IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:15-CV-00166-WJM-NYW

TAMMY FISHER

Plaintiff,

v.

BRIAN KOOPMAN, Detective in the Loveland, Colorado Police Department, in his official and individual capacity;
LUKE HECKER, Chief of Loveland Police Department, in his official and individual capacity,

Defendants.

DEFENDANTS' MOTION AND BRIEF IN SUPPORT OF SUMMARY JUDGMENT[1]

Defendants, by and through their attorneys, Nathan Dumm & Mayer P.C., hereby submit their Motion and Brief in Support of Summary Judgment as follows[2]:

MOVANTS' STATEMENT OF MATERIAL FACTS

1. Plaintiff ("Plf") started with the Loveland Police Department ("LPD") in 1997 and worked there until September, 2012, first as a Community Service Officer and then as a Police Officer. [Pl 15:12-16:16 (Ex. A)].

[1] Given Plf's assertion of numerous state law claims and the application of immunity, a portion of this Motion may also be considered as a Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(1).
[2] While not required for the pending motion, the undersigned certifies that she advised Plf's counsel of the filing of this Motion and was advised that it is opposed by Plf.

2. Plf obtained employment thereafter as a bond commissioner with Larimer County and is presently still employed in that position. [Pl 235:12-236:1].

3. In 2009, Officer Arreola ("Arreola") of the LPD received information from a federal law enforcement agency to investigate child pornography involving Stanley Romanek, a Loveland resident. [Koopman 6:3-22, 7:1-8, 7:24-8:14 (Ex. B)].

4. At the time, for various reasons, Arreola did not have the skills to proceed with the investigation, although he did discuss the matter in 2012 with Defendant Det. Koopman, ("Koopman"), an experienced detective with LPD, and follow up was done by the two at that time. [Koopman 7:9-8:-18, 10:6-11:13, 12:1-19].

5. In July of 2012, while Plf was still a police officer for LPD, Plf responded to a call at the Romanek home. This was Plf's first interaction with Mr. and Mrs. Romanek. [Plf 70:19-71:5, 300:3-6; Romanek 24:8-20 (Ex. C)].

6. Also in July, 2012, while Plf was still an LPD police officer, Plf and Arreola had a discussion wherein Arreola informed Plf that Mr. Romanek had been alleged to have engaged in child pornography and that Arreola had been looking into the allegation. [Plf 104:1-4, 172:9-25, 285:2-12].

7. Again in July, 2012, Plf and Koopman had a discussion about Mr. Romanek, related to the child pornography allegations, wherein Koopman asked Plf for an email she had received from Mr. Romanek, so he could look at the IP identifier. [Plf 300:7-10; Koopman 46:16-49:23].

8. Also in the summer of 2012, Sgt. Scott Highland ("Highland") of the LPD, assisted Plf and her husband with installing and running a cleaning software on their

home computer, called Ccleaner. [Plf 41:15-42:3; Depo. Ex. 1(Ex. D), Plf 39:14-22; Fisher 135:8-18(Ex. E), Hecker 7:19-8-5(Ex. F)].

9. Thereafter, in 2013, Koopman received additional information from Special Agent Vanessa Hipps ("SA Hipps") of the Dept. of Homeland Security regarding Mr. Romanek and additional evidence of child pornography, which triggered a follow up investigation. [Koopman 12:20-13:12].

10. In March, 2013, while the criminal investigation of Mr. Romanek was underway, Plf had breakfast with the Romaneks and another individual, for which the Romaneks' paid. During the breakfast, Plf volunteered to the Romaneks that there had been an allegation relayed to LPD that Mr. Romanek was involved with child pornography. Plf admits she volunteered this information and that it was based upon the information she had received in 2012 while employed with the LPD as a police officer. [Romanek 24:24-25:7, 25:24-26:25, 27:20-30:7; Plf 101:2-101:19, 113:13-21, 134:20-23].

11. Plf also acknowledged that between March 2013 and April 2013, she exchanged text messages with Ms. Romanek and had in person contact with both Romaneks. [Plf 173:18-175:5].

12. Also just prior to the execution of the search warrant on the Romaneks' home, Plf and her LPD Sgt. husband, Jeff Fisher, had dinner with the Romaneks. [Fisher 136:3-12; Plf 285:13-19]. On the day after the Fishers had dinner with the Romaneks, Stan Romanek disconnected his internet service with Century Link. [Plf 301:17-24]. Plf claims this specific connection to the Romaneks' unusual activity, among others, was simply a coincidence. [Plf 180:13-181:17].

13. Based upon the information LPD received, with the assistance of other law enforcement agencies, on or about April 10, 2013, Koopman applied for and was granted a search warrant for the Romanek home. [Koopman 5:13-19].

14. The search warrant issued by Judge Rand granted permission for law enforcement to seize and examine any computer or other electronic devices for any communications to or from Mr. Romanek's IP address, along with any and all media depicting child pornography. [Ex. G, Defendants 207-14 (All related records found in Ex. G along with verification affidavit)].

15. On April 12, 2013, Koopman, Highland, Arreola, and other members of the LPD executed the approved search warrant on the Romanek household. [Depo. Ex. 1; Depo. Ex. 22(Ex. H), Plf 305:11-16; Depo. Ex. 31(Ex. I), Romanek 80:21-25].

16. Officer Ben DeLima ("DeLima") of the LPD attempted to first make contact with Mr. Romanek by phone prior to the execution of the search warrant. [Depo. Ex. 1, Ex. G, Defendants 152].

17. DeLima was chosen to make contact because approximately two weeks prior, on or about March 30, 2013, DeLima had responded to a harassment call at the Romanek household. [Koopman 24:12-22].

18. During DeLima's March 30, 2013 contact with Mr. Romanek, Mr. Romanek stated that he and Lisa Romanek, Mr. Romanek's wife, were friends with Plaintiff and Plaintiff's husband, Jeff Fisher. [Ex. G, Defendants 154].

19. At the time DeLima responded to the Romanek household on March 30, 2013 and during the execution of the warrant in April, 2013, Jeff Fisher was a Sergeant with the LPD. [Fisher 37:7-11].

20. During a portion of the execution of the search warrant, Highland and Arreola were standing outside the Romanek household with Ms. Romanek. [Depo. Exs. 1 & 22].

21. During a discussion, there was reference to the purpose of the search warrant being an investigation into child pornography, to which Ms. Romanek was observed stating "that's what I thought…" or words to that effect. [Depo. Ex. 1].

22. Ms. Romanek was also observed by LPD officers laughing and stating that she was friends with the Plf and her husband, that she had just recently been to brunch with Plf, that she knew of an allegation of child pornography, and that she knew "this was coming" or words to that effect. [Depo. Exs. 1, 22 & 31; Romanek 41:22-42:17, 44:6-45:1, 50:19-53:12; Arreola Aff. ¶¶3-12 (Ex. J); Koopman 20:13-23:11].[3]

23. Arreola, having heard Ms. Romanek's statements, got the attention of Koopman and informed him that he needed to speak with Ms. Romanek. [Koopman 21:23-22:8].

24. Arreola was the officer who first informed Koopman that Ms. Romanek's source may have been a former police officer. [Koopman 22:23-23:3; Arreola Aff. ¶7].

25. The search warrant of the Romanek household led to the seizure of several electronic devices, including computers and cell phones. Upon initial review of the

[3] While Ms. Romanek provided some unclear and contradictory testimony about exactly what she said and to whom, beyond Koopman, there were several officers, including Arreola and Highland, who heard statements made by Ms. Romanek. Whether the statements were made by Ms. Romanek and the actual wording of them is not relevant to the pending case, because, as explained below, Koopman is allowed to rely on the information provided by his fellow officers in seeking a search warrant.

computers, it appeared that numerous files had been deleted from two of the computers in the weeks prior to the search warrant. [Koopman 25:17-26:18; 28:3-9].

26. It was thereafter learned that the primary hard drive at the Romanek house had been wiped using the Ccleaner program. [Koopman 26:16-18].

27. In reviewing Ms. Romanek's cell phone, it contained multiple entries to and from Plf. [Koopman 28:3-20].

28. Between Ms. Romanek's admissions during the execution of the warrant related to Plf, and the text messages confirming communication between Ms. Romanek and the Plf prior to the execution of the warrant, Koopman became concerned as to Plf's potential involvement in a crime and the safety of the officers involved in the search warrant. [Koopman 20:13-23:11, 28:3-20, 31:12-32:13].

29. As such, on May 8, 2013 Koopman sought a search warrant for Ms. Romanek's cell phone to determine if additional information could be obtained from her cell phone. Koopman's sought a warrant based upon the following facts:

a. Ms. Romanek's admissions related to Plf during LPD's search of the residence,
b. The series of text messages that could be seen from the weeks leading up to the search between Ms. Romanek and Plf,
c. The Fisher/Romanek dinner,
d. The installation of Ccleaner, on both the Fisher and Romanek home computers. [Depo. Ex. 4 (Ex. K)].

30. A similar search warrant was also sought for Plf's cell phone records. [Depo. Ex. 10 (Ex. L)].

31. Koopman's requested warrants for the cell phone records, which were reviewed and ultimately approved by Larimer County Court Judge Rand on or about May 8, 2013. [Depo. exs. 4 & 10]. Plf testified she had no reason to believe Judge Rand did not fully fulfill his judicial obligations when he reviewed the warrant for her phone. [Plf 198:20-199:3].

32. After issuing the search warrants related to the cell phones, Koopman waited for the Northern Colorado Regional Forensic Laboratory's ("NCRFL") analysis of the Romanek's electronics. [Koopman 33:3-11, 36:8-22, Hecker 6:21-7:9, 9:15-10:11].

33. Upon completion of the NCRFL's investigation in January 2014, Koopman had probable cause that Mr. Romanek was in possession of child pornography. Koopman then re-initiated his inquiry into Plf's involvement. [Koopman 36:14-38:11].

34. Once the forensic lab results were back, Koopman, who had been friends with Plf and her husband, went to speak with Plf to try to ascertain the accuracy of the allegations related to criminal conduct by her and the extent of Plf's involvement. [Depo. Ex. 6 (Ex. M); Plf 96:5-17].

35. Plf voluntarily agreed to speak with Koopman, and since the discussion was recorded there is a clear record of the parties' statements. As a former police officer, Plf knew or should have known her rights and failed to ask for a formal interview. [Depo. Ex. 6, Plf 143:1-12, Fisher 114:4-115:12].

36. During that conversation, Plf made the following important admissions:

- "I remember Paul [Officer Arreola] was working on it, yeah. Yeah, I knew Paul was working – and I did mention that to them. But that was like way in the past." [Depo. Ex. 6, 9:7-10].
- "And I did mention – I said, Yeah I think, like last summer there – someone was looking for something." [Depo. Ex. 6, 9:21-23].
- "I met them for breakfast". [Depo. Ex. 6, 14:6-7]
- "We went to – yeah, we went to dinner, and then her [Lisa Romanek] and I were going to go for a walk". [Depo. Ex. 6, 21:12-14].
- Ms. Romanek left Plf a voicemail, which Plf failed to preserve, immediately after the execution of the search warrant on the residence in which Ms. Romanek apparently said "I mentioned your name, and I'm really sorry . . ." [Depo. Ex. 6, 34:1-5].

37. In her deposition, Plf further made the clear and unequivocal admission of:

- Ms. KLOSTER: …when you just read these words, "I did mention that to them," doesn't that tell a reasonable person that you may have told the Romaneks about the investigation?

  PLAINTIFF: Yes [Plf 99:6-10].

38. Thereafter, Koopman submitted the LPD case file associated with Mr. Romanek to the Larimer County DA's Office for review and determination. As part of that process, information regarding Plf's apparent criminal conduct was included. [Koopman 37:15-40:12; Aff. of Chief Deputy DA McDonald & Bates #752 (Ex. N)].

39. On or about February 10, 2014, DA McDonald, after reviewing the relevant evidence regarding Plf's involvement with the Romanek investigation, issued a Case Rejection Form. DA McDonald stated in the Case Rejection Form that: "[Th]e People believe Tammy Fisher committed a crime under C.R.S. 18-8-405. Especially in light of LPD Code of Conduct 26.1. However, under C.R.S. 16-5-401, the statute of limitations on this crime ran in January of 2013. But for the limitations, the People would have filed this case." [Aff. of DA McDonald & Bates #752].

40. It is clear and undisputed that (1) the decision whether to prosecute a case within the Eighth Judicial District for the State of Colorado lies within the sole discretion of the Larimer County District Attorney's Office; (2) that the DA was not pressured or influenced in his decision regarding Plf; (3) that it was the DA's office that made the decision how to proceed with Plf; and (4) that the DA's office believed Plf had committed a crime. [Aff. of DA McDonald, ¶¶4-7].

41. While the DA believed that Plf had engaged in criminal conduct, it is again undisputed that Plf was not ultimately subjected to any legal process by any government entity related to the criminal conduct. Specifically, she was not arrested, charged, indicted, or subpoenaed to appear in front of a grand jury; never had to appear in court; never had to retain an attorney to deal with criminal charges; and was not subject to any invasive warrant or any confinement. [Plf 145:22-146:3, 149:3-19, 200:14-201:19, 214:18-215:4, 216:15-23].

42. Plf has also acknowledged that a Judge signed the search warrant involving her cell phone. [Plf 158:12-159:2].

43. Despite all of these admissions and facts, Plf filed the current civil action alleging malicious prosecution and other tort claims against Koopman. Plaintiff further alleges that Chief Luke Hecker ("Hecker") is constitutionally liable based upon his supervision of Koopman. [ECF 2, Complaint].

44. In her Complaint, Plf makes vague reference to "another Loveland police employee" and states that this employee allegedly had a conversation with Koopman wherein he exhibited "both a conscious guilty knowledge of the nature of his conduct but, also, a conspiratorial aspect to it" and other similarly vague allegations of misconduct by Koopman [ECF 2, Complaint, ¶¶27-28].

45. This "police employee" referred to was subsequently identified by Plf as Sgt. Jeff Pyle ("Pyle"), another employee of LPD. [Plf 181:22-182:11]. Pyle is close friends with Plf and her husband. [Plf 192:6-22; Fisher 59:20-60:5; Pyle 57:9-25 (Ex. O)].[4]

46. In his deposition, Pyle indicated that he had two conversations with Koopman about Plf and the Romanek matter, during both of which Pyle asked questions of Koopman about Plf. While Pyle did not like Koopman's alleged comments, Pyle admitted that none of Koopman's actions or statements represented a violation of City policy or of the law. Pyle further admitted that any charging decisions were within the sole discretion of the DA's Office and that Pyle was not aware of any improper influence exerted by Koopman toward DA McDonald. [Pyle 83:2-17, 114:5-124:4, 125:2-15].

[4] Pyle executed an affidavit after receiving a demand from his friend, Jeff Fisher, to either do so or testify. The affidavit was initially prepared by Plf's attorney, prior to him ever speaking to Pyle. It was not prepared by Pyle and prior drafts, which contained inaccurate statements, were apparently not kept. Further, Pyle indicated during deposition that the final affidavit executed contained some inaccurate statements. [Pyle 8:9-11:21, 65:3-9, 65:21-66:9, 67:20-68:5, 114:5-124:4].

47. Pyle also admitted that he did not hear the conversation where Ms. Romanek admitted prior knowledge of the search warrant executed on the Romanek household, but learned of the allegation the day of the execution of the warrant. [Pyle 51:19-25, 60:9-19].

48. Pyle further confirmed that he had no evidence of misconduct or improper motive by Hecker as to Plf. [Pyle 29:22-30:14].

49. Similarly, Plf has admitted that she never submitted any complaints regarding Hecker during her tenure with LPD or after prior to the filing of this lawsuit. She also admitted that in this case she was not asserting any specific misconduct by Hecker directed at her in particular, nor did she believe that Hecker had been dishonest with respect to her or that Hecker had an improper motive or bias against her personally. [Plf 20:14-23:10, 24:8-24].

50. As for Koopman, Plf acknowledged that she was not aware of any personal vendetta against her by Koopman, that Koopman never lied to her, that they never had prior disputes, and they had always gotten along. Her husband also made similar admissions. [Plf 54:25-55:16, 56:15-25; Fisher 45:16-25].

51. Plf also confirmed that she has never made any complaints regarding DA McDonald and has no reason to believe he is dishonest, nor has she had any prior disputes with DA McDonald. [Plf 26:16-28:3, 28:15-21].

52. Plf also acknowledged knowing Arreola and to having previously worked with him and been friendly with him. Plf admitted she never submitted any complaints about him

at any point during her career with LPD or since she has left, nor has she asserted misconduct, improper motive, bias or dishonesty by him. [Plf 28:22-29:23, 33:3-15].

53. Plf also contends that she knows Highland and admittedly never submitted any complaints about him, nor asserted that he engaged in misconduct. [Plf 33:16-34:13].

54. Plf also alleges that the sole basis for her assertions of shoddy or substandard police work, and false or misleading statements by Koopman, are contained in her complaint letter, which she provided to the LPD, and is found in Depo. Ex. 2. In going through all of the statements wherein Plf complains, it is clear that the statements were either true or opinions. While Plf wanted further statements or clarification, the actual information contained in the affidavit for the search warrant was accurate. [Plf 76:10-25, 84:12-143:19; Depo. Ex. 2 (Ex. P), Plf 40:17-41:2].

55. Plf admits that the City advised her that it had investigated her complaint and that the investigation did not find misconduct, shoddy policy work, or dishonesty. [Plf 79:6-17, 84:2-11; Depo. Ex. 5 (Ex. Q)].

56. As to the defamation claim, Plf has made the following admissions:

a. Plf's sole basis is alleged statements from Koopman's police report, as set forth in Depo. Ex. 2. [Plf 218:20-220:19].

b. Plf admits that Koopman has not publicized the police reports to the media, and that just because she disagrees with the statements does not mean they are defamatory. [Plf. 240:16-241:20].

c. Plf also acknowledges that she voluntarily chose to speak to the media and to allow them to quote her in the paper. [Plf 255:17-256:22].

d. Plf vaguely, and in a self-serving manner, contends her reputation has been damaged by this matter, but admitted that no one at the DA's office has stated they think less of her nor has anyone at her current employer made such comments nor was she was disciplined by her current employer. [Plf 225:3-226:25].

57. As for Plf's interference claim against Koopman, she indicates the sole basis was a conversation initiated by her supervisor to Koopman, documented in Depo. Ex. 12 (Ex. R), for which there were no false statements made. Plf also acknowledges that there was no impact on her employment and that she remains employed. [Plf 224:15-237:1].

58. As to her abuse of process claim, Plf contends it is based on the warrant for her cell phone records and the communication between Koopman and the DA's office. However, again Plf admits she was not criminally charged. [Plf 238:4-239:25].

59. Plf's sole basis for the assertion in paragraph 83 of her Complaint against Hecker has to do with the unrelated civil case for which there has been no finding of wrongdoing by Koopman. Plf is not alleging misconduct or shoddy police work by Hecker. [Plf 84:2-11, 241:21-243:1]. Plf admittedly had no first-hand knowledge of any citizen complaints involving Koopman. [Plf 243:2-7].

60. As to the negligent hiring claim, Plf acknowledged that Hecker was not the Chief at the time Koopman was hired by LPD. [Plf 243:12-24].

61. Plf acknowledged the existence of the fellow officer rule and the fact that Koopman could rely on statements from others to support probable cause. [Plf 269:18-270:8].

62. Plf's sole support for her failure to train and/or supervise claim was that there was some video on someone's Facebook page regarding what to write in a report and that Plf and her husband submitted complaints to LPD related to this situation. [Plf 159:3-160:7]. Plf admittedly has not investigated what training Koopman has had related to his employment with the LPD. [Plf 165:23-166:9]. Plf admitted that there is a chain of command within the LPD and she could not dispute that it applies to Koopman. [Plf 166:24-167:23]. Plf also acknowledged that the City has PD policies. [Plf 167:24-168:14].

INTRODUCTION

Plf claims the actions of Koopman and his superior, Hecker, constitute malicious prosecution in violation of the Fourteenth Amendment to the U.S. Constitution. Plf also alleges ten state law claims essentially arising out of the same conduct.[5] The scope of any investigation into Plf is limited to a single search warrant issued for her cell phone

[5] Plf attempted, albeit improperly, to amend her Complaint. [ECF 31]. Because of the substantial legal deficiencies in the proposed amendment, the Defendants opposed the Motion. [ECF 35]. The Court's recent October 28, 2015 Order on Plaintiff's Objection to Magistrate Wang's Recommendation supports the Defendants' argument that no constitutional violation based upon malicious prosecution, whether pled under the 4th or 14th Amendment, may be properly asserted by Plf. While Defendants believed, given the current posture of the case, that this issue had been fully resolved, Plf's counsel recently advised that he may file a new Motion to Amend asserting a Fourth Amendment claim. Defendants have not yet seen any new motion and, therefore, cannot address it at this point, but reserve the right to substantively respond and object to it should it be filed. Further, based upon the undisputed facts set forth above there is no factual support for a Fourth Amendment claim here and, thus, even if it had been pled summary judgment would be appropriate as to it as well. Should Plf argue this issue in their Response to this Motion, Defendants reserve their right to address those issues in their Reply brief.

records and a review of her actions, in connection with the Romanek criminal case file, by the DA's office. It is undisputed that Plf was not arrested, prosecuted, or in any way subject to a restraint upon her liberty. Her claims for malicious prosecution, therefore, fail as a matter of law.

Furthermore, every material witness, including Plf, has admitted that a relationship existed between the Romanek household and the Fisher household. No fewer than three law enforcement officers reported that Ms. Romanek admitted prior knowledge of a search warrant regarding child pornography at the Romanek household. Also, both Plf and Ms. Romanek admitted to speaking about an allegation of child pornography involving Mr. Romanek shortly before the execution of the search warrant. The information that was discussed was information Plf admittedly obtained during her tenure as an LPD officer. There were also connections between the computer hard drive cleaner used by the Fishers and the Romaneks. Stan Romanek also disconnected his internet service *the day after* having dinner with the Fishers.

Based on the undisputed facts, significant evidence existed to investigate Plf for potential criminal conduct. Indeed, Plf's own Complaint reads like an affidavit for probable cause in support of a warrant. Plf admits in her Complaint that:

> "During the execution of the search warrant of the Romanek home, suspect Lisa Romanek commented to Loveland police officer Paul Arreola, and other law enforcement present, that the Romanek's were friends with Loveland police Sergeant Jeff Fisher and his wife Tammy Fisher and that ***Tammy Fisher had warned her of the child pornography investigation and impending search***."

[ECF 2, ¶17 (emphasis added)]. Moreover, Koopman's investigation and his actions in seeking a search warrant for Plf's cell phone records were approved by a neutral judge, based upon the existence of probable cause.

As a result, as shown herein, no constitutional violation exists in this case. Additionally, both Koopman and Hecker are entitled to qualified immunity. Lastly, Plf's state law claims lack any merit and should be subject to dismissal under the Colorado Governmental Immunity Act ("CGIA").

LEGAL ARGUMENT

Plf's Fourteenth Amendment Due Process claims brought pursuant to 42 U.S.C. § 1983 fail as a matter of law under Tenth Circuit precedent. Plf's pendent state law claims also fail as a matter of law because Defendants' actions do not rise to the level of willful and wanton conduct as is needed to eliminate immunity under the Colorado Governmental Immunity Act ("CGIA"), C.R.S. § 24-10-101, *et al.*

I. Plf's Federal Claims

A. Standard of Review for Federal Claims

"Summary judgment is appropriate where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." ***Neal v. Lewis***, 414 F.3d 1244, 1247 (10th Cir. 2005); Fed.R.Civ.P. 56. It is not a disfavored shortcut, but rather is an integral part of the rules. ***Celotex Corp. v. Catrett,*** 477 U.S. 317, 327 (1986). Once the moving party shows the absence of a genuine issue of material fact, the burden shifts to the nonmoving party to establish a genuine issue of material fact. ***Vitkus v. Beatrice Co***., 11 F.3d 1535, 1539 (10th Cir. 1993). Vague, conclusory and

self-serving statements do not create a genuine issue of material fact. ***Ford v. West***, 222 F.3d 767, 777 (10th Cir. 2000). "Conclusory allegations, general denials, or mere argument of an opposing party's case cannot be utilized to avoid summary judgment." ***Pasternak v. Lear Petroleum Exploration, Inc.,*** 790 F.2d 828, 834 (10th Cir. 1986).

B. Plaintiff Cannot Sustain a Malicious Prosecution Claim Against Koopman under the Fourteenth Amendment (Claim One for Relief)

Plf's first claim alleges a violation of her Fourteenth Amendment rights for malicious prosecution.[6] Plf's claim, however it was intended to be pled, fails.

First, to the extent Plf was trying to allege a violation of substantive due process protected by the Fourteenth Amendment, such claim is barred by the U.S. Supreme Court's decision in ***Albright v. Oliver***, 510 U.S. 266 (1994). The Court in ***Albright*** eliminated malicious prosecutions claims brought under the Fourteenth Amendment's guarantee of substantive due process. 510 U.S. at 270 n.4 (holding that for malicious prosecution claims, "it is evident that substantive due process may not furnish the constitutional peg on which to hang such a "tort.").

Second, the Tenth Circuit's decision in ***Becker v. Kroll***, 494 F.3d 904 (2007), forecloses Plf from pursuing a malicious prosecution claim based upon procedural due process. The plaintiff in ***Becker*** alleged that she had a cognizable liberty interest in being free from "unwarranted investigation" and a property interest in "the integrity of her medical and billing records." ***Id***. at 919. While recognizing that due process

[6] For the first federal claim, Plf asserts a claim against both Koopman and Hecker in their individual and official capacities. For purposes of clarity, the Defendants will address the personal capacity claims against Koopman and Hecker separately, but will address the official capacity claims jointly, since such claims are really just one claim against the City, as the Defendants' employer.

concerns can arise at some point in a criminal investigation, the Tenth Circuit refused to extend Fourteenth Amendment protections to *pre-trial* deprivations of liberty, even when the plaintiff had been formally charged with felonies. ***Id***. at 920 ("We are not aware, moreover, of any other circuit that has extended Fourteenth Amendment procedural due process guarantees to pre-trial deprivations of liberty."). The court held that "the Fourth Amendment adequately protected Becker's constitutional liberty interests, and she therefore has no procedural due process claim based upon pre-trial deprivations of physical liberty." ***Id***.

Plf's claim here bears similarity to the Fourteenth Amendment claim brought in ***Becker***. Plf claims she "had a constitutionally protected right to be secure in her person against malicious prosecution" and that right was "guaranteed by the due process clause of the Fourteenth Amendment," even in the absence of an arrest or subsequent prosecution. [ECF 2, ¶¶34, 37]. All of the claims raised by Plf relate to injuries prior to the institution of legal process, as she admittedly was never subject to any restraint on her liberty, much less forced to defend herself in a subsequent trial. [ECF 45, pgs. 4-5]. As in ***Becker***, Plf thus cannot maintain a Fourteenth Amendment claim based on "unwarranted prosecution." ***Id***. at 919, 922. Plf's claims of an unconstitutional investigation are also not protected by the Fourteenth Amendment, as aptly held by Judge Daniel of this Court, "[Plaintiff] has not alleged how his due process rights are different from his Fourth Amendment rights. [Plaintiff] may not argue that due process entitled him to any process greater than that guaranteed by the Fourth Amendment."

Guinn v. Unknown Lakewood Police Officers, 2010 WL 4740326, at *11 (D. Colo. Sept. 30, 2010).

Third, for Plf's alleged injuries beyond her constitutionally protected interest to be free from government restraint, such as her unsupported claim of reputational harm, adequate state law remedies preclude her from bringing federal constitutional claims. ***See Becker***, 494 F.3d at 920-21; ***see also Rodriguez v. Chavez***, 2015 WL 5174226, at *12 (D. Colo. Sept. 3, 2015) ("an adequate post-deprivation remedy – such as a state tort claim – will satisfy due process requirements … Colorado law provides that remedy."(internal citations omitted).

C. Plf Cannot Sustain a Malicious Prosecution Claim Against Hecker in his Personal Capacity for Want of Personal Involvement (Claim One)

Plf names Hecker in her first claim also in his personal capacity, alleging that "Defendant Hecker failed to adequately train and/or supervise his subordinates to prevent the acts described herein." [ECF 2, pg. 10, ¶39]. In order to hold a supervisor liable in his ***personal*** capacity under § 1983 for this type of claim, a Plf must allege:

> "1) an *underlying violation* of his constitutional rights; 2) that the supervisor-defendant's personal involvement *caused* the misconduct complained of; and 3) that the supervisor-defendant acted with the state of mind or *intent* required to establish he committed a constitutional violation; specifically, at minimum, establish a deliberate and intentional act on the part of the defendant to violate the plaintiff's legal rights."

Kemp v. Lawyer, 846 F. Supp. 2d 1170, 1175 (D. Colo. 2012) (emphasis in original). Plf fails on all three elements recited in ***Kemp***. As demonstrated above, Plf's Fourteenth Amendment claim fails as a matter of law since she was never subjected to any form of legal process; thus, Plf cannot sustain an underlying constitutional violation.

With regard to Hecker's personal involvement, which is prong two of the test, Plf only generically states that "Hecker failed to adequately train and/or supervise his subordinates to prevent the acts described therein." [Complaint, ¶39]. However, as noted above, her deposition testimony confirms she has no basis for any personal misconduct by Hecker, nor does she have any evidence to support a personal bias or improper motive of Hecker. Plf has failed to demonstrate Hecker's "personal involvement in the alleged constitutional violation." ***Gallagher v. Shelton***, 587 F.3d 1063, 1069 (10th Cir. 2009). "Supervisory status alone does not create § 1983 liability." ***Id***.

As for Plf's allegation that Hecker "affirmatively endorsed Koopman's activities" based upon Koopman's involvement in another §1983 lawsuit, [Complaint, ¶40], Plf has not shown any evidence that Koopman has been adjudicated of committing any wrongdoing or that the case is even remotely similar. As such, the incident is insufficient as a matter of law to demonstrate a causal connection between Plf's alleged constitutional violation and Hecker's personal involvement.

As for the third prong of the test, Plf similarly cannot demonstrate that Hecker acted with deliberate intent to violate Plf's constitutional rights when Koopman investigated her potential misconduct, especially in light of the facts of this case and the clear probable cause. It is difficult to perceive how Hecker could have *failed* to endorse an investigation into Plf given the facts linking Plf to the Romaneks, much less that any subsequent investigation actually demonstrated how Hecker *intentionally violated* her constitutional rights.

D. Plf's Claim against Hecker and Koopman in their Official Capacities Fails Given the Lack of an Underlying Constitutional Violation (Also Claim One)

Naming a municipal official in his official capacity is identical to a suit against the municipality itself. ***See, e.g., Watson v. City of Kansas City, Kan.***, 857 F.2d 690, 695 (10th Cir. 1988). In order to sustain a claim against a municipality under 42 U.S.C. § 1983, a plaintiff must demonstrate "1) the existence of a municipal policy or custom and 2) a direct causal link between the policy or custom and the injury alleged …In addition, a municipality may not be held liable where there was no underlying constitutional violation by any of its officers." ***Graves v. Thomas***, 450 F.3d 1215, 1218 (10th Cir. 2006). In her first claim for relief, Plf alleges that a failure to train and/or supervise Koopman "inevitably led" to a malicious prosecution against her in violation of the Fourteenth Amendment. [Complaint, ¶39]. Plf's official capacity claim fails at the outset for want of an underlying violation of the Fourteenth Amendment.

Furthermore, Plf fails to cite any particular policy or training that caused her alleged injures, nor does she allege that "the failure to train amount[ed] to deliberate indifference to the rights of persons with whom the police come into contact." ***City of Canton, Ohio v. Harris***, 489 U.S. 378, 388 (1989). Plf's failure to allege a specific policy, practice, or custom of LPD that led to her constitutional violation, and failure to plead specific actions taken by Koopman or Hecker pursuant to that policy, forecloses Plf''s ability to raise claims against the Defendants in their official capacities. ***See Rhoden v. City of Lakewood, Colo.***, 2013 WL 878680, at *5 (D. Colo. Mar. 8, 2013)

(dismissing official capacity claims against Chief and Lakewood based upon similar conclusory allegations as alleged by Plf in this lawsuit).

E. Plf's Failure to Train and Supervise Claim Against Hecker Must Fail Given Plf's Inadequate Federal Constitutional Claims (Second Claim for Relief)

Because Plf's claim of malicious prosecution under the Fourteenth Amendment fails, her second claim for relief, Failure to Train and Supervise against Hecker, must also fail. Indeed, from the face of the Complaint, there appears to be little distinction between the first two claims for purposes of § 1983 liability. As asserted above, a claim for failure to train and/or supervise brought pursuant to §1983 is only cognizable if a plaintiff adequately alleges and proves an underlying constitutional violation by a government actor. ***Myers v. Okla. County Bd. of County Comm'rs***, 151 F.3d 1313, 1317 (10th Cir. 1998). Since Plf has not adequately pled a claim under the Fourteenth Amendment for malicious prosecution against either Koopman or Hecker, allegations of a violation based upon a failure to supervise are similarly inadequate.

F. Koopman Could Rely on the Fellow Officer Rule

An officer is entitled to rely upon the statements of another officer and under the fellow officer rule, an officer is "deemed to have whatever knowledge" another officer has uncovered regarding probable cause. ***Karr v. Smith***, 774 F.2d 1029, 1032 (10th Cir. 1985). An officer without first-hand knowledge of an allegation "is not required to second-guess" the reporting officer; but rather, can reasonably rely upon the reporting officer's statements. ***Dodea v. City of Rifle***, 2015 WL 350674, at *5 (D. Colo. Jan. 27, 2015).

In this case, it is undisputed that Arreola first reported to Koopman that Ms. Romanek had prior knowledge of the search warrant and that her knowledge was obtained from a former police officer. Thus, even if disputed facts arose regarding the subsequent admissions made by Ms. Romanek to Koopman on the date of the search, such disputes would not be material to Koopman's investigation. Arreola's report that Ms. Romanek had been tipped off by a former female police officer, coupled with the other specific connections between Plf and the Romaneks and Plf's prior knowledge of the Romanek investigation, well established probable cause for Koopman's subsequent inquiry into Plf's misconduct.

G. Koopman and Hecker are Entitled to Qualified Immunity on Claims One and Two

The doctrine of qualified immunity is broad, shielding "all but the plainly incompetent or those who knowingly violate the law." ***Malley v. Briggs***, 475 U.S. 335, 341 (1986). Once a defendant asserts qualified immunity, the plaintiff bears the heavy burden of satisfying a strict two part test which requires: (1) that the defendant violated a constitutional right of plaintiffs; and (2) that this right was clearly established at the time of the defendant's conduct. ***Dodds v. Richardson***, 614 F.3d 1185, 1191 (10th Cir. 2010). Plf fails on both prongs in this case.

Plf's federal claims allege malicious prosecution in violation of the Fourteenth Amendment, despite the fact that Plf was never prosecuted for any crime arising out the Romanek/Fisher investigation. The Defendants are entitled to qualified immunity on the simple basis that Plf has not pled a cognizable claim under 42 U.S.C. § 1983. The only action Koopman took in relation to Plf was an investigation of her contacts with Ms.

Romanek that led to a search warrant and case review by the DA's Office. His actions leading up to that case evaluation, specifically his request for a search warrant of Plf's cell phone records, were reviewed and approved by a neutral judge.

In order to overcome the defense of qualified immunity, a plaintiff must also make a particularized showing that the law was sufficiently clear that the defendant would know that his particular conduct was unconstitutional. ***Patrick v. Miller***, 953 F.2d 1240, 1243 (10th Cir.1992). "The law is clearly established when a Supreme Court or Tenth Circuit decision is on point, or if the clearly established weight of authority from other Courts shows that the right must be as plaintiff maintains." ***Dodds,*** 614 F.3d at 1206 (citing ***Harman v. Pollock*****,** 586 F.3d 1254, 1261 (10th Cir. 2009)). "The contours of the right . . . must be sufficiently clear that a reasonable official would understand that what he is doing violates that right." ***Id***.

The Defendants are unaware of any case, 10th Circuit or otherwise, that would have put them on notice that investigating Plf and submitting her conduct, along with the Romanek investigation, for evaluation to the DA's Office, given the facts and probable cause found in this case could lead to liability under a theory of malicious prosecution protected by the Fourteenth Amendment. In light of Tenth Circuit precedent holding that the Fourteenth Amendment does not govern pre-trial deprivations of liberty, it stands to reason that the constitutional violation alleged by Plf could not be clearly established for purposes of individual liability under § 1983. ***Becker***, 494 F.3d at 920. For all of the above reasons, summary judgment should be granted as to Plf's federal claims.

II. Plf's State Law Claims

A. Standard of Review under Colorado Governmental Immunity Act

The CGIA bars state tort claims against a government official performing duties within his employment unless the plaintiff can demonstrate sufficient facts supporting a finding of willful and wanton conduct. C.R.S. § 24-10-118(2)(a). Willful and wanton conduct is "conduct purposefully committed which the actor must have realized as dangerous, done heedlessly and recklessly, without regard to the consequences, or rights and safety of others, particularly the plaintiffs." ***A.B. ex rel. B.S. v. Adams-Arapahoe 28J School Dist.***, 831 F. Supp. 2d 1226, 1258 (D. Colo. Nov. 28, 2011) (internal citations omitted). Because the CGIA requires a Plf to set forth a "specific factual basis" supporting allegations of willful and wanton conduct, a Plf's conclusory statements are insufficient to waive immunity for an employee's actions. ***Robinson v. City and County of Denver***, 39 F. Supp. 2d 1257, 1264 (D. Colo. 1999). In this case, all of the state claims alleged by Plf are tort claims and therefore governed by these requirements.[7]

B. Key Deficiencies as to Plf's State Law Claims

While each of Plf's state law claims is substantively discussed in detail below, all of the state law claims suffer from many of the same legal deficiencies, which subject

[7] See ***Thompson v. Maryland Cas. Co.***, 84 P.3d 496, 504 (Colo. 2004) (discussing tort of malicious prosecution); ***Enright v. Groves***, 560 P.2d 851, 854 (intentional infliction of emotional distress is a tort); ***Amoco Oil Co. v. Ervin***, 908 P.2d 493, 500 (Colo. 1995) (recognizing tort of intentional interference); ***Sterenbuch v. Goss***, 266 P.3d 428, 439 (Colo. App. 2011) (discussing tort of abuse of process); ***Smiley's Too, Inc. v. Denver Post Corp.***, 935 P.2d 39, 41 (Colo. App. 1996) ("the tort of defamation"); ***Kahland v. Villarreal***, 155 P.3d 491, 493-94 (considering torts of negligent hiring, entrustment, supervision, and training under the CGIA); ***Grease Monkey Intern., Inc. v. Montoya***, 904 P.2d 468, 473 (Colo. 1995) (respondeat superior is premised upon tortious conduct).

the claims to dismissal under the CGIA. First, Plf has failed to plead, or as a matter of law establish factually, that Koopman or Hecker have engaged in actions there were willful and wanton, as defined by the CGIA. Plf's Complaint contains some conclusory buzz words, but as clearly explained above, the use of such conclusory buzz words does not meet the heightened pleading standard required under the CGIA.

Second, even if Plf had properly pled willful and wanton misconduct--which she has not--Plf's own admissions confirm that there is no factual support for the assertion against either Koopman or Hecker. Plf admitted that she had no prior disputes with Koopman, nor could she allege any particular instance where Koopman had lied to her in the past, which contests her allegation that Koopman acted with the requisite mental state of "willful and wanton." Plf also fails to address the fact that *multiple* officers reported on Ms. Romanek's admissions and *multiple*, *independent* government actors endorsed Koopman's investigation upon their own review of the facts, including a Larimer County Judge and a district attorney. Plf further admitted that she was not asserting any specific misconduct by Hecker directed at her nor did she believe that Hecker had been dishonest with respect to her or that Hecker had an improper motive or bias against her personally. For these reasons alone, all of Plf's state law claims must be dismissed.

C. Plf Cannot Maintain a Claim for Malicious Prosecution (Claim Three)

In addition to the reasons set forth above, Plf's state law claim for malicious prosecution substantively fails. "[T]o prevail on a claim for malicious prosecution, the following elements must be satisfied: (1) the defendant contributed to bringing a prior

action against the plaintiff; (2) the prior action ended in favor of the plaintiff; (3) no probable cause; (4) malice; and (5) damages." ***Hewitt v. Rice***, 154 P.3d 408, 411 (Colo. 2007). It is undisputed here that there was never any criminal proceedings instituted or charges filed. ***See Walford v. Blinder, Robinson & Co., Inc.***, 793 P.2d 620, 623 (Colo. App. 1990) ("a plaintiff must prove by a preponderance of the evidence that the defendant was a party or assisted in a *criminal or civil proceedings against the plaintiff …*) (emphasis added). Also, to sustain a claim of malicious prosecution "the criminal prosecution must be disposed of in a way which indicates the innocence of the accused." ***Allen v. City of Aurora***, 892 P.2d 333, 335 (Colo. App. 1994). The expiration of the statute of limitations does not demonstrate the innocence of Plf; rather it only proves that her alleged criminal acts could no longer be pursued under state law.

D. There are no Facts Supporting Plf's Claim for Intention Infliction of Emotional Distress (Claim Four)

Once again, beyond the reasons set forth above, to sustain a claim of intentional infliction of emotional distress, a plaintiff must prove that: (1) the defendant engaged in extreme and outrageous conduct, (2) recklessly or with the intent of causing the plaintiff severe emotional distress, and (3) that the plaintiff incurred severe emotional distress as a result of defendant's conduct. ***McKelvy v. Liberty Mut. Ins. Co***., 983 P.2d 42, 44 (Colo. App. 1998). Plf's claim is based upon "the initiation of a baseless criminal charge." [Complaint, ¶59]. However, as has been established throughout this Motion, Plf was never subject to any criminal charge as the DA's Office never charged her with any crime.

Furthermore, Plf pled Koopman's conduct "was so outrageous in character and so extreme in degree as to go beyond all possible bounds of decency and is to be regarded as atrocious and utterly intolerable in a civilized society." ***Id.*** at ¶60. However, as borne out by her deposition testimony, Plf has no facts to support this conclusory statement and, in fact, Koopman's actions demonstrate the opposite conclusion. His choice to investigate Plf was borne out of the statements of *multiple* independent officers who overheard Ms. Romanek implicate Plf in criminal wrongdoing. Furthermore, since Koopman's request for a search warrant and subsequent follow-up with the DA's Office were supported with probable cause and endorsed by both a judge and a deputy district attorney, Plf cannot state that Koopman's actions were "so outrageous" as to form the basis of a claim for intentional infliction of emotional distress.

E. Plf's Tortious Interference Claim Fails as a Matter of Law (Claim Five)

Along with the reasons set forth above, a claim for tortious interference with a business relationship occurs only where "one intentionally and improperly interferes with the performance of a contract between another person and a third person by inducing or otherwise causing the third person not to perform the contract." ***Omedelena v. Denver Options, Inc.***, 60 P.3d 717, 721 (Colo. App. 2002). In considering if an action is improper, the courts have utilized the factors set forth in the § 767 of the Restatement of Torts (Second), which include "the interests of the parties and those of society …" ***Id.***

Plf's claim substantively fails for a number of reasons. First, Plf has not actually established that she has a contract that was not performed. In fact, just the opposite has been shown; that her employment with the County has continued. Second, Plf has

absolutely no evidence that Koopman attempted to interfere. She acknowledges all Koopman did was respond to a call he received and the information he provided was accurate. Third, Koopman was investigating whether suspects in a search warrant had knowledge of the warrant prior to its execution. A suspect's prior knowledge of a search warrant constitutes a serious threat to the safety of the officers conducting the search. [Arreola Affidavit, ¶9]. Any possible interference suffered by Plf, of which there is none, pales in comparison to the necessity of a law enforcement agency to protect its officers against potential harms of executing a search warrant where the suspect has prior knowledge of the officers' activity. ***See Town of Dillon v. Yacht Club Condominiums HOA***, 325 P.3d 1032, 1041-42 (Colo. 2014) ("a municipality certainly need not wait for more accidents to happen before addressing a perceived danger … police power includes the power to anticipate and prevent dangers.") (internal citations and quotations omitted).

F. Plf's Abuse of Process Claim Fails for Want of Process (Claim Six)

Beyond the above issues, in relevant part, a claim for abuse of process requires that that plaintiff prove "an ulterior purpose for the use of a judicial proceeding." ***Walker v. Van Laningham***, 148 P.3d 391, 394 (Colo. App. 2006). As noted by the court in ***Walker***, "[i]f the action is confined to its regular and legitimate function in relation to the cause of action stated the complaint there is no abuse, ***even if*** plaintiff had an ulterior motive in bringing the action …"). ***Id***. (emphasis added) (internal citations omitted).

Plf's abuse of process claim fails for the same reasons as the malicious prosecution claim. Simply put, there was no institution of legal process against Plf, nor

did she ever defend herself in any judicial proceeding. Moreover, even assuming the application for a warrant for cell phone records and review of records by the DA constituted a judicial proceeding, an interpretation which is unsupported by any case, there can be no claim because the actions were legitimate and proper, as confirmed by the judge who approved the warrant and the DA who reviewed the records.

G. Plf has No Facts to Support her Claim for Defamation (Claim Seven)

In addition to the above issues, to sustain a claim of defamation a plaintiff must allege and prove "(1) a defamatory statement concerning another; (2) published to a third party; (3) with fault amounting to at least negligence on the part of the publisher; and (4) either actionability of the statement irrespective of special damages or the existence of special damages to the plaintiff caused by the publication." ***McIntyre v. Jones***, 194 P.3d 519, 523-24 (Colo. App. 2008). "Truth is a complete defense to defamation … [furthermore] absolute truth is not required; instead, a defendant need only show substantial truth …" ***Gordon v. Boyles***, 99 P.3d 75, 81 (Colo. App. 2004).

As shown above, Plf's bases for this claim are the statements contained in the police reports prepared by Koopman. While Plf may not like the statements, and may have wanted them worded differently, the statements of fact were confirmed to be accurate by Plf during her deposition. Because a defamation claim cannot be sustained upon an allegation of criminal conduct where the allegation is substantially true, Plf cannot prevail on this claim. ***See Id.***, 99 P.3d at 81 (defamation not actionable where arrest record supported defendant's allegations that plaintiff had history of domestic violence incidents); ***see also Barnett v. Denver Pub. Co., Inc.***, 36 P.3d 145, 148

(Colo. App. 2001) (defamation claim unsupported even though newspaper used the word “stalking” when plaintiff had been convicted of merely “harassment”).

H. Plf’s Claim for Negligent Hiring Fails Because Hecker Did Not Hire Koopman (Claim Eight)

Again, beyond the above issues, Plf’s Eighth Claim for Relief states, “[a]s the Chief of Police for the Loveland Police Department, it was Defendant Hecker’s obligation to hire, retain, supervise, and ultimately discharge his employees, including Defendant Koopman. [Complaint, ¶83]. At the outset, Plf fails to indicate whether this is brought against Hecker in is his personal or official capacity. A claim against Hecker in his official capacity is tantamount to suit against the City itself and thus subject to dismissal since the City is immune from a claim of negligent hiring as a matter of law under the CGIA. ***Kahland v. Villarreal***, 155 P.3d 491, 493-94 (Colo. App. 2006) (dismissing claims of negligent supervision and hiring against municipal entity on CGIA grounds); see also C.R.S. § 24-10-106.

As to a personal claim against Hecker, Plf’s claim lacks any merit since Hecker did not hire Koopman, a fact Plf admitted in her deposition. [Pl. 243:8-16]. Plf has further failed to allege in any respect that Hecker was willful and wanton and in fact her statements, as set forth above, regarding a lack of misconduct, bias, or impropriety by Hecker confirm just the opposite.

I. Governmental Immunity Has Not Been Waived for the Remaining Supervisory Claims Brought Against Hecker (Claims Nine –Twelve)

Plf’s remaining claims all allege various types of torts against Hecker in his capacity as supervisor within the Loveland Police Department. [Complaint, pgs. 20-23].

Plf again fails to allege whether the claims are brought against Hecker in his official or personal capacity, but as stated previously, any claims against Hecker in his official capacity are barred as a matter of law pursuant to the CGIA.

Moreover, the assertion of vicarious liability and *respondeat superior* along with three claims of supervisory liability are redundant and the claims can be analyzed collectively under the CGIA, as immunity does not differ for any of the claims. ***See Kahland***, 155 P.3d at 493-494 (analyzing negligent entrustment, hiring, training, and supervision together and under identical standard for purposes of immunity). As with Plf's Eighth Claim for relief, Plf fails to allege in any of her remaining claims that Hecker has waived immunity under any provision of the CGIA. ***See Loveland v. St. Vrain Valley School Dist. RE-1J***, 328 P.3d 228, 233-34 (Colo. App. 2012) (dismissing negligent supervision claim against principal given lack of nexus between complaint and any waiver under the CGIA).

Claims Nine, Ten, Eleven, and Twelve can be dismissed solely for Plaintiff's failure to allege willful and wanton conduct as required under the CGIA, as explained above. ***Springer v. City and County of Denver***, 13 P.3d 794, 800 (Colo. 2000) ("a public employee enjoys immunity unless … the employee's act or omission is willful and wanton."); ***Gray v. Univ. of Colorado Hosp. Auth.***, 284 P.3d 191, 198 (Colo. App. 2012) ("the specific factual basis of such allegations … in the complaint [as] conclusory allegations are insufficient."). Even if willful and wanton conduct was alleged, there are no facts set forth by Plf that could plausibly support such an allegation, especially since,

under Hecker's supervision, Koopman has *never* been found civilly or criminally liable for wrongdoing in his capacity as a Detective for the LPD.

CONCLUSION

It is clear that Plf is upset that she was believed to have engaged in criminal wrongdoing. However, Plf's personal disagreement does not provide a valid basis in which to pursue claims against these Defendants. Further, in being upset, Plf ignores her own completely unnecessary and improper actions, which actually created this dispute; namely, that Plf obtained information regarding a criminal allegation against Mr. Romanek during her tenure with the LPD and she volunteered that information to the suspect and his wife--for no good reason--just prior to the execution of a felony search warrant. Such conduct presents a real, immediate, and obvious threat to the members of the LPD who participated in the execution of the search warrant. Plf ignores this obvious danger and further ignores the fact that her claims have no legal merit, for the reasons set forth above.

WHEREFORE, the Defendants respectfully request that their Motion for Summary Judgment be granted and that this Court award the Defendants their costs and/or attorney fees and such other and further relief as the Court deems appropriate.

Respectfully submitted this 9th day of November, 2015.

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CERTIFICATE OF SERVICE (CM/ECF)

I hereby certify that on November 9th, 2015, I electronically filed the foregoing **MOTION AND BRIEF IN SUPPORT OF SUMMARY JUDGMENT** with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following at their email address:

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