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6 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

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8 QUENTIN M. PARKER, et al.,

CASE NO. C21-5258 BHS

9 Plaintiffs,

ORDER

v.

10 STATE OF WASHINGTON, et al.,

11 Defendants.

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13 THIS MATTER is before the Court on Defendants Thurston County and former
14 Deputy Prosecuting Attorney Shawn Horlacher's motion for summary judgment, Dkt. 77,
15 and the Defendants State of Washington, Washington State Patrol (WSP), Carlos
16 Rodriguez, Kristi Pohl, Darrell Noyes, Travis Calton, Maurice Rincon, William Steen,
17 and James Taylor's motion for summary judgment, Dkt. 84.

18 Plaintiff Quentin Parker¹ responded to an online advertisement posted by law
19 enforcement as part of a larger undercover operation known as the "Net Nanny Stings,"
20 which was a multi-jurisdiction law enforcement task force aimed at those sexually

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22 ¹ Quentin Parker's wife, Katherine Parker, is also a plaintiff on a subset of claims. This order uses the singular Parker for clarity and ease of reference.

1 exploiting children. A non-profit organization, Operation Underground Railroad (OUR),
2 was also involved.

3 In February 2019, Defendant Carlos Rodriguez, an undercover WSP detective
4 posing a mother of three children under the username “RowdyRhonda720,” posted an
5 advertisement on “SKOUT,” a dating application,² offering her children for sexual
6 exploitation:

7 “New in town. Single mom. I have three girls. Looking for like minded
8 people that are into ddlg/incest/young taboo. No curious wanted. Only
serious. Young fun. Taboo”

9 Dkt. 1-1 at 8.

10 Parker responded, engaged with the officer online, and ultimately provided his
11 phone number. Defendant Detective Kristi Pohl then posed as RowdyRhonda720 and
12 began texting back and forth with Parker. These texts include about 150 messages, and
13 involve discussions of “young taboo,” the ages of the “littles” that Parker sought, and the
14 “mother’s” rules about penetration, lubrication and condoms, and the fact that the girls
15 liked candy. *See* Dkt. 43 at Ex. 2.

16 Pohl eventually arranged a meeting and Parker arrived, with lube, condoms, and
17 candy. He was arrested by WSP troopers. Thurston County Deputy Prosecutor Horlacher
18 reviewed the evidence and determined there was sufficient evidence to charge Parker
19 with two counts of attempted rape of a child in the first degree and one count of
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21 ² Parker emphasizes that SKOUT is an adults-only website, apparently suggesting that he
22 would not seek minors there, but Rodriguez was posing as an adult, offering access to minor
children.

1 attempted rape of a child in the second degree. Horlacher filed a Declaration of Probable
2 Cause in Thurston County charging Parker with these offenses.. Dkt. 43 at 16. Parker
3 moved to suppress the evidence and to dismiss the criminal charges based on government
4 misconduct. *Id.* at 20.

5 Parker’s primary defense in the criminal case was, and his primary claim in this
6 case is, that the acronym “ddlg” means Daddy Dom/Little Girl,” and that it *proves* he was
7 interested only in role-playing with another consenting adult, not in actually having sex
8 with children. Thurston County Judge Dixon heard and denied the motions, concluding
9 that “ddlg” could have different interpretations but that Parker’s asserted interpretation
10 was not a “roadblock or a legal deterrent to a valid arrest.” *See* Dkt. 78 at 23. In March
11 2020, Deputy Prosecutor Zhou (Horlacher’s successor) dismissed the charges without
12 prejudice. Dkt. 43 at 20.

13 In February 2021, Parker filed suit in Thurston County Superior Court. He alleges
14 that the defendants violated his Fourth and Fourteenth Amendment rights, and asserts 42
15 U.S.C. § 1983 claims for illegal seizure, false arrest, excessive force, and malicious
16 prosecution, and state law claims for abuse of process, and intentional and negligent
17 infliction of emotional distress. Dkt. 1-1. The defendants removed the case here. Dkt. 1.

18 Parker sued the Washington State Patrol and its employees involved in the Net
19 Nanny Sting operation (including Rodriguez and Pohl). He also sued Thurston County,
20 Deputy Prosecutor Horlacher, the City of Olympia, and Olympia police officer Aaron
21 Ficek. The Court previously dismissed Parker’s claims against Olympia and Ficek on
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1 summary judgment. Dkts. 41 and 67. Parker’s defamation claim against OUR has been
2 settled. Dkt. 30.

3 The remaining County and State defendants now seek summary judgment on
4 Parker’s claims against them.

5 Horlacher argues that he is entitled to absolute prosecutorial immunity and to
6 qualified immunity³ from Parker’s claims. He and Thurston County assert that there was
7 probable cause to arrest Parker for attempted child rape, and that Parker’s “role playing”
8 explanation for his actions does not change that fact. They argue that the existence of
9 probable cause defeats Parker’s malicious prosecution claim, and that the criminal court’s
10 prior determination that there was probable cause has collateral estoppel effect. They
11 argue that Parker’s state law outrage, negligent infliction of emotional distress, and abuse
12 of process claims fail as a matter of law.

13 Parker asserts that Horlacher is not entitled to prosecutorial immunity because,
14 acting as a complaining witness, he made “false statements” in his affidavit. Dkt. 80 at 7.
15 He argues that Horlacher is similarly not entitled to qualified immunity. He argues there
16 was no probable cause as a matter of law because he claimed he was interested only in
17 role play, and Horlacher failed to include that assertion in his affidavit. He asserts that
18 these actions support his malicious prosecution claim. He argues that collateral estoppel

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³ Horlacher and Thurston County argue that Parker did not assert a § 1983 claim against
either of them.

1 does not apply because Detective Rodriguez intentionally hid evidence in the Net Nanny
2 cases⁴ generally, and that the probable cause determination in his case was not final.

3 The State defendants similarly point out that Parker has not asserted a § 1983
4 (Fourteenth Amendment) due process claim, but rather an “unreasonable seizure” claim,
5 properly asserted under the Fourth Amendment. Dkt. 84 at 10. They argue there was
6 probable cause to arrest Parker for attempted child rape, as a Thurston County
7 commissioner and judge determined. The State defendants also assert they are entitled to
8 qualified immunity, and that Parker’s state law claims fail as a matter of law. Dkt. 84.

9 Parker asserts that there is at least a question of fact about the existence of
10 probable cause, and that the State defendants are not entitled to qualified immunity
11 because they falsified and omitted material facts from their reports. He argues that there
12 is evidence supporting his malicious prosecution, defamation, outrage, judicial deception,
13 and negligence claims. Dkt. 96.

14 As the State defendants’ reply points out, Parker does not defend, and can be
15 deemed to have abandoned, his § 1983 excessive force and failure to intervene claims
16 and his state law negligent infliction of emotional distress and abuse of process claims.
17 Dkt. 99 at 2. The summary judgment motion on those claims is **GRANTED**, and they are
18 **DISMISSED** with prejudice.

19 The remaining issues are addressed in turn.

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21 ⁴ Parker’s complaints about the Net Nanny Stings generally, and what he claims were the
22 real motivations behind that program, were persuasively rejected when asserted to support a due
process claim in a similar case in this District. *See Sanchez v. State of Washington, et al.*, No. 21-
5915-RBJ at Dkt. 96.

I. DISCUSSION

A. Summary Judgment Standard

Summary judgment is proper if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is “no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). In determining whether an issue of fact exists, the Court must view all evidence in the light most favorable to the nonmoving party and draw all reasonable inferences in that party’s favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248–50 (1986); *Bagdadi v. Nazar*, 84 F.3d 1194, 1197 (9th Cir. 1996). A genuine issue of material fact exists where there is sufficient evidence for a reasonable factfinder to find for the nonmoving party. *Anderson*, 477 U.S. at 248. The inquiry is “whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.” *Id.* at 251–52. The moving party bears the initial burden of showing that there is no evidence which supports an element essential to the nonmovant’s claim. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Once the movant has met this burden, the nonmoving party then must show that there is a genuine issue for trial. *Anderson*, 477 U.S. at 250. If the nonmoving party fails to establish the existence of a genuine issue of material fact, “the moving party is entitled to judgment as a matter of law.” *Celotex*, 477 U.S. at 323–24.

There is no requirement that the moving party negate elements of the non-movant’s case. *Lujan v. Nat’l Wildlife Fed’n*, 497 U.S. 871, 885 (1990). Once the moving party has met its burden, the non-movant must then produce concrete evidence, without

1 merely relying on allegations in the pleadings, that there remain genuine factual issues.
2 *Anderson*, 477 U.S. at 248.

3 **B. Horlacher’s summary judgment motion is granted.**

4 **1. Horlacher is entitled to absolute prosecutorial immunity.**

5 Horlacher’s primary defense is that he acted solely as a prosecutor—an
6 advocate—and that he is absolutely immune from Parker’s state law claims. The
7 exception to this immunity is when a prosecutor acts as a *witness* and testifies under
8 penalty of perjury as to the facts supporting probable cause. *Kalina v. Fletcher*, 522 U.S.
9 118, 129–31 (1997). Horlacher argues he acted only as an advocate, and that even Parker
10 alleges that the “perjury” was in Horlacher stating he had read the police reports. Parker’s
11 complaint alleges that Horlacher “failed to investigate the facts of Parker’s ‘ddlg’
12 explanation” and “charged him with legal activity.” Dkt. 77 at 9 (citing Dkt. 1-1 at 12).
13 Horlacher also asserts, correctly, that the selection of particular facts in the certification
14 to provide probable cause is undertaken in the role of an advocate and is therefore
15 absolutely protected. Dkt. 77 at 9 (citing *Kalina*, 522 U.S. at 130).

16 Horlacher argues that he is qualifiedly immune from any § 1983 constitutional
17 claim against him for the same reasons. Parker does not allege that any fact included
18 Horlacher’s probable cause determination was not true; his complaint is that Horlacher
19 did not investigate or include Parker’s asserted defense that Detective Rodriguez’s use of
20 the acronym “ddlg” negated all his other statements and conduct. Horlacher argues that
21 any § 1983 claim based on a prosecutor’s failure to present exculpatory evidence at the
22 preliminary hearing, and presenting testimony without independently investigating its

1 | credibility, is precluded by prosecutorial immunity. Dkt. 77 at 11 (citing *Morley v.*
2 | *Walker*, 175 F.3d 756, 759–60 (9th Cir. 1999)).

3 | Parker responds that Horlacher’s assertion that Parker “responded to a detective
4 | posing as a mother offering her children for sexual exploitation” is a “false statement of
5 | material fact.” Dkt. 80 at 5. Instead, he claims, the truth is that he responded to a SKOUT
6 | profile of an adult female, for legal BDSM⁵ role-playing. *Id.*

7 | This is the core of Parker’s defense to the criminal charges he faced and of his
8 | claims here: he asserts that he was interested only in legal roleplaying between
9 | consenting adults, and that the use of the acronym “ddlg” is conclusive proof of the
10 | veracity of this claim. Parker claims he never intended to have sex with any minors, and
11 | the extensive dialogue and actions pointing to the opposite conclusion are negated by the
12 | use of the acronym “ddlg.”

13 | Parker effectively claims that Horlacher (and the other defendants) should have
14 | accepted and understood his “ddlg” explanation, and that, in failing to do so, he lied in
15 | his certificate of probable cause. The Court disagrees.

16 | There is no evidence that Horlacher testified as a witness to any fact that was not
17 | true. His prosecutorial, discretionary decision to not include (or accept) Parker’s “ddlg”
18 | “explanation” for his conduct is not actionable as a matter of law. “Probable cause does
19 | not require officers to rule out a suspect’s innocent explanation for suspicious facts.”
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22 | ⁵ “Bondage, Discipline, Sadism, and Masochism.”

1 | *O'Doan v. Sanford*, 991 F.3d 1027, 143 (9th Cir. 2021). Horlacher is entitled to absolute
2 | prosecutorial immunity from all of Parker's state law claims against him.

3 | Horlacher's summary judgment motion on this basis is **GRANTED**, and all of
4 | Parker's state law claims against him are **DISMISSED** with prejudice.

5 | **2. Horlacher is entitled to qualified immunity.**

6 | The Court agrees that Parker's complaint does not assert a § 1983 claim against
7 | Horlacher for violating his constitutional rights. *See generally* Dkt. 1-1. Even if Parker
8 | had asserted a due process claim against Horlacher, however, and even if Horlacher was
9 | not entitled to absolute prosecutorial immunity, Horlacher would be entitled to qualified
10 | immunity.

11 | Under the qualified immunity doctrine, "government officials performing
12 | discretionary functions generally are shielded from liability for civil damages insofar as
13 | their conduct does not violate clearly established statutory or constitutional rights of
14 | which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818
15 | (1982). The purpose of the doctrine is "to protect officers from the sometimes hazy
16 | border between excessive and acceptable force." *Brosseau v. Haugen*, 543 U.S. 194, 198
17 | (2004) (internal quotation marks omitted) (quoting *Saucier v. Katz*, 533 U.S. 194, 206
18 | (2001)).

19 | A two-part test resolves claims of qualified immunity by determining whether
20 | plaintiffs have alleged facts that "make out a violation of a constitutional right," and if so,
21 | "whether the right at issue was clearly established at the time of defendant's alleged
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1 misconduct.” *Pearson v. Callahan*, 555 U.S. 223, 232 (2009) (internal quotation marks
2 omitted).

3 Qualified immunity protects officials “who act in ways they reasonably believe to
4 be lawful.” *Garcia v. Cnty. of Merced*, 639 F.3d 1206, 1208 (9th Cir. 2011) (quoting
5 *Anderson v. Creighton*, 483 U.S. 640, 641 (1987)). Although it is fact-specific, the
6 reasonableness inquiry is objective, evaluating “whether the officers’ actions are
7 ‘objectively reasonable’ in light of the facts and circumstances confronting them, without
8 regard to their underlying intent or motivation.” *Graham*, 490 U.S. at 397. Even if the
9 officer’s decision is constitutionally deficient, qualified immunity shields him from suit if
10 his misapprehension about the law applicable to the circumstances was objectively
11 reasonable. *See Brosseau*, 543 U.S. at 198.

12 Furthermore, qualified immunity protects officers not just from liability, but from
13 suit: “it is effectively lost if a case is erroneously permitted to go to trial,” *Liberal v.*
14 *Estrada*, 632 F.3d 1064 (9th Cir. 2011), and therefore, the claim should be resolved “at
15 the earliest possible stage in litigation,” *Creighton*, 483 U.S. at 646 n.6. The purpose of
16 qualified immunity is “to recognize that holding officials liable for reasonable mistakes
17 might unnecessarily paralyze their ability to make difficult decisions in challenging
18 situations, thus disrupting the effective performance of their public duties.” *Mueller v.*
19 *Auker*, 576 F.3d 979, 993 (9th Cir. 2009). Because it is inevitable that law enforcement
20 officials will in some cases reasonably but mistakenly conclude that probable cause is
21 present, an officer is entitled to qualified immunity when their conduct is objectively
22 reasonable. *See Garcia*, 639 F.3d at 1208; *Creighton*, 483 U.S. at 639.

1 The salient question is whether the state of the law at the time gives officials “fair
2 warning” that the conduct is unconstitutional. *Hope v. Pelzer*, 536 U.S. 730, 740 (2002).
3 Qualified immunity “gives ample room for mistaken judgments” and protects “all but the
4 plainly incompetent.” *Hunter v. Bryant*, 502 U.S. 224, 229 (1991) (internal quotation
5 marks omitted).

6 Parker has not identified any analogous authority supporting a § 1983 claim
7 against a prosecutor for the decisions he made about which of the facts developed by law
8 enforcement officers to include in his affidavit or certificate of probable cause. He has
9 not identified a single falsehood that Horlacher chose to include: Rodriguez and Pohl did
10 pose as a mother online, offering her fictitious children for sexual exploitation, and
11 Parker did respond, in graphic detail. He asserts—and for purposes of this motion, the
12 Court accepts—that he did not intend to have sex with a minor; he intended only to role
13 play with an adult. But that defense to the charges does not negate the probable cause the
14 officers had to arrest him based on everything else he said and did. It is not conclusory or
15 controversial to observe that criminal suspects commonly assert that they did not do what
16 the evidence suggests they were doing.

17 Horlacher’s motion on qualified immunity as to any federal constitutional claim is
18 **GRANTED.**

19 **C. Thurston County’s summary judgment motion is granted.**

20 Thurston County argues that Parker did not assert a § 1983 *Monell* claim against it
21 and that, even if he did, he failed to provide any evidence in support of it. Parker does not
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1 allege or argue that Thurston County violated any of his rights other than his claims
2 against Horlacher.

3 To set forth a claim against a municipality under § 1983, a plaintiff must show that
4 the defendant's employees or agents acted through an official custom, pattern or policy
5 that permits deliberate indifference to, or violates, the plaintiff's civil rights; or that the
6 entity ratified the unlawful conduct. *See Monell v. Dep't of Soc. Servs.*, 436 U.S. 658,
7 690–91 (1978); *Larez v. City of Los Angeles*, 946 F.2d 630, 646–47 (9th Cir. 1991).
8 Under *Monell*, a plaintiff must allege: (1) that a municipal employee violated a
9 constitutional right; (2) that the municipality has customs or policies that amount to
10 deliberate indifference; and (3) that those customs or policies were the “moving force”
11 behind the constitutional right violation. *Bd. of Cnty. Comm'rs v. Brown*, 520 U.S. 397,
12 403–04 (1997).

13 Parker has not done so. He has not alleged or offered facts supporting any claim
14 against Thurston County itself, and he has not established a material question of fact
15 concerning a claim against Horlacher for which Thurston County would be vicariously
16 liable. His Response to the pending motion, Dkt. 80, devotes pages to the shortcomings
17 of the WSP and OUR, but does not articulate or support any claim against Thurston
18 County. Thurston County's summary judgment motion, Dkt. 77, is **GRANTED** and all of
19 Parker's claims against it are **DISMISSED** with prejudice.
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1 **D. The State Defendants’ summary judgment motion is granted.**

2 **1. There was probable cause to arrest Parker.**

3 The State and its employees seek summary judgment for similar reasons. They
4 argue first that there was probable cause to believe that Parker had attempted to rape a
5 child, notwithstanding his explanation that he instead intended only to role play. The
6 State concedes that an officer may not ignore exculpatory evidence that would negate
7 probable cause, but argues that an officer is “not required to rule out a suspect’s innocent
8 explanation for suspicious facts.” Dkt. 84 at 8 (citing *O’Doan v. Sanford*, 991 F.3d 1027,
9 143 (9th Cir. 2021)). It asserts that “it is not the rule that police must investigate a
10 defendant’s legal defenses prior to making an arrest.” *Id.*

11 Parker argues that, under the totality of the circumstances, there was no probable
12 cause to arrest him for attempted rape of a child. He reiterates that “ddlg” means that he
13 intended to role-play, not actually have sex with minors, and criticizes Rodriguez and
14 Pohl for not recognizing that and for never looking the phrase up on the Urban
15 Dictionary. Dkt. 96 at 5–6. He complains that Pohl’s messages to him never indicated
16 that this was real and not role play. *Id.* He argues that, if a party to such a conversation
17 does not intend to role play, the common indicator is for that party to state, “no RP,”
18 which did not occur here. *Id.* at 8. He argues that the State defendants’ “failure to learn
19 the subject matter” is “unconscionable and reckless”—he blames them for not knowing
20 that, notwithstanding all his other words and conduct, he intended only to role play.

21 Probable cause does not require the same type of specific evidence of each
22 element of the offense as would be needed to support a conviction. *Adams v. Williams*,

1 407 U.S. 143, 149 (1972) (citation omitted). Probable cause requires “only the
2 probability, and not a prima facie showing, of criminal activity.” *Franklin v. Fox*, 312
3 F.3d 423, 438 (9th Cir. 2002) (quoting *Illinois v. Gates*, 462 U.S. 213, 235 (1983)). In
4 determining whether probable cause exists, “[a]ll facts known to the arresting officer and
5 all reasonable inferences that could be drawn are considered.” *United States v. Thornton*,
6 710 F.2d 513, 515 (9th Cir. 1983) (citation omitted).

7 Parker concedes that “probable cause to arrest exists when officers have
8 knowledge or reasonably trustworthy information sufficient to lead a person of
9 reasonable caution to believe that an offense has been or is being committed by the
10 person being arrested.” Dkt. 96 at 3 (citing *United States v. Lopez*, 482 F.3d 1067, 1072
11 (9th Cir. 2007)). But the cases upon which he relies to demonstrate that the State
12 defendants should have known that he was not seeking sex with minors are not
13 analogous. Parker claims that *Briscoe v. City of Seattle*, 483 F. Supp. 3d 999 (W.D.
14 Wash. 2020), and *Bier v. City of Lewiston*, 354 F.3d 1058 (9th Cir. 2004), support his
15 claim that the officers should have either known or more-fully investigated what his
16 messages and conduct really meant.

17 *Briscoe* involved a fatal police shooting. An officer had seen a convicted felon,
18 Taylor, with a gun on his hip 30 minutes before he and another officer confronted Taylor,
19 with their guns drawn. The officers could not confirm that he had a weapon when they
20 confronted him, but they shot him when they thought he was reaching for a weapon that
21 he did not actually have. Judge Thomas Zilly of this District denied the officers’ motion
22 for summary judgment on qualified immunity, concluding there was a question of fact

1 whether they reasonably believed Taylor was armed—whether they had probable cause
2 to seize him—as they approached him:

3 Given the amount of time and reasons that Taylor could not be observed,
4 and his return to the scene as a passenger in a vehicle occupied by two other
5 people, one of whom later denied seeing him with a gun on the day of the
6 shooting, the Court concludes that “room for a difference of opinion” exists
7 concerning whether the facts and their reasonable inferences indicate that
8 Taylor’s seizure was supported by probable cause.

9 *Briscoe* at 1010. *Brier* involved an arrest based on a violation of a protection order with
10 which the officers were admittedly not familiar, and which the plaintiff did not actually
11 violate. *Brier* at 171.

12 The Court does not agree that either case provides support for Parker’s claims.
13 *Brier* is not analogous. *Briscoe* turned on the fact that the probable cause was “stale;” not
14 on the claim that the officers made deliberate or recklessly false statements or omissions.
15 Parker makes the latter assertion, but he has not identified any false statements leading to
16 his arrest. Instead, he argues that he did not intend to have sex with minors. But an officer
17 reading the messages and observing the conduct—Parker showed up at the agreed time
18 and place with condoms, lube, and candy for the minor girls, as he was instructed to do if
19 he wanted to penetrate the older two—could quite reasonably conclude that Parker
20 intended to have sex with minors.

21 Parker argues that the Thurston County Superior Court’s determination of
22 probable cause does not have collateral estoppel effect because it was not “final.” The
23 State defendants point out that the result of a suppression hearing in a criminal case does
24 have preclusive effect in a subsequent civil case. Dkt. 99 at 7 (citing *Ayers v. City of*

1 *Richmond*, 895 F.2d 1267, 1270 (9th Cir. 1990)). Whether it is bound to or not, the Court
2 agrees with the Thurston County Superior Court’s determination on this record. This
3 Court stated as much in its prior summary judgment order: “Even assuming Parker only
4 intended to engage in role play, that does not negate the fact that the officers had
5 probable cause for his arrest before he told them he intended to engage in role play.” Dkt.
6 67 at 7. Law enforcement does not have an obligation to definitively rule out a suspect’s
7 innocent explanation prior to making an arrest. *See* Dkt. 99 at 4 (citing *O’Doan*).
8 Probable cause is a much lower standard than the beyond a reasonable doubt standard
9 required to convict.

10 The existence of probable cause to arrest Parker is fatal to his § 1983 claims, and
11 the State defendants’ summary judgment motion on that basis is **GRANTED**, and
12 Parker’s § 1983 claims against them are **DISMISSED** with prejudice.

13 **2. The State defendants are entitled to qualified immunity.**

14 The State also argues that its employees have qualified immunity from Parker’s §
15 1983 constitutional against them. The Court concludes that the State did have probable
16 cause, and thus that they did not violate Parker’s constitutional rights. Even if they did
17 not have probable cause, however, Parker has cited no authority that would have given
18 them “fair warning” that they had to further investigate his real intentions or his later-
19 asserted, innocent explanation before arresting him. There is authority to the contrary,
20 discussed above. The State defendants’ summary judgment motion on this basis is
21 similarly **GRANTED**.

1 **3. Parker’s malicious prosecution claim fails as a matter of law.**

2 The State defendants argue that probable cause is also a complete defense to
3 Parker’s malicious prosecution claim. As discussed above, the Court agrees. *See Clark v.*
4 *Baines*, 150 Wn.2d 905, 912 (2004) (“Although the malicious prosecution plaintiff must
5 prove all required elements, malice and want of probable cause constitute the gist of a
6 malicious prosecution action, as such, proof of probable cause is an absolute defense.”).

7 The officers’ arrest based on probable cause is also insulated from a malicious
8 prosecution claim by the fact that Prosecutor Horlacher filed a criminal complaint.

9 “Typically, in constitutional tort cases the ‘[f]iling of a criminal complaint
10 immunizes investigating officers . . . because it is presumed that the prosecutor filing the
11 complaint exercised independent judgment in determining that probable cause for an
12 accused’s arrest exists at that time.’” *Caldwell v. City & Cty. of San Francisco*, 889 F.3d
13 1105, 1115 (9th Cir. 2018) (quoting *Smiddy v. Varney (Smiddy I)*, 665 F.2d 261, 266 (9th
14 Cir. 1981)). Courts have applied this presumption of prosecutorial independence in
15 malicious prosecution cases. *See, e.g., Newman v. Cty. of Orange*, 457 F.3d 991, 994 (9th
16 Cir. 2006). To rebut the presumption, a plaintiff must produce evidence “that the district
17 attorney was subjected to unreasonable pressure by the police officers, or that the officers
18 knowingly withheld relevant information with the intent to harm [him], or that the
19 officers knowingly supplied false information.” *Id.* (quoting *Smiddy v. Varney (Smiddy*
20 *II)*, 803 F.2d 1469, 1471 (9th Cir.1986)). Parker has provided no evidence that any
21 defendant acted with malice or recklessness.
22

1 The State defendants' motion for summary judgment on Parker's malicious
2 prosecution claim is **GRANTED**, and that claim is **DISMISSED** with prejudice.

3 **4. Parker's defamation claim fails as a matter of law.**

4 Parker alleges that the State defendants defamed him when his case was included
5 in a WSP press release about the Net Nanny Stings. To prevail on a defamation claim, the
6 Plaintiff must show (1) falsity; (2) an unprivileged communication; (3) fault; and (4)
7 damages. *Mohr v. Grant*, 153 Wn.2d 812, 822 (2005).

8 The State defendants correctly argue that a plaintiff asserting a defamation claim
9 based on the information officers provide to the public faces a high burden:

10 "Statements of police officers in releasing information to the public and
11 press serve the important functions of informing and educating the public
12 about law enforcement practices." *Bender v. City of Seattle*, 664 P.2d 492,
13 504 (Wash. 1983). Accordingly, police officers are protected by a qualified
14 privilege (rather than an absolute privilege) in releasing information to the
15 press and public. *Id.* A plaintiff has the burden to establish an abuse of that
qualified privilege to recover; the standard of proving abuse of the privilege
is high. *Id.* The plaintiff must show abuse of the privilege by clear and
convincing evidence. *Id.* "[K]nowledge or reckless disregard as to the
falsity of a statement is necessary to prove the abuse of a qualified
privilege." *Id.*

16 Dkt. 99 at 9. They argue that Parker has failed to point to any knowingly false statement,
17 and that he cannot establish the requisite recklessness with clear and convincing
18 evidence.

19 Parker acknowledges these authorities but argues that the qualified privilege "does
20 not include license to make gratuitous statements concerning the facts of a case or
21 disparaging the character of other parties to an action." Dkt. 96 at 19 (citing *Bender*, 664
22 P.2d 492).

1 But Parker has not shown that any defendant made a knowingly false or reckless
2 statement about him or the criminal case against him. He cannot support a defamation
3 claim as a matter of law. The State defendants' summary judgment motion on this claim
4 is **GRANTED**, and it is **DISMISSED** with prejudice.

5 **5. Parker's outrage claim fails as a matter of law.**

6 Parker asserts that the State defendants' conduct was outrageous. He asserts
7 primarily that the WSP and its defendant employees had a financial incentive to operate
8 the Net Nanny Stings.⁶ He reiterates that Rodriguez and Pohl should have known the
9 connotation of "ddlg" and should have included "No RP" to denote "real" rather than
10 "role playing."

11 To prevail on a claim of outrage, or intentional infliction of emotional distress, the
12 plaintiff must show "(1) extreme and outrageous conduct, (2) intentional or reckless
13 infliction of emotional distress, and (3) actual result to plaintiff of emotional distress."
14 *Lyons v. U.S. Bank Nat'l Ass'n*, 181 Wn.2d 775, 792 (2014). "Although the three
15 elements are fact questions for the jury, the first element of the test goes to the jury only
16 after the court determines if reasonable minds could differ on whether the conduct was
17 sufficiently extreme to result in liability." *Spicer v. Patnode*, 9 Wn. App. 2d 283, 292–93
18 (2019) (citations and internal quotations omitted).

19 The conduct in question must be "[s]o outrageous in character, and so extreme in
20 degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious,

21 _____
22 ⁶ There is no evidence that any defendant had a personal financial stake in the outcome of
the Net Nanny Stings.

1 and utterly intolerable in a civilized community.” *Grimsby v. Samson*, 530 Wn.2d 52, 59
2 (1975) (quoting Restatement (Second) of Torts § 46 cmt. d). “[I]t is not enough that a
3 ‘defendant has acted with an intent which is tortious or even criminal, or that he has
4 intended to inflict emotional distress, or even that his conduct has been characterized by
5 “malice,” or a degree of aggravation which would entitle the plaintiff to punitive damages
6 for another tort.’” *Id.* (quoting Restatement § 46 cmt. d).

7 The State defendants argue that reasonable minds could not differ as to whether
8 the conduct alleged here was so extreme as to be “utterly intolerable” in a civilized
9 society. Dkt. 84 at 17. The Court agrees, as it did in granting the Olympia defendants’
10 summary judgment motion. Dkt. 67 at 10. There is no evidence supporting the claim that
11 any defendant intentionally harmed Mr. Parker, knowing he was innocent. The State
12 defendants’ summary judgment motion on this claim is **GRANTED** and it is
13 **DISMISSED** with prejudice.

14 **6. Parker’s judicial deception claim fails as a matter of law.**

15 To state a claim for judicial deception, a plaintiff must be able to demonstrate (1)
16 deliberate falsehood or reckless disregard for the truth and (2) the search and arrest would
17 not have occurred but for the dishonesty. *Chism v. Washington*, 661 F.3d 380, 387 (9th
18 Cir. 2011).

19 Parker’s judicial deception claim is based on his allegation that the WSP, and
20 detectives Rodriguez and Pohl, had an undisclosed financial incentive to establishing
21 probable cause. He alleges that Rodriguez did not disclose to the Thurston County
22

1 Superior Court the “financial incentives” at stake, including “OUR’s payment for
2 Rodriguez’s travel to promote OUR.” Dkt. 96 at 27.

3 It is not clear how this information would have affected the Court’s review of the
4 facts in this case, and it does not address the elements of this claim. It is clear that the
5 omission does not amount to actionable judicial deception.

6 The remainder of Parker’s judicial deception claim is based on the same assertions
7 discussed above; that the use of the acronym “ddlg” and the failure to use the phrase “No
8 RP” in the SKOUT posting and subsequent texts messages proves that he intended only
9 to role play, and law enforcement should have known it. Even if that were true, it does
10 not amount to judicial deception. The State defendants’ summary judgment motion on
11 this claim is **GRANTED** and it is **DISMISSED** with prejudice.

12 **7. Parker’s negligence claim fails as a matter of law.**

13 Finally, Parker asserts a negligence claim based on the same allegations discussed
14 throughout this order. The State defendants read his response to their motion as asserting
15 negligent training and negligent supervision claims. Dkt. 99 at 11 (citing Dkt. 96 at 25).
16 The failure to train claim alleges that detectives Rodriguez and Pohl were negligently
17 trained, and they would have known what “ddlg” meant, and that Parker did not intend to
18 have sex with minors, if they were properly trained. Parker does not describe his failure
19 to supervise claim. Dkt. 96 at 26.

20 Negligent training and supervision claims are improper (as unnecessary) when the
21 employer concedes that the actions occurred in the employee’s scope of employment—a
22 concession the WSP makes. *See La Plant v. Snohomish Cty.*, 167 Wn. App. 476, 480

1 (2011) (“[A] claim for negligent hiring, training, and supervision is generally improper
2 when the employer concedes the employee’s actions occurred within the course and
3 scope of employment.”). There was ample evidence supporting the officers’ belief that
4 Parker intended to have sex with minors, including his act of arriving at the meeting place
5 with condoms, lube, and candy, and his text statement that he “liked teens” but could
6 “deal with a six year old.” Dkt. 43 at 5.

7 The State defendants’ summary judgment motion on Parker’s negligence claim is
8 **GRANTED** and it is **DISMISSED** with prejudice.

9 II. ORDER

10 The Thurston County Defendants’ summary judgment motion, Dkt. 77, is
11 **GRANTED**, and Parker’s claims against the County and Horlacher are **DISMISSED**
12 with prejudice. The State defendants’ motion for summary judgment, Dkt. 84, is similarly
13 **GRANTED**, and Parker’s claims against defendants State of Washington, the
14 Washington State Patrol, Rodriguez, Pohl, Noyes, Calton, Rincon, Steen, and Taylor, are
15 **DISMISSED** with prejudice.

16 The Clerk shall enter a **JUDGMENT** and close the case.

17 **IT IS SO ORDERED.**

18 Dated this 17th day of July, 2023.

19
20
21
22



BENJAMIN H. SETTLE
United States District Judge