The Honorable Barbara J. Rothstein

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

HAZEN SHOPBELL, et al.,

Plaintiffs,

v.

WASHINGTON STATE DEPARTMENT OF FISH AND WILDLIFE, et al.,

Defendants.

NO. 2:18-cv-1758-BJR

DEFENDANTS' SECOND MOTION FOR SUMMARY JUDGMENT

NOTE ON MOTION CALENDAR: November 13, 2020

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I. INTRODUCTION

Defendants have previously submitted a Motion for Partial Summary Judgment (Dkt. # 30) and the Court ruled on and granted part of that motion (Dkt. # 74). Because Defendants' motion did not address all Plaintiffs' claims and Plaintiffs have since amended their Complaint, Defendants offer this Second Motion for Summary Judgment of all the claims that remain.

In her Order Granting in Part Defendants' Motion for Partial Summary Judgment, the Court was critical of Defendants for not supplying her the detail necessary to evaluate the quality of Defendants' Myers', Jaros', and Vincent's arrest of Plaintiffs Shopbell and Paul: "It is therefore impossible for the Court, at this time, to conduct an assessment of the 'factual and practical considerations' supporting probable cause, as required by the Fourth Amendment." Dkt. # 74 at p. 24. "In addition, the Court cannot conclude based on Defendants' declaration testimony that if the detention did rise to the level of a (warrantless) arrest, it was supported by probable cause to believe that an offense had been committed by Plaintiffs, as required by the Constitution. *Beck v. Ohio*, 379 U.S. 89, 91 (1964)." *Id.* at p. 23. Without an undue repetition of previously-submitted facts, supporting evidence, or legal arguments, Defendants will endeavor to provide the Court with those missing factual details through this motion and the attached supplemental declarations.

Defendants intend to offer the court the following additional information: what Defendants knew about the Plaintiffs at the time of the arrest; what crimes were implicated; facts within Defendants' knowledge suggesting Plaintiffs had committed those crimes. *See id.* at p. 24. Because Defendants Myers, Jaros, and Vincent are the only named Defendants who remain after the Court's Order Granting in Part and Denying in Part Defendants' Motion for Partial Summary Judgment and after Plaintiffs amended their complaint for a third time, those three named defendants' actions and knowledge will be the focus of the federal statutes sections of this second motion for summary judgment. Defendants will also address Plaintiffs' state law claims.

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II. RELIEF REQUESTED

Defendants Myers, Jaros, and Vincent respectfully request that this Court dismiss all claims relating to any alleged civil rights violations under §§ 1983 and 1988 that Plaintiffs have made against them for the reasons outlined below. In addition, Defendant WDFW respectfully requests this Court dismiss the state law claims against it.

III. STATEMENT OF FACTS

On the morning of June 13, 2016, the named Defendants and many other officers attended a Pre-Search Warrant Safety and Execution Briefing at various locations including the Tulalip Tribal Police Department and the WDFW Mill Creek office. *See* Declaration of Alan Myers in Support of Defendants' Second Motion for Summary Judgment (Myers Decl.) ¶ 4; Declaration of Anthony Jaros in Support of Defendants' Second Motion for Summary Judgment (Jaros Decl.) ¶ 3; Declaration of Shawnn Vincent in Support of Defendants' Second Motion for Summary Judgment (Vincent Decl.) ¶ 5. There was then a second additional meeting of officers at the Tulalip Police Department to further discuss staging of personnel shortly after that first meeting in Mill Creek. Myers Decl. ¶ 4; Jaros Decl. ¶ 4; Vincent Decl. ¶ 5. Either at the Tulalip Police Department briefing room, or sometime prior to that meeting, each of the named Defendants reviewed the signed search warrant affidavits relating to the searches that were to occur that same day. Myers Decl. ¶¶ 4-5; Jaros Decl. ¶¶ 3-4; Vincent Decl. ¶¶ 5-6. While none of the named Defendants may remember the precise time they spent reviewing the affidavit or affidavits for the search warrants, each of them read the documents sufficiently to become familiar with the crimes specified and the facts supporting Plaintiffs' connection with those crimes. See Myers Decl. ¶¶ 4-6; Jaros Decl. ¶¶ 3, 7; Vincent Decl. ¶ 5. Other officers present at the meetings also received copies of the documents. Myers Decl. ¶ 4; Jaros Decl. ¶ 3; Vincent Decl. ¶ 5.

The officers, under the direction of the lead investigating officer, Wendy Willette, discussed specific points of direction, location, and safety that were needed for personnel that were assisting with the execution of the search warrants. Myers Decl. ¶ 3; Jaros Decl. ¶ 4. Detective Willette described to the officers, including the three named Defendants, that there

was sufficient probable cause to detain, arrest, and interview Plaintiffs Shopbell and Paul. Myers Decl. ¶ 5; *see also* Jaros Decl. ¶ 3; Vincent Decl. ¶ 5. The three named Defendants independently verified that assertion through their own examinations as well. Myers Decl. ¶¶ 5, 7; Jaros Decl. ¶¶ 3, 6; Vincent Decl. ¶¶ 5, 7. And many other officers present reached that very same conclusion based on their own reviews. Dkt. # 31 at pp. 1-2; Dkt. # 32 at p. 2; Dkt. # 33 at p. 2; Dkt. # 34 at p. 2; Dkt. # 35 at p. 2; Dkt. # 36 at pp. 1-2; Dkt. # 37 at pp. 1-2; Dkt. # 38 at pp. 1-2; Dkt. # 39 at pp. 1-2; Dkt. # 43 at p. 2; Dkt. # 44 at pp. 2-5, 7.

Specifically, the warrants specified facts that connected the Plaintiffs to multiple felonious and misdemeanor activities that had been committed by both Plaintiffs Paul and Shopbell. Myers Decl. ¶¶ 5-6; Jaros Decl. ¶ 3; Vincent Decl. ¶ 5; Dkt. # 44-2; Dkt. # 44-3. Without unduly burdening the record by repeating all the facts described in detail in the affidavits reviewed by the named Defendants and at least in part relied on in their probable cause determinations (Dkt. # 44-2 and Dkt. # 44-3), the crimes specified are summarized as unlawful trafficking of shellfish, unlawful catch accounting, and illegal possession and sale of shellfish, which also included selling shellfish without a shellstock shippers license, underpaying for shellfish they were purchasing from fishers, and also selling illegally harvested clams to fishers to be used as bait. Myers Decl. ¶ 6; Jaros Decl. ¶ 3; Vincent Decl. ¶ 5. As experienced WDFW enforcement officers, each of the named Defendants had a great deal of experience with those particular crimes. Myers Decl. ¶ 5; Jaros Decl. ¶ 3; Vincent Decl. ¶ 5. Again, the documents the named Defendants examined provided facts that tied Plaintiffs to those crimes. Dkt. # 44-2 and Dkt. # 44-3.

IV. EVIDENCE RELIED UPON

Declaration of Alan Myers in Support of Defendants' Second Motion for Summary Judgment;

Declaration of Anthony Jaros in Support of Defendants' Second Motion for Summary Judgment;

Second Declaration of Shawnn Vincent in Support of Defendants' Second Motion for Summary Judgment;

Pleadings previously submitted to the Court.

V. ISSUES PRESENTED

A. Should the Court dismiss Plaintiffs' Federal claims asserted under 42 U.S.C. §§ 1983 and 1988 when Plaintiffs' arrests[1] were supported by probable cause?

B. Should the Court grant qualified immunity to Defendants Myers, Jaros, and Vincent when their arrests of Plaintiffs were supported by at least arguable probable cause?

C. Should the Court dismiss Plaintiffs state law negligence claims when they are unsupported as a matter of law?

VI. ARGUMENT

A. Plaintiffs Hazen Shopbell and Anthony Paul Were Lawfully Arrested and Therefore Any Claims Against Defendants Myers, Vincent, and Jaros Should Be Dismissed

Plaintiffs allege claims against Defendants Myers, Vincent, and Jaros for "false arrest" and "false imprisonment," both under 42 U.S.C. § 1983.[2] Dkt. # 81 at pp. 16-17. Because there existed probable cause against Plaintiffs, neither Plaintiffs' arrest not their "imprisonment" was a violation of § 1983. "The existence of probable cause vitiates any claim of unlawful arrest, *Pierson v. Ray,* 386 U.S. 547, 87 S.Ct. 1213, 18 L.Ed.2d 288 (1967), and acts as a complete defense to the liability of an officer under § 1983. *Owen v. City of Independence,* 445 U.S. 622, 637, 100 S.Ct. 1398, 63 L.Ed.2d 673 (1980)." *Bradford v. City of Seattle*, 557 F. Supp. 2d 1189, 1199 (W.D. Wash. 2008); *Pallas v. Accornero*, No. 3:19-cv-01171-LB, 2019 WL 2359215, at *3 (N.D. Cal. June 3, 2019) ("For a constitutional claim of false arrest or false imprisonment under 42 U.S.C. § 1983, a plaintiff must show that the defendants did not have probable cause to arrest him.").

"[A] warrantless arrest by a law officer is reasonable under the Fourth Amendment where there is probable cause to believe that a criminal offense has been or is being committed." *Devenpeck v. Alford*, 543 U.S. 146, 152 (2004). More specifically, the standard to establish

[1]While Defendants respectfully disagree that an arrest of Plaintiffs occurred on June 13, 2016, the Court's finding in that regard is treated by Defendants as a verity for purposes of this brief and is not further contested here. *See* Dkt. # 74 at p. 23.

[2]Plaintiffs assert these claims under § 1983, but state law provides the same relief to Defendants: "Probable cause is a complete defense to an action for false arrest or false imprisonment." *Dunn v. Hyra*, 676 F. Supp. 2d 1172, 1196 (W.D. Wash. 2009) (citing *McBride v. Walla Walla County*, 95 Wash. App. 33, 975 P.2d 1029 (1999)).

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probable cause for a warrantless arrest is that the facts and circumstances within the officer's knowledge are sufficient to warrant a prudent person to believe "that the suspect has committed, is committing, or is about to commit an offense." *Michigan v. DeFillippo*, 443 U.S. 31, 37, 99 S. Ct. 2627, 2632 (1979). "To determine whether an officer had probable cause to arrest an individual, we examine the events leading up to the arrest, and then decide 'whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to' probable cause, *Ornelas, supra*, at 696, 116 S.Ct. 1657." *Maryland v. Pringle*, 540 U.S. 366, 371, 124 S. Ct. 795, 800 (2003) (citing *Ornelas v. United States*, 116 S. Ct. 1657 (1996)).

Though Defendants provide much support that the named Defendants believed they had probable cause to arrest Plaintiffs and provide factual support for the reasonableness of that belief, their individual states of mind in making the arrests are not dispositive. "As we have repeatedly explained, 'the fact that the officer does not have the state of mind which is hypothecated by the reasons which provide the legal justification for the officer's action does not invalidate the action taken as long as the circumstances, viewed objectively, justify that action.' " *Devenpeck*, 543 U.S. at 153. The information available to the named Defendants in the affidavits supporting the search warrants provided the probable cause the named Defendants needed to vitiate their warrantless arrest of Plaintiffs. The probable cause test for making a warrantless arrest is the same as for the issuance of an arrest or search warrant. *Gerstein v. Pugh*, 420 U.S. 103, 120 (1975).

"Probable cause does not require the same type of specific evidence of each element of the offense as would be needed to support a conviction." *Adams v. Williams*, 407 U.S. 143, 149, (1972). Therefore, the evidentiary standard for probable cause is significantly lower than the standard that is required for conviction. *See DeFillippo*, 443 U.S. at 36 ("We have made clear that the kinds and degree of proof and the procedural requirements necessary for a conviction are not prerequisites to a valid arrest.") (citations omitted). Probable cause exists if "at the moment the arrest was made . . . the facts and circumstances within [the officers'] knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent

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man in believing that [the suspect] had committed or was committing an offense." *Beck*, 379 U.S. at 91 (citations omitted).

Because Defendants Captain Myers, Officer Vincent, and Officer Jaros – the only Defendants that actively detained (or, arguably, arrested) *any* of the Plaintiffs – had probable cause to undertake the actions they did, all Plaintiffs' claims against them should be dismissed. Each of the Defendants here examined the warrants obtained by Detective Willette and each of them concluded there was ample probable cause to arrest Plaintiffs even before any of the Defendants went to the public boat launch and detained the Plaintiffs. Dkt. # 32 at p. 2; Dkt. # 37 at p. 2; Dkt. # 43 at p. 2; Dkt. # 35 at p. 2.

The affidavits in support of the search warrants provided the following factual information:

- Plaintiffs owned Puget Sound Seafood Dist. LLC, a licensed wholesale dealer through the Department of Fish and Wildlife for 2015 and 2016 and was subject to all rules, regulations, and record-keeping requirements regarding the purchase and sale of wholesale fish and shellfish.
- Puget Sound Seafood Dist. LLC failed to submit 16 Fish Receiving tickets (FRTS) to WDFW and the NWIFC between 03/12/14 and 01/08/16 and paid for VOIDED FRTs on 03/08/15 and 06/30/15 without submitting a valid FRT to document harvest.
- Puget Sound Seafood Dist. LLC back-dated an FRT and company check to a closed-season fisher to conceal an illegal purchase of Dungeness crab on May 23, 2015.
- Each instance with a value over $250 is a violation of Wash. Rev. Code 77.15.630-Unlawful Fish and Shellfish Catch Accounting, First Degree-a Class C Felony. There were a total of 8 violations.
- Each instance with a value under $250 is a violation of Wash. Rev. Code 77.15.630-Unlawful Fish and Shellfish Catch Accounting, Second Degree-a Gross Misdemeanor. There were a total of 6 violations.

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- Puget Sound Seafood Dist. LLC is not licensed as a Shellstock Shipper through the Washington State Department of Health nor was the company licensed as such in 2015. This was been confirmed through the Washington State Department of Health. Puget Sound Seafood Dist. LLC has engaged in the commercial buying and selling of bivalve shellfish (cockle, butter, and geoduck clams). There were 30 documented transactions of cockle and butter clams in 2015 and 15 documented transactions of geoduck in 2015. Each transaction is a violation of Wash. Rev. Code 69.30.110-Possession or Sale in Violation of Chapter-a Gross Misdemeanor. A total of 45 violations.
- Puget Sound Seafood Dist. LLC underpaid fishers they purchased fish and shellfish from over $244,000 in 2015, based on fish receiving ticket values. The company retroactively paid fishers a total of about $47,000, leaving about $197,000 still owed to fishers. This may indicate possible illegal harvests being paid less than what the fish ticket states as financial incentive for assuming risk.
- Wash. Rev. Code 77.08.010(64) "Trafficking" means offering, attempting to engage, or engaging in sale, barter, or purchase of fish, shellfish, wildlife, or deleterious exotic wildlife.
- Wash. Rev. Code 77.15.260 Unlawful Trafficking in Shellfish, in the first Degree is a Class B Felony
- Puget Sound Seafood Dist. LLC repeatedly engaged in the unlawful purchase and sale of shellfish. Each transaction of shellfish made by Puget Sound Seafood Dist. LLC that was in violation of either Wash. Rev. Code 77.15 or 69.30, per reporting requirements; or licensing requirements, constitutes unlawful trafficking. Further sale of said illegally purchased shellfish is also classified as unlawful trafficking.

See Dkt. # 44-2 at pp. 6-7; Dkt. # 44-3 at pp. 6-7. These points provide merely a summary of the possible crimes alleged in the warrant affidavits (*id.*), and the facts supporting them. The affidavits each go on for an additional approximately nine pages describing the evidence

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collected over the course of the investigation. Given these facts, and the specific details outlined behind each of them, any reasonable officer would believe he or she had probable cause to believe Plaintiffs "*had* committed" multiple crimes as alleged in the affidavits and the warrants. *Beck*, 379 U.S. at 91 (emphasis added). Further, the officers reasonably believed the affidavits and the search warrants, signed by two different judges, were the type of "reasonably trustworthy information" anticipated by the Supreme Court in *Beck*. *Id*. This Court itself found, in the context granting qualified immunity to former Defendants Willette and Hale, "Standing alone, the allegations related to just these two offenses were sufficient probable cause for the search warrants to issue." Dkt. # 74 at p. 17.

In addition, even if the arresting officers had not (although they had) read the affidavits describing in detail Plaintiffs' involvement in numerous crimes, their arrests are still reasonable. *United States v. Ramirez*, 473 F.3d 1026 (9th Cir. 2007), *cert. denied*, 552 U.S. 866 (2007), the Ninth Circuit Court held that pursuant to the "collective knowledge doctrine,"

> [w]here one officer knows facts constituting reasonable suspicion or probable cause (sufficient to justify action under an exception to the warrant requirement), and he communicates an appropriate order or request, another officer may conduct a warrantless stop, search, or arrest without violating the Fourth Amendment.

473 F.3d at 1037. The Ninth Circuit also explained the collective knowledge doctrine as follows:

> [u]nder the collective knowledge doctrine, we must determine whether an investigatory stop, search, or arrest complied with the Fourth Amendment by "look[ing] to the collective knowledge of all the officers involved in the criminal investigation although all of the information known to the law enforcement officers involved in the investigation is not communicated to the officer who actually [undertakes the challenged action]."

473 F.3d at 1032 (*citing United States v. Sutton*, 794 F.2d 1415, 1426 (9th Cir. 1986)). Here, the officers who detained or transported Plaintiffs Hazen Shopbell and Anthony Paul, were aware of and correctly believed the warrants supported ample probable cause to arrest these two Plaintiffs. Dkt. # 32 at p. 2; Dkt. # 37 at 2; Dkt. # 43 at p. 2; Dkt. # 35 at p. 2; see also Dkts. # 44-2 and # 44-3. Consequently, probable cause existed against them and the civil rights claims against Defendants Myers, Vincent, and Jaros should be dismissed.

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B. The Defendants Are Entitled to Qualified Immunity

This Court previously held that it "[could not] conclude that qualified immunity from the false arrest claims applies" to Defendants Myers, Jaros, and Vincent. Dkt. # 74 at p. 25. However, Defendants submit their new declarations, in which they attempt to further specify how they formed their beliefs that they had ample probable cause and that those beliefs were derived from one or both of the affidavits for search warrants executed on June 13, 2016. Qualified immunity shields federal and state officials from money damages unless a plaintiff pleads facts showing (1) that the official violated a statutory or constitutional right, and (2) that the right was "clearly established" at the time of the challenged conduct. *Ashcroft v. al-Kidd*, 563 U.S. 731, 735 (2011). For purposes of qualified immunity, the salient question is whether the state of the law at the time gives officials fair warning that their conduct is unconstitutional. *Hope v. Pelzer*, 536 U.S. 730, 740 (2002). Under all these legal principles, the named Defendants are entitled to qualified immunity.

The proper inquiry in determining whether an officer reasonably believed that probable cause was present, the trial court should consider "whether all reasonable officers would agree that there was no probable cause in this instance." *Rosenbaum v. Washoe County*, 663 F.3d 1071, 1078 (9th Cir. 2011). In other words, in examining whether an officer can raise the defense of qualified immunity to a claim for unlawful arrest, the inquiry is not whether probable cause exists, but whether "arguable probable cause" exists. When the underlying facts are not in dispute, the existence of arguable probable cause is "an essentially legal question" that should be resolved on summary judgment. *Act Up!/Portland v. Bagley*, 988 F.2d 868, 872–873 (9th Cir. 1993).

Respectfully, Defendants Myers, Jaros, and Vincent, resubmit their argument they are entitled to qualified immunity if this Court still believes there remain "factual and practical considerations" regarding the existence of actual probable cause for Plaintiffs' arrest. The underlying facts are not in dispute: the officers, highly trained in the very crimes described in the affidavits, examined the warrant affidavits from the June 13, 2016, operation and formed the

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belief they had probable cause. The civil rights claims against the remaining named Defendants, Myers, Jaros, and Vincent, should be dismissed because they are entitled to qualified immunity.

C. Plaintiffs' 42 U.S.C. § 1988 Claims Are Unsupported as a Matter of Law

Because Plaintiffs have failed to demonstrate a violation of their civil rights under § 1983 as described above, Plaintiffs' third cause of action—"42 U.S.C. § 1988: Conspiracy to Violate Plaintiffs' Civil Rights"—must be dismissed. Dkt. # 81 at p. 17. Likewise, 42 U.S.C. § 1988, the statute to which Plaintiffs cite as the legal basis for their claim, does not create an independent cause of action. *See Moor v. Alameda County*, 411 U.S. 693, 703-04 (1973); *Brower v. Inyo County*, 817 F.2d 540, 546 (9th Cir. 1987), *reversed on other grounds*, *Brower v. Cty. of Inyo*, 489 U.S. 593 (1989); *Citizens for Free Speech, LLC v. Cty. of Alameda*, 338 F. Supp. 3d 995 (N.D. Cal. 2018).

The Ninth Circuit has held that a civil rights conspiracy claim under 42 U.S.C. § 1985(3)—if that is what Plaintiffs here intend—must allege (1) a conspiracy, (2) to deprive any person or a class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws, (3) an act by one of the conspirators in furtherance of the conspiracy, and (4) a personal injury, property damage or a deprivation of any right or privilege of a citizen of the United States. *Gillespie v. Civiletti*, 629 F.2d 637, 641 (9th Cir. 1980). The conspiracy must be motivated by race- or class-based discriminatory animus. *United Bhd. of Carpenters & Joiners of Am. v. Scott*, 463 U.S. 825, 829 (1983). A civil rights conspiracy claim is not actionable unless there has been an actual deprivation of the plaintiff's constitutional rights. *Woodrum v. Woodward County, Okl.*, 866 F.2d 1121, 1126 (9th Cir. 1989); *Aguilera v. Baca*, No. CV 03-6328 SVW(CWX), 2005 WL 2562889, *20 (C.D. Cal. Sept. 15, 2005). Because there were no violations of Plaintiffs' civil rights, as detailed above, Plaintiffs' conspiracy claim is not actionable and should be dismissed. Moreover, Plaintiffs have failed to allege specific facts that demonstrate any of the named Defendants was involved in any conspiracy to deprive Plaintiffs of equal protection, or acted in furtherance of such a conspiracy. This claim must be dismissed.

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D. Plaintiffs Cannot Make a Prima Facie Case of Negligence Against the Defendants

Plaintiffs' claims of negligent training, negligent supervision, and negligence are without merit.

1. Plaintiffs' negligent training claim is unsupported

Under Washington law, "a claim for negligent hiring, training, and supervision is generally improper when the employer concedes the employee's actions occurred within the course and scope of employment." *LaPlant v. Snohomish County*, 162 Wash. App. 476, 480, 271 P.3d 254, 257 (2011). Defendant WDFW has never disputed and concedes that all the officers were acting within the course and scope of their employment. Accordingly, just as in *LaPlant*, Plaintiffs' claims here for negligent training and supervision are improper, superfluous and must be dismissed. *LaPlant*, 271 P.3d at 258; *see also James v. City of Seattle*, No. C10-1612JLR, 2011 WL 6150567, at *1 (W.D. Wash. Dec. 12, 2011) (applying Washington law).

2. Plaintiffs' negligent supervision claim is unsupported

A negligent supervision claim requires a showing: (1) an employee acted outside the scope of his or her employment; (2) the employee presented a risk of harm to other employees; (3) the employer knew, or should have known in the exercise of reasonable care that the employee posed a risk to others; and (4) that the employer's failure to supervise was the proximate cause of injuries to other employees. *Niece v. Elmview Grp. Home*, 131 Wash. 2d 39, 48-49, 51, 929 P.2d 420 (1997); *Briggs v. Nova Servs.*, 135 Wash. App. 955, 966-967, 147 P.3d 616, 622 (2006).

However, when an employer does not disclaim liability for the acts of its employee, a negligent supervision claim collapses into a direct tort claim against the employer. *Niece, supra*; *Shielee v. Hill*, 47 Wash. 2d 362, 287 P.2d 479 (1955); *Gilliam v. Dep't of Soc. & Health Servs., Child Protective Servs.*, 89 Wash. App. 569, 950 P.2d 20 (1998); *LaPlant v. Snohomish County*, 162 Wash. App. 476, 479-480, 271 P.3d 254, 256-257 (2011). Again, employees of the Defendant WDFW, did not act outside the scope of their employment nor did they present a risk

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of danger to others by their conduct. Defendant WDFW has never disputed that all the officers involved in the investigation or arrest of Plaintiffs acted in a reasonable and prudent manner and within the scope of their duties. Therefore, Plaintiffs' claim that Defendant WDFW negligently supervised any of its officers relevant to this case is baseless. Further, the factual record establishes that all the officers were experienced, well-trained, and well-supervised officers who performed their duties lawfully. Since there is no evidence to substantiate the Plaintiffs' claim, the cause of action for negligent supervision should be dismissed.

3. Plaintiffs' negligence claim is unsupported

Plaintiffs have not specified precisely how the Defendant WDFW was negligent other than to state WDFW involved here had "a duty to act as reasonable law enforcement officers . . . ." Dkt. # 81 at p. 18 ¶ 63. Plaintiffs have the burden to establish "(1) the existence of the duty owed, (2) breach of that duty, (3) a resulting injury, and (4) proximate cause . . . ." *Tincani v. Inland Empire Zoological Soc'y*, 124 Wash. 2d 121, 127–28, 875 P.2d 621 (1994). A plaintiff does not have a valid claim if they fail to meet the burden of demonstrating the existence of a duty. *Folsom v. Burger King*, 135 Wash. 2d 658, 671, 958 P.2d 301 (1998). The existence of a duty is a question of law for the court. *Pedroza v. Bryant*, 101 Wash. 2d 226, 228, 677 P.2d 166 (1984). Again, establishing the existence of the duty is Plaintiffs' burden. *Lake Washington Sch. Dist. No. 414 v. Schuck's Auto Supply, Inc.*, 26 Wash. App. 618, 621, 613 P.2d 561 (1980).

a. Negligent investigation

Washington courts have consistently rejected a common law claim for negligent investigation by police officers. *Donaldson v. City of Seattle*, 65 Wash. App. 661, 831 P.2d 1098 (1992) (no claim for negligent investigation of domestic violence complaint); *Dever v. Fowler*, 63 Wash. App. 35, 816 P.2d 1237 (1991), *modified*, 824 P.2d 1237 (1992) (no claim for negligent investigation of arson); *Chambers-Castanes v. King County*, 669 P.2d 451 (Wash. 1993) (duty to investigate is duty owed to public at large and unenforceable as to individuals). In *Donaldson*, the court noted: "[P]olice responsibility in regard to any further investigation becomes part of

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their overall law enforcement function and does not generate a right to sue for negligence." 65 Wash. App. at 675.

The rule in Washington is consistent with the rule in numerous other jurisdictions that have similarly rejected a common law claim for negligent investigation by police officers. *See Rodriguez v. Ritchey*, 556 F.2d 1185 (5th Cir. 1977), *cert. denied*, 434 U.S. 1047 (1978) (no federal claim for negligent investigation); *Smith v. Iowa*, 324 N.W.2d 299 (Iowa 1982) (claim for negligent investigation by police officer dismissed pursuant to 12(b)(6)): *Johnson v. City of Pacifica*, 4 Cal. App. 3d 82, 84 Cal. Rptr. 246 (Cal. Ct. App. 1970); *Landeros v. City of Tucson*, 831 P.2d 850 (Ariz. Ct. App. 1992) (summary judgment dismissal of claim for negligent investigation by police officers); *Wimer v. Idaho*, 841 P.2d 453 (Idaho Ct. App. 1992) (summary judgment dismissal of claim for negligent investigation by police officers); *Waskey v. Mun. of Anchorage*, 909 P.2d 342 (Alaska 1996); *Montgomery Ward & Co. v. Pherson*, 272 P.2d 643 (Colo. 1954); and *Bromud v. Holt*, 129 N.W.2d 149 (Wis. 1964).

The rule in Washington and other jurisdictions disallowing claims for negligent investigation is based partly on the public duty doctrine, and partly on concerns about the negative effect on law enforcement of allowing such claims. *Dever*, 816 P.2d at 1242 ("holding investigators liable for their negligent acts would impair vigorous prosecution and have a chilling effect on law enforcement."). Police departments have limited budgets, limited resources, and limited staffing. Patrol officers and detectives must wrestle constantly with conflicting demands on their time, and are often forced to make on-the-spot decisions as to where to focus their limited resources.

In this case, based on the information uncovered over the course of the lengthy investigation, WDFW properly and correctly investigated the Plaintiffs, both of whom are viable suspects. Regardless, Washington courts have consistently rejected negligent investigation claims against police officers; therefore, Plaintiffs' negligence claim fails as a matter of law.

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b. Negligent training and negligent supervision

Last, if Plaintiffs' "negligent" claim is, instead, tied to their negligent training and negligent supervision claims, their claims are still legally unsupported. The public duty doctrine undermines any such claim. *Osborn v. Mason County*, 157 Wash. 2d 18, 27–28, 134 P.3d 197 (2006) (explaining that the public duty doctrine "reminds us that a public entity—like any other defendant—is liable for negligence only if it has a statutory or common law duty of care."). Under the public duty doctrine, a plaintiff must show that the duty was owed to him individually rather than "to the public in general." *See, e.g.*, *Vergeson v. Kitsap County*, 145 Wash. App. 526, 535, 186 P.3d 1140 (2008) (quoting *Babcock v. Mason Cty. Fire Dist. No. 6*, 144 Wash. 2d 774, 785, 30 P.3d 1261 (2001). The duty of a public law enforcement agency to hire, train, retain, and supervise its officers is owed to the public at large, not to any potential plaintiff individually. The same is true here, if Defendant WDFW owed a duty, it owed a duty to the general public and not to Plaintiffs as individuals and the Court should dismiss the negligence claim against Defendant WDFW.

VII. CONCLUSION

For the foregoing reasons all Defendants respectfully request that this Court dismiss all Plaintiffs' constitutional claims against them with prejudice.

DATED this 16th day of October 2020.

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DECLARATION OF SERVICE

I hereby declare that on this day I caused the foregoing document to be electronically filed with the Clerk of the Court using the Court's CM/ECF System which will send notification of such filing to the following:

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DATED this 16th day of October 2020, at Tumwater, Washington.

/s/ Eric A. Mentzer
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