alleged to have conducted the strip search outside of a State Police

barracks (Am. Compl. ¶¶ 57-63), while Jane Doe 2 is alleged to have conducted the strip search at the Harford County Detention Center.[9] (*Id.* ¶¶ 72-80.)

This Court finds that Plaintiffs have stated constitutional claims in Counts Four, Six, and Seven against both Jane Doe 1 and Jane Doe 2 with respect to the strip searches. However, because there are no allegations tying them to the arrest, Counts One, Two, Three, and Five are hereby dismissed against Jane Doe 1 and Jane Doe 2.

CONCLUSION

For the reasons stated above, the Town of Bel Air and Officer's Ravadge, Zulauf and Dupre's Motion to Dismiss or, Alternatively, for Summary Judgment (Paper No. 24) is GRANTED IN PART and DENIED IN PART insofar as Counts IV, VI, VII, VIII, and IX are DISMISSED while the remaining counts may PROCEED. Harford County's Motion to Dismiss (Paper No. 25) is GRANTED IN PART and DENIED IN PART insofar as Count VIII is DISMISSED, while the remaining counts may PROCEED. The MSP Defendants' Motion to Dismiss and/or for Summary Judgment (Paper No. 44) is GRANTED IN PART and DENIED IN PART insofar as Counts IV, VI, VII, VIII, and IX are DISMISSED and Counts I, II, III, and V are DISMISSED against the Trooper Defendants in their official capacities, while Counts I, II, III, and V may PROCEED against the Trooper Defendants in their individual capacities and against Colonel Sheridan in his official capacity. Sheriff L. Jesse Bane's Motion to Dismiss First Amended Complaint (Paper No. 45) is GRANTED in its entirety. Finally, this Court holds that with respect to Jane Doe 1 and Jane Doe 2, Counts I, II, III, V, and VIII are DISMISSED, while the remaining counts may PROCEED.

This case will proceed to discovery as to the following claims against the following Defendants:

[9] No motion to dismiss was entered on behalf of Jane Doe 1 and Jane Doe 2.

Count	**Remaining Defendants**
Count I – 42 U.S.C. § 1983, First Amendment, Freedom of Speech	Trooper Defendants (in their individual, but not official, capacities); Colonel Sheridan (in his official capacity); Bel Air police officers; Town of Bel Air; Harford County
Count II – 42 U.S.C. § 1983, Fourteenth Amendment, Due Process (Vagueness)	Trooper Defendants (in their individual, but not official, capacities); Colonel Sheridan (in his official capacity); Bel Air police officers; Town of Bel Air; Harford County
Count III - 42 U.S.C. § 1983, Fourth Amendment, Unreasonable Seizure	Trooper Defendants (in their individual, but not official, capacities); Colonel Sheridan (in his official capacity); Bel Air police officers; Town of Bel Air; Harford County
Count IV - 42 U.S.C. § 1983, Fourth Amendment, Unreasonable Search	Jane Doe 1; Jane Doe 2; Harford County
Count V - 42 U.S.C. § 1983, Fifth and Fourteenth Amendments, Deprivation of Liberty without Due Process of Law	Trooper Defendants (in their individual, but not official, capacities); Colonel Sheridan (in his official capacity); Bel Air police officers; Town of Bel Air; Harford County
Count VI - 42 U.S.C. § 1983, Fifth, Ninth, and Fourteenth Amendments, Invasion of Privacy	Jane Doe 1; Jane Doe 2; Harford County
Count VII - 42 U.S.C. § 1983, Fourteenth Amendment, Equal Protection	Jane Doe 1; Jane Doe 2; Harford County
Count VIII – False Arrest and Imprisonment	Dismissed
Count IX – Assault and Battery	Jane Doe 1; Jane Doe 2; Harford County

A separate Order follows.

Dated: June 2, 2009

/s/
Richard D. Bennett
United States District Judge