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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 DEAN ERVIN PHILLIPS,

9 Plaintiff,

10 v.

11 BETH RENEE RIETEMA, et al.,

12 Defendants.

CASE NO. C16-5000 BHS

ORDER GRANTING IN PART
AND DENYING IN PART
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT

13 This matter comes before the Court on Defendants Kate Forrest, Beth Renee
14 Rietema, Daniel John Rietema, and Frederick Doyce Rietema's ("Defendants") motion
15 for summary judgment (Dkt. 79). The Court has considered the pleadings filed in support
16 of and in opposition to the motion and the remainder of the file and hereby grants in part
17 and denies in part the motion for the reasons stated herein.

18 **I. PROCEDURAL HISTORY**

19 On January 4, 2016, Plaintiff Dean Ervin Phillips ("Phillips") filed a complaint
20 against numerous defendants asserting eleven claims for relief as follows: (1) conspiracy,
21 (2) violations of 42 U.S.C. § 1983, (3) assault, (4) false arrest and imprisonment, (5)
22 intentional infliction of emotional distress, (6) violation of Americans with Disabilities

1 Act and cruel and unusual punishment, (7) defamation, (8) abuse of process, (9)
2 malicious prosecution, (10) respondeat superior, and (11) negligent hiring, retention,
3 supervision, and training. Dkt. 1.

4 On March 29, 2016, Defendants filed a motion for summary judgment. Dkt. 79.
5 On April 4, 2016, Phillips responded. Dkt. 83. On April 19, 2016, Defendants replied.
6 Dkt. 85.

7 **II. FACTUAL BACKGROUND**

8 This dispute arises out of a protection order Phillips’s wife Defendant Beth Renee
9 Rietema obtained from Thurston County Commissioner Christine Schaller. Comp., ¶ 36.
10 Phillips alleges that the order was unnecessary and that “Ms. Rietema has spent the last
11 few years conspiring to ruin [Phillips’s] life with the assistance of law enforcement and
12 the Thurston County Courts.” *Id.*, ¶ 37.

13 On June 14, 2012, Phillips was arrested by Officer Boling and charged with two
14 counts of harassment and two counts of being within 500 feet of protected locations. *Id.*,
15 ¶ 38. Phillips contends that the arrest was approved by Deputy Prosecutor Jennifer Lord.
16 *Id.* The arrest was based on the placement of flyers being around a building that Ms.
17 Rietema claimed was her workplace. *Id.*, ¶ 39.

18 After being arrested, Phillips claims that he was taken to Nisqually Jail where he
19 was placed in solitary confinement for four days. *Id.*, ¶ 42. Phillips asserts various
20 allegations that his Eighth Amendment rights were violated during his stay at this jail.
21 *Id.*, ¶¶ 43–45.
22

1 On August 20, 2012, Phillips claims that, due to fear of further prosecution and
2 under duress, he pled guilty to the two counts of violating the protection order by going
3 within 500 feet of Ms. Rietema’s workplace. *Id.*, ¶ 40. Phillips asserts that both Judge
4 Lyman and Judge Coker presided over this case in the City of Tumwater Municipal
5 Court. *Id.*, ¶ 41. Phillips was sentenced to “serve a year in jail, pay fines, attend
6 Domestic Violence Treatment Counseling (DVTC) for a year, and extended the
7 [protective order] for 2 more years.” *Id.*

8 On December 26, 2012, Thurston County Prosecutor Luke Hanson applied for and
9 Thurston County Judge Dixon granted a search warrant for Phillips’s residence. *Id.*, ¶ 46.
10 Phillips explains circumstances surrounding the warrant as follows:

11 The warrant was granted due to a complaint by Ms. Rietema about some
12 flyers supposedly mailed to her neighbors Bat-Sheva Stein and Kenneth
13 Cohen and to her family Daniel Rietema and Frederick Rietema who all
14 testified to [Officer] Yancey that they believed [Phillips] had mailed to
15 them. None of these people, who supposedly received the flyer, were listed
16 on the [protection order]. Yet Plaintiff was still charged with
17 communicating with, and stalking of, Ms. Rietema.

18 The flyer received in the mail was compared to the previous flyer for
19 which the [Phillips] was arrested. The second flyers’ content did not violate
20 the [protection order], nor did it violate any law, code, or statute, similar to
21 the first referenced flyer. Luke Hansen had knowledge of the previous flyer
22 and knew it did not constitute harassment and yet he still approved the
search warrant as though a crime had been committed. Since both flyers
were similar enough, then both did not constitute harassment, or illegal
acts, and therefore did not constitute a violation of the [protection order],
and therefore did not constitute probable cause to search [Phillips’s] house.

Id., ¶¶ 48–49. On December 27, 2012, officers with the Tumwater and Centralia police
departments executed the search warrant at Phillips’s home. *Id.* ¶¶ 46–48.

1 In February 2013 and August of 2014, Phillips claims that Ms. Rietema filed for
2 renewal of the protection order and sought an extension of 99 years. *Id.*, ¶¶ 50, 52. The
3 chain of events is unclear, but it appears that Commissioner Lack entered an order
4 adverse to Phillips. On September 18, 2014, Phillips filed a motion to revise
5 Commissioner Lack’s ruling. *Id.*, ¶ 57. On October 17, 2014, Judge Wickman held a
6 hearing on Phillips’s motion, and Ms. Rietema hired Kimberly Reid to represent her at
7 the hearing. *Id.* Phillips alleges that Judge Wickman ruled against Phillips and ordered
8 Phillips to pay for Ms. Rietema’s attorney’s fees. *Id.*, ¶ 59.

9 Phillips appealed the ruling to the Washington Court of Appeals. Ms. Rietema
10 hired Kate Forrest to represent her. *Id.*, ¶ 61. On October 15, 2015, Commissioner
11 Schmidt filed a ruling dismissing the case. *Id.*, ¶ 62.

12 III. DISCUSSION

13 A. Summary Judgment Standard

14 Summary judgment is proper only if the pleadings, the discovery and disclosure
15 materials on file, and any affidavits show that there is no genuine issue as to any material
16 fact and that the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c).
17 The moving party is entitled to judgment as a matter of law when the nonmoving party
18 fails to make a sufficient showing on an essential element of a claim in the case on which
19 the nonmoving party has the burden of proof. *Celotex Corp. v. Catrett*, 477 U.S. 317,
20 323 (1986). There is no genuine issue of fact for trial where the record, taken as a whole,
21 could not lead a rational trier of fact to find for the nonmoving party. *Matsushita Elec.*
22 *Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986) (nonmoving party must

1 present specific, significant probative evidence, not simply “some metaphysical doubt”).
2 *See also* Fed. R. Civ. P. 56(e). Conversely, a genuine dispute over a material fact exists
3 if there is sufficient evidence supporting the claimed factual dispute, requiring a judge or
4 jury to resolve the differing versions of the truth. *Anderson v. Liberty Lobby, Inc.*, 477
5 U.S. 242, 253 (1986); *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass’n*, 809 F.2d
6 626, 630 (9th Cir. 1987).

7 The determination of the existence of a material fact is often a close question. The
8 Court must consider the substantive evidentiary burden that the nonmoving party must
9 meet at trial – e.g., a preponderance of the evidence in most civil cases. *Anderson*, 477
10 U.S. at 254; *T.W. Elec. Serv., Inc.*, 809 F.2d at 630. The Court must resolve any factual
11 issues of controversy in favor of the nonmoving party only when the facts specifically
12 attested by that party contradict facts specifically attested by the moving party. The
13 nonmoving party may not merely state that it will discredit the moving party’s evidence
14 at trial, in the hopes that evidence can be developed at trial to support the claim. *T.W.*
15 *Elec. Serv., Inc.*, 809 F.2d at 630 (relying on *Anderson*, 477 U.S. at 255). Conclusory,
16 nonspecific statements in affidavits are not sufficient, and missing facts will not be
17 presumed. *Lujan v. Nat’l Wildlife Fed’n*, 497 U.S. 871, 888-89 (1990).

18 **B. Defendants’ motion**

19 Based upon a liberal reading of Phillips’s complaint, the only violation of federal
20 law that applies to Defendants is the alleged conspiracy to violate Phillips’s civil rights.
21 Dkt. 1, ¶ 71. The Court, however, has held that Phillips’s 42 U.S.C. § 1985 conspiracy
22 claim fails as a matter of law. Dkt. 86 at 9. The claim fails because the conspiracy is not

1 based on racial or class-based discrimination. *Trerice v. Pedersen*, 769 F.2d 1398, 1402
2 (9th Cir. 1985) (“racial or perhaps otherwise class-based, invidiously discriminatory
3 animus . . . constitutes an essential element of a cause of action . . .”). Therefore, the
4 Court grants Defendants’ motion on this claim.

5 **C. Supplemental Jurisdiction**

6 The district courts may decline to exercise supplemental jurisdiction over state law
7 claims if the district court has dismissed all claims over which it has original jurisdiction.
8 28 U.S.C. § 1367(c)(3).

9 In this case, the Court has dismissed all claims which it has original jurisdiction
10 over Defendants. The Court declines to exercise supplemental jurisdiction of Phillips’s
11 remaining state law claims. Therefore, the Court dismisses Phillips’s state law claims
12 against Defendants and denies the remainder of Defendants’ motion as moot.

13 **IV. ORDER**

14 Therefore, it is hereby **ORDERED** that Defendants’ motion for summary
15 judgment (Dkt. 79) is **GRANTED in part** and **DENIED in part** as stated herein. The
16 Clerk shall terminate Defendants as parties in this case.

17 Dated this 19th day of May, 2016.

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20 BENJAMIN H. SETTLE
21 United States District Judge
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