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

8 THE ESTATE OF JOLENE  
9 LOVELETT,

10 Plaintiff,

11 v.

12 UNITED STATES OF AMERICA, et  
13 al.,

14 Defendants.

CASE NO. C16-5922 BHS

ORDER REQUESTING  
RESPONSE FROM UNITED  
STATES GOVERNMENT

15 This matter comes before the Court on motion to dismiss of Defendants Nancy  
16 Dufraigne, Heather Hoyle, Kelsie Moen, RN, and Trisha Shipp, LPN (“Defendants”) (Dkt.  
17 159), the Court’s request for responses regarding supplemental jurisdiction (Dkt. 162),  
and the parties’ responses (Dkts. 166, 168).

18 On November 1, 2016, the Estate of Jolene Lovelett (“the Estate”) filed a  
19 complaint against numerous defendants and the United States of America asserting  
20 claims for violations of 42 U.S.C. § 1983; violations of Washington’s Abuse of  
21 Vulnerable Adults Act, RCW Chapter 74.34 (“VAS”); and the “common law torts under  
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1 Washington law, including assault, battery, negligence, neglect, abandonment, outrage  
2 and infliction of emotional distress.” Dkt. 1.

3 On March 3, 2017, the United States of America (“Government”) filed a notice of  
4 substitution giving notice that the Government would be substituting as defendants for all  
5 “common law tort[s]” asserted against Defendants. Dkt. 39. On May 1, 2017, the Court  
6 granted the United States’ motion to dismiss. Dkt. 54.

7 On May 22, 2018, Defendants filed a motion to dismiss the Estates’ VAS claims  
8 against them. Dkt. 159. Defendants contend that the parties dispute whether the  
9 Government’s substitution for all “common law tort” claims encompassed the state  
10 statutory claims. *Id.* On June 11, 2018, the Estate responded. Dkt. 163. On June 14,  
11 2018, Defendants replied. Dkt. 165.

12 On June 11, 2018, the Court granted multiple defendants’ motion for summary  
13 judgment and dismissed the Estate’s 42 U.S.C. § 1983 claims. Dkt. 162. The Court also  
14 requested responses on the issue of exercising supplemental jurisdiction because it  
15 appeared that all the federal claims had been dismissed. *Id.* at 10. The remaining parties  
16 responded. Dkts. 166, 168.

17 Upon reviewing the parties’ responses, the Court is inclined to decline  
18 supplemental jurisdiction and dismiss the Estate’s state law claims without prejudice.  
19 The parties, however, have identified federal claims that remain. Upon review of these  
20 claims, the Court requests a response from the Government on the scope of its  
21 substitution. No party provides and the Court is currently unaware of any reason why the  
22 Government would substitute itself for the common law claims but not for the state

1 statutory claims. It appears that the Government intended to separate the state law claims  
2 from the federal law claims because 28 U.S.C. § 2679 does not distinguish between state  
3 common law and state statutory claims. Regardless, the Government used the phrase  
4 “common law torts,” and the Court needs an explanation before needlessly addressing the  
5 merits of a complicated issue on the merits. Therefore, the Court requests a response  
6 from the Government regarding the scope of its substitution.

7 If the Government only intended to substitute for common law torts, then a short  
8 response is sufficient. On the other hand, if the Government intended to substitute for all  
9 state law claims, then it appears that an amended or supplemental substitution is  
10 necessary as well as a subsequent motion to dismiss.

11 The Government shall respond no later than June 26, 2018, and any other party  
12 may respond to the Government no later than June 29, 2018. The dispositive motion  
13 deadline is extended to July 13, 2018, and the Clerk shall renote all pending motions for  
14 consideration on the Court’s June 29, 2018 calendar. The Clerk shall also send a copy of  
15 this order directly to the attorneys of record for the Government.

16 **IT IS SO ORDERED.**

17 Dated this 19th day of June, 2018.

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20 BENJAMIN H. SETTLE  
21 United States District Judge  
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