

1 WO
2
3
4
5

6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Steven Peck, et al.,

10 Plaintiffs,

11 v.

12 Margaret Hinchey, et al.,

13 Defendants.
14

No. CV-12-01371-PHX-JAT

ORDER

15 Pending before the Court is Defendant's Motion for Summary Judgment on
16 Qualified Immunity Grounds (Doc. 375). The Court now rules on the motion.¹

17 **I. Background**

18 On March 14, 2014, the Court issued an Order on Defendants' motion to dismiss
19 and the parties' cross motions for Summary Judgment. (Doc. 329). On July 15, 2016, this
20 Court received the decision of the U.S. Court of Appeals for the Ninth Circuit affirming
21 this Court's decision in part, and reversing and remanding in part. (Doc 351-2).
22 Following the Court of Appeals' decision, this Court issued an Order to clarify the
23

24 ¹ At oral argument, Plaintiffs raised for the first time that Defendant improperly
25 filed a Response to Plaintiffs' Additional Controverting Facts ("RSOF") (Doc. 387),
26 which Defendant cited in her Reply brief (Doc. 386). Plaintiff did move for any formal
27 relief based on this issue (e.g., Plaintiff did not ask the Court to strike it). Plaintiff is
28 correct that District of Arizona Local Rule Civil 56.1 does not contemplate a RSOF. *See*
LRCiv 56.1(a), (b); *see also GoDaddy.com, LLC v. RPost Commc'ns Ltd.*, No. CV-14-
00126-PHX-JAT, 2016 WL 3068638, at *1 (D. Ariz. June 1, 2016) ("Local Rule 56.1
does not provide for a reply statement of facts or a response to the non-moving party's
separate statement of facts"). The Court has reviewed the facts therein and finds that no
new, material facts were raised for the first time in Defendant's RSOF. Therefore, the
Court will not take any action on this procedural issue.

1 procedural posture of this case. (Doc. 352). Plaintiffs maintain three counts against
2 Defendant Hinchey under the Civil Rights Act of 1871, 42 U.S.C. § 1983. (*Id.*). No other
3 defendants or claims remain in this case. (*Id.*).

4 Defendant responded to those counts by filing a Motion to Dismiss (Doc. 355),
5 which was denied by this Court (Doc. 368). Defendant later filed a Motion for Summary
6 Judgment on Qualified Immunity Grounds on February 2, 2017 (Doc. 375). Plaintiffs
7 filed a Response on March 6, 2017 (Doc. 379). Defendant then filed a Reply on March
8 21, 2017 (Doc. 386).

9 Count I, Intentional Presentation of False Evidence to Support Criminal, Count II,
10 Presentation of False Evidence to Support Criminal Charges with a Reckless Disregard
11 for the Truth, and Count III, Malicious Prosecution, are discussed below.²

12 **A. Undisputed Material Facts**

13 Steven Peck, Benjamin Sywarungsymun, Aaron Lentz, and Shannon Lentz
14 (hereinafter “Plaintiffs”) filed a complaint in June 2012 against several defendants,
15 including Margaret Hinchey (hereinafter “Defendant”). (*See* Doc. 1, *as am.* Doc. 180).
16 Plaintiffs—except for Shannon Lentz³—are officers in the Phoenix Police Department
17 (“PPD”) who were investigated for falsely reporting their hours worked at a uniformed,
18 off-duty security job coordinated by former PPD Officer George Contreras at Cotton
19 Center Townhomes (the “Job”). (Doc. 380 at 2). Defendant was a Special Agent with the
20 Arizona Attorney General’s Office during the course of the investigation. (Doc. 380 at 3).

21 The Court went through the background facts regarding Defendant’s investigation
22

23 ² Count III initially included both a federal §1983 claim and an Arizona state law
24 claim for malicious prosecution, but the state law claim in Count III was dismissed, along
25 with Plaintiffs’ other state law claims, for failure to comply with Arizona’s Notice of
26 Claim Statute. (Doc. 329 at 24). The Court of Appeals’ mandate, reversing this Court’s
27 decision to grant summary judgment in favor of Defendant on Count III on absolute
28 immunity grounds, pertained only to the § 1983 claim. (Doc 351-2 at 4). The Court of
Appeals declined to reverse this Court’s decision on the dismissal of state law claims,
which stands. The claims in Plaintiffs’ Second Amended Complaint, that were remanded
by the Court of Appeals, represent the “totality of the claims” remaining in this case.
(Doc. 352 at 3).

³ Shannon Lentz is the spouse of Aaron Lentz. (Doc. 380 at 2).

1 of Plaintiffs' conduct at the Job in its previous Summary Judgment Order, so the Court
2 will not repeat them all here (Doc. 329 at 2-5). Facts most relevant to this Order are
3 discussed below and the Court will discuss other relevant facts as necessary:

4 Contreras selected more than fifty PPD officers to work this
5 off-duty job, including Plaintiffs Steven Peck, Aaron Lentz,
6 and Benjamin Sywarungsymun ("Plaintiffs"). (PSOF ¶ 1).
7 The Townhomes officers worked in two-man shifts and used
8 a patrol car that was picked-up and dropped-off at the PPD
9 South Mountain Precinct. (PSOF ¶¶ 21–27). Contreras kept a
10 handwritten logbook at the South Mountain Precinct to allow
11 officers to log their activities and communicate relevant
12 information to subsequent shifts. (PSOF ¶¶ 35–37).

13 Contreras did not monitor or verify the times that the officers
14 began and ended their shifts. However, the patrol cars used by
15 the officers included an on-board computer ("MDT") that
16 recorded officers' sign-in/sign-off times. (PSOF ¶ 47;
17 Controverting Statement of Facts to Defendants City of
18 Phoenix and Paula Veach's Separate Statement of Facts in
19 Support of Her Motion for Summary Judgment on Immunity
20 Grounds ("PCSOF"), Doc. 297 ¶ 5). Although the MDT's
21 sign-in/sign-off system could be unreliable, the officers often
22 used the MDT. (PSOF ¶ 55–59; see PCSOF ¶ 5).
23 Additionally, the officers used radios that recorded on/off
24 times. (PSOF ¶ 52; see PCSOF ¶ 5). PPD off-duty policies,
25 however, did not require the officers to sign-in with the MDT
26 at the beginning of their shifts, or to sign-off the MDT or the
27 radio at the end of their shifts. (PSOF ¶¶ 48–52).

28 In October, 2006, the Townhomes job ended. (PSOF ¶ 68).
On December 7, 2006, in response to a citizen complaint that
the Townhomes officers had been paid for services not
actually performed, PPD assigned two detectives from its
Professional Standards Bureau to audit the Townhomes job.
(Defendants City of Phoenix, Paula Veach and Jack Harris's
Statement of Facts in Support of Motion for Summary
Judgment Regarding Immunity ("DSOF"), Doc. 258 ¶¶ 1–4;
PCSOF ¶¶ 1–4). The detectives gathered documentation
including pay slips, department reports from arrests made at
the Townhomes, sign-in/sign-off data from the MDTs, radio
on/off times, and various written logs. (PCSOF ¶ 5). The
detectives organized this information into an Excel

1 spreadsheet (the “PSB spreadsheet”) and the preliminary data
2 indicated discrepancies between the hours officers worked
and the hours they were paid. (PCSOF ¶¶ 6–7).

3 PPD transferred the matter to Sergeant Paula Veach to
4 conduct an administrative investigation to determine if any
5 PPD policies had been violated. (PCSOF ¶¶ 8–10). Veach
6 received the PSB spreadsheet, requested additional materials,
7 and added additional information to the PSB spreadsheet.
8 (PCSOF ¶¶ 11–12). Veach also conducted seven Garrity-
protected officer interviews, including of Contreras and
Plaintiff Sywarungsymun. (PCSOF ¶¶ 14–16).

9 After two of the interviewed officers admitted to leaving the
10 Townhomes job early, Veach was ordered to create a
11 PowerPoint presentation to show the current status of her
12 ongoing administrative investigation to her chain of
13 command. (PCSOF ¶¶ 17–18). Following the presentation,
14 Veach was ordered to halt her administrative investigation
15 and PPD referred the matter to the Arizona Attorney
16 General’s Office (“AGO”) for an independent criminal
17 investigation. (PCSOF ¶¶ 19–20). Veach was ordered to
18 provide her records to the AGO and serve as PPD’s liaison
19 for the purposes of the AGO’s criminal investigation.
20 (PCSOF ¶ 20).

21 In November 2008, the AGO appointed Special Agent
22 Margaret Hinchey to conduct a criminal investigation into the
23 matter and Hinchey contacted Veach. (PCSOF ¶ 21). Veach
24 met with Hinchey to discuss the PSB spreadsheet and its
25 underlying data. (DCSOF ¶ 21). Veach informed Hinchey
26 that Veach’s administrative investigation was incomplete and
27 that the PSB spreadsheet was incomplete and inaccurate.
28 (PCSOF ¶¶ 22, 99–100). During the course of Hinchey’s
investigation, Veach, as the PPD liaison, answered Hinchey’s
questions related to PPD policies and procedures and directed
Hinchey to sources of data relevant to Hinchey’s
investigation. (PCSOF ¶ 34). In December 2009, Veach was
transferred out of the PSB unit and her role as PPD liaison to
Hinchey ended. (PCSOF ¶ 23).

During Hinchey’s investigation, Hinchey “asked PPD for all
supporting data used to calculate times in the PSB
spreadsheet” (PSOF ¶ 108), determined shift start and end

1 times using “MDT, radio log off, PACE time, [and] report
2 entry times” (PSOF at Ex. 18 pp. 55–57), reinterviewed a
3 Townhomes witness (PSOF ¶ 112, Ex. 44), and interviewed
4 at least 21 Townhomes officers (PSOF at Exs. 19–20, 23–41).
5 As part of her investigation, Hinchey heavily modified the
6 PSB spreadsheet. (*Id.*; see also SSOF at Exs. 17, 58–60).
7 During her investigation, Hinchey authored numerous
8 investigative reports (DSOF at Ex. 12) and informed her
9 supervisors of the status of her investigation. Plaintiffs allege
10 that Hinchey’s reports failed to include exculpatory evidence
11 and included false or fabricated evidence intended to mislead
12 the prosecutor into pursuing criminal charges against
13 Plaintiffs. (SAC ¶¶ 232–37).

14 Plaintiffs allege that the decision to indict Plaintiffs was made
15 in the fall of 2010. (SAC ¶ 241). Specifically, Plaintiffs allege
16 that, in order to achieve political gain, Attorney General Terry
17 Goddard directed that Hinchey’s investigation conclude and
18 the prosecutor procure indictments prior to Election Day on
19 November 2. (SAC ¶¶ 244–47). Plaintiffs further allege that
20 in response, Hinchey presented false, misleading, and
21 fabricated results from her investigation to the prosecutor,
22 Todd Lawson, for the purposes of supporting criminal
23 charges against Plaintiffs. (SAC ¶¶ 251–54, 260–61).
24 Plaintiffs allege that Lawson convened a grand jury and
25 Hinchey, as the sole witness to the grand jury, perjurally
26 presented false evidence to secure an indictment against
27 Plaintiffs. (SAC ¶¶ 255–57). The grand jury returned an
28 indictment of Plaintiffs on November 17, 2010. (SAC ¶ 258).
Plaintiffs allege that there was no probable cause for the
indictment. (SAC ¶ 259). Plaintiffs further allege that
Hinchey continued the investigation and continued to submit
false, fabricated, and misleading reports to her supervisors
and Lawson. (SAC ¶ 268).

During the course of criminal discovery, Plaintiffs’ attorneys
reviewed Hinchey’s investigation, discovered falsities, and
moved for remand of Plaintiffs’ indictment. (SAC ¶¶ 278–
80). Remand was granted and a second grand jury was
empaneled, but the second grand jury failed to return an
indictment of Plaintiffs. (SAC ¶ 281–84). Plaintiffs allege that
without the false evidence, the second grand jury could not
find probable cause. (SAC ¶ 283). On November 23, 2011, all

1 criminal charges against Plaintiffs were dropped. (SAC ¶
2 286).

3 (Doc. 329 at 2-5).

4 **II. Summary Judgement Standard**

5 Summary judgment is appropriate when “there is no genuine dispute as to any
6 material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P.
7 56(a). “A party asserting that a fact cannot be or is genuinely disputed must support that
8 assertion by . . . citing to particular parts of materials in the record, including depositions,
9 documents, electronically stored information, affidavits, or declarations, stipulations . . .
10 admissions, interrogatory answers, or other materials,” or by “showing that materials
11 cited do not establish the absence or presence of a genuine dispute, or that an adverse
12 party cannot produce admissible evidence to support the fact.” *Id.* 56(c)(1)(A), (B). Thus,
13 summary judgment is mandated “against a party who fails to make a showing sufficient
14 to establish the existence of an element essential to that party's case, and on which that
15 party will bear the burden of proof at trial.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 322
16 (1986).

17 Initially, the movant bears the burden of pointing out to the Court the basis for the
18 motion and the elements of the causes of action upon which the non-movant will be
19 unable to establish a genuine issue of material fact. *Id.* at 323. The burden then shifts to
20 the non-movant to establish the existence of material fact. *Id.* A material fact is any
21 factual issue that may affect the outcome of the case under the governing substantive law.
22 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The non-movant “must do
23 more than simply show that there is some metaphysical doubt as to the material facts” by
24 “com[ing] forward with ‘specific facts showing that there is a genuine issue for trial.’”
25 *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586–87 (1986) (quoting
26 Fed. R. Civ. P. 56(e)). A dispute about a fact is “genuine” if the evidence is such that a
27 reasonable jury could return a verdict for the non-moving party. *Liberty Lobby, Inc.*, 477
28 U.S. at 248 (1986). The non-movant's bare assertions, standing alone, are insufficient to

1 create a material issue of fact and defeat a motion for summary judgment. *Id.* at 247–48.
2 However, in the summary judgment context, the Court construes all disputed facts in the
3 light most favorable to the non-moving party. *Ellison v. Robertson*, 357 F.3d 1072, 1075
4 (9th Cir.2004).

5 At the summary judgment stage, the Court’s role is to determine whether there is a
6 genuine issue available for trial. There is no genuine issue for trial unless there is
7 sufficient evidence in favor of the non-moving party for a jury to return a verdict for the
8 non-moving party. *Liberty Lobby, Inc.*, 477 U.S. at 249-50. “If the evidence is merely
9 colorable, or is not significantly probative, summary judgment may be granted. *Id.*
10 (citations omitted).

11 **III. Qualified Immunity**

12 Defendant argues that she is entitled to qualified immunity as a matter of law on
13 all outstanding counts because she reasonably—even if erroneously—believed that her
14 conduct in investigating Plaintiffs did not violate Plaintiffs’ constitutional rights. (Doc.
15 375 at 14). The qualified immunity doctrine “provides ample protection to all but the
16 plainly incompetent or those who knowingly violate the law.” *Malley v. Briggs*, 475 U.S.
17 335, 341 (1986).

18 **A. Legal Standard**

19 Section 1983 provides a private right of action against individuals acting under
20 color of state law who violate others’ constitutional or statutory rights. 42 U.S.C. § 1983.
21 Qualified immunity, however, shields government officials from civil liability under §
22 1983 when applicable. Qualified immunity “is an *immunity from suit* rather than a mere
23 defense to liability; and like an absolute immunity, it is effectively lost if a case is
24 erroneously permitted to go to trial.” *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985)
25 (emphasis in original). Defendant is entitled to qualified immunity if her conduct did not
26 violate a clearly established constitutional right “of which a reasonable person would
27 have known.” *Harlow v. Fitzgerald*, 457 U.S. 800, 801 (1982). “Courts should decide
28 issues of qualified immunity as early in the proceedings as possible, but when the answer

1 depends on genuinely disputed issues of material fact, the court must submit the fact-
2 related issues to the jury.” *Bryant v. City of Goodyear*, No. CV-12-00319-PHX-JAT,
3 2014 WL 2048013, at *3 (D. Ariz. May 19, 2014) (quoting *Ortega v. O’Connor*, 146
4 F.3d 1149, 1154 (9th Cir. 1998)).

5 The United States Supreme Court has set forth a two-step test—comprised of the
6 “constitutional inquiry” and the “qualified immunity inquiry”—to determine if a
7 defendant is entitled to qualified immunity. *Saucier v. Katz*, 533 U.S. 194, 201 (2001),
8 *overruled on other grounds by Pearson v. Callahan*, 555 U.S. 223 (2009). The
9 “constitutional inquiry” examines whether the alleged facts, as viewed in the light most
10 favorable to the non-moving party, demonstrate that a defendant’s conduct violated one
11 of a plaintiff’s constitutional rights. *Id.* If the alleged facts show that a right was violated,
12 the Court must then address the “qualified immunity inquiry” to determine whether the
13 right was “clearly established.” *Id.* at 201–02. A government investigator is not entitled to
14 qualified immunity for her conduct if “it would be clear to a reasonable [investigator] that
15 the conduct was unlawful in the situation [s]he confronted.” *Id.* at 202 (citing *Wilson v.*
16 *Layne*, 526 U.S. 603, 615 (1999)). The qualified immunity inquiry “must be undertaken
17 in [the] light of the specific context of the case, not as a broad general proposition.” *Id.* at
18 201.

19 **B. Counts I and II: *Devereaux* Claims**

20 Counts I and II (the “*Devereaux* claims”) allege that Defendant violated Plaintiffs’
21 right to be free from criminal charges based on “false evidence that was deliberately
22 fabricated by the government.” (See Doc. 379 at 8-9).⁴ “[T]here is a clearly established
23 constitutional due process right not to be subjected to criminal charges on the basis of
24 false evidence that was deliberately fabricated by the government.” *Devereaux v. Abbey*,
25 263 F.3d 1070, 1074-75 (9th Cir. 2001). A claim that a government agent deliberately

26
27 ⁴ The Court discusses both the fabrication and reckless claims together because
28 both Parties comingle the claims in their briefs. (Doc. 375 at 14-20; Doc. 379 at 9-22).
Furthermore, deliberate fabrication is “equivalent” to recklessness for the purposes of the
instant qualified immunity inquiry. (Doc. 329 at 30 n.22).

1 fabricated evidence must be supported by evidence that either: “(1) Defendants continued
2 their investigation of [plaintiff] despite the fact that they knew or should have known that
3 he was innocent; or (2) Defendants used investigative techniques that were so coercive
4 and abusive that they knew or should have known that those techniques would yield false
5 information.” *Hall v. City of Los Angeles*, 697 F.3d 1059, 1068 (9th Cir. 2012) (quoting
6 *Devereaux*, 263. F.3d at 1076).

7 Plaintiffs argue that Defendant violated both of the *Devereaux* prongs. (*See Doc.*
8 379 at 10). To support this argument, Plaintiffs allege that Defendant relied on
9 incomplete or unreliable investigatory sources, failed to verify claims from those sources,
10 failed to disclose potentially exculpatory evidence, generated false reports as to the extent
11 of her investigation, and ignored or misunderstood pertinent information about Plaintiffs’
12 timekeeping systems. (*Id.* at 10-11). Plaintiffs also point out that, at the motion to dismiss
13 stage, this Court acknowledged that Plaintiffs’ complaint provided sufficient allegations
14 to support those claims, if true. (*See id.* at 9; *see also Doc.* 368 at 7).⁵ The facts of this
15 case when construed in the light most favorable to Plaintiffs, however, do not validate
16 Plaintiffs’ assertions.

17 **1. Officers Admitted to Leaving Shifts Early**

18 Defendant may have exaggerated theft claims based on misunderstandings of the
19 evidence and failed to diligently pursue all possible leads that could have improved the
20 quality of her investigatory findings, but a careless or inaccurate investigation does not
21 necessarily reach the level of a constitutional violation. *See Gausvik v. Perez*, 345 F.3d
22 813, 817 (9th Cir. 2003) (holding that an investigator’s carelessness or inaccuracy “does
23 not satisfy *Devereaux’s* stringent test”). The record demonstrates that Defendant’s

24
25 ⁵ Plaintiffs misapply the “law of the case” doctrine by arguing that this Court’s
26 analysis under the motion to dismiss standard must result in the same outcomes at the
27 summary judgment stage (*Doc.* 379 at 10). The “denial of motions to dismiss do not
28 constitute law of the case for the purpose of summary judgment.” *Moonin v. Nevada ex*
rel. Dep’t of Pub. Safety Highway Patrol, No. 3:12-CV-000353-LRH, 2015 WL 4113289,
at *6 (D. Nev. July 8, 2015) (citations omitted); *see also Robbins v. Wilkie*, 433 F.3d 755,
764 (10th Cir.2006) (“Law of the case does not apply because a motion to dismiss and a
motion for summary judgment do not raise the same issues.”).

1 interviews with officers who worked the Job revealed that several officers did in fact
2 admit to leaving the Job early. (*Compare* Doc. 379 at 16 n.120-21 (citing Doc. 380 at ¶¶
3 31.2, 48, 53) *with* Doc. 375 at 15-16).⁶ George Contreras, the Job’s coordinator, was
4 among those who admitted to leaving early and working suspect shifts with Plaintiffs.
5 (*Compare* Doc. 379 at 16 (citing Doc. 380 at ¶¶ 48.1, 53, 58, 76) *with* Doc. 375 at 15; *see*
6 *also* Doc. 376-2 at 96). Defendant was told that the practice of leaving the Job early, but
7 receiving full pay was “pretty common” among officers. (*See* Doc. 375 at 16 (citing Doc.
8 376-2 at 238, 241)). While Defendant could have acted in a more diligent manner to
9 investigate these witness statements, nothing in the statements would provide actual or
10 constructive knowledge to Defendant that Plaintiffs were in fact innocent of the charges
11 against them, and Defendant did not fabricate or coerce these witness statements.
12 (*Compare* Doc. 379 at 16 *with* Doc. 375 at 16-17). These undisputed admissions instead
13 provide evidence that Defendant reasonably relied upon in furtherance of her
14 investigation into Plaintiffs.

15 2. Defendant’s Determination of Shift Start Times

16 Plaintiffs take particular issue with Defendant’s methodology in estimating shift
17 start times in constructing timelines of shifts worked by Plaintiffs. (*See* Doc. 379 at 11-
18 12). However, Plaintiffs decided not to provide Defendant with potentially exculpatory
19 evidence of their innocence relating to start times during Defendant’s investigation.
20 (*Compare* Doc. 379 at 16 *with* Doc. 375 at 16). As a result, Defendant was left to rely on
21 what proved to be unreliable data sources, such as MDT timestamps, to construct a
22 timeline and narrative that tended to indicate that Plaintiffs were not innocent. (*See* Doc.
23 379 at 13). In calculating the length of each officer’s shift, Plaintiffs allege that
24 Defendant “deliberately fabricated evidence related to start time” by operating under the

25
26 ⁶ For Lieutenant Tortoricci, *see* Doc. 376-2 at 238-39; for Officer Hoenigman, *see*
27 Doc. 380-4 at 17-18; for Officer Reiff, *see* Doc. 376-2 at 104-05; for Officer Thompson,
28 *see* Doc. 380-5 at 80; for Officer Holton *see* 380-5 at 221-22, 226. While some of these
officers did provide explanations for their premature departures—often that they were
simply following orders from Contreras, the Job’s coordinator, when working alongside
him—those explanations do not negate their admissions, which provided credible
evidence of theft to Defendant. Defendant did not falsify statements to this effect.

1 assumption that the Job’s client understood shifts to start when officers were on the
2 property, but “clearly the agreement was that the shift would start when the officers
3 arrived at the South Mountain precinct.” (*See* Doc. 379 at 11; *see also* (Doc. 380-2 at 37,
4 244:16-245:4) (Veach testified in her deposition that she did not tell Defendant whether
5 officers started the Job for timekeeping purposes at the station or at the property)).

6 While Defendant may have operated under a mistaken impression, this did not
7 distort time calculations to the point where a reasonable investigator would have thought
8 Plaintiffs to be innocent because Defendant did credit some travel time at the beginning
9 and end of each shift and relied on multiple data sources to calculate shift times (*See* Doc.
10 386 at 7 (citing Doc. 380-16 at 31, 27:24-28:25) for credit of travel time; *see e.g.*, Doc.
11 376 at 10-11 for use of multiple data sources). Plaintiffs concede that Defendant
12 accounted for preparation time on some shifts, but question whether she did so all shifts.
13 (*See* Doc. 379 at 12). But again, this goes to Defendant’s methodology in how she came
14 to her conclusions and does not demonstrate that Defendant deliberately fabricated
15 evidence. (*Compare id.* at 12-13 with Doc. 386 at 7). By alleging that the preparation
16 time Defendant failed to account for “could be an additional 21 minutes” per shift,
17 Plaintiffs cast doubt on whether Defendant misstated the amount of time for which
18 Plaintiffs were paid while not working at the Job, but this correction would not provide
19 Defendant notice that Plaintiffs were innocent; only that the amount of their theft was
20 being exaggerated. (*See* Doc 379 at 12). In other words, the time discrepancies were well
21 over 21 minutes per shift. (*See* Doc. 375 at 2 (citing Doc. 376 at ¶¶ 9); *see also* Doc. 376-
22 3 at 3).

23 3. Defendant’s Reliance on MDT Timestamps

24 Plaintiffs next allege that Defendant deliberately reported a false theft amount by
25 “rel[ying] on unreliable and incomplete sources in her investigation” because Defendant
26 used MDT timestamps as the primary data source in determining shift start and end
27 times. (*Id.* at 12). Plaintiffs provide the same assertions to question the methodology in
28 using this data source, but Defendant relied on multiple data sources during her

1 investigation. (*Compare* Doc. 379 at 11-12 *with* Doc. 386 at 7). While the accuracy of
2 Defendant’s findings may be in question, Defendant did not deliberately fabricate
3 evidence by using an unreliable source without knowledge of its falsity. (*Compare* Doc.
4 379 at 12-13 *with* Doc. 386 at 7-8).

5 If anything, overreliance on MDT timestamps that did not capture work before and
6 after MDT sign-in and sign-off contributed to an overestimation of the shorted shifts that
7 exaggerated the amount of Plaintiffs’ alleged theft. (*Compare* Doc. 379 at 13 *with* Doc.
8 386 at 9). Defendant could have exercised more diligence in determining whether MDT
9 timestamps were the best data source upon which to base her findings because questions
10 were raised about its reliability during Defendant’s investigation, but mere reliance on
11 that data source did not provide Defendant with actual or constructive knowledge of
12 Plaintiffs’ innocence. (*Compare* Doc. 379 at 14 *with* Doc. 386 at 7; *see also* (Doc. 380-2
13 at 58, 326:15-327:11) (Veach testified that she thought MDT sign-in and sign-off time
14 would not be reliable markers for calculating how long each officer actually worked, but
15 did not recall sharing this opinion with Defendant)). The same is true with Plaintiff’s
16 alleged failure to account for “flex time” in her reports based on her understanding of
17 witness statements. (*Compare* Doc. 379 at 17-18 *with* Doc. 386 at 6-7).

18 Investigators may “draw on their own inferences from and deductions about the
19 cumulative information available to them,” as Defendant did here. *John v. City of El*
20 *Monte*, 515 F.3d 936, 940 (9th Cir. 2008) (quoting *United States v. Hernandez*, 313 F.3d
21 1206, 1210 (9th Cir.2002)). Defendant may be wrong in her inferences and deductions
22 without violating a clearly established constitutional right. *See Devereaux*, 263 F.3d at
23 1076-77 (Reasoning that an investigator cannot permissibly intentionally fabricate
24 evidence, but need not “carry out an investigation in a manner that will ensure an error-
25 free result”). There is no constitutional due process right to “have the investigation
26 carried out in a particular way” or using a particular methodology. *Broam v. Bogan*, 320
27 F.3d 1023, 1032 (9th Cir. 2003). Defendant’s conclusions based on MDT timestamps
28 proved inaccurate, but inaccurate conclusions based even on a dubious methodology do

1 not violate either *Devereaux* prong. *See Gausvik*, 345 F.3d at 817.

2 **4. Defendant did not Deliberately Fabricate Witness Statements**

3 Next, Plaintiffs allege that Defendant deliberately fabricated false witness
4 statements with respect to the reliability of MDT data and admissions by officers that
5 they left early. (Doc. 379 at 15-16). Plaintiffs claim that Defendant said that MDT
6 timestamps would definitely measure officer shift start and stop times, but Lawson, the
7 prosecutor, was in fact responsible for promoting that misconception. (Doc. 386 at 9
8 (citing Doc. 380-16 at 57, 177:24-178:13)). That is not the only statement made by
9 Lawson that Plaintiffs mistakenly credit to Defendant in support of their *Devereaux*
10 claims. (*See* Doc. 379 at 13, *but see* Doc. 386 at 9 (asserting that Lawson’s statements
11 regarding PPD policy on the use of MDTs and that Officer Lentz was short on every shift
12 were deliberately fabricated by Defendant without providing any evidence that Lawson
13 relied on Defendant for those assertions)).

14 In its Notice of Supplemental Authority (Doc. 392), Plaintiffs call the Court’s
15 attention to *Spencer v. Peters*, which provides that Plaintiffs do not need to meet
16 *Devereaux’s* two-prong test if Plaintiffs provide “direct evidence of fabrication” by way
17 of deliberately fabricated witness statements (857 F.3d 789, 798-99 (9th Cir. 2017);
18 *accord Costanich v. Dep’t of Soc. & Health Servs.*, 627 F.3d 1101, 1111 (9th Cir. 2010)).
19 To this end, Plaintiffs allege that Defendant did just that by “deliberately falsely
20 report[ing]” that officers fully admitted leaving early, but Plaintiffs do acknowledge that
21 officers “admitted to leaving early.” (Doc. 379 at 15); *see supra* Part III.B.1. An
22 investigative report need not be perfect because the Ninth Circuit explained in *Spencer*
23 that “[t]o be sure, not all inaccuracies in an investigative report give rise to a
24 constitutional claim.” 857 F.3d at 789 (citations omitted).

25 Here, Defendant’s interpretation of officers’ statements is reasonable under the
26 circumstances and does not rise to the high standard of deliberately fabricated evidence.
27 Defendant did not manufacture any officer’s words, but understood them to be full
28 admissions of leaving early even though some officers provided excuses or potential

1 justification for their conduct. (*See* Doc. 379 at 6 n.37-38). “Mere ‘careless[ness]’ is
2 insufficient, as are mistakes of ‘tone’” to prove direct fabrication by an investigator who
3 mischaracterizes a witness statement. *Spencer*, 857 F.3d at 798. Even if Defendant
4 mischaracterized officer’s statements by claiming that they “fully admitted” to leaving
5 early when most of those officers offered a caveat to their admission, this is, at worst,
6 akin to a mistake in tone. (*See* Doc. 379 at 6 n.37-38). The Court finds that there is no
7 direct evidence of fabrication herein, therefore, Plaintiffs must satisfy the *Devereaux* test
8 to advance their deliberate fabrication claims.

9 **5. Defendant’s Investigative Techniques**

10 Plaintiffs further allege that Defendant disregarded or failed to ascertain
11 “potentially exculpatory evidence” provided by officers as to various timekeeping
12 processes. (*Id.* at 16). Even if true, “[a] police officer’s failure to preserve or collect
13 potential exculpatory evidence does not violate the Due Process Clause unless the officer
14 acted in bad faith.” *Cunningham v. City of Wenatchee*, 345 F.3d 802, 812 (9th Cir. 2003)
15 (holding that a police officer was entitled to qualified immunity even though he failed to
16 document multiple interrogations, did not keep a record of statements denying a criminal
17 suspect’s wrongdoing, and failed to gather physical evidence that could have exonerated
18 the suspect). Rather, a plaintiff must “put forward specific, nonconclusory factual
19 allegations that establish improper motive” to prove that an investigator acted in bad faith
20 by failing to pursue all potentially exculpatory evidence. *Id.* (citing *Jeffers v. Gomez*, 267
21 F.3d 895, 907 (9th Cir. 2001)). Plaintiffs do not offer such evidence here. For example,
22 Defendant failed to recall that she interviewed Officer Thiebaut because that interview
23 was not transcribed. (*Compare* Doc. 380 at 54 *with* Doc. 375 at 18). However, that failure
24 was clearly due to an administrative error by administrative staff and Plaintiffs offer no
25 evidence of bad faith. (*See* Doc. 375 at 18).

26 **6. Defendant did not Deliberately Fabricate Additional Evidence**

27 Finally, Plaintiffs argue that Defendant fabricated additional evidence by
28 “rel[ying] on unreliable and incomplete sources in her investigation,” including the PSB

1 spreadsheet. (Doc. 379 at 19). The PSB spreadsheet was a compilation of preliminary
2 data adduced by Veach in the PPD’s Professional Standard Bureau, which indicated that
3 there were discrepancies between the hours that officers worked and the hours for which
4 officers were paid at the Job. *See supra* Part I.A at 3-4. Veach provided the PSB
5 spreadsheet and a companion PowerPoint presentation regarding that status of the
6 investigation to Defendant when this investigation was referred to the AGO. *See id.* at 4.
7 These documents specifically identified Plaintiffs as being involved in potential theft by
8 getting paid for more hours than they worked at the Job and included an estimated dollar
9 amount of alleged theft. (*See* Doc. 376-2 at 29-91). Veach testified in her deposition that
10 her documentation was “incomplete ... and that there was other data available.” (Doc.
11 380-2 at 35, 232:19-21). Plaintiffs allege that Defendant did not “verify the information
12 she received” from Veach, which led to her inaccurate conclusions. (Doc. 379 at 19).

13 While the extent to which Defendant relied on this incomplete documentation is in
14 dispute, Defendant did undisputedly review some additional sources of evidence during
15 the course of the investigation. Plaintiffs concede that “[Defendant] reviewed multiple
16 data sources and PPD policies” and that Defendant specifically “attempted to review and
17 analyze all data provided to her for every shift Plaintiff Officers worked at the Job” (Doc.
18 380 at 63-64, ¶¶ 74-75) (internal quotations omitted). For example, in analyzing Plaintiff
19 Officer Sywarungsymun’s shift on March 24, 2016, Defendant reviewed several
20 documents related to the shift in addition to MDT timestamps, including: the “log”
21 identifying when the shift was supposed to start and end, “The [PPD] Code Enforcement
22 Unit Off-Duty Query Results,” the “Off-Duty Officer Job Log,” the “[PPD]
23 Dispatched/Call Back Calls for Service Grid,” the handwritten “Daily Log,” the “Patrol
24 Recap Unit History Worksheet,” the “Off-Duty Vehicle Log,” and various financial
25 records and general practices in constructing a timeline of when Officer Sywarungsymun
26 actually worked at the Job during day. (*Compare* Doc. 376 at 10-11, ¶¶ 77 *with* Doc. 380
27 at 66, ¶¶ 77).⁷

28 ⁷ Plaintiffs dispute that Defendant reviewed arrest records for the Job, which she

1 Plaintiffs contend that Defendant failed to gather or ignored other sources of
2 evidence to clarify Job timelines, which resulted in inaccurate findings. (Doc. 379 at 19).
3 For instance, Defendant reviewed portable radio deactivation data for some shifts, but did
4 not request that data for many more shifts. (*See, e.g.*, Doc. 380 at 10, ¶¶ 18.4.1). To the
5 extent that Defendant did over-rely on the PSB spreadsheet from Veach, Defendant was
6 basing her investigation on a record that was known to be “flawed” and contained
7 “errors.” (Doc. 380-2 at 40-41, 257:2-13; 258:4-9). Veach, however, did not identify
8 what those errors might be, except that she had did not fix all the potential typos in the
9 document and the math within the spreadsheet was not entirely accurate. (*Id.* at 40-41,
10 257:2-13; 258:4-9; *Id.* at 44, 271:19-24). Veach did not share that any specific items or
11 data points in her spreadsheet were false; only that the dollar amounts of potential theft
12 per officer were estimates. (*Id.* at 98, 164:9-16).

13 Even so, Defendant is not constitutionally required to conduct a reasonably
14 thorough, diligent, or even competent investigation. *See Malley*, 475 U.S. at 341.
15 Defendant did rely on, or offer as true, any specific data points that she knew to be false
16 in the PSB spreadsheet because Veach did not point out any and had not yet reached any
17 conclusions about her data by the time she turned it over to Defendant. (*See* Doc. 380-2 at
18 25:3-15). Defendant undoubtedly could have exercised additional due diligence to
19 ascertain the validity of timestamps and other data she did rely on, but that is not the
20 standard under *Devereaux*. *See Devereaux*, 263 F.3d at 1076-77. When viewed in the
21 light most favorable to Plaintiffs, the evidence in the record cited by Plaintiffs only
22 demonstrates that Defendant relied on data from an incomplete administrative
23 investigation that was “flawed” and contained careless or inaccurate representations of
24 the facts. (*See* Doc. 329 at 31-32). A careless or inaccurate investigation that does not
25 ensure an error-free result does not rise to the level of a constitutional violation. *See*

26
27
28

claimed to have reviewed generally and specifically for this shift; nevertheless, Plaintiffs
concede that Defendant reviewed several different data sources during her investigation
and did not rely exclusively on the PSB spreadsheet and PowerPoint. (Doc. 380 at 66, ¶¶
77).

1 *Gausvik*, 345 F.3d at 817.

2 **7. Conclusion as to the *Devereaux* Claims**

3 While viewing all disputed facts in the light most favorable to the Plaintiffs, the
4 evidence fails to support a finding that Defendant’s conduct violated either of the
5 *Devereaux* prongs. Defendant seemingly relied on incomplete data at times and failed to
6 conduct a conclusively thorough investigation of Plaintiffs, which resulted in inaccurate
7 findings. (Doc. 379 at 7). However, this level of carelessness in conducting a less than
8 thorough investigation fails to meet the standard set by *Devereaux* to remove the
9 protection of qualified immunity for deliberately fabricating evidence. *See Gausvik*, 345
10 F.3d at 817. There is no disputed issue of fact that indicates Defendant knew or should
11 have known that Plaintiffs were innocent during her investigation. Defendant’s
12 investigative shortcomings are not “so coercive and abusive” that Defendant knew or
13 should have known that those techniques would yield false information, even though the
14 investigation was faulty. *Devereaux*, 263. F.3d at 1076.⁸ Accordingly, Defendant is
15 entitled to qualified immunity on the *Devereaux* claims.

16 **C. Count III: Malicious Prosecution**

17 Defendant also argues that she is entitled to qualified immunity on Count III,
18 malicious prosecution. A malicious prosecution claim brought under § 1983, requires
19 proof that defendant “prosecuted [Plaintiffs] with malice and without probable cause, for
20 the purpose of denying [them] equal protection” under the Constitution. *Awabdy v. City*
21 *of Adelanto*, 368 F.3d 1062, 1066 (9th Cir. 2004) (quoting *Freeman v. City of Santa Ana*,
22 68 F.3d 1180, 1189 (9th Cir. 1995)).

23 Although Defendant is an investigator, not a prosecutor, actions for malicious
24 prosecution are not limited to prosecutors; such an action may be brought against those
25 who wrongfully caused charges to be filed. *Galbraith v. County of Santa Clara*, 307 F.3d
26 1119, 1126–27 (9th Cir. 2002) (holding that a malicious prosecution claim brought under

27 ⁸ Additionally, Plaintiffs do not allege and point to no evidence that Defendant’s
28 interview techniques were abusive or coercive, so the Court need not address that issue.
(Doc. 379 at 21).

1 § 1983 could proceed against a coroner).

2 Ordinarily, the decision to file a criminal complaint is
3 presumed to result from an independent determination on the
4 part of the prosecutor, and thus, precludes liability for those
5 who participated in the investigation or filed a report that
6 resulted in the initiation of proceedings . . . However, the
7 presumption of prosecutorial independence does not bar a
8 subsequent § 1983 claim against state or local officials who
9 improperly exerted pressure on the prosecutor, knowingly
10 provided misinformation to him, concealed exculpatory
11 evidence, or otherwise engaged in wrongful or bad faith
12 conduct that was actively instrumental in causing the
13 initiation of legal proceedings. *See Galbraith*, 307 F.3d at
14 1126–27 (holding that plaintiff’s allegations that a coroner’s
15 knowingly or recklessly false statements led to his arrest and
16 prosecution were sufficient to state a § 1983 claim).

17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
841
842
843
844
845
846
847
848
849
850
851
852
853
854
855
856
857
858
859
860
861
862
863
864
865
866
867
868
869
870
871
872
873
874
875
876
877
878
879
880
881
882
883
884
885
886
887
888
889
890
891
892
893
894
895
896
897
898
899
900
901
902
903
904
905
906
907
908
909
910
911
912
913
914
915
916
917
918
919
920
921
922
923
924
925
926
927
928
929
930
931
932
933
934
935
936
937
938
939
940
941
942
943
944
945
946
947
948
949
950
951
952
953
954
955
956
957
958
959
960
961
962
963
964
965
966
967
968
969
970
971
972
973
974
975
976
977
978
979
980
981
982
983
984
985
986
987
988
989
990
991
992
993
994
995
996
997
998
999
1000

11 *Awabdy*, 368 F.3d at 1067 (citing *Smiddy v. Varney*, 665 F.2d 261, 266–68 (9th Cir.
12 1981), *overruled on different grounds by Beck v. City of Upland*, 527 F.3d 853, 865 (9th
13 Cir. 2008)).

14 Here, Plaintiffs have a malicious prosecution claim available against Defendant if
15 Defendant’s false reports induced Lawson to file criminal charges against Plaintiffs
16 without probable cause. (Doc. 379 at 22).

17 **1. Probable Cause**

18 Plaintiffs argue that probable cause was lacking to prosecute Plaintiffs. *See id.*
19 Plaintiffs further allege that Defendant was “actively instrumental in causing the
20 initiation of legal proceedings” against Plaintiffs. (Doc. 379 at 21-22 (citing *Lacy v. Cty.*
21 *of Maricopa*, 631 F. Supp. 2d 1197, 1210 (D. Ariz. 2008) (citing *Awabdy*, 368 F.3d at
22 1066)). Plaintiffs were initially indicted after Defendant presented her investigatory
23 findings as the sole witness to the grand jury. *See supra* Part I.A at 5. After the errors in
24 Defendant’s investigation were brought to light during criminal discovery, a new grand
25 jury was empaneled and decided not to return an indictment against Plaintiffs. (*See* Doc.
26 379 at 22-23). Plaintiffs allege that this shows there was no probable cause to indict
27 Plaintiffs due to the removal of faulty information provided by Defendant from the legal
28 proceeding. *See id.* at 23. While viewing all disputed facts in the light most favorable to

1 the Plaintiffs, the evidence can support a finding that Defendant caused Plaintiffs to be
2 prosecuted without probable cause.

3 Even if probable cause was lacking, Plaintiffs must show that Defendant
4 “reasonably believed in good faith that probable cause” did not exist. *Smiddy*, 665 F.2d at
5 266. By finding that Defendant did not deliberately fabricate evidence in violation of
6 *Devereaux*, this Court determined that Defendant did not continue her investigation
7 despite the fact that she knew or should have known that Plaintiffs were innocent. *See*
8 *supra* III.B.7 at 17. But Defendant’s reasonable belief that Plaintiffs were not innocent is
9 a lower standard than belief that there was probable cause. Even if Defendant should
10 have known that probable cause did not exist to prosecute Plaintiffs, Plaintiffs’ argument
11 fails to satisfy the additional elements for malicious prosecution addressed below.

12 2. Malice

13 Defendant argues that there is no evidence of malice because Plaintiffs did not
14 allege that Defendant’s conduct was undertaken for the purpose of violating Plaintiffs’
15 constitutional rights. (Doc. 375 at 21). Plaintiffs argue that “a reasonable jury could also
16 infer malice and intent to deprive [Plaintiffs] of constitutional rights” if Plaintiff
17 deliberately fabricate false evidence. (Doc. 379 at 23 (citing *Lacy*, 631 F. Supp. 2d at
18 1211)). While this is true, the Court found that Defendant did not deliberately fabricate
19 false evidence. *See supra* III.B.7 at 17. Plaintiffs offer no evidence to support a finding
20 that Defendant’s otherwise careless reliance on incomplete evidence and failure to
21 conduct a more thorough investigation was motivated by bad faith or the purpose of
22 denying Plaintiffs equal protection. *Awabdy*, 368 F.3d at 1067. Accordingly, the Court
23 cannot infer malice and Defendant is entitled to qualified immunity on the malicious
24 prosecution claim.

25 ///

26 ///

27 ///

28 ///

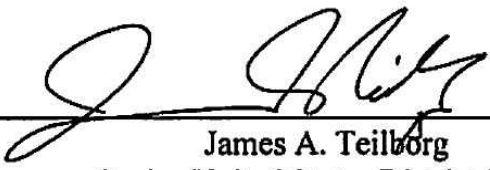
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IV. Conclusion

For the reasons outlined above,

IT IS ORDERED that Defendant Hinchey’s Motion for Summary Judgment on Qualified Immunity Grounds on February 2, 2017 (Doc. 375) is GRANTED. Thus, Defendant Hinchey is granted immunity on Counts I, II, and III. Because these are the only claims remaining against the only remaining Defendant, the Clerk of Court shall enter judgment in favor of Defendant Hinchey and against Plaintiffs and shall close this case.

Dated this 7th day of July, 2017.



James A. Teilborg
Senior United States District Judge