UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION AT LEXINGTON

ANDRU JACKSON PHILLIPS, Plaintiff, v. LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, LEXINGTON POLICE OFFICERS CORY B. VINLOVE, DONNELL GORDON, and LAWRENCE WEATHERS in their individual capacities, and unknown officers and supervisors of the Lexington Police Department, Defendants.	)	CASE NO. 5:22-cv-00243-GFVT

DEFENDANTS' MOTION TO DISMISS
PURSUANT TO FED. R. CIV. PRO. 12(b)(6)

Barry D. Hunter
Susan J. Pope
Nolan M. Jackson
FROST BROWN TODD, LLC
250 West Main Street, Suite 2800
Lexington, KY 40507
(859) 231-0000
bhunter@fbtlaw.com
spope@fbtlaw.com
njackson@fbtlaw.com

Jason P. Renzelmann
FROST BROWN TODD LLC
400 West Market Street, 32nd Floor
Louisville, KY 40202
(502) 589-5400
jrenzelmann@fbtlaw.com

Counsel for Defendants

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DEFENDANTS' MOTION TO DISMISS

Pursuant to FED. R. CIV. PRO. 12(b)(6), Defendants hereby move to dismiss all of Plaintiffs' claims against Defendants Lexington-Fayette Urban County Government ("LFUCG"), Sergeant Donnell Gordon ("Sgt. Gordon"), and Police Chief Lawrence Weathers ("Chief Weathers"), as well as all claims except Count VII (state law malicious prosecution) against Detective Cory Vinlove ("Det. Vinlove") (Sgt. Gordon, Chief Weathers and Det. Vinlove collectively referred to herein as the "Officer Defendants").[1]

Plaintiffs bring federal claims under 42 U.S.C. § 1983 and state-law claims arising from what they allege to be wrongful criminal charges brought against them in connection with incidents occurring at a 2021 fraternity-hosted party at a private residence. However, Plaintiffs' allegations fail to state a claim under the legal theories they have advanced.

Plaintiffs' § 1983 claims for malicious prosecution and Fourth Amendment fabrication of evidence fail as a matter of law because Plaintiffs do not allege they were ever arrested, detained, or otherwise subject to a liberty deprivation within the meaning of the Fourth Amendment. Moreover, because no Sixth Circuit or U.S. Supreme Court precedent has ever found a constitutional violation based on the kind of injuries alleged here, the Officer Defendants are entitled to qualified immunity. Plaintiffs' various efforts to impose liability on Chief Weathers or other "supervisory defendants" also fail because they allege no facts whatsoever about any

[1] The Plaintiff here, Andru Jackson Phillips, is one of five plaintiffs who have filed nearly identical complaints related to the same incident, all of which have been assigned to this Court. *Adams v.* LFUCG, No. 5:22-cv-241; *McClain v. LFUCG*, No. 5:22-cv-242; *Phillips v. LFUCG*, No. 5:22-cv-243; *Tisdale v. LFUCG*, No. 5:22-cv-244; *Williams v.* LFUCG, No. 5:22-cv-245. While the various complaints contain some differences the particular plaintiffs, the substantive allegations against the Defendants relevant to this motion are identical across the five complaints. Accordingly, for purposes of this motion, the five Plaintiffs' claims are addressed collectively and largely identical motions are being filed by Defendants in each of the five cases. In this motion, citations to the Complaint are to the Complaint of Phillips, unless otherwise noted. The motions being filed in the other four cases cite to the corresponding allegations in the respective Complaints for each of the other four Plaintiffs.

actions taken by these defendants in connection with the investigation. Plaintiffs also fail to plead facts necessary to support a claim for municipal liability against LFUCG.

Plaintiffs' state-law claims fare no better. All of Plaintiffs' state-law claims against LFUCG are barred by state sovereign immunity. Plaintiffs' defamation claim fails because they do not even specifically identify the statements allege to be defamatory, and because the only types of statements addressed in the Complaint would be absolutely privileged. Plaintiffs also do not state any facts that would support a state malicious prosecution claim against Chief Weathers or Sgt. Gordon, nor any facts that would support a negligent hiring or negligent supervision claim against any of the Defendants here. These claims should all be dismissed.

PLAINTIFFS' FACTUAL ALLEGATIONS

Plaintiffs' claims are based on the following factual allegations.[2] At the time of the events at issue, Plaintiffs were students at the University of Kentucky ("UK"), where they were members of the football team. Plaintiffs allege they were wrongfully subjected to criminal charges following events at a fraternity-hosted party at a private residence located at 201 Forest Drive in Lexington, KY ("201 Forest Drive") on the evening of March 6 and early morning of March 7, 2021. (DN 1, Compl., ¶ 28.)

Plaintiffs allege that on the evening of March 6, Plaintiffs Reuben Adams ("Adams") and Joel Williams ("Williams") learned of a party at 201 Forest Drive. (*Id.*, ¶ 32.) Plaintiffs allege they believed the party to be "open invite." (*Id.*, ¶¶ 32-35.)

Plaintiffs allege that Adams and Williams arrived at the residence between 1:00 and 2:00 A.M. on March 7, walked in the open front door, and observed 30-50 people in attendance, many of whom were intoxicated. (*Id.*, ¶ 34-36.) Shortly after entering, Adams and Williams were

[2] Defendants dispute many of the Plaintiffs' factual claims. However, for purposes of this motion, which asserts that even on the facts alleged by the Plaintiffs, they do not state a claim on which relief can be granted, Plaintiffs' allegations are set forth here as pled in the Complaints.

allegedly subjected to disrespectful language and racial slurs by some of the attendees and attempted to leave. Plaintiffs claim Williams was pushed toward the back door and "jumped" by several fraternity members, who swung at him with their fists, and that Williams tried to defend himself. (*Id*., ¶ 39-45.) Tisdale allegedly arrived as Williams and Adams were leaving and was also subjected to racial slurs and physically assaulted on the front porch and also defended himself before backing off the porch and returning to his dorm. (*Id*., ¶¶ 46-49.)

Around the time of these events, Plaintiffs state Plaintiff Robert McClain ("McClain") received a text that Williams had been assaulted, and that McClain then drove to the party, found the road blocked by police vehicles, and returned to his apartment. (Tisdale Compl., ¶¶ 52-55.)

Plaintiff Andru Phillips ("Phillips") states he learned of the party at another teammate's apartment, drove there with a teammate, and received a text as they were arriving that Williams had been "jumped." (*Id.*, ¶¶ 32-35.) Phillips states he walked to the front door, heard screaming and racial slurs, and left without entering. (*Id*., ¶¶ 36-39.)

At some point, a fraternity member called the Lexington Police Department ("LPD"). Officers arrived on the scene and spoke with players and fraternity members on the scene, but no arrests were made. (DN 1, Compl., ¶¶ 58-59.) Plaintiffs allege the fraternity members made allegations about some football players brandishing weapons, although the accounts differed as to the number of players with weapons and whether they had knives or guns. (*Id*., ¶ 61.) No weapons were found at the scene or on any of the persons questioned. (*Id*., ¶ 62.)

Det. Vinlove took over the investigation of the incident on March 8, 2021. (*Id*., ¶ 67.) Plaintiffs allege that Det. Vinlove "falsely swore" in an affidavit in support of a search warrant for the contents of Plaintiffs' cell phones that Adams admitted to being in a physical altercation with two occupants of the home, despite physical evidence to the contrary. (*Id*.) Det. Vinlove

also included in the affidavit one of the guest's accusations that Tisdale had a handgun, which Plaintiffs allege was also false. (Tisdale Compl., ¶ 71.) Plaintiffs further allege Det. Vinlove was provided with information that the accusers' accounts of the incidents and identification process were unreliable, and that the accusers had been drinking. (DN 1, Compl., ¶¶ 76-78.)

After five months of investigation, on August 17, 2021, Det. Vinlove swore out criminal complaints for the Plaintiffs, resulting in the initiation of charges for first degree burglary and wanton endangerment. (*Id*., ¶¶ 80-81.) Plaintiffs allege Det. Vinlove included unspecified "false and fabricated" information in the criminal complaints. (*Id*., ¶ 82.)

Two days after the criminal complaint was filed, Sgt. Gordon issued a press release, which Plaintiffs allege "include[ed] the fabricated allegations against Mr. Tisdale and five other teammates." (*Id*., ¶ 83.) Plaintiffs include no allegations about any involvement by him in the investigation, aside from the issuance of the press release

The Plaintiffs were later arraigned in Fayette County District Court and pleaded not guilty. (*Id*., ¶ 84.) Following arraignment, the charges against Plaintiffs were presented to a grand jury. Plaintiffs allege that Det. Vinlove "knowingly presented the false allegations against [Plaintiffs]" to the grand jury, even though he "knew that the witness statements used to initiate the burglary and wanton endangerment charges … were false, fabricated, and the product of a tainted identification procedure." (*Id*., ¶¶ 87-88.)

The grand jury ultimately returned no true bill, and the charges against Plaintiffs were dismissed. (*Id*., ¶ 90.) Plaintiffs do not allege they were ever detained, forced to post bond, or even arrested in connection with the incident or the criminal charges.

In addition to Det. Vinlove, Plaintiffs have also named Chief Weathers as a defendant. But the Complaints contain no factual allegations about any actions by Chief Weathers related to

their claims, aside from noting his position as Police Chief. (*Id*., ¶ 23.)

On September 21, 2022, Plaintiffs filed five individual lawsuits against LFUCG, as well as Chief Weathers, Sgt. Gordon, and Det. Vinlove. All five have been assigned or reassigned to this Court. The Plaintiffs' Complaints include substantially identical allegations about the underlying incident and include the same claims for relief: (1) a 42 U.S.C. § 1983 claim for malicious prosecution; (2) a § 1983 claim for fabrication of evidence in violation of the Fourth Amendment; (3) a § 1983 claim for supervisory liability; (4) a § 1983 claim for failure to intervene; (5) a § 1983 claim for conspiracy to deprive constitutional rights; (6) a § 1983 claim for municipal liability against LFUCG; (7) a state-law claim for malicious prosecution; (8) a state-law claim for negligent supervision; (9) a state-law defamation claim; (10) a state-law *respondeat superior* claim against LFUCG; and (11) a state-law negligent hiring claim against LFUCG. Defendants now move to dismiss.

ARGUMENT

I. Legal Standard.

A. Plaintiffs must allege sufficient particularized facts to state a plausible claim for relief against each individual Defendant.

To survive a motion to dismiss, "a complaint must contain sufficient factual matter, accepted as true, to state a claim that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The complaint "must contain either direct or inferential allegations with respect to all material elements necessary to sustain a recovery," and the Court "need not accept as true any conclusory legal allegations that do not include specific facts necessary to establish the cause of action." *Bickerstaff v. Lucarelli*, 830 F.3d 388, 396 (6th Cir. 2016) (quotations omitted). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Iqbal*, 556 U.S. at 678.

Moreover, "[i]n a § 1983 suit … each Government official, his or her title notwithstanding, is only liable for his or her own misconduct." *Id.* at 677. *See also Nouri v. Cnty. of Oakland*, 615 F. App'x 291, 297 (6th Cir. 2015). Thus, Plaintiffs "must allege, with particularity …, what *each* defendant did to violate the … constitutional right." *Heyne v. Metro. Nashville Pub. Sch.*, 655 F.3d 556, 564 (6th Cir. 2011) (italics in original). Plaintiffs may not "rely on broad allegations of collective wrongdoing." *Brown v. Louisville Jefferson Cnty. Metro Gov't*, 2017 WL 4288886, at *5 (W.D. Ky. Sep. 27, 2017).

B. Plaintiffs must further allege facts to overcome the Officer Defendants' qualified immunity.

Plaintiffs' allegations must also state facts sufficient to overcome the Officer Defendants' qualified immunity. *Crawford v. Tilley*, 15 F.4th 752, 760 (6th Cir. 2021). Under the doctrine of qualified immunity, "[g]overnment officials are immune from civil liability under 42 U.S.C. § 1983, provided 'their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" *Cummin v. North*, 731 F. App'x 465, 469 (6th Cir. 2018) (quoting *Pearson v. Callahan*, 555 U.S. 223, 231 (2009)).

Moreover, it is a "longstanding principle that 'clearly established law' should not be defined at a high level of generality"; rather, "the clearly established law must be particularized to the facts of the case." *White v. Pauly*, 580 U.S. 73, 137 S.Ct. 548, 550 (2017) (quotation omitted). "So a complaint distinguishable from our past cases on its face will not often survive a motion to dismiss on qualified immunity grounds." *Crawford*, 15 F.4th at 766.

II. Plaintiffs' § 1983 malicious prosecution claim fails as a matter of law.

Plaintiffs' federal malicious prosecution claim should be dismissed as to all Defendants. To state a malicious prosecution claim under the Fourth Amendment, a plaintiff must allege:

(1) a criminal prosecution was initiated against him and the defendant made,

> influenced, or participated in the decision to prosecute;
> (2) there was a lack of probable cause for the criminal prosecution;
> (3) as a consequence of a legal proceeding, the plaintiff suffered a deprivation of liberty under the Fourth Amendment, apart from the initial seizure; and
> (4) the criminal proceeding was resolved in the plaintiff's favor.

Noonan v. Cnty. of Oakland, 683 F. App'x. 455, 462 (6th Cir. 2017); *Sykes v. Anderson*, 625 F.3d 294, 308-09 (6th Cir. 2010).

Here, none of the Plaintiffs have alleged a Fourth Amendment liberty deprivation, which precludes any recovery on a § 1983 malicious prosecution claim. Nor have Plaintiffs alleged any facts concerning the "participation" of Chief Weathers or Sgt. Gordon.

A. Plaintiffs do not allege a liberty deprivation.

Plaintiffs have not alleged that they were ever detained or subjected to any type of restraint that would establish a liberty violation under the Fourth Amendment. To state a federal constitutional claim for malicious prosecution, the "plaintiff must show … [h]e suffered a deprivation of liberty, as understood in our Fourth Amendment jurisprudence, *apart from the initial seizure*." *Noonan*, 683 F. App'x. at 463 (quoting *Sykes*, 625 F.3d at 308). A Fourth Amendment liberty deprivation requires something beyond merely being subject to criminal investigation and charges. *Id*. "[T]he initial arrest alone is an insufficient deprivation of liberty." *Id*. Similarly, merely being subject to criminal proceedings and required to attend hearings is also not sufficient to establish a liberty violation. *Id.*; *Cummin*, 731 F. App'x at 470-72; *Rapp v. Putman*, 644 F. App'x 621, 628 (6th Cir. 2016) (dismissing malicious prosecution claim).

Likewise, allegations of reputational damage or emotional distress cannot establish a Fourth Amendment liberty deprivation. *Noonan*, 683 F. App'x. at 462 (allegation that "false charges caused embarrassment, personally and professionally, … which inhibited [plaintiff's] practice as a lawyer" did not establish liberty deprivation).

Thus, in *Noonan*, the Sixth Circuit held there was no Fourth Amendment liberty deprivation because the plaintiff "was never arrested or incarcerated, required to post bail or bond, or subjected to any travel restrictions," notwithstanding the fact that plaintiff was charged with multiple felonies, called in for questioning twice, required to undergo a polygraph examination and attend court proceedings, alleged significant reputational and professional harm, and had his car withheld from him in impound for over five months. *Id*. The court concluded, "despite the aggravation, financial cost, and personal humiliation that Noonan suffered as a result of these false charges, we must conclude ***as a matter of law*** that he did not suffer a deprivation of liberty as understood in our Fourth Amendment jurisprudence." *Id*. (emphasis added).

Similarly, in *Cummin*, 731 F. App'x at 470-72, the court found no liberty deprivation where the plaintiff was never taken into custody, left court after his arraignment on a personal recognizance bond, and was required to attend five court appearances and keep the court apprised of his current address. The court noted that, in light of existing precedent, these facts could not rise to the level of a Fourth Amendment liberty deprivation. *Id*. at 472.

Indeed, courts have repeatedly dismissed § 1983 malicious prosecution claims where the plaintiff was not detained and did not allege any liberty impairment beyond being required to attend court proceedings and defend against criminal charges.[3]

The same is true here. Plaintiffs do not allege they were ever arrested – which in any event would not suffice – or subject to pretrial detention or other restriction of liberty. To the contrary, the Complaints affirmatively allege that "no arrests were made" on the night of the

[3] *E.g*, *Lowe v. Coffee Cnty*., 2018 WL 563839, at *4 (E.D. Tenn. Jan 25, 2018) (plaintiff did not suffer liberty deprivation, where "she was never arrested, but was only served with a criminal summons" and "never posted a bond or spent any time incarcerated," even though "she had to go to court several times."); *Stallworth v. Champine*, 2018 WL 690997, at *8 (E.D. Mich. Feb. 2, 2018) (requirement to attend two preliminary hearings, aggravation, and financial expense did not suffice to show liberty deprivation).

incident. (DN 1, Compl., ¶ 60.). Plaintiffs allege that Defendants swore out a criminal complaint, initiated charges, and presented testimony to the grand jury, but they do not claim to have been detained in any way in connection with any of these charges. These allegations cannot sustain a § 1983 claim for malicious prosecution under Sixth Circuit precedent.

B. Plaintiffs do not allege facts showing participation by Weathers or Gordon.

Plaintiffs' § 1983 malicious prosecution claims against Chief Weathers and Sgt. Gordon fail for the additional reason that Plaintiffs do not allege these Defendants "made, influenced, or participated in" the decision to prosecute. *Sykes*, 625 F.3d at 308 (quotation omitted).

"To be liable for 'participating' in the decision to prosecute, the officer must participate in a way that aids the decision, as opposed to passively or neutrally participating." *Id.* at 323 n.5. Plaintiffs cannot rely on conclusory allegations of a defendant's participation; they must identify facts concerning how the defendant participated or influenced the decision. *See Rapp v. Putman*, 644 F. App'x 621, 627-28 (6th Cir. 2016); *Brown v. Louisville Jefferson County Metro Gov't*, 2017 WL 4288886, at *5 (W.D. Ky. Sep. 27, 2017).

Here, Plaintiffs allege no such facts. Plaintiffs' only allegation concerning Sgt. Gordon is that he "issued a press release" following the initiation of charges against the Plaintiffs. (DN 1, Compl., ¶ 83.) Plaintiffs do not allege any facts suggesting that the press release played any role in the decision to bring charges or otherwise prosecute them. Plaintiffs do not include any allegations at all concerning any participation by Chief Weathers in the prosecution, aside from noting his position as Police Chief. (*Id.*, ¶ 23.) That is insufficient to state a claim.

C. The Officer Defendants are entitled to qualified immunity.

Moreover, even if Plaintiffs could articulate some reason why the facts alleged should be considered a constitutional violation, the law could not be considered "clearly established," as

required to overcome the Officer Defendants' qualified immunity. No Sixth Circuit or U.S. Supreme Court case has recognized a malicious prosecution claim based on facts in any way comparable to those alleged here. *Cummin.* 731 F. App'x at 472 (noting that even court accepted plaintiffs' liberty deprivation theory, defendants would be entitled to qualified immunity because no Sixth Circuit precedent had previously endorsed this theory). Nor has any Sixth Circuit or U.S. Supreme Court precedent recognized that "participation" could be shown based on the conclusory allegations set forth against Sgt. Gordon and Chief Weathers. Plaintiffs' malicious prosecution claims should be dismissed for this reason as well.

III. Plaintiffs' Fourth Amendment fabrication of evidence claims fail as a matter of law.

Plaintiffs' Fourth Amendment claims for fabrication of evidence also fail to state a claim for relief for largely the same reasons as their malicious prosecution claims. Plaintiffs do not allege any liberty deprivation within the meaning of the Fourth Amendment, and they fail to allege any facts at all to establish liability against Sgt. Gordon or Chief Weathers.

A. Plaintiffs do not allege a liberty deprivation.

Because Plaintiffs assert their fabrication of evidence claim under the Fourth Amendment, a necessary element of such claim is a showing that they suffered a Fourth Amendment deprivation of liberty.[4] "Fabrication of evidence is not a constitutional violation 'in and of itself.' Rather the *use* of fabricated evidence *to some end* offends constitutional rights. The possible injuries flowing from the use of fabricated evidence include unlawful arrest or detention or an unfair trial resulting in a wrongful conviction." *Hoskins v. Knox Cnty.*, 2020

[4] Alternatively, a fabrication of evidence claim arising under the Fourteenth Amendment generally requires that the plaintiff undergo a criminal trial, and suffer a conviction based on evidence. *Brown v. Louisville Jefferson Cnty. Metro Gov't*, 2017 WL 4288886, at *6 n.10 (W.D. Ky. Sep. 27, 2019). *Accord Stemler v. City of Florence*, 126 F.3d 856, 872 (6th Cir. 1997) (fabrication claim requires "reasonable likelihood that the false evidence could have affected the judgment of the jury"). Here, Plaintiffs were never tried or convicted, and therefore cannot assert a Fourteenth Amendment fabrication claim either.

WL 1442668, at *21 (E.D. Ky. Mar. 23, 2020). "When the Fourth Amendment is the constitutional hook for § 1983 purposes, fabrication may be the means by which governmental authorities accomplish ***detention*** without probable cause." *Id.* (emphasis added). *See also Ferris v. City of Cadillac*, 272 F. Supp. 3d 1003, 1011 (W.D. Mich. 2017), *aff'd* 726 F. App'x 473 (6th Cir. 2018) ("Plaintiff must show that one or more of the defendants '***caused his detention to be unlawfully continued*** by … fabricating evidence ….'") (quoting *Gregory v. City of Louisville*, 444 F.3d 725, 747 (6th Cir. 2006) (emphasis added); *Friskey v. Bracke*, 2020 WL 465026, at *8 (E.D. Ky. Jan. 28, 2020) (fabrication claim requires plaintiff to show criminal proceedings and "consequent ***deprivations of his liberty***" were "***caused by*** Defendant's malfeasance in fabricating evidence.") (quoting *McDonough v. Smith*, 139 S. Ct. 2149, 2156 (2019)) (emphasis added).

Indeed, in the context of Fourth Amendment claims, courts in this district have questioned whether a fabrication claim is "separately cognizable" from a malicious prosecution claim. *Hoskins*, 2020 WL 1442668, at *23. Fabrication is merely the means by which a liberty deprivation without true probable cause is accomplished. *Id*.

Thus, Plaintiffs' Fourth Amendment fabrication of evidence claims fail for the same reason as their malicious prosecution claims. They do not allege they were ever arrested or detained, or subject to any other deprivation of their Fourth Amendment liberty interests. *See* pp. 7-9, *supra*. Plaintiffs' fabrication of evidence claims should be dismissed.

B. Plaintiffs assert no facts that Sgt. Gordon or Chief Weathers engaged in any fabrication of evidence.

At a minimum, Plaintiffs' Fourth Amendment fabrication claim must be dismissed as to Sgt. Gordon and Chief Weathers, as Plaintiffs make no particularized allegations that either of these defendants engaged in any evidence fabrication. At most, Plaintiffs offer a collective allegation that "Defendant Officers, individually, jointly, and in conspiracy with each other,

fabricated evidence…." (DN 1, Compl., ¶ 118.) "Such collective allegations cannot support a claim under §1983" for fabrication of evidence. *Brown v. Louisville Jefferson Cnty. Metro Gov't*, 2017 WL 4288886, at *6 (W.D. Ky. Sep. 27, 2017).

C. The Officer Defendants are entitled to qualified immunity.

Even assuming *arguendo* that Plaintiffs could articulate a fabrication of evidence theory based on the kind of facts asserted here, the Officer Defendants would be entitled to qualified immunity. Plaintiffs cannot identify any clearly established law in the U.S. Supreme Court or Sixth Circuit that recognizes a fabrication of evidence violation where there are no clear allegations of any deprivation of liberty. To the contrary, courts have generally recognized that this area of law is characterized by an ***absence*** of clarity about the precise contours of liability.[5] Thus, the Officer Defendants are entitled to qualified immunity as well.

IV. Plaintiffs' claims for supervisory liability should be dismissed.

Plaintiffs' claims for "supervisory liability" also fail to state a claim for relief. First, for the reasons discussed above, Plaintiffs have failed to allege an underlying constitutional violation on either their malicious prosecution claim or their fabrication of evidence claim. *See* pp. 7-11, *supra*. Failure to supervise can only give rise to liability under § 1983 if it causes or contributes to some underlying constitutional violation. *Crawford v. Tilley*, 15 F.4th 752, 766 (6th Cir. 2021).

Second, Plaintiffs' supervisory liability claims fail to allege any particularized facts. (DN 1, Compl., ¶ 124.) Supervisory liability "has sharp limits" and "will not attach for a mere failure to act." *Crawford v. Tilley*, 15 F.4th 752, 761 (6th Cir. 2021) (quotation omitted). "Supervisory liability comprises two concepts important here: active involvement by the supervisor and causation." *Id.* "[A] plaintiff must plausibly allege that a supervisory defendant, 'authorized,

[5] *Hoskins*, 2020 WL 1442668, at *22 ("[S]ome courts have been something less than clear about which constitutional right is violated when fabrication occurs."); *Brown*, 2017 WL 4288886, at 6* n.10.

approved, or knowingly acquiesced in the unconstitutional conduct….'" *Id.* (quoting *Peatross v. City of Memphis*, 818 F.3d 233, 242 (6th Cir. 2016)). *See also Sexton v. Kenton Cnty. Det. Ctr.*, 702 F. Supp. 2d 784, 792 (E.D. Ky. 2010). "[A] supervisor cannot be held liable simply because he or she was charged with overseeing a subordinate who violated the constitutional right of another." *Peatross*, 818 F.3d at 241.

Plaintiffs' boilerplate allegations do not come close to satisfying these standards. *See Crawford*, 15 F.4th at 766 (affirming dismissal for failure to allege particularized facts of "active unconstitutional behavior"). Count III includes only conclusory allegations that an otherwise undefined group of "supervisory defendants failed to supervise the Defendant Officers in constitutionally adequate law enforcement practices." (DN 1, Compl., ¶¶ 125.) Plaintiffs do not specify any affirmative unconstitutional conduct by any supervisory defendant. They do not identify any specific action taken by Chief Weathers in this case, and the only allegations about Sgt. Gordon relates to his issuance of a press release, not any supervisory role he played in the investigation. These allegations do not state a constitutional violation, much less a "clearly established" one, as is required to overcome qualified immunity.

V. Plaintiffs' § 1983 failure-to-intervene claims should be dismissed.

"To state a § 1983 claim on the basis of a failure-to-intervene, the plaintiff must allege that each individual defendant '(1) observed or had reason to know that the [constitutional harm] would be or was [taking place], and (2) … had both the opportunity and the means to prevent the harm from occurring.'" *Robertson v. Univ. of Akron Sch. of Law*, 2021 WL 3709915, at *7 (N.D. Ohio Aug. 20, 2021) (quoting *Sheffey v. City of Covington*, 564 F. App'x 783, 793 (6th Cir. 2014)) (further quotation omitted).

First, Plaintiffs again have not alleged an underlying Fourth Amendment violation, so

they cannot show any alleged failure to intervene caused a constitutional deprivation.

Second, Plaintiffs do not allege any particularized facts about any defendants' knowledge of an ongoing constitutional violation, or opportunity and means to prevent it. *Id*. (plaintiffs' "grouped and conclusory allegations involving the failure of 'Defendants' to intervene are insufficient to meet the *Iqbal*/*Twombly* pleading standard."). As discussed above, there are no allegations about any particular conduct by Sgt. Gordon or Chief Weathers related to the investigation, what they knew, or what opportunity they had to intervene.

Third, even if Plaintiffs could allege a constitutional violation, the Officer Defendants would be entitled to qualified immunity because no clearly established precedent of the Supreme Court or Sixth Circuit has recognized constitutional liability for failure to intervene in the context of malicious prosecution or fabrication of evidence claims. *Id*. While the Sixth Circuit has recognized such liability in the context of excessive force and false arrest cases, courts in this circuit have held those decisions "cannot reasonably be extended to create a general duty of officers to intervene whenever they may witness violations of an individual's constitutional rights." *Id.* at *7 (finding no clearly established precedent imposing duty to intervene to prevent improper civil commitment). *See also Glover v. Rivas*, 2021 WL 963936, at *7 (E.D. Mich. Mar. 15, 2021) (existing precedent "says nothing about whether police officers' duty to intervene extends beyond claims involving excessive force or preventing an unlawful arrest."). The failure-to-intervene claims should be dismissed for this reason as well.

VI. Plaintiffs do not state a claim for § 1983 conspiracy.

Plaintiffs' § 1983 conspiracy claims fail as a matter of law.

First, Plaintiffs' claims are barred by the intra-corporate conspiracy doctrine. "[T]he intracorporate conspiracy doctrine applies in § 1983 suits to bar conspiracy claims where two or

more employees of the same entity are alleged to have been acting within the scope of their employment when they allegedly conspired together to deprive the plaintiff of his rights." *Jackson v. City of Cleveland*, 925 F.3d 793, 818 (6th Cir. 2019). *See also, e.g., Glover v. Rivas*, 2021 WL 963936, at *5 (E.D. Mich. Mar. 15, 2021). A corporate entity cannot conspire with itself, so when two or more agents of the same entity act together, they cannot form a conspiracy. *Jackson*, 925 F.3d at 818; *Hull v. Cuyahoga Valley Joint Vocational Sch. Dist. Bd. of Educ.*, 926 F.2d 505, 510 (6th Cir. 1991). Here, Plaintiffs allege all of the Officer Defendants are employees of LFUCG, and that each was acting within the scope of their employment. (DN 1, Compl., ¶ 23.) This precludes a claim for conspiracy as a matter of law.

Second, Plaintiffs fail to plead sufficient facts to state a plausible claim for conspiracy. "[I]t is well settled that conspiracy claims must be pled with some degree of specificity and that vague and conclusory allegations unsupported by material facts will not be sufficient to state a claim under § 1983." *Bickerstaff v. Lucarelli*, 830 F.3d 388, 399 (6th Cir. 2016) (quoting *Heyne v. Metro. Nashville Pub. Sch.*, 655 F.3d 556, 563-64 (6th Cir. 2011)). A conspiracy claim requires particularized allegations of: (1) a single plan, (2) shared objective, and (3) an overt act in furtherance of the conspiracy. *Id.*

Plaintiffs' conspiracy claims are based on nothing more than conclusory allegations that "Defendants reached an agreement amongst themselves to frame Plaintiffs"; "Defendants, acting in concert with other unknown co-conspirators, conspired by concerted action"; and "the co-conspirators committed [unspecified] overt acts." (DN 1, Compl., ¶¶ 135-137.) Such conclusory allegations are inadequate to withstand a motion to dismiss. *Bickerstaff*, 830 F.3d 388; *Heyne*, 655 F.3d 556. Plaintiffs do not specify the nature of the plan, how or when an agreement was formed, or any particular overt acts. Plaintiffs' conspiracy claims should be dismissed.

VII. Plaintiffs' municipal liability claims against LFUCG should be dismissed.

Plaintiffs' § 1983 claims for municipal liability against LFUCG also fail. Initially, as set forth above, *see* pp. 7-11, *supra*, Plaintiffs have not alleged an underlying constitutional violation against any of the Officer Defendants, which precludes municipal liability as well. But even assuming Plaintiffs had pled a constitutional violation, they do not allege facts that would support a municipal liability claim against LFUCG.

"[U]nder § 1983, local governments are responsible only for their own illegal acts. They are not vicariously liable under § 1983 for their employees' actions." *Connick v. Thompson*, 563 U.S. 51, 60 (2011). "Plaintiffs who seek to impose liability on local governments under § 1983 must prove that 'action pursuant to official municipal policy' caused their injury." *Id*. (quoting *Monell v. N.Y. City Dept. of Social Servs*, 436 U.S. 658, 691 (1978)).

"To properly allege a municipal liability claim, a plaintiff must adequately allege (1) the existence of an illegal official policy or legislative enactment; (2) that an official with final decision making authority ratified illegal actions; (3) the existence of a policy of inadequate training or supervision; or (4) the existence of a custom of tolerance [of] or acquiescence [to] federal rights violations." *D'Ambrosio v. Marino*, 747 F.3d 378, 386 (6th Cir. 2014) (quotation omitted). "[I]n order to survive the motion to dismiss phase under *Twombly* and *Iqbal*, a complaint setting forth a § 1983 municipal liability claim must plead with specificity one or more of these grounds…." *Munson v. Bryan*, 2015 WL 4112429, at *4 (M.D. Tenn. July 8, 2015). Plaintiffs' allegations do not satisfy these requirements.

A. Plaintiffs do not allege any formal policy or enactment.

Plaintiffs do not plead the existence of any formal policy or legislative enactment by LFUCG sanctioning falsification of evidence or bringing false charges. To the extent a plaintiff

makes such a claim, the policy or legislation must be identified.

B. Plaintiffs have not alleged facts demonstrating ratification.

Plaintiffs also fail to allege facts demonstrating ratification. To establish municipal liability based on ratification, Plaintiffs must show that "an official charged with making final policy … expressly approved" the challenged actions. *Feliciano v. City of Cleveland*, 988 F.2d 649, 656 (6th Cir. 1993). "Ratification of a subordinate's actions requires more than acquiescence – it requires affirmative approval of a particular decision made by a subordinate." *Id.* Moreover, the ratification must cause, or a "moving force," in causing the constitutional violation. *Id*. at 656 n.6; *Rice v. Logan*, 2022 WL 3031752, at *5 (E.D. Ky. Aug. 1, 2022).

Plaintiffs do not allege any such facts. Plaintiffs' ratification claims appear to be based on a single conclusory allegation that the Officer Defendants' actions were "ratified by policymakers with final policymaking authority." (DN 1, Compl., ¶ 142.) Plaintiffs do not identify these alleged "policymakers" or the state-law source of their authority, nor do they identify any decision made by a policy maker that specifically ratified or approved the particular conduct at issue here.[6] Courts in this circuit have routinely dismissed ratification claims in such instances. *E.g.*, *Lyons v. Franklin Cnty*., 2020 WL 1249891, at *4 (E.D. Ky. Mar. 16, 2020) (dismissing ratification claim because plaintiff "does not identify with any specificity a decision made by a decision-maker with ultimate authority").[7]

[6] Ratification may also be shown by demonstrating that a municipality has ratified unconstitutional conduct by systematically "failing to meaningfully investigate and punish allegations of unconstitutional conduct." *Wright v. City of Euclid*, 962 F.3d 852, 882 (6th Cir. 2020). To state a claim under this theory, a plaintiff "must generally allege that a municipality's failure to investigate *prior* allegations of unconstitutional misconduct caused the constitutional violation at issue." *Lyons v. Franklin Cnty*., 2020 WL 1249891, at *4 (E.D. Ky. Mar. 16, 2020) (italics in original). Here, Plaintiffs do not identify any prior similar allegations that LFUCG failed to investigate, much less a systematic pattern of failures.

[7] *See also, e.g*., *Karsner v. Hardin Cnty*., 2021 WL 886233, at *15 (W.D. Ky. Mar. 8, 2021); *Fakhri v. Louisville-Jefferson Cnty. Metro. Gov't*, 2019 WL 4196056, at * 4 (W.D. Ky. Sep. 4, 2019); *Fletcher-Hope v. Louisville-Jefferson Cnty. Metro Gov't*, 2019 WL 498853, at *3 (W.D. Ky. Feb. 8, 2019).

C. Plaintiffs do not state a claim for failure to train.

Plaintiffs also fail to establish municipal liability based on a failure to train. "A municipality's culpability for a deprivation of rights is at its most tenuous where a claim turns on a failure to train." *Connick*, 563 U.S. at 61. To state a claim for failure to train, a plaintiff must allege "(1) the training or supervision was inadequate for the tasks performed; (2) the inadequacy as the result of the municipality's deliberate indifference; and (3) the inadequacy was closely related to or actually caused the injury." *Ellis ex rel. Pendergrass v. Cleveland Mun. Sch. Dist.*, 455 F.3d 690, 700 (6th Cir. 2006).

"Deliberate indifference is a stringent standard of fault, requiring proof that a municipal actor disregarded a known or obvious consequence of his action." *Connick*, 563 U.S. at 61 (quotation omitted). "[M]ere allegations that an officer was improperly trained or that an injury could have been avoided with better training are insufficient to make out deliberate indifference." *Harvey v. Campbell Cnty.*, 453 F. App'x 557, 563 (6th Cir. 2011). Plaintiffs must allege facts demonstrating that "[t]he city's policy of inaction in light of notice that its program will cause constitutional violations 'is the functional equivalent of a decision by the city itself to violate the Constitution.'" *Connick*, 563 U.S. at 61-62 (quoting *Canton v. Harris*, 489 U.S. 378, 395 (1989)). "A less stringent standard of fault for a failure-to-train claim would result in *de facto respondeat superior* liability on municipalities." *Id.* at 62.

Moreover, to demonstrate deliberate indifference, the constitutional right to which the municipality is allegedly deliberately indifferent "must be clearly established[,] because a municipality cannot *deliberately* shirk a constitutional duty unless that duty is clear." *Arrington-Bey*, 858 F.3d at 994 (italics in original). Plaintiffs' allegations cannot satisfy these standards.

First, Plaintiffs do not allege facts demonstrating LFUCG's notice or knowledge that the

training program will cause constitutional violations, as required to show deliberate indifference. "A pattern of similar constitutional violations by untrained employees is ordinarily necessary to demonstrate deliberate indifference for purposes of a failure to train." *Connick*, 563 U.S. at 62. Thus, courts have routinely dismissed failure to train claims where plaintiffs do not allege prior incidents of similar constitutional violations. *D'Ambrosio v. Marino*, 747 F.3d 378, 387 (6th Cir. 2014); *Karsner v. Hardin Cnty.*, 2021 WL 886233, at *14 (W.D. Ky. Mar. 8, 2021); *Fletcher-Hope v. Louisville-Jefferson Cnty. Metro Gov't*, 2019 WL 498853, at *3 (W.D. Ky. Feb. 8, 2019). Plaintiffs' Complaint here makes no allegations of ***any*** specific prior acts of similar alleged misconduct by LFUCG officers, much less the kind of pattern of prior misconduct that is ordinarily necessary to state a claim for deliberate indifference.

Nor do Plaintiffs' Complaints allege facts to satisfy the "narrow range of circumstances" where the "obviousness" that insufficient training would result in constitutional violations "can substitute for the pattern of violations ordinarily necessary to establish municipal culpability." *Connick*, 563 U.S. at 64. Liability under such a theory is limited to unique circumstances where a public employee would have an "utter lack of an ability to cope with constitutional situations" absent additional training. *Id.* at 68. Courts routinely dismiss failure-to-train claims where no such extraordinary facts are alleged. *E.g.*, *Napper v. Hankinson*, 2022 WL 3008809, at *18(W.D. Ky. July 28, 2022) ("conclusory" allegations did not establish "narrow range of circumstances" where liability could be shown absent prior incidents).[8]

Plaintiffs' claims here are based on nothing more than the conclusory allegation that

[8] *See also, e.g.*, *Karsner v. Hardin Cnty.*, 2021 WL 886233, at *14-15 (W.D. Ky. Mar. 8, 2021) ("Nor has [plaintiff] pleaded any specific facts to suggest that either Defendant failed to adequately prepare for recurring situations where a constitutional violation would be likely to take place"); *Fakhri v. Louisville-Jefferson Cnty. Metro. Gov't*, 2019 WL 4196056, at *5 (W.D. Ky. Sep. 4, 2019) ("[N]o court has held that absence of implicit bias training fits within the narrow range of instances representing a failure to equip law enforcement officers with specific tools such that a federal rights violation is the highly predictable outcome.").

LFUCG's "policies and practices included the failure to adequately train, supervise, and discipline officers on the requirements concerning the prompt disclosure of newly discovered evidence…" (DN 1. Compl., ¶ 142.) There is no effort to allege any facts that would bring this case into the narrow exception from the requirement for a pattern of past misconduct.

Second, as explained with respect to the Officer Defendants' qualified immunity, Plaintiffs have not alleged underlying constitutional violations that were "clearly established" under existing law, which also precludes deliberate indifference. *Arrington-Bey*, 858 F.3d at 994.

Third, Plaintiffs do not allege any particularized facts concerning how LFUCG's training was inadequate, or how its lack of training contributed to the incident. "[A] blanket allegation that training was inadequate is plainly insufficient under ordinary pleading standards." *Napper*, 2022 WL 3008809, at *17 (complaint did not allege "[h]ow exactly the training was inadequate" and "identif[ied] no training omission that would've prevented the incident if only the officers had received it"). *See also Brown v. Cuyahoga Cnty.*, 517 F. App'x 431, 436 (6th Cir. 2013).

D. Plaintiffs cannot maintain municipal liability based on a custom of inaction.

Plaintiffs also fail to state a claim for municipal liability based on a custom of inaction or acquiescence in constitutional violations. "[A] custom-of-tolerance claim requires a showing that there was a pattern of inadequately investigating similar claims." *Burgess v. Fischer*, 753 F.3d 462, 478 (6th Cir. 2013). *See also Munson v. Bryan*, 2015 WL 4112429, at *5 (M.D. Tenn. July 8, 2015). The alleged custom must be based on a pattern that pre-dates the incident in question, in order for the custom to plausibly be a moving force behind the violation. *Sexton v. Kenton Cnty. Detention Center*, 702 F. Supp. 2d 784, 792 (E.D. Ky. 2010). Here, Plaintiffs do not allege facts demonstrating a pattern of prior similar claims, or a failure to investigate them, so they cannot establish municipal liability on this basis either.

VIII. Plaintiffs' state-law claims against LFUCG are all barred by sovereign immunity.

Plaintiffs state-law claims against LFUCG for malicious prosecution, defamation, and negligent hiring and supervision are all barred by state sovereign immunity. It is well established that "federal courts must apply state substantive law, including immunities, when dealing with supplemental state-law claims in federal court." *Shepherd v. Floyd Cnty.*, 128 F. Supp. 3d 976, 977-78 (E.D. Ky. 2015). "The Court must therefore apply Kentucky governmental immunity law to [Plaintiffs'] claims." *Id*. at 980. *See also Fletcher-Hope*, 2019 WL 498853, at *3; *Karsner*, 2021 WL 886233, at *5.

In Kentucky, county governments and consolidated urban-county governments, like LFUCG, are subdivisions of the state and enjoy sovereign immunity from state-law claims to the same extent as the state. *Napper v. Hankison*, 2022 WL 3008809, at *27 (W.D. Ky. July 28, 2022); *Phillips v. LFUCG*, 331 S.W.3d 629, 631 (Ky. App. 2010) ("LFUCG is a subdivision of the state and enjoys the protective cloak of sovereign immunity."). Accordingly, all state-law claims against LFUCG must be dismissed, including Plaintiffs' *respondeat superior* claim, which asserts liability only against LFUCG as employer of the Officer Defendants.

IX. Plaintiffs' state malicious prosecution claims against Chief Weathers and Sgt. Gordon should be dismissed.

Plaintiffs cannot state a claim against Chief Weathers or Sgt. Gordon for state-law malicious prosecution, because they allege no facts that either of these defendants played a role in the investigation or otherwise caused charges to be brought. *Davidson v. Castner-Knott Dry Goods Co.*, 202 S.W.3d 597, 602 (Ky. App. 2006) (malicious prosecution claim requires that proceedings were brought by or at the insistence of the defendant). "Under Kentucky law, … a claim against a public official must contain some allegation that the official was directly involved in the negligent acts of subordinates, otherwise there is no vicarious liability for the

public official." *Kirilova v. Braun*, 2018 WL 3371119, at *7 (W.D. Ky. July 10, 2018) (quotation omitted); *Yanero v. Davis*, 65 S.W.3d 510, 528 (Ky. 2001) ("Public officials are responsible only for their own misfeasance …."). Plaintiffs offer no allegations that Chief Weathers or Sgt. Gordon did anything individually to bring about these charges.

X. Plaintiffs' negligent hiring and negligent supervision claims should be dismissed.

Plaintiffs' negligent hiring and negligent supervision claims also fail as a matter of law. First, under Kentucky law, the torts of both negligent hiring and negligent supervision require the plaintiff to "allege that the defendant knew or had reason to know of the employee's harmful propensities." *Napper v. Hankinson*, 2022 WL 3008809, at *31 (W.D. Ky. July 28, 2022) (quoting *Grand Aerie Fraternal Order of Eagles v. Carneyhan*, 169 S.W.3d 840, 844 (Ky. 2005)). Thus, a plaintiff must allege some facts related to conduct occurring before the employee was hired, or the underlying incident occurred, that would put the employer or supervisor on notice of the employee's propensities. *Id.* "Past negligent acts [of an employee] must pre-date the events in controversy in order for a court to impute knowledge to the supervisor." *Id. See also Smith v. Norton Hosps., Inc.*, 488 S.W.3d 23, 34 (Ky. App. 2016).

Here, Plaintiffs do not allege any conduct by Det. Vinlove predating the incident that would have put hiring or supervising officials on notice of any dangerous propensities, as required for a negligent hiring or supervision claim. *See Napper*, 2022 WL 3008809, at *31 (dismissing negligent hiring and supervision claims where "allegations make no mention of how or why supervisors would have known of the offending officers' 'harmful propensities'").

Second, Plaintiffs do not identify any particularized facts concerning failures of supervision or the hiring process that caused or contributed to the incident. They merely formulaically recite the elements of these torts. (DN 1, Compl., ¶¶ 152-154, 168-172.) Their

conclusory allegations are insufficient to state a claim. *See Napper*, 2022 WL 3008809, at *31 (dismissing negligent supervision claims because "complaint describes no facts about any concrete failures of any supervisory officers"). "Simply blaming supervisors in an organizational hierarchy that included inferior officers accused of malfeasance or negligence does not provide enough facts to state a claim that is plausible on its face." *Id*. (quotation omitted).

XI. Plaintiffs' defamation claims should be dismissed.

The Court should also dismiss Plaintiffs' defamation claims. Plaintiffs' allegations fail to specify the particular statements alleged to be defamatory, and thus cannot satisfy the elements of a defamation claim. Moreover, the only statements alleged in the Complaint were made in the course of judicial proceedings and therefore are absolutely privileged.

A. Plaintiffs' defamation claims are foreclosed by their failure to allege with particularity the specific statements alleged to be defamatory.

To state a claim for defamation, Plaintiffs must allege: (1) a false and defamatory statement of fact concerning another; (2) an unprivileged publication to a third party; (3) fault of at least negligence; and (4) either that the statement is actionable as defamation per se or caused special harm. *Toler v. Sud-Chemie, Inc*., 458 S.W.3d 276, 282 (Ky. 2014).

Plaintiffs cannot establish these elements without identifying the specific statements they allege to be defamatory. *See, e.g., Grubbs v. Univ. of Del. Police Dept*., 174 F. Supp. 3d 839, 861 (D. Del. 2016) (dismissing defamation claim where plaintiff "does not … identify the exact comments or specific publication," without which "the court cannot evaluate" the elements of defamation); *Simons v. New York*, 472 F. Supp. 2d 253, 268 (N.D.N.Y. 2007) ("[P]laintiffs have failed to provide the specific content and context of the statement," and thus "failed to afford defendants sufficient notice of the communications complained of…") (quotation omitted).

While Plaintiffs' Complaints generally describe allegedly false accusations contained in

Det. Vinlove's affidavits and grand jury testimony, it does not identify the specific statements alleged to be defamatory, making it impossible to determine whether they were fact or opinion, verifiably false, specifically identified a particular plaintiff, or otherwise actionable under the elements of defamation. Similarly, the Complaints refer to a press release that generally reiterated the accusations made in the criminal proceedings, but do not attach the release or identify any specific statements in the release that are alleged to be defamatory. This is insufficient to state a claim for defamation.

B. Plaintiffs' defamation claims are barred by the judicial proceedings privilege.

Moreover, the only alleged false statements even generally described in the Complaints are absolutely privileged. Under Kentucky law, "statements in judicial proceedings re absolutely privileged when material, pertinent, and relevant to the subject under inquiry, though it is claimed that they are false and alleged with malice." *Maggard v. Kinney*, 576 S.W.3d 559, 567 (Ky. 2019). *See also Ohnemus v. Thompson*, 594 F. App'x. 864, 869-70 (6th Cir. 2014) (applying Kentucky law). "Moreover, under Kentucky law, statements protected by absolute privilege do not lose their privilege merely because they are republished by a newspaper." *Ohnemus*, 594 F. App'x. at 869.

Thus, in *Ohnemus*, the Sixth Circuit affirmed dismissal of a defamation claim based on statements in a criminal complaint filed in state court and republished by the media. *Id.* The court reiterated, the privilege applies regardless of "whether it is alleged that Deputy Thompson knew the charges were false and even if brought in bad faith or with actual malice." *Id.*

The same is true here. The only alleged falsehoods even generally referenced in the Complaint are statements made in support of a criminal complaint, affidavits in support of search warrants, and in grand jury testimony. (DN 1, Compl., ¶¶ 69-71, 80-82, 87-88.) Likewise,

Plaintiffs' allegations relating to the press release merely state that it reported the contents of these judicial statements (*id.*, ¶83), which would not lose their privilege as a result of republication to the media. *Ohnemus*, 594 F. App'x. at 869. These claims are barred.

CONCLUSION

For all the foregoing reasons, Plaintiffs' claims should be dismissed.

Respectfully submitted,

/s/Jason P. Renzelmann

Barry D. Hunter
Susan J. Pope
Nolan M. Jackson
FROST BROWN TODD, LLC
250 West Main Street, Suite 2800
Lexington, KY 40507
(859) 231-0000
bhunter@fbtlaw.com
spope@fbtlaw.com
njackson@fbtlaw.com

Jason P. Renzelmann
FROST BROWN TODD LLC
400 West Market Street, 32nd Floor
Louisville, KY 40202
(502) 589-5400
jrenzelmann@fbtlaw.com

Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on December 1, 2022, I electronically filed a copy of the foregoing with the clerk of court by using the CM/ECF system, which will send a notice of electronic filing to all registered CM/ECF participants in this matter.

Mike Kanovitz
Elliot Slosar
Amy Robinson Staples
Margaret E. Campbell
LOEVY & LOEVY
311 N. Aberdeen, 3rd Floor
Chicago, IL 660607
(312) 243-5900
mike@loevy.com
elliot@loevy.com
amy@loevy.com
campbell@loevy.com

Counsel for Plaintiff

/s/Jason P. Renzelmann
Counsel for Defendants

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION AT LEXINGTON

ANDRU JACKSON PHILLIPS, Plaintiff, v. LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, LEXINGTON POLICE OFFICERS CORY B. VINLOVE, DONNELL GORDON, and LAWRENCE WEATHERS in their individual capacities, and unknown officers and supervisors of the Lexington Police Department, Defendants.	)	CASE NO. 5:22-cv-00243-GFVT

ORDER

Motion having been made, and the Court being otherwise sufficiently advised,

IT IS HEREBY ORDERED that all claims against Defendants Lexington-Fayette Urban County Government, Sergeant Donnell Gordon, and Police Chief Lawrence Weathers are hereby **DISMISSED WITH PREJUDICE**, and all claims against Detective Cory Vinlove, except Count VII (state law malicious prosecution), are also hereby **DISMISSED WITH PREJUDICE**.

Tendered by:

/s/Jason P. Renzelmann
Barry D. Hunter
Susan J. Pope
Nolan M. Jackson
FROST BROWN TODD, LLC
250 West Main Street, Suite 2800
Lexington, KY 40507
(859) 231-0000
bhunter@fbtlaw.com
spope@fbtlaw.com
njackson@fbtlaw.com

Jason P. Renzelmann
FROST BROWN TODD LLC
400 West Market Street, 32nd Floor
Louisville, KY 40202
(502) 589-5400
jrenzelmann@fbtlaw.com

Counsel for Defendants

0002082.0762762 4853-3715-4369