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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 PAMELA MANSFIELD,

11 Plaintiff,

12 v.

13 DAWN JONES-PFAFF, et al.,

14 Defendants.

CASE NO. C14-0948JLR

ORDER

15 Before the court are five motions from the parties: (1) Defendant Barbara Brooks-
16 Worrell's motion to strike claims pursuant to Washington's anti-SLAPP statute¹ and the
17 University Defendants'² motion for partial summary judgment (Mot. (Dkt. # 40)); (2)
18 Defendants Jessica Reichow and Dawn Jones-Pfaff's joinder in the anti-SLAPP motion

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20 ¹ Washington Act Limiting Strategic Lawsuits Against Public Participation. RCW ch.
4.24; see *Davis v. Cox*, 325 P.3d 255, 261 n.1 (Wash. Ct. App. 2014).

21 ² "The University Defendants" include Ms. Brooks-Worrell, Defendant Dr. Jerry Palmer,
22 Defendant Mara Fletcher, and Defendant University of Washington. (See Ans. to First Am.
Compl. (Dkt. # 16) at 1.)

1 and Ms. Reichow’s joinder in the motion for partial summary judgment (Joinder (Dkt.
2 # 43); (3) Plaintiff Pamela Mansfield’s motion to dismiss Ms. Brooks-Worrell and certain
3 claims against Defendant Dr. Jerry Palmer (Not. of Dis. (Dkt. # 46)); (4) Ms. Mansfield’s
4 motion for leave to file a third amended complaint (Mot. to Am. (Dkt. # 48)); and (5) Ms.
5 Mansfield’s motion for a continuance under Federal Rule of Civil Procedure 56(d) (Mot.
6 to Cont. (Dkt. # 49)).³

7 The principle issues about which the parties argue in these motions are whether
8 Washington’s anti-SLAPP statute bars some of Ms. Mansfield’s claims, and whether she

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10 ³ Portions of the motion for a continuance are improper. Ms. Mansfield filed this motion
11 in addition to her response brief, and labeled the motion as a “Motion for Order (i)denying or
12 continuing defendants’ premature Anti-SLAPP Motions.” (Mot. to Cont. at 1.) To the extent the
13 motion requests a Rule 56(d) continuance, it is appropriate. *See, e.g., Kocsis v. Delta Air Lines,*
14 *Inc.*, 963 F. Supp. 2d 1002, 1019 (D. Haw. 2013) (“Ordinarily, a Rule 56(d) request must be
15 made in a separate motion or formal request.”). However, Ms. Mansfield also uses this motion
16 to urge the denial or postponement of Defendants’ motions on grounds other than Rule 56(d).
17 For example, Ms. Mansfield’s motion argues that Defendants’ anti-SLAPP motion conflicts with
18 multiple Federal Rules of Civil Procedure, including Rule 11, Rule 15, and Rule 41. (*See* Mot.
19 to Cont. at 6-9.) No authority of which the court is aware authorizes the filing of supplemental
20 motions on those subjects, and Ms. Mansfield has not cited any. (*See generally* Mot. to Cont.)
21 As such, those additional arguments are appropriate only in a response brief. *See* Local Rules
22 W.D. Wash. LCR 7(b)(2). Yet Ms. Mansfield has also filed a response brief (Dkt. # 50), and this
District’s Local Rules allow her only one response brief, *see* Local Rules W.D. Wash. LCR
7(b)(2).

Consequently, Defendants request that the court strike Ms. Mansfield’s motion. (Opp. to
Mot. to Cont. (Dkt. # 51) at 1-3.) The court declines to do so, because it finds that Defendants
have not suffered prejudice from Ms. Mansfield’s improper filing. As an initial matter, most of
the arguments raised in this motion are simply duplicates of arguments in Ms. Mansfield’s
response brief. (*Compare* Mot. to Cont. *with* Resp.) Moreover, although Ms. Mansfield has in
effect filed two response briefs, she has not exceeded the page limit of 24 pages for a response
brief, Local Rules W.D. Wash. LCR 7(e)(3)—her response brief is 18 pages long (*see* Resp.),
and the improper portions of her motion to continue add up to fewer than 6 additional pages (*see*
Mot. to Cont. at 4, 6-9). Finally, in reaching its decision the court has not relied on the
arguments Ms. Mansfield makes in the improper portions of her motion to continue. The court
cautions Ms. Mansfield, however, that further failure to abide by the Local or Federal Rules may
result in sanctions. *See* Local Rules W.D. Wash. LCR 11(c).

1 | should be allowed to dismiss some of her claims and amend others in order to avoid the
2 | impact of the anti-SLAPP statute. As relevant here, Washington’s anti-SLAPP statute
3 | affords a person who communicates with a government agency on a matter reasonably of
4 | concern to that agency absolute immunity against claims based on such communications.
5 | RCW 4.24.510. Defendants assert that Ms. Mansfield’s state law claims come under this
6 | statute because those claims are based on Defendants’ communications to law
7 | enforcement for the United States Department of Veterans’ Affairs (“VA”). (*See*
8 | *generally* Mot.; Joinder.) Rather than oppose this argument on its merits, Ms. Mansfield
9 | attempts to dismiss some of her claims and amend others to remove all reference to
10 | Defendants’ communications to the VA police. (*See generally* Not. of Dis.; Mot. to Am.)
11 | Ms. Mansfield contends that Defendants’ arguments are moot in light of her motions to
12 | dismiss and amend. (*See generally* Resp.) Alternatively, she urges the court to postpone
13 | ruling on Defendants’ motion until she has a chance to conduct further discovery. (*Id.*)
14 | The University Defendants, joined by Ms. Reichow, also seek partial summary judgment
15 | on the ground that some of Ms. Mansfield’s claims are barred by the statute of
16 | limitations. (*See* Mot. at 13-18; Joinder at 3.)

17 | The parties’ arguments on the anti-SLAPP issues are irrelevant, however, due to
18 | an issue that no party addresses in the briefing—the effect of the United States’
19 | substitution under the Westfall Act on the court’s ability to adjudicate the anti-SLAPP
20 | motion. Only Ms. Brooks-Worrell, Ms. Jones-Pfaff, and Ms. Reichow seek anti-SLAPP
21 | relief (*see* Mot.; Joinder), yet substitution has displaced them as defendants in this suit
22 | and replaced them with the United States (*see* Not. of Sub. & Cert. 1 (Dkt. # 3); Not. of

1 Sub. & Cert. 2 (Dkt. # 13)). As a result, no current party moves for anti-SLAPP relief,
2 and the court must deny the joint anti-SLAPP motion without reaching its merits.

3 Having considered the submissions of the parties, the balance of the record, and
4 the governing law, and being fully advised, the court DENIES the joint anti-SLAPP
5 motion; GRANTS Ms. Mansfield's motion to dismiss; GRANTS Ms. Mansfield's motion
6 for leave to file a third amended complaint; GRANTS in part and DENIES in part the
7 motion for partial summary judgment; and DENIES as moot Ms. Mansfield's motion for
8 a continuance.

9 I. BACKGROUND

10 A. Factual Background

11 This case began as a dispute between co-workers but has now blossomed into a
12 federal court lawsuit. Plaintiff Ms. Mansfield is a nurse who was employed by the
13 University of Washington ("UW"). (2d Am. Compl. (Dkt. # 44) ¶¶ 1, 10.) She began
14 working for UW in 1994 and eventually advanced to the position of Research-Nurse-2.
15 (*Id.* ¶ 10.) In 2007, she was appointed to a lead position assisting Dr. Jerry Palmer with
16 several grant-funded diabetes prevention and treatment studies. (*Id.*) Dr. Palmer and his
17 research team conducted those studies at the Seattle office of the VA. (*Id.*) As such, Ms.
18 Mansfield was required to hold an uncompensated VA appointment. (Mot. at 3.)

19 In addition to Ms. Mansfield, Dr. Palmer's research team included an
20 administrative aid, a lab technician, and a lab supervisor. All of them are now defendants
21 in this lawsuit. (*See generally* 2d Am. Compl.) The administrative aid, Dawn Jones-
22 Pfaff, was an employee of the Seattle Institute for Biomedical and Clinical Research

1 (“SIBCR”) who was assigned to the team. (*Id.* ¶ 4.) She was supervised by both Dr.
2 Palmer and Ms. Mansfield. (*Id.* ¶¶ 4, 10.) The lab technician, Jessica Reichow, was a
3 UW employee assigned to work with Dr. Palmer. (*Id.* ¶ 6.) The lab supervisor, Barbara
4 Brooks-Worrell, was Ms. Mansfield’s supervisor with respect to lab work. (*Id.* ¶ 7.) Ms.
5 Brooks-Worrell had design and implementation authority over Dr. Palmer’s team in
6 connection with research studies funded by grants from the National Institutes of Health.
7 (*Id.*) Together, these five team members (“the Palmer team”)⁴ worked at the VA to
8 research and treat diabetes patients. (*See id.* ¶ 10.)

9 Over time, certain relationships within the Palmer team soured. In particular, and
10 most relevant to this lawsuit, Ms. Mansfield and Ms. Jones-Pfaff grew to dislike one
11 another. It is unclear to the court exactly what sparked this mutual dislike, but it is
12 evident that with time it became rather pronounced. To begin, Ms. Mansfield took
13 exception to a number of Ms. Jones-Pfaff’s clinical practices. (*Id.* ¶ 12.) For example,
14 Ms. Mansfield alleges that Ms. Jones-Pfaff publicized patients’ private medical histories
15 (*id.* ¶¶ 12B-C), prepared doses of prescription medicine without a health care license (*id.*
16 ¶ 12E), and scheduled a child for an appointment at an adults-only clinic (*id.* ¶ 12I). Ms.
17 Mansfield makes similar allegations against other members of the team, and claims that
18 she publicized those allegations at various times. (*Id.* ¶ 12.)

19 The dispute between Ms. Mansfield and Ms. Jones-Pfaff took on a personal
20 dimension as well. (*See id.* ¶¶ 15-22.) Ms. Mansfield alleges that Ms. Jones-Pfaff

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22 ⁴ “The Palmer team” will generally be used to refer to Dr. Palmer, Ms. Brooks-Worrell,
Ms. Jones-Pfaff, and Ms. Reichow—the Defendant team members.

1 physically attacked Ms. Mansfield in 2011, repeatedly slamming her head into her desk
2 and then fleeing down a stairwell “as a good Samaritan tried to stop [Ms. Jones-Pfaff] for
3 questioning.” (*Id.* ¶ 19.) She further alleges that Ms. Jones-Pfaff attempted to cover up
4 this attack by orchestrating an effort by the Palmer team to “furnish coordinated round-
5 table testimony.” (*Id.*) She alleges that through this testimony the other Palmer team
6 members not only attempted to absolve Ms. Jones-Pfaff of any blame for the attack, but
7 also tried to portray Ms. Mansfield as mentally unstable, an illegal drug distributor, and a
8 violent threat. (*Id.*)

9 As a result of these incidents, Ms. Mansfield lost her job. VA officials concluded
10 that Ms. Mansfield could not be trusted with access to a federal facility in light of her
11 falsified assault report. (*Id.* ¶ 20.) The VA’s decision to bar Ms. Mansfield from its
12 facility, in turn, caused UW to terminate Ms. Mansfield’s employment. (*Id.*) A UW
13 employee named Mara Fletcher reviewed Ms. Mansfield’s file, including her reports of
14 abuses by the Palmer research team, and “executed UW’s authorization” to terminate Ms.
15 Mansfield’s UW employment. (*Id.* ¶ 8, 21.) Ms. Fletcher is now a defendant in this
16 lawsuit as well. (*Id.* ¶ 8.)

17 **B. Procedural Background**

18 Several years after Ms. Mansfield’s termination, the dispute migrated from the
19 halls of the VA office to the court system. On March 10, 2013, Ms. Mansfield filed a
20 complaint in King County Superior Court. (State Ct. Rec. (Dkt. # 2-1) at 5.) Her original
21 complaint alleged only a single cause of action for wrongful interference with contract

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1 against Ms. Pfaff. (*Id.* at 5, 7.) However, she amended her original complaint in state
2 court, adding the rest of the Palmer team as defendants as well as SIBCR and UW.⁵ (*See*
3 *generally id.* at 17-27 (“1st Am. Compl.”).) In addition, she introduced new causes of
4 action for negligent infliction of emotional distress, negligent supervision and retention,
5 civil conspiracy, and First Amendment violations under 42 U.S.C. § 1983. (1st Am.
6 Compl. ¶¶ 27-37.)

7 On June 27, 2014, the United States of America removed the case to federal court
8 and substituted itself for Ms. Reichow and Ms. Jones-Pfaff pursuant to 28 U.S.C.
9 § 2679(d)(2). As required for removal and substitution under § 2679(d)(2), the United
10 States certified that Ms. Reichow and Ms. Jones-Pfaff were acting within the scope of
11 their federal employment at all times relevant to Ms. Mansfield’s tort claims. (*See Not.*
12 *of Rem.* (Dkt. # 1); *Not. of Sub. & Cert.* 1.) Shortly thereafter, the United States
13 substituted itself for Ms. Brooks-Worrell, certifying that she too was acting within the
14 scope of her federal employment at all times relevant to Ms. Mansfield’s tort claims.
15 (*Not. of Sub. & Cert.* 2.)

16 On July 17, 2014, newly-substituted Defendant the United States filed a motion to
17 dismiss, and Ms. Mansfield moved to amend her complaint. (*See U.S. Mot. to Dis.* (Dkt.
18 # 14); 7/17/14 *Mot. to Am.* (Dkt. # 15).) In amending, Ms. Mansfield sought to remove
19 her claim for negligent supervision and retention and allege that much of the conduct that
20 forms the basis of her claims took place outside the scope of Defendants’ employment

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22 ⁵ SIBCR and UW have subsequently been dismissed from this action. (*See Dkt. ## 11,*
56.)

1 with the VA. (*See generally* 7/17/14 Mot. to Am.) The latter amendment would allow
2 Ms. Mansfield to resist the United States' motion to dismiss. (*See* Resp. to 7/17/14 Mot.
3 to Am. (Dkt. # 18) at 5.) The court granted her leave to amend on August 1, 2014 (Order
4 (Dkt. # 22)); however, Ms. Mansfield did not file her second amended complaint until
5 September 17, 2014 (2d Am. Compl. (Dkt. # 44)).

6 On August 18, 2013, after the court granted leave to amend but before Ms.
7 Mansfield filed her second amended complaint, Ms. Brooks-Worrell notified Ms.
8 Mansfield by email of Defendants' position that several of Ms. Mansfield's claims are
9 subject to Washington's anti-SLAPP statute. (9/11/14 Berntsen Decl. (Dkt. # 42) at 4.)
10 The email requested that Ms. Mansfield voluntarily withdraw any claims based on
11 communications by Ms. Brooks-Worrell to VA police officers. (*Id.*) It also warned that
12 if Ms. Mansfield did not comply, Ms. Brooks-Worrell would file a motion to strike the
13 offending claims. (*Id.*) Ms. Mansfield did not respond (*id.* ¶ 3), and on September 11,
14 2014, Ms. Brooks-Worrell filed her anti-SLAPP motion (*See* Mot. (Dkt. # 40)). On the
15 same day, Ms. Reichow and Ms. Jones-Pfaff filed their joinder in Ms. Brooks-Worrell's
16 motion. (*See* Joinder (Dkt. # 43).)⁶

17 Six days later, Ms. Mansfield sprung into action. On September 17, 2013, she
18 filed her second amended complaint (Dkt. # 44). Then, on September 19, 2013, she
19 moved to dismiss Ms. Brooks-Worrell and certain claims against Dr. Palmer (Dkt. # 46).

21 ⁶ In the same filing as Ms. Brooks-Worrell's anti-SLAPP motion, the University
22 Defendants moved for partial summary judgment. (*See generally* Mot.) Ms. Reichow joined in
the motion for partial summary judgment. (*See* Joinder at 2-3.)

1 She followed that on September 25, 2014, with a motion for leave to file a third amended
2 complaint (Dkt. # 48) and a motion for a continuance (Dkt. # 49). The proposed third
3 amended complaint changes the way Ms. Mansfield recounts the events that followed the
4 alleged assault. Whereas the second amended complaint asserts that the Palmer team
5 made statements to VA police that led to Ms. Mansfield's termination (2d Am. Compl.
6 ¶¶ 19-22, 24, 30), the proposed third amended complaint contains no reference to the VA
7 police (Mot. to Am. Ex. 1 ("Jacobson Decl.") ¶ 2, Ex. 2 ("Proposed 3d Am. Compl.")
8 ¶¶ 19-22, 24, 30). Instead, the proposed third amended complaint asserts that the Palmer
9 team made statements to VA and UW human resources ("HR") administrators that led to
10 Ms. Mansfield's termination. (*Id.*) Ms. Mansfield's and Defendants' motions are now
11 before the court.

12 **II. DISCUSSION**

13 As stated above, the parties focus the majority of their attention on the
14 applicability of Washington's anti-SLAPP statute and the interaction between the anti-
15 SLAPP motion and Ms. Mansfield's motions to dismiss certain claims and amend her
16 complaint. For the reasons discussed below, the court concludes that substitution of the
17 United States precludes consideration of the anti-SLAPP motion, and the court therefore
18 denies that motion. Proceeding to the remaining motions, the court grants Ms.
19 Mansfield's motion to dismiss Ms. Brooks-Worrell and any common law claims against
20 Dr. Palmer; grants Ms. Mansfield's motion for leave to amend her complaint; grants in
21 part and denies in part the motion for partial summary judgment; and denies as moot Ms.
22 Mansfield's motion for a continuance.

1 **A. The United States’ Substitution under the Westfall Act and the Anti-SLAPP**
2 **Motion**

3 Ms. Brooks-Worrell, Ms. Jones-Pfaff, and Ms. Reichow (“the anti-SLAPP
4 Defendants”) bring a joint motion under Washington’s anti-SLAPP statute. (*See* Mot.;
5 Joinder.) Before they filed their motion, however, the United States substituted itself for
6 all three anti-SLAPP Defendants pursuant to 28 U.S.C. § 2679(d)(2), commonly known
7 as the Westfall Act. (*See* Not. of Sub. & Cert. 1; Not. of Sub. & Cert. 2.) Consequently,
8 the court must decide whether parties for whom the United States has substituted
9 (“displaced defendants”) may bring motions attacking a plaintiff’s claims. The court
10 concludes that the Westfall Act does not permit motions by displaced defendants and
11 therefore denies the joint anti-SLAPP motion. Further, the court orders that if Ms.
12 Mansfield wishes to challenge the United States’ substitution, she must do so in a motion
13 filed no later than three months from the date of this order.

14 1. The Westfall Act generally

15 The Westfall Act provides immunity against common law torts to federal
16 employees acting within the scope of their employment. *See Osborn v. Haley*, 549 U.S.
17 225, 245-47 (2007). This immunity functions through substitution of the United States as
18 defendant in place of the employee. *See id.* Substitution can occur in several ways. An
19 employee may move for substitution, or, as occurred here, the United States may
20 substitute itself by certifying that the defendant-employee acted within the scope of his or
21 her employment at the time of the incident out of which the claim arose. *See* 28 U.S.C.

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1 §§ 2679(d)(1)-(3). Following certification and substitution, the action is deemed to be an
2 action against the United States. 28 U.S.C. § 2679(d)(2).

3 If the plaintiff opposes substitution, he or she may challenge the scope-of-
4 employment certification. See *Gutierrez de Martinez v. Lamagno*, 515 U.S. 417, 436-37
5 (1995). The United States’ certification, however, is “prima facie evidence that a federal
6 employee was acting within the scope of her employment at the time of the incident,”
7 *Billings v. United States*, 57 F.3d 797, 800 (9th Cir. 1995), and the plaintiff bears the
8 burden of disproving the certification by a preponderance of the evidence, *Pauly v. U.S.*
9 *Dep’t of Agri.*, 348 F.3d 1143, 1151 (9th Cir. 2003). If the plaintiff carries that burden,
10 the court re-substitutes the displaced defendants, and the action proceeds against the
11 formerly displaced defendants as individuals. See *Osborn*, 549 U.S. at 242.

12 2. The Westfall Act and the anti-SLAPP motion

13 Here, the key question is whether displaced defendants can file motions attacking
14 the plaintiff’s claims. The Westfall Act does not specifically address that issue, nor does
15 any case of which the court is aware. Nevertheless, the language of the Westfall Act and
16 the Supreme Court opinions interpreting it lead the court to conclude that upon
17 certification and substitution displaced defendants are not parties to the action and thus
18 cannot file motions attacking the plaintiff’s claims.

19 The language of the Westfall Act regarding the effect of certification is mandatory
20 and unconditional. Section 2679(d)(2) provides that upon certification by the United
21 States the action or proceeding “shall be deemed to be an action or proceeding brought
22 against the United States . . . and the United States shall be substituted as the party

1 defendant.” 28 U.S.C. § 2679(d)(2). This language suggests that displaced defendants
2 are not parties who may file motions. Following certification, the action is no longer
3 against the displaced defendants and they are no longer party defendants. Rather the
4 action is now “an action . . . against the United States,” and the United States has been
5 “substituted as the party defendant.” *Id.*

6 The Supreme Court’s descriptions of the Westfall Act support this interpretation.
7 In particular, the Supreme Court has stated that “[u]pon certification, the employee is
8 dismissed from the action and the United States is substituted as defendant.” *Lamagno*,
9 515 U.S. at 420; *see also Kashin v. Kent*, 457 F.3d 1033, 1036-37 (9th Cir. 2006) (“Upon
10 certification, the government employee is dismissed from the suit”); *Davric Marine*
11 *Corp. v. U.S. Postal Serv.*, 238 F.3d 58, 65 (1st Cir. 2001) (“Once such a certification is
12 made, the court dismisses the federal employee from the case”). Thus, because a
13 displaced defendant has been dismissed upon certification, he or she cannot file motions
14 attacking the plaintiff’s claims against the remaining defendants.

15 Of course, certification by the United States is not conclusive insofar as the
16 plaintiff can challenge it. *See Lamango*, 515 U.S. at 436-37. One might contend,
17 therefore, that if the plaintiff challenges certification, displaced defendants remain parties
18 who can file motions until the court resolves the scope-of-employment issue. Yet that
19 position breaks down in light of the Supreme Court’s holding that substitution is effective
20 “unless *and until* the district court determines that the federal officer originally named as
21 defendant was acting outside the scope of his employment.” *Osborn*, 549 U.S. at 252
22 (emphasis added). Furthermore, on the basis of that holding the *Osborn* Court concluded

1 that “at the time the district court reviews the Attorney General’s certification,” the suit is
2 against the sovereign and therefore the Seventh Amendment right to a jury trial is
3 inapplicable. *See id.* It would be incongruous to subject the plaintiff to motions from
4 displaced defendants at a time when the plaintiff has lost the right to a jury due to the
5 United States’ substitution for the displaced defendants.⁷

6 The anti-SLAPP Defendants attack Ms. Mansfield’s common law claims in a joint
7 anti-SLAPP motion (*see* Mot.; Joinder); however, United States has substituted for each
8 of those defendants (*see* Not. of Sub. & Cert. 1; Not. of Sub. & Cert. 2). As such, they
9 are not currently party defendants, and they cannot bring motions attacking Ms.
10 Mansfield’s claims. *See* 28 U.S.C. § 2679(d)(2); *see also* *Lamagno*, 515 U.S. at 420;
11 *Kashin*, 457 F.3d at 1036-37. This conclusion stands despite the possibility that Ms.
12 Mansfield will challenge certification in the future. Substitution is effective “unless and
13 until” the court determines that the United States’ certification was unwarranted. *Osborn*,
14 549 U.S. at 252.

15 At oral argument, counsel for Ms. Brooks-Worrell urged the court to decide the
16 anti-SLAPP motion notwithstanding the United States’ substitution. According to

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18 ⁷ Additional support for this interpretation can be found in the Supreme Court’s
19 characterization of a district court’s role in hearing certification challenges as “judicial review.”
20 *See generally* *Lamango*, 515 U.S. 417. That language suggests that substitution is complete
21 upon certification but may be reversed at some later point. *See also* *Nasuti v. Scannell*, 906 F.2d
22 802, 810 (1st Cir. 1990) (“Absent, however, a contrary federal judicial determination of the
scope question, the Attorney General’s certification is binding on all, including the court itself.”),
rev’d on other grounds by Osborn, 549 U.S. 225. Moreover, the Supreme Court has instructed
district courts to resolve issues related to immunity, including Westfall Act immunity, as early as
possible. *See Osborn*, 549 U.S. at 252-53. That admonition further militates against entertaining
motions by displaced defendants before deciding the scope-of-employment issue.

1 counsel, that course of action would be both more efficient and fairer to the anti-SLAPP
2 Defendants because it would dispose of defective claims quickly and without forcing the
3 anti-SLAPP Defendants to await the outcome of the scope-of-employment dispute.
4 Although the court is not unsympathetic to counsel’s arguments,⁸ they cannot overcome
5 the clear import of the Westfall Act and the Supreme Court opinions interpreting it.
6 Accordingly, the court denies the joint anti-SLAPP motion without prejudice.

7 3. The Westfall Act issues going forward

8 Having declined to address the merits of the anti-SLAPP motion, the court is
9 mindful of the need to move forward on the issue of Westfall Act immunity. *See Osborn*,
10 549 U.S. at 252-53 (“Immunity-related issues . . . should be decided at the earliest
11 opportunity.”). As previously noted (*see* 8/27/14 Ord. (Dkt. # 38)), this case presents that
12 issue in a somewhat unique posture: The United States premises its scope-of-
13 employment certification on a denial that tortious conduct ever took place. (*See* Mot. to
14 Dismiss (Dkt. # 14) at 9-11.) Thus, to determine whether substitution was proper and
15 Westfall Act immunity applies, the court must decide the key factual issues of Ms.
16 Mansfield’s common law claims—that is, whether Ms. Jones-Pfaff assaulted Ms.

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18 ⁸ Furthermore, the court suspects that the anti-SLAPP issues are not as clear as the anti-
19 SLAPP Defendants have portrayed them in their filings and at oral argument. For example, the
20 anti-SLAPP Defendants invoke the provisions of RCW 4.24.525 but explain their conduct only
21 in terms of RCW 4.24.510. It is not clear that any provisions of RCW 4.24.525 apply absent an
22 explicit demonstration that the underlying conduct is an act of “public participation or petition”
as defined in RCW 4.24.525(2). *See* RCW 4.24.525(4)(a), (b). In addition, the status of agency
employees under RCW 4.24.510 is unclear in light of *Segaline v. Department of Labor and*
Industries, 238 P.3d 1107 (Wash. 2010), *Eklund v. Seattle Municipal Court*, 410 Fed. App’x 14
(9th Cir. 2010), and *Tracy v. State*, 2010 WL 5395029, No. 09-5588RJB (W.D. Wash. Dec. 27,
2010). Although the court does not decide those issues here, the court cautions the parties that
any future anti-SLAPP motion should address those issues.

1 Mansfield, and whether the Palmer team later lied about the assault and Ms. Mansfield's
2 conduct in an attempt to get her fired. (*See* 8/27/14 Ord. at 7-8); *Osborn* 549 U.S. at 248-
3 53. Ms. Mansfield bears the burden of proving by a preponderance of the evidence that
4 the displaced defendants engaged in such conduct. *See Pauly*, 348 F.3d at 1151.

5 However, the court need not consider the propriety of substitution unless Ms.
6 Mansfield challenges the United States' scope-of-employment certification. If Ms.
7 Mansfield wishes to make such a challenge, she must do so in a motion filed no later than
8 three months from the date of this order and noted as a fourth-Friday motion. *See* Local
9 Rules W.D. Wash. LCR 7(d)(3). In the meantime, Ms. Mansfield and the United States
10 may conduct relevant discovery. The court will determine whether a hearing is necessary
11 after it reviews Ms. Mansfield's motion, if any.

12 **B. Ms. Mansfield's Motion to Dismiss**

13 After the anti-SLAPP Defendants filed their joint motion, Ms. Mansfield entered
14 on the docket a "notice of dismissal." (*See* Not. of Dis. (Dkt. # 46).) With this
15 document, she seeks to dismiss her state common law claims against Dr. Palmer⁹ and all
16 of her claims against Ms. Brooks-Worrell. (*Id.* at 1.) Ms. Brooks-Worrell argues that
17 Ms. Mansfield should have labeled this document as a motion and sought the court's

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19 ⁹ The second amended complaint, upon which this dismissal is supposed to operate, does
20 not contain any state common law claims against Dr. Palmer. (*See* 2d Am. Compl. ¶¶ 23-35.)
21 Instead, the only claim it expressly asserts against Dr. Palmer is Ms. Mansfield's First
22 Amendment retaliation claim. (*See id.* ¶ 33.) The complaint mentions Dr. Palmer in the context
of the civil conspiracy claim but alleges only that he acted outside the scope of his employment,
not that he participated in the conspiracy. (*See id.* ¶¶ 30-31.) At oral argument, counsel for Ms.
Mansfield represented that Ms. Mansfield does not intend to assert any common law claims
against Dr. Palmer in her second amended complaint.

1 leave because the University Defendants have already filed an answer to Ms. Mansfield's
2 first amended complaint as well as a motion for summary judgment. (Reply at 4 n.1.)
3 Ms. Mansfield disclaims the need for approval on the ground that Defendants have not
4 answered her second amended complaint or, according to her, filed a motion for
5 summary judgment.¹⁰ (Not. of Dis. at 1-2 n.1.) No party has cited any authority
6 regarding the effect of an answer to a previous complaint on the plaintiff's right to
7 unilateral dismissal under Federal Rule of Civil Procedure 41, and no defendant has
8 meaningfully addressed Ms. Mansfield's argument regarding the motion for summary
9 judgment.

10 The court declines to render a decision on those issues because it finds that Ms.
11 Mansfield is entitled to dismiss her claims against Ms. Brooks-Worrell and any common
12 law claims she may have against Dr. Palmer even if she requires court approval. When
13 presented with a motion to voluntarily dismiss, the court "must determine whether the
14 defendant will suffer some plain legal prejudice as a result of dismissal." *Westlands*
15 *Water Dist. v. United States*, 100 F.3d 94, 96 (9th Cir. 1996); *see also* Fed. R. Civ. P.

16 _____
17 ¹⁰ In fact, Ms. Mansfield is ambivalent regarding her need for court approval. Although
18 she labeled her docket entry a "notice," not a motion, the header of the document reads "Notice
19 and Motion for Voluntary Dismissal." (*See* Dkt.; Not. of Dis. at 1.) Furthermore, the document
20 "requests an Order of Voluntary Dismissal" and states that the relevant claims should be
21 dismissed "[w]hether by court order or without court order." (Not. of Dis. at 1, 3.) If in the
22 future Ms. Mansfield and her counsel find themselves unsure of whether they require court
approval for a particular action, the court advises them to err on the side of caution and file their
request as a motion. This tactic is particularly prudent where, as here, persuasive authority
suggests that the request at issue requires court approval, at least on the basis of the University
Defendants' prior answer. *See Aana v. Pioneer Hi-Bred Int'l, Inc.*, Nos. 12-00231 LEK-BMK,
12-00665 LEK-BMK, 2014 WL 819158, at *2-3 (D. Haw. Feb. 28, 2014) (citing *Armstrong v.*
Frostie Co., 453 F.2d 914, 916 (4th Cir. 1971)).

1 41(a)(2). Plain legal prejudice generally concerns “the rights and defenses available to a
2 defendant in future litigation.” *Westlands Water Dist.*, 100 F.3d at 97 (“For example, . . .
3 courts have examined whether a dismissal without prejudice would result in the loss of a
4 federal forum, or the right to a jury trial, or a statute-of-limitations defense.”). Here,
5 substituted Defendant United States does not oppose dismissal, and no defendant will
6 suffer “plain legal prejudice” as a result of dismissal. Accordingly, all claims against Ms.
7 Brooks-Worrell and any state common law claims against Dr. Palmer are dismissed with
8 prejudice.

9 **C. Ms. Mansfield’s Motion for Leave to File a Third Amended Complaint**

10 Ms. Mansfield moved for leave to file a third amended complaint six days after
11 Defendants filed their motion raising the anti-SLAPP and statute of limitations issues.
12 (*See* Mot. to Am.; *see generally* Dkt.) In her proposed third amended complaint, Ms.
13 Mansfield removes all mention of Defendants’ communications to the VA police and
14 instead emphasizes their communications with VA and UW administrators.¹¹ (Mot. to
15 Am. at 2, 3 n.2; Proposed 3d Am. Compl. ¶¶ 19-22, 24, 30.)

16 Federal Rule of Civil Procedure 15(a) provides that, after an initial period for
17 amendments as of right, pleadings may be amended only with the opposing party’s
18 written consent or by leave of the court. Fed. R. Civ. P. 15(a). Generally, “the court
19 should freely give leave [to amend pleadings] when justice so requires.” Fed. R. Civ. P.

20
21 ¹¹ The proposed third amended complaint also removes all reference to Ms. Brooks-
22 Worrell in keeping with Ms. Mansfield’s motion to voluntarily dismiss Ms. Brooks-Worrell. (*See*
Mot. to Am. at 2.)

1 15(a)(2). This rule should be interpreted and applied with “extreme liberality.” *Morongo*
2 *Band of Mission Indians v. Rose*, 893 F.2d 1074, 1079 (9th Cir. 1990). Federal policy
3 favors freely allowing amendment so that cases may be decided on their merits. *See*
4 *Martinez v. Newport Beach City*, 125 F.3d 777, 785 (9th Cir. 1997).

5 The court ordinarily considers five factors when determining whether to grant
6 leave to amend: “(1) bad faith, (2) undue delay, (3) prejudice to the opposing party, (4)
7 futility of amendment,” and (5) whether the pleadings have previously been amended.
8 *Allen v. City of Beverly Hills*, 911 F.2d 367, 373 (9th Cir. 1990). The court need not
9 consider all of these factors in each case. *Atkins v. Astrue*, No. C 10-0180 PJH, 2011 WL
10 1335607, at *3 (N.D. Cal. Apr. 7, 2011). The third factor, however, prejudice to the
11 opposing party, is the “touchstone of the inquiry under rule 15(a).” *Eminence Capital,*
12 *LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003).

13 In conducting this five-factor analysis, the court must grant all inferences in favor
14 of allowing amendment. *Griggs v. Pace Am. Group, Inc.*, 170 F.3d 877, 880 (9th Cir.
15 1999). In addition, the court must be mindful of the fact that, for each of these factors,
16 the party opposing amendment has the burden of showing that amendment is not
17 warranted. *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 187 (9th Cir. 1987); *see also*
18 *Richardson v. United States*, 841 F.2d 993, 999 (9th Cir. 1988). With these points in
19 mind, the court analyzes each of the relevant factors.

20 1. Bad Faith

21 The first factor is bad faith. In the context of a motion for leave to amend, “bad
22 faith” means acting with intent to deceive, harass, mislead, delay, or disrupt. *Cf. Leon v.*

1 | *IDX Sys. Corp.*, 464 F.3d 951, 961 (9th Cir. 2006); *In re Ezzell*, 438 B.R. 108, 117-18
2 | (Bkrcty. S.D. Tex. 2010). As it has been defined in other contexts, “bad faith” means
3 | more than acting with bad judgment or negligence, but “rather it implies the conscious
4 | doing of a wrong because of dishonest purpose or moral obliquity. . . . [I]t contemplates
5 | a state of mind affirmatively operating with furtive design or ill will.” *United States v.*
6 | *Manchester Farming P’ship*, 315 F.3d 1176, 1185 (9th Cir. 2003).

7 | Here, this factor favors allowing amendment. Nothing in the record suggests that
8 | Ms. Mansfield is acting in bad faith. There is no evidence of “conscious doing of a
9 | wrong . . . , dishonest purpose or moral obliquity . . . , [or] furtive design or ill will.” *See*
10 | *id.* Although Ms. Mansfield filed her motion for leave to amend after Ms. Brooks-
11 | Worrell warned her about the anti-SLAPP issue, waited for her to amend, and then filed
12 | an anti-SLAPP motion (*see supra* Part I.B), Ms. Mansfield’s delay alone does not
13 | amount to bad faith. This is particularly true in light of the fact that the court must
14 | indulge all inferences in favor of allowing amendment and must therefore impute benign
15 | motives to Ms. Mansfield where, as here, it is plausible to do so. *See Griggs*, 170 F.3d at
16 | 880.

17 | 2. Undue Delay

18 | The second factor is undue delay. “Undue delay” is delay that prejudices the
19 | nonmoving party or imposes unwarranted burdens on the court. *Davis v. Powell*, --- F.
20 | Supp. 2d ----, 2012 WL 4754688, at *9 (S.D. Cal. 2012). In assessing whether there is
21 | undue delay, it is not sufficient merely to ask whether the motion to amend complies with
22 | the court’s scheduling order. *AmerisourceBergen Corp. v. Dialysist West, Inc.*, 465 F.3d

1 946, 953 (9th Cir. 2006). Instead, a district court must inquire whether the moving party
2 knew or should have known the facts and theories raised by the amendment at the time of
3 the original pleading, *id.*, although the fact that a party could have amended a complaint
4 earlier does not in itself constitute an adequate basis for denying leave to amend. *Howey*
5 *v. United States*, 481 F.2d 1187, 1191 (9th Cir. 1973). Whether there has been “undue
6 delay” should be considered in the context of (1) the length of the delay measured from
7 the time the moving party obtained relevant facts; (2) whether discovery has closed; and
8 (3) proximity to the trial date. *Texaco, Inc. v. Ponsoldt*, 939 F.2d 794, 798-99 (9th Cir.
9 1991).

10 This factor is neutral with respect to amendment. Although Ms. Mansfield
11 delayed several weeks after being warned about the anti-SLAPP issue (*see supra* Part
12 I.B), that delay is not substantial in the context of the case schedule. Trial is over 10
13 months away, and the deadline for amended pleadings is more than four months in the
14 future. (*See* Sched. Ord. (Dkt. # 47).) On the other hand, the anti-SLAPP Defendants
15 have endured some prejudice. Because Ms. Mansfield failed to respond to their warning
16 for three weeks, the anti-SLAPP Defendants undertook the expense of preparing and
17 filing the joint anti-SLAPP motions. (*See supra* Part I.B; Reply at 7.)

18 3. Prejudice to the Opposing Party

19 The next factor is prejudice. “Prejudice,” in the context of a motion to amend,
20 means “undue difficulty in prosecuting a lawsuit as a result of a change of tactics or
21 theories on the part of the other party.” *Deakyne v. Cmmsrs. of Lewes*, 416 F.2d 290, 300
22 (3d Cir. 1969); *Amersham Pharacia Biotech, Inc. v. Perkin-Elmer Corp.*, 190 F.R.D. 644,

1 648 (N.D. Cal. 2000). The prejudice inquiry carries the “greatest weight” among the five
2 factors. *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003).
3 Even so, “[t]he party opposing amendment bears the burden of showing prejudice.”
4 *DCD Programs*, 833 F.2d at 186. The non-moving party must do more than merely
5 assert prejudice; “it must show that it was unfairly disadvantaged or deprived of the
6 opportunity to present facts or evidence which it would have offered had
7 the . . . amendments been timely.” *Bechtel v. Robinson*, 886 F.2d 644, 652 (3d Cir.
8 1989). As a corollary, delay alone is not sufficient to establish prejudice, nor is a need
9 for additional discovery. *Amersham*, 190 F.R.D. at 648; *In re Circuit Breaker Litig.*, 175
10 F.R.D. 547, 551 (C.D. Cal. 1997). To justify denying leave to amend, the prejudice to
11 the non-moving party must be “substantial.” *Morongo Band*, 893 F.2d at 1079.

12 This factor favors allowing amendment. Although the anti-SLAPP Defendants
13 went to the expense of filing the joint anti-SLAPP motions, that expense is relatively
14 minor with respect to the remaining anti-SLAPP Defendants, Ms. Jones-Pfaff and Ms.
15 Reichow. Ms. Jones-Pfaff and Ms. Reichow filed only a cursory joinder in Ms. Brooks-
16 Worrell’s motion and a brief reply in joinder. (*See generally* Joinder; Reply in Joinder.)
17 Furthermore, no defendant has demonstrated that it will be “unfairly disadvantaged or
18 deprived of the opportunity to present facts or evidence,” *Bechtel*, 866 F.3d at 652, or
19 will suffer undue difficulty in defending against Ms. Mansfield’s lawsuit, *Deakyne*, 416
20 F.2d at 300.

21 //

22 //

1 4. Futility of Amendment

2 The fourth factor is whether amendment would be futile. A court may deny leave
3 to amend if the proposed amendment is futile or would be subject to dismissal. *Carrico*
4 *v. City & Cnty. of San Francisco*, 656 F.3d 1002, 1008 (9th Cir. 2011). For purposes of
5 this analysis, an amendment is “futile” if it is clear that the complaint could not be saved
6 by amendment. *United States v. Corinthian Colleges*, 655 F.3d 984, 995 (9th Cir. 2011).
7 Specifically, the court must determine whether the deficiencies in the pleadings “can be
8 cured with additional allegations that are consistent with the challenged pleading and that
9 do not contradict the allegations in the original complaint.” *Id.* (quotation marks
10 omitted). “A party should be afforded an opportunity to test his claim on the merits
11 rather than on a motion to amend unless it appears beyond doubt that the proposed
12 amended pleading would be subject to dismissal.” *Mahone v. Pierce Cnty.*, No. C10-
13 5847 RBL/KLS, 2011 WL 2009740, at *2 (W.D. Wash. May 23, 2011) (citing *Roth v.*
14 *Garcia Marquez*, 942 F.2d 617, 629 (9th Cir. 1991)).

15 This factor favors amendment. Defendants do not address this factor at length;
16 however, they briefly assert that the proposed third amended complaint remains subject
17 to dismissal on the basis of the anti-SLAPP statute, RCW 4.24.510. (*See* Reply at 4 n.2;
18 Reply in Joinder at 3.) That is, they contend that their statements to HR administrators
19 with UW and the VA constitute communications to government agencies on matters
20 reasonably of concern to those agencies. (*See* Reply at 4 n.2; Reply in Joinder at 3);
21 RCW 4.24.510. The court finds, however, that it is not beyond doubt that the proposed
22

1 third amended complaint would be subject to dismissal. *See Mahone*, 2011 WL 2009740,
2 at *2.

3 Defendants provide a single citation to support their position regarding the
4 applicability of RCW 4.24.510 to the proposed third amended complaint—*Bailey v.*
5 *State*, 191 P.3d 1285 (Wash. Ct. App. 2008). (*See Reply* at 4 n.2.) In that case, the
6 Washington Court of Appeals applied RCW 4.24.510 to a suit by a former Eastern
7 Washington University (“EWU”) professor against the wife of another faculty member
8 who reported the professor to EWU officials. *See Bailey*, 191 P.3d at 1287-89. *Bailey*
9 shares several similarities with this case as it would exist under the proposed third
10 amended complaint. It involved claims by a former agency employee that were based on
11 communications made to agency administrators regarding the plaintiff’s job-related
12 misconduct. *See id.* At first glance, then, *Bailey* appears to make the proposed third
13 amended complaint subject to dismissal.

14 Nevertheless, a critical difference exists between *Bailey* and this case. In *Bailey*,
15 the communications came from outside EWU, *id.* at 1287, whereas here the
16 communications came from other agency employees (Mot. at 3-4; Joinder at 2-3; 2d Am.
17 Compl. ¶¶ 4-8, 19-21; Proposed 3d Am. Compl. ¶¶ 4-6, 8, 19-22, 24, 30). The
18 Washington Supreme Court has held that agencies are not “persons” eligible for
19 immunity under RCW 4.24.510 510, *Segaline*, 238 P.3d at 1113, and the Ninth Circuit
20 and one district court have extended that holding to agency employees, *Eklund*, 410 Fed.
21 App’x at *14-15; *Tracy*, 2010 WL 5395029, at *5. The court need not decide here
22 whether *Segaline*, *Eklund*, and *Tracy* render RCW 4.24.510 inapplicable to the proposed

1 third amended complaint. However, those cases at least require the conclusion that the
2 proposed third amended complaint is not clearly subject to dismissal on the basis of RCW
3 4.24.510. Moreover, the anti-SLAPP Defendants have not identified, and the court is not
4 aware of, an independent basis that would clearly mandate dismissal at this time. *See*
5 *Mahone*, 2011 WL 2009740, at *2. Thus, the court cannot say that the proposed
6 amendment would be futile.¹²

7 5. Previous Amendments

8 A court may also consider whether the moving party has had previous
9 opportunities to amend its pleadings. A district court's discretion to deny amendment is
10 especially broad when the court has already given a plaintiff one or more opportunities to
11 amend. *Chodos v. West Publishing Co.*, 292 F.3d 992, 1003 (9th Cir. 2002); *Mir. v.*
12 *Fosburg*, 646 F.2d 342, 347 (9th Cir. 1980). This factor weighs in favor of denying
13 amendment. Ms. Mansfield has already amended her complaint twice, once in state court
14 and once in federal court. (*See* 1st Am. Compl; 2d Am. Compl.)

15 Having considered the factors relevant to a motion to amend, the court finds that
16 on balance they favor allowing amendment in this instance. Three factors favor
17 amendment, one factor is neutral, and only one factor weighs against amendment.

18
19 ¹² In addition, the United States is currently the only party defendant subject to Ms.
20 Mansfield's common law claims, *see supra* Part II.A, and the United States is undoubtedly not a
21 "person" under RCW 4.24.510, *see Segaline*, 238 P.3d at 1113. Therefore, even if the court
22 were to find that RCW 4.24.510 applies to the statements in the proposed third amended
complaint, that conclusion would make the proposed third amended complaint subject to
dismissal only if Ms. Mansfield successfully challenged the United States' scope-of-employment
certification and the court re-substituted Ms. Jones-Pfaff and Ms. Reichow as party defendants.
Defendants' futility argument therefore fails for the additional reason that a successful
certification challenge by Ms. Mansfield is not a certainty.

1 Accordingly, the court grants Ms. Mansfield’s motion for leave to file a third amended
2 complaint.

3 As stated at oral argument, however, the court does not look fondly on Ms.
4 Mansfield’s repeated use of amendment to avoid defense motions. Therefore, the court
5 will closely analyze any further attempts by Ms. Mansfield to amend her complaint. If
6 the court finds that Ms. Mansfield is using amendment to avoid a defense motion or for a
7 similar tactical purpose, the court will deny leave to amend on the basis of Ms.
8 Mansfield’s bad faith.

9 **D. Defendants’ Motion for Partial Summary Judgment**

10 The University Defendants have moved for partial summary judgment, and Ms.
11 Reichow has joined in the motion.¹³ (*See* Mot. at 12-18; Joinder at 3.) However, Ms.
12 Brooks-Worrell and UW have been dismissed, *see supra* Part II.B.1; (Dkt. # 56), and Ms.
13 Reichow is not presently a party defendant in this action, *see supra* Part II.A.2.

14 //

15
16 ¹³ In the reply in joinder to this motion, Ms. Jones-Pfaff interjects a new argument—that
17 Ms. Mansfield’s negligent infliction of emotional distress claim against Ms. Jones-Pfaff is in fact
18 an assault claim in disguise, and is therefore time barred. (*See* Reply in Joinder at 8.) New
19 issues and evidence may not be raised in reply briefs. *See Bazuaye v. I.N.S.*, 79 F.3d 118, 120
20 (9th Cir. 1996). When a party raises new material in a reply brief, the court has discretion to
21 strike that material. *See, e.g., Tovar v. U.S. Postal Serv.*, 3 F.3d 1271, 1273 (9th Cir. 1993). Ms.
22 Jones-Pfaff admits that this argument is “perhaps not clearly addressed in Pfaff-Jones’s initial
joinder.” (Reply in Joinder at 8.) That is an understatement. In fact, Ms. Jones-Pfaff does not
even join in the motion for partial summary judgment (*see* Joinder at 2-3), and no other
defendant raises this argument on her behalf (*see* Mot. at 12-18; Joinder at 3). Moreover, Ms.
Jones-Pfaff is not currently a party defendant in this action. *See supra* Part II.A.2. The court
therefore strikes Ms. Jones-Pfaff’s improperly raised argument (Reply in Joinder at 8 (first full
paragraph)). The court expresses no opinion on the validity or timeliness of Ms. Mansfield’s
negligent infliction of emotional distress claim.

1 //

2 Therefore, the remaining movants are Ms. Fletcher and Dr. Palmer¹⁴ (“the Limitations
3 Defendants”). The Limitations Defendants argue that any claims premised on events that
4 occurred before May 16, 2011, are barred by the combined effect of the statute of
5 limitations and Federal Rule of Civil Procedure 15(c)(1)(C). (*See* Mot. at 12-18.)
6 Specifically, they argue that Ms. Mansfield’s claims against them must be judged for
7 statute of limitations purposes from the date on which she filed her first amended
8 complaint. (Mot. at 14-16.) Given that premise, the Limitations Defendants conclude
9 that the statute of limitations has run on some of Ms. Mansfield’s claims against them.
10 (Mot. at 16-18.)

11 This motion presents two questions: First, do Ms. Mansfield’s claims against the
12 Limitations Defendants relate back to the original complaint, or must the court judge
13 them as of the date Ms. Mansfield filed claims against the Limitations Defendants?
14 Second, if Ms. Mansfield’s claims against the Limitations Defendants do not relate back,
15 does a statute of limitations bar any of those claims? Before reaching those questions, the
16 court will briefly discuss the familiar summary judgment framework.

17 1. Summary judgment standard

18 Summary judgment is appropriate if the evidence, when viewed in the light most
19 favorable to the non-moving party, demonstrates “that there is no genuine dispute as to
20

21 ¹⁴ The United States has partially substituted for Dr. Palmer (*see* Not. of Sub. & Cert. 1);
22 however, because Dr. Palmer is still a party defendant in his capacity as a UW employee (*see*
id.), the court will consider him as a movant under this motion.

1 any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ.
2 P. 56(a); *see Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Galen v. Cnty. of L.A.*,
3 477 F.3d 652, 658 (9th Cir. 2007). A fact is “material” if it might affect the outcome of
4 the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A factual dispute is
5 “genuine” if the evidence is such that reasonable persons could disagree about whether
6 the facts claimed by the moving party are true. *Aydin Corp. v. Loral Corp.*, 718 F.2d
7 897, 902 (9th Cir. 1983).

8 The court is “required to view the facts and draw reasonable inferences in the light
9 most favorable to the [non-moving] party.” *Scott v. Harris*, 550 U.S. 372, 378 (2007).

10 The court may not weigh evidence or make credibility determinations in analyzing a
11 motion for summary judgment because these are “jury functions, not those of a judge.”
12 *Anderson*, 477 U.S. at 249-50.

13 The moving party bears the initial burden of showing there is no genuine issue of
14 material fact and that he or she is entitled to prevail as a matter of law. *Celotex*, 477 U.S.
15 at 323. If the moving party meets his or her burden, the non-moving party “must make a
16 showing sufficient to establish a genuine dispute of material fact regarding the existence
17 of the essential elements of his case that he must prove at trial.” *Galen*, 477 F.3d at 658.

18 2. Relation back

19 Rule 15(c)(1)(C) governs relation back of amended pleadings that add a party or
20 change the name of a party. Fed. R. Civ. P. 15(c)(1)(C). Such an amendment relates
21 back to the date of the original pleading if, among other requirements, within 120 days of
22 the filing of the original complaint, the party to be added “knew or should have known

1 that the action would have been brought against it, but for a mistake concerning the
2 proper party's identity." *Id.*; *see also* Fed. R. Civ. P. 4(m). In other words, a claim
3 against a new defendant relates back to the original complaint only if (1) the plaintiff
4 failed to include that defendant in the original complaint due to a mistake concerning that
5 defendant's identity, and (2) the defendant knew or should have known of that mistake
6 within 120 days of the filing of the original complaint. *See Louisiana-Pacific Corp. v.*
7 *ASARCO, Inc.*, 5 F.3d 431, 434 (9th Cir. 1993). If the claims against the new defendant
8 do not relate back, the court judges those claims as of the date they were filed for statute
9 of limitations purposes. *See id.* at 433-34.

10 In her original complaint, Ms. Mansfield named only Ms. Jones-Pfaff. (State Ct.
11 Rec. at 5.) Ms. Fletcher and Dr. Palmer appear as Defendants only in Ms. Mansfield's
12 first amended complaint. (*See* 1st Am. Compl.) Ms. Mansfield filed her original
13 complaint on March 10, 2014 (State Ct. Rec. at 5), and her first amended complaint on
14 May 16, 2014 (1st Am. Compl.). The Limitations Defendants argue that the claims
15 against them in the first amended complaint cannot relate back to the original complaint
16 because Ms. Mansfield was not mistaken as to their identities when she filed her original
17 complaint. (Mot. at 14-16.) They contend that Ms. Mansfield knew their identities but
18 simply chose not to include them in the first amended complaint; therefore, she filed her
19 claims against them on May 16, 2014, for statute of limitations purposes. (*See* Mot. at
20 16.)

21 The court agrees. Ms. Mansfield worked on the same research team with Dr.
22 Palmer (*see* 2d Am. Compl. ¶¶ 5, 10; Proposed 3d Am. Compl. ¶¶ 5, 10), and Ms.

1 | Mansfield received notice of the termination of her UW employment from Ms. Fletcher
2 | (2d Am. Compl. ¶¶ 8, 21; Proposed 3d Am. Compl. ¶¶ 8, 21; Resp. at 17; Fletcher Decl.
3 | (Dkt. # 41) ¶ 7). Ms. Mansfield does not claim that at the time she filed her original
4 | complaint she was unaware of the Limitations Defendants' identities or their roles in the
5 | events underlying this lawsuit. (*See* Resp. at 17-18.) Furthermore, nothing in her
6 | original complaint suggests that she intended to sue the Limitations Defendants but was
7 | mistaken as to their identities. Similarly, nothing shows that the Limitations Defendants
8 | should have known that they were intended targets of Ms. Mansfield's original
9 | complaint. As such, no genuine dispute of material fact exists on this issue. The court
10 | finds that Ms. Mansfield omitted Dr. Palmer and Ms. Fletcher from her original
11 | complaint by choice. Therefore, her claims against them do not relate back to her
12 | original complaint. *See ASARCO*, 5 F.3d at 433-34.

13 | 3. Statute of limitations

14 | Ms. Mansfield asserts claims against Ms. Fletcher and Dr. Palmer under 42
15 | U.S.C. § 1983. (*See* 2d Am. Compl. ¶¶ 33-35; 3d Am. Compl. ¶¶ 33-35.) "Actions
16 | brought pursuant to 42 U.S.C § 1983 are governed by state statutes of limitations for
17 | personal injury actions." *Morales v. City of Los Angeles*, 214 F.3d 1151, 1153 (9th Cir.
18 | 2000). The three-year statute of limitations for personal injury actions set forth in RCW
19 | 4.16.080(2) applies to Section 1983 actions filed in Washington. *RK Ventures, Inc. v.*
20 | *City of Seattle*, 307 F.3d 1049, 1058 (9th Cir. 2002). Ms. Mansfield filed her claims
21 | against Dr. Palmer and Ms. Fletcher on May 16, 2014 (*see* 1st Am. Compl.); therefore,
22 | those claims are timely if they accrued after May 15, 2011.

1 “Although state law determines the length of the limitations period, federal law
2 determines when a civil rights claim accrues.” *Morales*, 214 F.3d at 1153-54 (citing
3 *Tworivers v. Lewis*, 174 F.3d 987, 991(9th Cir. 1999)). “Under federal law, a claim
4 accrues when the plaintiff knows or has reason to know of the injury which is the basis of
5 the action.” *Tworivers*, 174 F.3d at 991. The question, then, is whether Ms. Mansfield
6 knew or had reason to know of the injury or injuries of which she complains before May
7 16, 2011. *See Morales*, 214 F.3d at 1154.

8 The principal injury of which Ms. Mansfield complains is the termination of her
9 UW employment, allegedly in retaliation for exercising her First Amendment rights. (*See*
10 2d Am. Compl. ¶ 34; Proposed 3d Am. Compl. ¶ 34; Resp. at 17-18.) Ms. Mansfield
11 received notice of her termination in a letter dated July 5, 2011, well after the May 15,
12 2011, limitations cutoff. (*See Fletcher Decl.* ¶ 7, at 13.) As such, Ms. Mansfield’s
13 Section 1983 claims are timely to the extent they are based on the termination of her UW
14 employment. *See McKee v. Peoria Unified Sch. Dist.*, 963 F. Supp. 2d 911, 922 (D. Ariz.
15 2013) (“In an employment-related § 1983 action, the [statute of limitations] begin[s] to
16 run from the time the plaintiff ‘learns of the “actual injury,” i.e., an adverse employment
17 action, and not when the plaintiff suspects a “legal wrong,” i.e., that the employer acted
18 with discriminatory intent.’”) (quoting *Coppinger-Martin v. Solis*, 627 F.3d 745, 749 (9th
19 Cir. 2010)). At oral argument, counsel for Ms. Mansfield assured the court that Ms.
20 Mansfield is not asserting claims based on injuries that occurred before her termination.
21 Nevertheless, for the sake of clarity and to narrow the issues going forward, the court
22 finds that the statute of limitations bars any claims based on injuries occurring before

1 May 16, 2011. Such injuries might constitute evidence relevant to a timely claim;
2 however, they cannot form the basis of a distinct cause of action.

3 Accordingly, the court grants the motion for partial summary judgment insofar as
4 it addresses distinct causes of action based on pre-May 16, 2011, injuries. The court
5 denies the motion for partial summary judgment insofar as it relates to injuries that
6 occurred on or after May 16, 2011.

7 **E. Ms. Mansfield’s Motion for a Continuance**

8 The remaining motion before the court is Ms. Mansfield’s motion for a
9 continuance pursuant to Federal Rule of Civil Procedure 56(d). Ms. Mansfield requests
10 that the court postpone ruling on Defendants’ motions until she has had an opportunity to
11 conduct additional discovery. (Mot. to Cont. at 12.) She asserts that she requires further
12 discovery to overcome Defendants’ anti-SLAPP and statute of limitations arguments.

13 (*Id.*)

14 In light of the court’s prior rulings, Ms. Mansfield’s motion is moot. The court
15 has denied the anti-SLAPP motion. *See supra* Part II.A.2. In addition, the court has
16 denied the motion for partial summary judgment with respect to injuries that occurred
17 after May 15, 2011, *see supra* Part II.D.3, and counsel for Ms. Mansfield asserted at oral
18 argument that Ms. Mansfield has no claims based on injuries that occurred before May
19 16, 2011. Therefore, the court denies as moot Ms. Mansfield’s motion for a continuance.

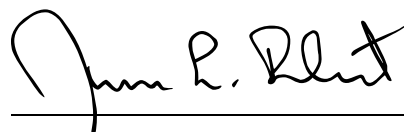
20 **III. CONCLUSION**

21 For the foregoing reasons, the court DENIES the joint anti-SLAPP motion (Dkt.
22 ## 40, 43); GRANTS Ms. Mansfield’s motion to dismiss (Dkt. # 46); GRANTS Ms.

1 Mansfield's motion for leave to file a third amended complaint (Dkt. # 48); GRANTS in
2 part and DENIES in part the motion for partial summary judgment (Dkt. ## 40, 43); and
3 DENIES as moot Ms. Mansfield's motion for a continuance under Rule 56(d) (Dkt.
4 # 49). All claims against Ms. Brooks-Worrell and any common law claims against Dr.
5 Palmer are DISMISSED WITH PREJUDICE. In addition, the court ORDERS as
6 follows:

- 7 (1) If Ms. Mansfield wishes to challenge the United States' scope-of-employment
8 certification, she must do so in a motion filed no later than three (3) months
9 from the date of this order;
- 10 (2) Ms. Mansfield shall note that motion as a fourth-Friday motion pursuant to
11 Local Rule LCR 7(d)(3); and
- 12 (3) Ms. Mansfield and the United States may conduct discovery relevant to
13 preparing for that motion.

14 Dated this 15th day of December, 2014.

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17 JAMES L. ROBART
18 United States District Judge
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