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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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Mario De La Fuente Manriquez, et al.,

No. CV-11-1981-PHX-SMM

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Plaintiffs,

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v.

**MEMORANDUM OF DECISION
AND ORDER**

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City of Phoenix, et al.,

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Defendants.

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Pending before the Court is Defendants John Collins, Steve Garcia, Jack Harris, James Holmes, Jeff Kornegay, Lana Laker and the City of Phoenix’s (collectively, unless otherwise specified “City Defendants”) motion for summary judgment and accompanying statement of facts, which is fully briefed. (Docs. 148-49, 158-60, 174-75.) Also pending is Defendants Assistant Attorney General Ted Campagnolo and the State of Arizona’s (collectively, unless otherwise specified “Campagnolo”) motion for summary judgment and accompanying statement of facts, which is also fully briefed. (Docs. 151-52, 161-63, 173.) Finally pending is Plaintiffs’ Mario De La Fuente Manriquez and Cecelia De La Fuente (collectively, unless otherwise specified “Manriquez”) fully briefed motion for partial summary judgment and their accompanying statement of facts. (Docs. 154-55, 164-72.)

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After considering the parties’ extensive briefing and having determined that oral argument is unnecessary,¹ the Court will grant in part and deny in part the City Defendants’

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¹Campagnolo’s request for oral argument is denied because the parties have had an adequate opportunity to present their written arguments, and oral argument will not aid the Court’s decision. See Lake at Las Vegas Investors Grp., Inc. v. Pac. Malibu Dev., 933 F.2d

1 motion for summary judgment. The Court will grant Campagnolo's motion for summary
2 judgment and deny Manriquez's motion for partial summary judgment.

3 **BACKGROUND**

4 The Court will provide a brief factual overview of this case and discuss the relevant
5 facts more fully as they are necessary and pertinent to the issues presented by each parties'
6 motion for summary judgment.

7 On February 2, 2008, Phoenix Police Detectives Jeff Kornegay and Karen Hughes
8 conducted a routine liquor inspection at the Scorch Bar in North Phoenix. (Doc. 149-1 at
9 10.) After learning that a bar employee purchased liquor from an unauthorized vendor in
10 violation of state law, the detectives conducted a more thorough inspection. (Doc. 149-1 at
11 10-11.) Detectives learned that persons other than the liquor license holder, Katie Peters,
12 owned an interest in the bar. (Doc. 149-1 at 10-11.) Detective Kornegay found documents
13 that listed a Nazreth Derboghossian as the owner. (Doc. 149-1 at 10-11.) Further
14 investigation into bank and other records revealed that Manriquez, over several years funded
15 the establishment through the control of Derboghossian. (Doc. 149-1 at 11; Doc. 54 at 5.)

16 On November 23, 2009 and again on November 30, 2009, Assistant Attorney General
17 Campagnolo presented evidence to the state grand jury. (Doc. 155-2 at 16-17.) Detective
18 Kornegay was the sole witness to testify before the grand jury. (Doc. 155-2 at 16-17.) On
19 November 30, 2010, the grand jury indicted Nazreth Derboghossian, Manriquez and his son,
20 Jodi Upton, Katey Peters, Douglas Allen, Ara Derboghossian, and Nadia Zulema Lopez de
21 Morales. (Doc. 155-1 at 60-124.) The indictment covered various felony offenses including
22 conspiracy, fraudulent schemes, participation in a criminal syndicate, illegal control of an
23 enterprise, and money laundering. (Doc. 54 at 8-9; Doc. 155-1 at 60-124.)

24 After securing the indictment, Phoenix Police Detectives Garcia and Borquez,
25 presented a sworn affidavit to the Maricopa County Superior Court seeking authority to
26 arrest suspects, as well as search and seize evidence from six persons, nine locations and

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28 724, 729 (9th Cir. 1991).

1 thirty-three vehicles. (Doc. 149-1 at 4, 61-68.). After judicial review, the Maricopa County
2 Superior Court found probable cause and authorized the arrest and search warrants. (Doc.
3 149-1 at 74.) The Phoenix Police Department lacked sufficient manpower to execute the
4 warrants in the various Phoenix, Tucson, and Nogales locations; therefore, it asked the
5 Arizona Department of Public Safety and the Pima County Sheriff's Office to assist them.
6 (Doc. 149-2 at 2-7.) Manriquez was arrested at his home in Tucson on January 20, 2010.
7 (Doc. 54 at 11.)

8 During the pretrial phase of the criminal proceedings, Manriquez filed a motion to
9 remand or in the alternative to dismiss the grand jury indictment on the ground that the
10 State's grand jury presentation denied him his due process rights. (Doc. 54 at 8.) That
11 motion was granted on November 8, 2010, and the State did not appeal. (Id.) Ultimately,
12 the State did not seek reindictment of Manriquez due to the death of a critical witness.

13 Manriquez filed his original complaint in this action on September 20, 2011, in
14 Maricopa County Superior Court. (Doc. 1-2, at 4.) Defendants removed the case to this
15 Court on October 11, 2011. (Doc. 1.) Manriquez filed his first amended complaint on
16 December 16, 2011. (Doc. 25.) On April 12, 2012, Manriquez filed his second amended
17 complaint against the City of Phoenix, Kornegay (a City detective), Harris (the City's chief
18 of police), Collins (a City police lieutenant), Holmes (a City police department media
19 relations employee), Garcia (a City detective), Laker (a City police department media
20 relations employee), the State of Arizona, and Campagnolo (a State Assistant Attorney
21 General). (Doc. 54.) These Defendants are unchanged from the original and first amended
22 complaints, with the exception of Laker, who is named for the first time in the second
23 amended complaint. (See Docs. 1-2, 25.) The second amended complaint alleges both
24 federal civil rights and state tort law violations. Manriquez's federal civil rights claims were
25 (1) malicious prosecution, (2) false arrest, (3) defamation relating to a press conference, (4)
26 defamation relating to a website posting, (5) excessive force, and (6) destruction of property.
27 Doc. 54, at 18-26. Manriquez's state tort claims included (7) malicious prosecution, (8)
28 defamation relating to a website posting, (9) false light invasion of privacy, (10) negligence,

1 (11) intentional infliction of emotional distress, (12) a federal civil rights claim of defamation
2 relating to a YouTube video entitled “The Last 24,” wherein Laker describes the City
3 Defendants’ investigation of Manriquez, and (13) a state tort claim of defamation relating to
4 “The Last 24” video. (Doc. 54 at 26-36.)

5 Previously, this Court dismissed Count 2 (Doc. 110), Count 7 as to Defendants
6 Collins, Holmes and Garcia (Doc. 18), Count 8 (Doc. 18), Count 9 (Doc. 18), Count 10 (Doc.
7 18), Count 11 (Doc. 148), and Counts 12 and 13 as to Defendants Kornegay, Collins,
8 Holmes, Garcia, the State of Arizona, and Campagnolo (Doc. 89).

9 STANDARD OF REVIEW

10 Summary Judgment

11 A court must grant summary judgment if the pleadings and supporting documents,
12 viewed in the light most favorable to the nonmoving party, “show that there is no genuine
13 issue as to any material fact and that the moving party is entitled to judgment as a matter of
14 law.” Fed. R. Civ. P. 56(c); see Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986);
15 Jesinger v. Nevada Fed. Credit Union, 24 F.3d 1127, 1130 (9th Cir. 1994). Substantive law
16 determines which facts are material. See Anderson v. Liberty Lobby, 477 U.S. 242, 248
17 (1986); see also Jesinger, 24 F.3d at 1130. “Only disputes over facts that might affect the
18 outcome of the suit under the governing law will properly preclude the entry of summary
19 judgment.” Anderson, 477 U.S. at 248. The dispute must also be genuine, that is, the
20 evidence must be “such that a reasonable jury could return a verdict for the nonmoving
21 party.” Id.; see Jesinger, 24 F.3d at 1130.

22 A principal purpose of summary judgment is “to isolate and dispose of factually
23 unsupported claims.” Celotex, 477 U.S. at 323-24. Summary judgment is appropriate
24 against a party who “fails to make a showing sufficient to establish the existence of an
25 element essential to that party’s case, and on which that party will bear the burden of proof
26 at trial.” Id. at 322; see also Citadel Holding Corp. v. Roven, 26 F.3d 960, 964 (9th Cir.
27 1994). The moving party need not disprove matters on which the opponent has the burden
28 of proof at trial. See Celotex, 477 U.S. at 323-24. The party opposing summary judgment

1 need not produce evidence “in a form that would be admissible at trial in order to avoid
2 summary judgment.” Id. at 324. However, the nonmovant may not rest upon the mere
3 allegations or denials of the party’s pleadings, but must set forth specific facts showing that
4 there is a genuine issue for trial. See Fed. R. Civ. P. 56(e); Matsushita Elec. Indus. Co., Ltd.
5 v. Zenith Radio Corp., 475 U.S. 574, 585-88 (1986); Brinson v. Linda Rose Joint Venture,
6 53 F.3d 1044, 1049 (9th Cir. 1995).

7 DISCUSSION

8 I. Malicious Prosecution

9 In Counts 1 and 7, Manriquez moves for partial summary judgment for his malicious
10 prosecution claims against Prosecutor Campagnolo and the City of Phoenix, Phoenix Chief
11 of Police Harris and Detective Kornegay (“City Defendants”) arguing that these Defendants
12 lacked probable cause to pursue a grand jury indictment that resulted in his unconstitutional
13 arrest. (Doc. 154 at 6-17.)

14 In Campagnolo’s response and in his cross-motion for summary judgment, he
15 contends that he is absolutely immune due to his prosecutorial duties that culminated in his
16 decision that probable cause existed for charging Manriquez before the grand jury. (Doc.
17 164; Doc. 151.) In the City Defendants’ response and in their cross-motion for summary
18 judgment, they likewise contend that they are entitled to immunity for the police report they
19 prepared and submitted because it is presumed that Prosecutor Campagnolo exercised
20 independent judgment in his subsequent determination that probable cause existed for
21 pursuing an indictment of Manriquez before the grand jury. (Doc. 166; Doc. 148.)

22 The issue of whether any immunity prevents liability against either Campagnolo or
23 the City Defendants at this stage of the litigation is centrally important and will be resolved
24 here as a threshold issue.

25 A. Prosecutor’s Absolute Immunity

26 Campagnolo contends that he is entitled to absolute immunity because his overall
27 actions in this case were intimately associated with the judicial phase of the criminal process.
28 (Doc. 151 at 10-14.) According to Campagnolo, he only functioned in his official capacity

1 as a prosecutor in evaluating the evidence in the case and making the determination that
2 probable cause existed to bring the matter before the grand jury for a criminal indictment
3 naming Manriquez, among others. (Id.)

4 Factually, Campagnolo stated that initially he met with Detective Kornegay to
5 approve and/or issue grand jury subpoenas. (Doc. 152-1 at 16, 51.) Campagnolo was the
6 prosecutor that Kornegay presented the case to and from which Kornegay obtained grand
7 jury investigative subpoenas. (Id. at 18.) Campagnolo testified that he did not advise
8 Kornegay regarding any investigative tasks. (Id. at 76, see also 152-1 at 18, 52, 56.)
9 Campagnolo himself testified that he did not perform any investigation. (Id. at 52, 55.)
10 Kornegay explained his theory of Manriquez's culpability to Campagnolo. (Id. at 19-22, 31-
11 32, 37-39, 53, 62-63.) Based upon the evidence provided to him by the police, Campagnolo
12 decided that there was both probable cause to believe Manriquez committed the offenses
13 alleged and a reasonable likelihood of conviction. (Id. at 53, 62, 76.) Campagnolo's
14 decision to pursue an indictment was approved by the Arizona Attorney General and Chief
15 Counsel of the Criminal Division. (Id. at 56.) On November 23 and 30, 2009, Campagnolo
16 presented evidence to a grand jury, during which Detective Kornegay was the only witness
17 to testify. (Doc. 54 at 6.) The grand jury indicted Manriquez. (Id. at 8.) Following
18 indictment, Campagnolo provided no input into the applications for search warrants and the
19 supporting affidavits, prior to judicial approval. (Doc. 152-1 at 27, 54, 72.)

20 Manriquez contends that Campagnolo is not entitled to absolute immunity. (Doc. 161
21 at 3-9.) Based on Campagnolo's longstanding involvement in the investigation, which began
22 as early as February 2008, Manriquez argues that Kornegay and Campagnolo worked hand-
23 in-hand resulting in a joint investigation that tainted Campagnolo's independent judgment
24 that probable cause existed to seek an indictment. (Id., citing Harper v. City of Los Angeles,
25 533 F.3d 1010, 1027-28 (9th Cir. 2008.) In support, Manriquez cites pre-indictment and
26 post-indictment facts showing the amount of cooperation between the Attorney General's
27 office and the City Defendants. (Doc. 162-1 at 5-13, 36, 39-47, 49-52, 54-56.)

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1 *Legal Standard*

2 In Imbler v. Pachtman, 424 U.S. 409, 423-24 (1976), the Supreme Court established
3 absolute immunity for the liability of prosecutors under 42 U.S.C. § 1983 who are engaged
4 in activities intimately associated with the judicial phase of the criminal process. The
5 principle of absolute immunity established in Imbler was based on the need to ensure sound
6 decisionmaking by the prosecutor by protecting from fear of retaliatory suits due to vigorous
7 law enforcement. Id. at 438 (stating that the judicial process would suffer from a rule
8 permitting malicious prosecution suits against prosecutors because if suits for malicious
9 prosecution were permitted, the prosecutor’s incentive would always be not to bring
10 charges). When determining whether a prosecutor is absolutely immune from suit for his
11 conduct, the nature of the function performed is the standard for the analysis. See Kalina v.
12 Fletcher, 522 U.S. 118, 127 (1997) (noting that prosecutorial immunity depends on “the
13 nature of the function performed, not the identity of the actor who performed it”). The
14 protections of absolute immunity extend only to advocative, prosecutorial functions, not to
15 actions better described as administrative or investigative. See Botello v. Gammick, 413
16 F.3d 971, 976 (9th Cir. 2005) (citing Buckley v. Fitzsimmons, 509 U.S. 259, 273 (1993)).

17 It is well-established that certain prosecutorial functions, such as the decision to
18 initiate a prosecution or appear in court to present evidence in support of a search warrant
19 application, are intimately associated with the judicial phase of the criminal process and thus
20 entitled to absolute immunity. See Van de Kamp, 555 U.S. at 343-44. Further, absolute
21 immunity attaches to “the types of activities . . . which . . . necessarily require legal
22 knowledge and the exercise of related discretion.” Id. at 344. Where a prosecutor is not
23 acting as “‘an officer of the court,’ but is instead engag[ing] in other ... investigative or
24 administrative tasks,” he has no absolute immunity. Id. at 342 (quoting Imbler, 424 U.S. at
25 431).

26 Absolute immunity for prosecutorial functions also exists for claims brought pursuant
27 to Arizona law. See, e.g., State v. Superior Court, 186 Ariz. 294, 297, 921 P.2d 697, 700
28 (App. 1996); Mulligan v. Grace, 136 Ariz. 483, 485, 666 P.2d 1092, 1094 (App. 1983).

1 “[T]he official seeking absolute immunity bears the burden of showing that such
2 immunity is justified for the function in question.” Burns v. Reed, 500 U.S. 478, 486 (1991).
3 Whether a public official or employee is entitled to absolute immunity is a question of law
4 for the Court to determine. Goldstein v. City of Long Beach, 481 F.3d 1170, 1172 (9th Cir.
5 2007), *rev’d and remanded on other grounds*, Van de Camp v. Goldstein, 555 U.S. 335
6 (2009).

7 *Discussion—Prosecutor’s Absolute Immunity*

8 Clearly established law entitles Campagnolo to absolute immunity for his initiation
9 and pursuit of a criminal prosecution. See Buckley, 509 U.S. at 269. Manriquez does not
10 argue otherwise. Rather, Manriquez cites Campagnolo’s pre and post-indictment activities
11 as investigative or administrative in nature and thus not entitled to absolute immunity. (Doc.
12 161 at 3-9.) Specifically, he cites to subpoenas issued by Campagnolo and discussions
13 Campagnolo had with Kornegay prior to the grand jury presentation. (Id.) Further,
14 Manriquez argues that Campagnolo’s pre-indictment activities between he and the City
15 Defendants amounted to a joint investigation that tainted his independent judgment and
16 decision to seek the criminal indictment. (Id.)

17 First, the Court finds that Campagnolo was entitled to absolute immunity for his pre-
18 indictment issuance of subpoenas. Although the Court in Buckley stated that “[a] prosecutor
19 neither is, nor should consider himself to be, an advocate before he has probable cause to
20 have anyone arrested,” 509 U.S. at 274, the Court in Van de Kamp subsequently clarified that
21 the types of activities which necessarily require legal knowledge and the exercise of related
22 discretion are intimately associated with the judicial phase of the criminal process and
23 entitled to absolute immunity. See 555 U.S. at 344. Here, Campagnolo’s legal knowledge
24 and his exercise of related discretion were essential in order for Campagnolo to issue pre-
25 indictment grand jury subpoenas. (Doc. 162-1 at 49-52.)

26 Second, the Court finds that Campagnolo was entitled to absolute immunity for his
27 meetings with Detective Kornegay to receive investigative updates. The Supreme Court has
28 established absolute prosecutorial immunity for the initiation and pursuit of a criminal

1 prosecution. Imbler, 424 U.S. at 421. “[T]he duties of the prosecutor in his role as advocate
2 for the State involve actions preliminary to the initiation of a prosecution and actions apart
3 from the courtroom,” and are nonetheless entitled to absolute immunity.” Id. at 431 n.33.
4 In the course of preparing for the initiation of the criminal process and for trial, a prosecutor
5 is required to obtain, review, and evaluate evidence. Id.; see also Roe v. City & County of
6 San Francisco, 109 F.3d 578, 584 (9th Cir. 1997) (stating that a prosecutor’s professional
7 evaluation of the evidence assembled by police is entitled to absolute immunity). Here,
8 Campagnolo’s meetings with Detective Kornegay in preparing for grand jury proceedings
9 and trial occurred in the course of his role as an advocate for the State and are entitled to the
10 protections of absolute immunity.

11 Although Manriquez cites Harper for the proposition that a prosecutor’s independent
12 judgment can be tainted when he becomes jointly involved in the day-to-day investigation
13 of a matter, the facts in Harper are easily distinguishable from the facts here. (Doc. 161 at
14 6, citing Harper, 533 F.3d at 1027-28.) Harper concerned whether a police officer taskforce
15 would be entitled to qualified immunity for pressuring the prosecutor into filing criminal
16 charges resulting in arrests without probable cause; it did not involve the issue of absolute
17 immunity for the prosecutor.

18 Finally, the only post-indictment conduct relied upon by Manriquez is the
19 correspondence between Kornegay and Campagnolo after the indictment had been remanded.
20 Campagnolo asked questions of Kornegay regarding liquor licensing statutes and Kornegay
21 provided his input. The result of this interaction was Campagnolo preparing and submitting
22 a supplemental brief to the Maricopa County Superior Court. Campagnolo’s filing a legal
23 pleading in the superior court is protected by absolute immunity, as well as the legal
24 interactions which precipitated its filing. See Van Kamp, 555 U.S. at 342-44.

25 Therefore, the Court finds that Campagnolo is entitled to absolute immunity because
26 his overall actions in this case were intimately associated with the judicial phase of the
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1 criminal process.² See Imbler, 424 U.S. at 423-24.

2 *B. City Defendants' Immunity*

3 The City Defendants argue that Detective Kornegay's grand jury testimony is
4 absolutely immune from liability, that Detective Kornegay and Chief of Police Harris are
5 otherwise entitled to immunity because Prosecutor Campagnolo independently determined
6 that there was probable cause to pursue a grand jury indictment, and alternatively, based on
7 the police report and underlying evidence, that the City Defendant Kornegay properly
8 determined probable cause did exist for Manriquez's arrest. (Doc. 148 at 5-8.) Consequently,
9 for Claim 7, because the individual City Defendants are entitled to immunity, the City of
10 Phoenix argues that there are no facts supporting independent wrongdoing by it and so it is
11 also entitled to be dismissed on Claim 7. (Id.)

12 Manriquez does not dispute that Detective Kornegay's grand jury testimony is
13 entitled to immunity. (Doc. 158 at 3.) Rather, Manriquez argues that Kornegay's liability
14 is due to prior conduct during which he functioned as the lead investigator in the criminal
15 case. (Id.) In this capacity, Manriquez contends that the following conduct subjects
16 Kornegay to liability: 1) his regular communications with Campagnolo; 2) his requests to
17 Campagnolo to review and sign subpoenas; 3) his decision not to subpoena potentially
18 exculpatory evidence; 4) his decision not to question Manriquez; 5) his encouragement to
19 Campagnolo to bring certain criminal charges against Manriquez; and 6) his providing of
20 legal advice, albeit erroneous, to Campagnolo at Campagnolo's request concerning the legal

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22 ²Manriquez concedes that he cannot hold the State of Arizona liable for the actions
23 of Mr. Campagnolo through *respondeat superior*. (Doc. 161 at 11.) In § 1983 litigation, a
24 local governmental unit such as the State may not be held responsible for the acts of its
25 employees under a *respondeat superior* theory of liability. See Bd. of County Comm'rs v.
26 Brown, 520 U.S. 397, 403 (1997). However, Manriquez continues his argument that the
27 State of Arizona is responsible for Campagnolo's conduct regarding his state tort count of
28 malicious prosecution. (Doc. 161 at 11.) The Court has already found that Campagnolo is
entitled to absolute immunity on this claim because his overall actions in this case were
intimately associated with the judicial phase of the criminal process. Therefore, the State of
Arizona will be dismissed from both Counts 1 and 7.

1 basis for the prosecution of Manriquez. (Id. at 3-6.)

2 *Legal Standard*

3 It is a well-settled principle that the “[f]iling of a criminal complaint immunizes
4 investigating officers . . . from damages suffered thereafter because it is presumed that the
5 prosecutor filing the complaint exercised independent judgment in determining that probable
6 cause for an accused’s arrest exists at that time.” Smiddy v. Varney, 665 F.2d 261, 266 (9th
7 Cir. 1981); see Beck v. City of Upland, 527 F.3d 853, 862 (9th Cir. 2008) (stating that a
8 prosecutor’s independent judgment breaks the chain of causation between allegations of
9 unconstitutional actions by city officials and the harm suffered by a constitutional tort
10 plaintiff). A plaintiff may rebut this presumption, however, by “showing that the district
11 attorney was pressured or caused by the investigating officers to act contrary to his
12 independent judgment.” Smiddy, 665 F.2d at 266. Such evidence must be substantial. See
13 Newman v. County of Orange, 457 F.3d 991, 994–95 (9th Cir. 2006) (stating that prosecutors
14 are entitled to rely on police reports not the suspect’s own version of the events when
15 deciding whether charges should be filed and thus the suspect’s version cannot by itself serve
16 as evidence that the officers interfered with the prosecutor’s decision). However, in Barlow
17 v. Ground, 943 F.2d 1132, 1136 (9th Cir. 1991), the court found such a showing was
18 established when police officers made false reports to the prosecutor, omitted material
19 information in their reports, and thus otherwise prevented the prosecutor from exercising his
20 independent judgment. Id. Once the plaintiff has introduced evidence to rebut the
21 presumption, the burden remains on the defendant to prove that an independent intervening
22 cause cuts off his tort liability. Beck, 527 F.3d at 863.

23 *Discussion–Police Officer Immunity*

24 In order to rebut the presumption that the prosecutor’s exercised independent
25 judgment in pursuing a grand jury indictment, the Court will summarize Manriquez’s
26 arguments, as follows: 1) Kornegay’s “hand-in-hand relationship” with Campagnolo
27 amounted to a joint investigation of Manriquez; 2) Kornegay’s, and/or other police officials,
28 purposeful omission of potentially exculpatory information from the police report and lack

1 of questioning of Manriquez prevented the prosecutor from exercising his independent
2 judgment; and 3) Kornegay pressured Campagnolo into bringing criminal charges against
3 Manriquez. (Doc. 158 at 3-6.)

4 The Court has already reviewed much of the evidence that Manriquez puts forward
5 in his attempt to establish that the prosecutor was compromised and lacked independent
6 judgment. First, based on a lack of evidence, the Court rejects Manriquez’s conclusory
7 contention that Campagnolo was working hand-in-hand with Detective Kornegay, in what
8 the Court should deem a joint investigation. (Doc. 158 at 3-6.) In support, Manriquez cites
9 Harper in support, but Harper established that there was a day-to-day contact between the
10 investigative task force and the prosecutor. See Harper, 533 F.3d at 1027-28. Here,
11 Manriquez relies only on Campagnolo signing a few grand jury subpoenas and deposition
12 testimony that Campagnolo sat in on a few investigative meetings at the police station. This
13 is far from the daily interaction cited in Harper in which the investigators “ongoing daily
14 interactions with the District Attorney’s office were instrumental” in the suspect’s arrest. Id.
15 It was this type of daily interaction that led the Harper court to conclude that the investigators
16 and the prosecutor were “engaged in an essentially joint investigation.” Id. at 1028. In
17 addition, Manriquez cites email correspondence from November 2010 between Kornegay
18 and Campagnolo in which Campagnolo enlisted Kornegay’s liquor license expertise in order
19 to respond to Manriquez’s motion to dismiss or remand the indictment. (Doc. 158 at 5-6.)
20 Manriquez states that this supports his argument that Kornegay and Campagnolo were
21 working together in a “joint investigation.” The Court rejects Manriquez’s argument; this
22 correspondence took place one year after Manriquez was indicted by the grand jury; it only
23 shows that Campagnolo sought Kornegay’s input due to his expertise in liquor license
24 enforcement so that Campagnolo could completely respond to Manriquez’s motion to dismiss
25 or remand the indictment.

26 Next, regarding the argument that Kornegay and/or other police officials purposely
27 omitted potentially exculpatory information from the police report provided to Campagnolo,
28 and chose not to question Manriquez as part of their investigation, Manriquez cites

1 Kornegay's deposition where Kornegay admitted that prior to the convening of the grand jury
2 he chose to not to subpoena records from Manriquez personally. (Doc. 159-2 at 34-35.)
3 Manriquez argues that if Kornegay had, he would have obtained another 2001 loan document
4 between Nazreth Derboghossian and Manriquez, in addition to the loan document he
5 obtained from Manriquez's accountant, Stephen Bond. (Doc. 159-2 at 20-21; Doc. 149-1 at
6 44-46; Doc. 159-5 at 17-19.) Manriquez argues that this 2001 loan document would have
7 shown that he did not have control or substantial involvement with Nazreth Derboghossian;
8 he only provided loans to him. (Doc. 158 at 3-4.)

9 In Newman, the Ninth Circuit found that prosecutors are entitled to rely on police
10 reports not the suspect's own version of events when deciding whether charges should be
11 brought. See 457 F.3d at 994-95. Thus, Kornegay's choice not to interview one of the
12 suspects, Manriquez, was not a material omission from the police investigation. Regarding
13 Kornegay's failure to subpoena the initial 2001 loan documents that existed between he and
14 Nazreth Derboghossian before pursuing charges before the grand jury, this argument is also
15 without merit. Prior to presenting the case to Campagnolo, Kornegay, through Manriquez's
16 accountant, Stephen Bond, knew the terms of the financing agreement detailing that
17 Manriquez had provided Derboghossian more than 16 million dollars since 2001. (Doc. 159-
18 2 at 20-21; Doc. 149-1 at 44-46; Doc. 159-5 at 17-19.) Based on Kornegay's interview with
19 Bond, Kornegay knew that Manriquez was aware that providing financing to Derboghossian
20 involved Exotic Auto Sales as well as Derboghossian's business relationships with
21 nightclubs and liquor licenses. (Doc. 149-1 at 44-47.) The Court finds that Kornegay's
22 failure to obtain this additional 2001 loan information from Manriquez was not a material
23 omission as it pertained to the investigative information Kornegay had already turned over
24 to Campagnolo. See United States v. Williams, 504 U.S. 36, 52-53 (1992) (stating that a
25 prosecutor does not have a duty to present exculpatory evidence to a grand jury when seeking
26 an indictment).

27 Finally, regarding Kornegay's alleged pressure upon Campagnolo to bring charges
28 against Manriquez, Manriquez relies on emails Kornegay forwarded to Campagnolo on

1 August 18, 2009 listing additional charges he wanted brought and again on September 8,
2 2009 where he provided Campagnolo with a revised outline of charges that should be listed
3 on the Indictment. (Doc. 158 at 4.)

4 First, Campagnolo testified at his deposition that he exercised independent judgment
5 in filing criminal charges against Manriquez. Campagnolo further testified that he believed
6 there was both probable cause and a reasonable likelihood of conviction. (Doc. 175-1 at 24-
7 25.) Although Manriquez points to emails between Kornegay and Campagnolo discussing
8 possible additional charges, these possible additional charges were not against Manriquez,
9 but against Nazreth Derboghossian, Doug Allen, and Jodi Upton. (See Doc. 159-3 at 31-32,
10 34-35.) Further, Campagnolo's email response shows that he rejected some of Kornegay's
11 recommended additional criminal charges due to the running of the statute of limitations.
12 (Id.) Campagnolo's response further confirms that he exercised independent judgment in
13 determining what criminal charges would be brought in the indictment. (Id.)

14 Therefore, the Court finds that Campagnolo exercised independent judgment in
15 determining that probable cause for Manriquez's arrest existed at that time he pursued
16 charges before the grand jury. Based on the prosecutor's independent judgment, the City
17 Defendants are entitled to immunity; Manriquez did not rebut the presumption demonstrating
18 that the City Defendants caused Campagnolo to act contrary to his independent judgment.

19 The Court has found that both Prosecutor Campagnolo and Detective Kornegay are
20 entitled to immunity as to both Count 1 and Court 7. Further, Detective Kornegay and Chief
21 of Police Harris are otherwise entitled to immunity because Prosecutor Campagnolo
22 independently determined that there was probable cause to pursue a grand jury indictment.
23 Based on these findings, there are no facts supporting independent liability by the City of
24 Phoenix and it will be dismissed from Claim 7, the state-law malicious prosecution claim.
25 Because both Prosecutor Campagnolo and the individual City Defendants are entitled to

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1 immunity, the Court will further deny as moot and dismiss Claims 1 and 7.³

2 **II. Search and Seizure**

3 In Counts 5 and 6, Manriquez alleges that the law enforcement officers executing the
4 arrest and search warrants used excessive force and destroyed their property in violation of
5 the Fourth Amendment (Doc. 54 at 24-25.)

6 All City Defendants contend that they are entitled to summary judgment because
7 Manriquez fails to allege City Defendants' personal participation in support of his 42 U.S.C.
8 § 1983 allegations of an unconstitutional search and seizure. Citing Taylor v. List, 880 F.2d
9 1040, 1045 (9th Cir. 1989), City Defendants assert that § 1983 liability arises only upon a
10 showing of the defendant's personal participation. Alternatively, City Defendants move for
11 summary judgment regarding Counts 5 and 6 contending that only reasonable force was
12 exercised in Manriquez's arrest and that the manner in which they executed the search
13 warrant was reasonable. (Doc. 148 at 8-11.)

14 Specifically, Manriquez contends that the use of SWAT teams to execute the arrest
15 and search warrants was in itself a Fourth Amendment excessive force violation. (Doc. 158
16 at 6-9.) Regarding his failure to allege personal participation, Manriquez reargues that he
17 was diligent in seeking to amend his complaint to name the officer requesting that SWAT
18 teams execute the search and seizure warrants. (Doc. 158 at 7.) Alternatively, Manriquez
19 contends that City Defendants unreasonably used excessive force in his arrest and that they
20 unreasonably seized—in fact destroyed his property—by the manner in which they executed
21 the search warrant. (Doc. 54 at 24-25; Doc. 58 at 6-8.)

22 *Discussion*

23 In Taylor, 880 F.2d at 1045, the Ninth Circuit found that the plaintiff failed to
24

25 ³Because the City Defendants prevailed on their threshold immunity argument, the
26 Court need not resolve the City Defendants' further arguments that Manriquez failed to
27 allege City Defendants' personal participation in his 42 U.S.C. § 1983 Fourth Amendment
28 malicious prosecution allegations or Manriquez's allegation that he was unlawfully arrested
without probable cause.

1 establish a genuine issue of material fact as to the personal involvement of any of the named
2 defendants. Id. The court went on to require that pursuant to § 1983, liability arises only
3 upon a showing of personal participation by the defendant. Id.

4 It is undisputed that it was Phoenix Police Sergeant Mark Doty, and not any of the
5 City Defendants, who requested that SWAT teams carry out the arrest warrant for Manriquez
6 and the search warrant authorizing seizure of certain property at his homes. (Doc. 149-2 at
7 2-7; see also Doc. 149-1 at 4-74.) The Court has already denied and refused reconsideration
8 of Manriquez’s late motion to amend his complaint to add Sergeant Doty. (Docs. 103, 105-
9 06, 109.) Although this Court has already thoroughly discussed why Manriquez was not
10 diligent in seeking amendment of his complaint, Manriquez again reargues justification for
11 seeking a late amendment to his complaint. (Doc. 158 at 7.) The Court will not rethink what
12 it has already thought through—rightly or wrongly. See Defenders of Wildlife v. Browner,
13 909 F. Supp. 1342, 1351 (D. Ariz. 1995).

14 Next, Manriquez argues that the City of Phoenix often uses a SWAT team to carry out
15 arrest and search warrants. (Doc. 158 at 7.) However, such argument does not create a
16 genuine issue of material fact for this particular case. Here, it is undisputed that Phoenix
17 Police Sergeant Mark Doty requested that members of the Pima County Regional SWAT
18 team and the Department of Public Safety SWAT team carry out the arrest warrant for
19 Manriquez and the search warrant authorizing seizure of certain property at his homes. (See
20 Doc. 149-2 at 2-7; Doc. 158 at 7.) Manriquez fails to allege any of the City Defendants’
21 personal participation regarding his claim of unconstitutional search and seizure.

22 The Court will grant City Defendants’ motion for summary judgment on Counts 5 and
23 6 because Manriquez fails to establish a genuine issue of material fact as to the personal
24 involvement of any of the City Defendants regarding the decision requesting that SWAT
25 teams carry out the arrest warrant for Manriquez and the search warrant authorizing seizure
26 of certain property at his homes. Liability under section 1983 arises only upon a showing
27 of personal participation by the defendant. See List, 880 F.2d at 1045. Therefore, the Court
28 will enter judgment in favor of City Defendants on Counts 5 and 6.

1 **III. Defamation**

2 A. Federal Civil Rights Defamation

3 In Counts 3, 4 and 12, the second amended complaint alleges that following his
4 unconstitutional arrest, Manriquez was defamed at the City’s press conference, by an article
5 posted on the City’s website, and by a City-produced video that was uploaded to You Tube.
6 (Doc. 54.)

7 *City Defendants’ Motion for Summary Judgment*

8 Relying upon Paul v. Davis, 424 U.S. 693, 698 (1976), City Defendants—the City of
9 Phoenix, Phoenix Police Chief Harris and Phoenix Police Officer Laker—move for summary
10 judgment on Counts 3, 4 and 12⁴ arguing that Manriquez only alleges a constitutionally
11 protected interest in his reputation. (Doc. 148 at 12.) Therefore, City Defendants argue that
12 they are entitled to summary judgment under the “stigma-plus” test for federal civil rights
13 defamation claims because Manriquez fails to plead defamation plus a required constitutional
14 violation. (Id.) According to City Defendants, Manriquez fails to state a *prima facie* claim
15 for defamation-plus by alleging defamation in connection with a federally protected right,
16 that being his allegation that he was arrested without probable cause because both a grand
17 jury and a state court judge determined that probable cause existed for Manriquez’s arrest
18 and therefore his arrest was not unconstitutional.

19 Manriquez contends that he meets the stigma-plus test as the defamation he suffered
20 was inflicted in connection with his federally protected right, that being his unconstitutional
21 arrest in violation of the Fourth Amendment. (Doc. 158 at 9.) Citing Cooper v. Dupnik, 924
22 F.2d 1520 (9th Cir. 1991), City Defendants reply that Manriquez’s alleged defamation was
23 not accompanied by an injury directly caused by the Government and therefore Manriquez

24
25 ⁴For Counts 3, 4 and 12, City Defendants reargue that Manriquez failed to file suit
26 within the two-year statute of limitations for federal civil rights claims under 42 U.S.C. §
27 1983. The Court has already denied this argument. (Doc. 89 at 6-7.) The Court denies
28 reconsideration of this issue. See Defenders of Wildlife, 909 F. Supp. at 1351 (stating that
reconsideration should not be used to ask the Court to rethink what the Court had already thought
through-rightly or wrongly).

1 does not meet the stigma-plus test. (Doc. 174 at 8-9.)

2 *Legal Standard*

3 An action for damage to reputation ordinarily “lies . . . in the tort of defamation, not
4 in [42 U.S.C. §] 1983.” Fleming v. Dep’t of Public Safety, 837 F.2d 401, 409 (9th Cir.
5 1988). Damage to reputation alone is not actionable under § 1983. Hart v. Parks, 450 F.3d
6 1059, 1069 (9th Cir. 2006). “To recover damages for defamation under § 1983, a plaintiff
7 must satisfy the ‘stigma-plus test.’” American Consumer Pub. Ass’n, Inc. v. Margosian, 349
8 F.3d 1122, 1125-26 (9th Cir. 2003) (quoting Cooper v. Dupnik, 924 F.2d 1520, 1532 (9th
9 Cir. 1991), rev’d on other grounds, 963 F.2d 1220, 1235 n.6 (9th Cir. 1992) (en banc)).
10 “Under that test, ‘a plaintiff must allege loss of a recognizable property or liberty interest in
11 conjunction with the allegation of injury to reputation.’” Id. at 1126 (quoting Cooper, 924
12 F.2d at 1532). This would include, for example, loss of a job as a result of defamatory
13 statements. See Hart, 450 F.3d at 1069. The injury must be to a “previously recognized right
14 or status.” WMX Tech., Inc. v. Miller, 80 F.3d 1315, 1319 (9th Cir. 1996) (citing Paul, 424
15 U.S. at 711. Further, “the ‘stigma-plus test’ requires that the defamation be accompanied by
16 an injury directly caused by the Government, rather than an injury caused by the act of some
17 third party [in reaction to the Government’s defamatory statements].” Id. at 1320. “There are
18 two ways to state a cognizable § 1983 claim for defamation-plus: (1) allege that the injury
19 to reputation was inflicted in connection with a federally protected right, or (2) allege that
20 the injury to reputation caused the denial of a federally protected right.” Herb Hallman
21 Chevrolet, Inc. v. Nash–Holmes, 169 F.3d 636, 645 (9th Cir. 1999).

22 *Discussion*

23 The Court agrees with City Defendants. Under the Fourth Amendment, an arrest
24 made upon probable cause with a warrant is not unconstitutional. Whether an arrest is
25 unconstitutional under the Fourth Amendment is determined at the time the arrest is made.
26 In this case, the facts establish that a grand jury found probable cause for Manriquez to be
27 indicted (Doc. 155-1 at 60-124), and after judicial review of the application for an arrest
28 warrant (Doc. 149-1 at 4-74, a state court judge determined that probable existed to issue an

1 arrest warrant for Manriquez. (Id.) The alleged defamation took place shortly after
2 Manriquez’s constitutional arrest under the Fourth Amendment.

3 Under Cooper, a § 1983 defamation plus claim was stated where plaintiff alleged
4 police officers made defamatory statements at a press conference that arose out of his
5 “*unconstitutional*” arrest. See Cooper, 924 F.2d 1534-36 (stating that the police chief’s
6 defamatory statements were intertwined with the arrest of Cooper and Cooper’s
7 unconstitutional arrest constitutes the necessary “plus” of the stigma-plus requirement).
8 Thus, absent an unconstitutional arrest, Manriquez fails to establish a *prima facie* stigma-plus
9 defamation case. Therefore, the Court will grant the individual City Defendants’ motion for
10 summary judgment on Counts 3, 4 and 12 based on their contention that Manriquez failed
11 to state a § 1983 stigma-plus defamation claim. Based on these findings, there are no facts
12 supporting independent liability by the City of Phoenix and it will be dismissed from Claims
13 3, 4 and 12, the federal civil rights defamation claims.

14 B. State Tort Defamation⁵

15 *Manriquez Motion for Partial Summary Judgment*

16 In Count 13, Manriquez alleges that Phoenix Police Officer Lana Laker, Police Chief
17 Jack Harris and the City of Phoenix defamed him under state law in their production and
18 public presentation of a video entitled: The Last 24, which became a You Tube video,
19 accessible on the World Wide Web. (Doc. 54 at 34-36.) Regarding Count 13, Manriquez
20 again moves for partial summary judgment on the first three elements of his Arizona
21 defamation claim: (1) a false statement concerning the plaintiff; (2) the statement was
22 defamatory; and (3) the statement was published to a third party. (Doc. 154 at 17, citing
23 Morris v. Warner, 160 Ariz. 55, 62, 770 P.2d 359, 366 (App. 1998).) Manriquez reiterates
24 that the final two elements of his Arizona defamation claim, (4) the requisite fault on the part

25
26 ⁵Regarding Claim 13, City Defendants reargue that Manriquez failed to: 1) timely
27 serve his notice of claim, and 2) timely file the claim within the applicable state statute of
28 limitations. The Court has already denied these arguments. (Doc. 89 at 4-6.) The Court
denies reconsideration. See Defenders of Wildlife, 909 F. Supp. at 1351.

1 of the defendant; and (5) how the plaintiff was damaged as a result of the statement, are
2 factual questions for the jury. (Id.) Manriquez alleges that these three elements of state-law
3 defamation were established in the video the City of Phoenix uploaded to You Tube. (Doc.
4 154 at 24-25.)

5 Manriquez asserts that the following statements in the City-produced video were false
6 and defamatory:

7 Defendant Laker . . . stated inter alia the following: (1) The Phoenix Police
8 Department's investigation exposed a criminal enterprise which was
9 financially funded by [Manriquez] and which operated car dealerships by
10 fraudulent means []; and (2) That members of the enterprise used their
11 financial accounts to carry out fraud against victims by issuing fraudulent
12 MVD titles and failing to pay off loans and consignment agreements.[] In the
13 video, [Manriquez] was lumped together with the other members of the alleged
14 criminal syndicate and accused of multiple crimes for which he was not even
15 indicted. [Manriquez's] "mug shot" was shown and he was identified as a
16 member of a "criminal enterprise"[], and photographs of [Manriquez's] two
17 homes were displayed[].

18 (Doc. 154 at 25, citing (Doc. 155-3 at 35 and Doc. 155-3 at 36 ("The Last 24" Video).) The
19 Court has already found that Laker was acting within the scope of her employment and that
20 Defendant Harris otherwise directly or indirectly approved the making of, dissemination,
21 publication and uploading of the video. (Doc. 89 at 8.)

22 Harris, Laker and the City respond that under Arizona law, when a plaintiff claims
23 defamation against public officials, he must additionally prove objective malice to overcome
24 the public official's right to qualified immunity, citing Goddard v. Fields, 214 Ariz. 175, 178,
25 150 P.3d 262, 265 (App. 2007). (Doc. 166 at 6.) Harris, Laker and the City contend first that
26 the police officers at issue are public officials, and second that they are entitled to the
27 protections of qualified immunity regarding the defamation claims raised against them. (Id.)

28 The Court finds that police and other law enforcement personnel are classified as
public officials. See Godbehere v. Phoenix Newspapers, Inc., 162 Ariz. 335, 343, 783 P.2d
781, 789 (1989). Therefore, the police officials at issue are entitled to qualified immunity.
Consequently, Manriquez must additionally prove objective malice to overcome the public
official's right to qualified immunity. Under the objective malice standard, "qualified
immunity will protect a public official if the facts establish that a reasonable person, with the

1 information available to the official, could have formed a reasonable belief that the
2 defamatory statement in question was true and that the publication was an appropriate means
3 for serving the interests which justified the privilege.” W. Tech., Inc. v. Neal, 159 Ariz. 433,
4 438, 768 P.2d 165, 170 (App. 1988) (further citation omitted).

5 Harris, Laker and the City further contend that the matters asserted in the video are
6 true and that such truth is an absolute defense to defamation. (Doc. 166 at 6.) They contend
7 that it is true that Manriquez funded the operation, loaning Nazreth Derboghossian more than
8 16 million dollars, that Derboghossian was convicted, that Manriquez was a suspect in these
9 activities, and that Manriquez bears responsibility for being associated with the now-
10 convicted Derboghossian. (Id. at 7.)

11 Manriquez replies that the video lumped him in with other criminal defendants and
12 accused him of committing multiple crimes for which he was not charged. (Doc. 168 at 6.)
13 Specifically, that the suspects operated several local car dealerships by fraudulent means, that
14 the suspects carried out the fraud by issuing fraudulent MVD titles and failing to pay off
15 loans and consignment agreements, and that the suspects were indicted on 102 felony counts
16 stemming from the investigation. (Id.) Manriquez contends that such statements were false
17 because no one suspected that he fraudulently operated the car dealerships or issued
18 fraudulent MVD titles, or failed to pay off loans, or that he was charged with 102 felony
19 counts as stated. (Id. at 6-7.)

20 *Legal Standard*

21 Substantial truth is sufficient to defeat an action for defamation. Fendler v. Phoenix
22 Newspapers, Inc., 130 Ariz. 475, 479, 636 P.2d 1257, 1261 (App. 1981). “It is well settled
23 that a defendant is not required in an action of libel to justify every word of the alleged
24 defamatory matter; it is sufficient if the substance, the gist, the sting of the libelous charge
25 be justified, and if the gist of the charge be established by the evidence, the defendant has
26 made his case.” Id. at 479, 636 P.2d at 1261 (further citation omitted). Further, it is settled
27 law that police officers may draw on their own experience and specialized training to make
28 inferences from and deductions about the cumulative information available to them that

1 might well elude an untrained person. See United States v. Hernandez, 313 F.3d 1206, 1210
2 (9th Cir. 2002) Officers are entitled to draw their inferences based on cumulative
3 information. Id. Behavior that may appear innocent when stripped of context, may not
4 appear so when viewed in the light of the aggregate evidence. See Hart v. Parks, 450 F.3d
5 1059, 1067 (9th Cir. 2006).

6 *Discussion*

7 The Phoenix Police Department's ("PPD") Public Affairs Bureau produced a video
8 entitled "The Last 24" for its continuing You Tube program. (Doc. 155-3 at 35; Doc. 54 at
9 31.) The program discussed the DeLafuente/Debogossian investigation and the subsequent
10 indictment. (Doc. 155-3 at 35.) In the video, City Defendant Lana Laker describes the
11 PPD's investigation that led to the arrest and indictment of Manriquez. (Id.) Specifically,
12 Laker states that the PPD's investigation exposed a criminal enterprise under the control of
13 Nazreth Derbogossian and financially funded by Manriquez which operated car dealerships
14 by fraudulent means. (Id.) Laker praises the PPD detectives for bringing members of the
15 criminal syndicate to justice. (Id.) The video was made on January 25, 2010, uploaded to
16 You Tube on January 28, 2010, and removed sometime between February 2, 2012 and
17 February 20, 2012. (Doc. 89 at 3.)

18 The Court views the facts in the light most favorable to the non-moving party, the
19 police officers at issue. The Court has reviewed a transcript of the video and the video
20 presentation which were submitted into evidence. (Doc. 155-3 at 35 and Doc. 155-3 at 36
21 ("The Last 24" Video).) The video was produced and uploaded to the web onto You Tube
22 within approximately one week after Manriquez was arrested. (Doc. 54 at 11, 32.) Taken
23 in the light most favorable to the non-moving party, the Court first finds that the statements
24 are substantially true. When viewed in context, the gist, the substance of the commentary
25 at issue revolves around the suspects that were indicted and arrested. It is true that
26 Manriquez was named, and that his picture was posted on the video, but it is also true that
27 he funded Nazreth Derbogossian, who was subsequently convicted of numerous felonies.
28 (Doc. 149-2 at 11.) It is substantially true that the charges presented was due to Manriquez's

1 association with, and long-time funding of Derbogossian's illegal activities, which funding
2 amounted to over 16 million dollars. Based on an interview with Stephen Bond, Manriquez's
3 accountant, the affidavit in support of the arrest and search warrant described Manriquez's
4 understanding of how Derbogossian had utilized the funding that Manriquez provided, and
5 his remaining collateral:

6 Mario De La Fuente Manriquez described Scorch, LLC as a nightclub in
7 Carefree; Mario desired to make his 4 children 50% owners with Nazreth
8 Derbogossian's 5 children possessing the other 50%; Mario and Nazreth
9 Derbogossian would be executors for their children; Mario would utilize Don
10 Loose to draft wills for both he and Nazreth Derbogossian to reflect the
11 percentage of ownership possessed by the children; Mario possessed 50%
12 ownership, though Jodi [Upton] will own liquor license; Mario would make
13 Jodi a partner so that she has fiduciary responsibility to other partners; Mario
14 indicated that the following percentages would be allotted: Jodi 1%, Nazreth's
15 Children 49%, Mario's children 40%, Mario [Manriquez] 5%, Mario [Mix]
16 5%; Mario claimed that as of May 31, 2004, \$11,000,000 had been loaned from
17 Mario to Nazreth's [children] and Mario's [children]; Mario described a new,
18 unnamed LLC with a superior controlling position to Jodi Upton CBNC,
19 Exotic, and Scorch.

20 (Doc. 149-1 at 47) (quotations omitted, edits included in brackets and formatting change).
21 Thus, although Manriquez claims to be an innocent lender and objects to being labeled a
22 suspect in the video, such an inference, based on the cumulative evidence obtained by the
23 police, is not unreasonable. (Doc. 149-1 at 4-74.)

24 Moreover, qualified immunity will protect a public official if the facts establish that
25 a reasonable person, with the information available to the official, could have formed a
26 reasonable belief that the defamatory statement in question was true and that the publication
27 was an appropriate means for serving the interests which justified the privilege. Neal, 159
28 Ariz. at 438, 768 P.2d at 170. Taken in the light most favorable to the non-moving party, the
Court finds that based on the cumulative evidence obtained by the police, the inferences
described in the video are not unreasonable and entitle the police officials at issue in Count
13 to qualified immunity. Consequently, the Court will deny Manriquez's motion for partial
summary judgment on Count 13 and sua sponte grant summary judgment to Police Chief
Harris and Police Officer Laker on the basis of qualified immunity. See id. Based on these
findings, because there are no facts supporting independent liability by the City of Phoenix,

1 it also will be dismissed from Claim 13, the state-law defamation claim.

2 **CONCLUSION**

3 Accordingly, based on the foregoing,

4 **IT IS HEREBY ORDERED** granting City Defendants' motion for summary
5 judgment. (Doc. 148.) The Court grants summary judgment to all of the City Defendants
6 on Counts 1, 3-7, and 12.

7 **IT IS FURTHER ORDERED** sua sponte granting summary judgment to the
8 remaining City Defendants on Count 13.

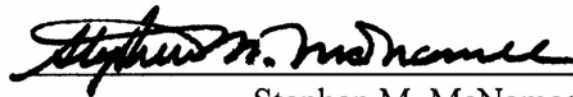
9 **IT IS FURTHER ORDERED** that all of the City Defendants are dismissed from this
10 case.

11 **IT IS FURTHER ORDERED** granting Campagnolo's motion for summary
12 judgment. (Doc. 151.) The State of Arizona, Assistant Attorney General Ted Campagnolo
13 and Dawn Campagnolo are dismissed from this case.

14 **IT IS FURTHER ORDERED** denying Manriquez's motion for partial summary
15 judgment. (Doc. 154.)

16 **IT IS FURTHER ORDERED** that the Clerk of Court shall enter judgment
17 accordingly and terminate this case.

18 DATED this 31st day of March, 2014.

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20 

21 _____
22 Stephen M. McNamee
23 Senior United States District Judge
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