NO.

IN THE
SUPREME COURT OF THE UNITED STATES

JAMIE SWARTZ and SANDRA SWARTZ

Petitioners

v.

HEARTLAND EQUINE RESCUE
RANDY LEE
JODI LOVEJOY
JO CLAIRE CORCORAN
DEBBIE MOORE
KELLY JO FITHIAN-WICKER
MARNIE BENNETT
MEGHAN COMBS

Respondents

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

APPENDIX FOR PETITION FOR WRIT OF CERTIORARI

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In the
United States Court of Appeals
For the Seventh Circuit

No. 18-3260

JAMIE SWARTZ, *et al.*,

Plaintiffs-Appellants,

v.

HEARTLAND EQUINE RESCUE, *et al.*,

Defendants-Appellees.

Appeal from the United States District Court for the
Southern District of Indiana, New Albany Division.
No. 16-cv-00095 — **Tanya Walton Pratt**, *Judge*.

ARGUED SEPTEMBER 25, 2019
DECIDED OCTOBER 11, 2019

Before FLAUM, SYKES, and SCUDDER, *Circuit Judges*.

FLAUM, *Circuit Judge*. The plaintiffs, Jamie and Sandra Swartz, allege a conspiracy among multiple state and private defendants to deprive them of their property, namely, several goats and horses. The district court dismissed the private defendants and later entered summary judgment in favor of the state defendants. We now vacate the district court's rulings and remand this case for dismissal due to a lack of federal subject matter jurisdiction. The Swartzes' claims are inextricably intertwined with state court judgments, requiring dismissal under the *Rooker-Feldman* doctrine.

I. Background

Between 2011 and 2013, the Swartzes acquired several horses, goats, and a donkey for keeping on their hobby farm in Washington County, Indiana. In April 2013, the county's animal control officer, defendant Randy Lee, contacted defendant Dr. Jodi Lovejoy (a veterinarian with the Indiana State Board of Animal Health) to ask for her help evaluating a thin horse he claimed to have observed on the Swartzes' property.

Lee and Lovejoy visited the Swartzes' farm to evaluate the animals on four occasions, in May 2013, January 2014, February 2014, and June 2014. On each occasion, Lovejoy assessed the horses and goats using body condition scoring systems that categorized them based on the amount of muscle and fat on their bodies. Lovejoy kept detailed notes of each visit and created Animal Case Welfare Reports for the animals. Following the fourth visit, on June 4, 2014, Lovejoy reported a significant decline in the animals' welfare and expressed concerns about the conditions in which the goats were being kept. Lovejoy stated in her report that it was unlikely the Swartzes were able or willing to adequately care for the animals and that the livestock was in immediate jeopardy.

On June 13, 2014, Lee used Lovejoy's report to seek (in a standard, ex parte proceeding) a finding of probable cause to seize the animals, stating that Lee "has been investigating the welfare of certain animals" and "believes that probable cause exists that the crime of neglect of a vertebrate animal has been committed and that pursuant to IC 35-46-3-6 he has the authority to seize said animals … ." The Superior Court of Washington County, Indiana determined that there was probable cause to believe animal neglect or abandonment was occurring and entered an order to seize the animals. The next day, the animals were seized from the Swartzes' farm by Lee and defendant Meghan Combs (a member of the Washington County Sheriff's Office), and individuals associated with Uplands Peak Sanctuary and

Heartland Equine Rescue (organizations dedicated to caring for abandoned or neglected animals).[1]

On June 20, 2014, the state of Indiana filed three counts of animal cruelty charges against the Swartzes. (State of Ind. v. Sandra Swartz, Case No. 88C01-1406-CM-000325, Washington Cty. Cir. Ct.) The probable cause affidavit and order were refiled on the criminal docket the same day. The Swartzes retained counsel and were able to take their own discovery in the state court case, including deposing Lovejoy. On October 21, 2014, the state filed a motion for authority to find permanent placement for the Swartzes' animals. On January 15, 2015, both the state and the Swartzes appeared (with their counsel) to argue the motion for permanent placement. After that hearing, the court denied the Swartzes' motion for a probable cause hearing, noting that it had already affirmed the previous finding of probable cause when the criminal charges were filed on June 20, 2014. The court also denied the state's motion for authority to permanently place the animals at that time, instead requesting that the state's veterinarian or its designee make a recommendation concerning the disposition of the animals. On April 2, 2015, the court held a second hearing at which it ordered permanent placement of the animals for adoption. The court subsequently signed the placement order on April 14. After a hearing on August 27, 2015, at which both parties appeared by counsel, the court entered a further order requiring the Swartzes to reimburse Heartland for the care of the animals following the seizure, totaling $928 ($6,828 less the $5,900 value of the animals themselves).

The state deferred prosecuting the Swartzes as part

[1]Most of the remaining defendants are associated with these animal welfare groups: Michelle Pruitt is the co-owner and co-founder of Uplands, while JoClaire Corcoran, Debbie Moore, and Kelly Jo Fithian-Wicker worked under the Heartland name. The Swartzes allege that prior to the seizure, defendant Marnie Bennett trespassed on their property to inspect the feed stocks for the Swartzes' animals; they also claim that Bennett is a "close friend and confidant of" Moore and "encouraged" Moore, Combs, and Lee to seize their livestock.

of a pretrial diversion agreement, which the court entered in November 2015. The Swartzes agreed to pay pretrial diversion fees, not commit or attempt to commit any crimes, report to the prosecutor's office as directed, and follow the court's order regarding reimbursing Heartland for the care of the animals.

The Swartzes then filed this federal lawsuit, alleging "that the defendants and all of them, acted in concert to cause certain livestock of Plaintiffs to be seized by the Washington County Animal Control Officer on less than probable cause and distributed to Uplands Peak Sanctuary and Heartland Equine Rescue based on false information and improper diagnostic analysis contrary to the 4th and 14th Amendments … ." The district court dismissed or entered summary judgment against the plaintiffs on all claims. The Swartzes now appeal.

II. Discussion

Before we may review the district court's orders in this case, we first must determine whether it had subject matter jurisdiction over the Swartzes' claims given the related state court proceedings. Federal district and circuit courts generally lack jurisdiction to review the decisions of state courts. The *Rooker-Feldman* doctrine "precludes lower federal court jurisdiction over claims seeking review of state court judgments … no matter how erroneous or unconstitutional the state court judgment may be. The doctrine applies not only to claims that were actually raised before the state court, but also to claims that are inextricably intertwined with state court determinations." *Kelley v. Med-1 Solutions, LLC*, 548 F.3d 600, 603 (7th Cir. 2008) (citation and internal quotation marks omitted).

The case before us raises a facial *Rooker-Feldman* issue, because finding in favor of the Swartzes would necessarily call into question the state court's probable cause finding, placement judgment, and the terms of the Swartzes' pretrial diversion agreement. Although no party raised

the *Rooker-Feldman* doctrine until appellate briefing, this Court may — indeed, must — consider it. "The *Rooker-Feldman* bar is jurisdictional; violations of it cannot be waived and thus preclude a court from considering the merits of the claim." *Lennon v. City of Carmel*, 865 F.3d 503, 506 (7th Cir. 2017).

A. "Inextricably Intertwined" Issues

We explained the rationale and application of the *Rooker-Feldman* doctrine in *Jakupovic v. Curran*:

> Lower federal courts are not vested with appellate authority over state courts. The *Rooker-Feldman* doctrine prevents lower federal courts from exercising jurisdiction over cases brought by state court losers challenging state court judgments rendered before the district court proceedings commenced. The rationale for the doctrine is that no matter how wrong a state court judgment may be under federal law, only the Supreme Court of the United States has jurisdiction to review it. The initial inquiry, then, is whether the federal plaintiff seeks to set aside a state court judgment or whether he is, in fact, presenting an independent claim. To make this determination, we ask whether the federal claims either "directly" challenge a state court judgment or are "inextricably intertwined" with one.

850 F.3d 898, 902 (7th Cir. 2017) (citation and internal quotation marks omitted). The Swartzes' § 1983 claims are not direct challenges to any state court order, so to be implicated by *Rooker-Feldman* they must be "inextricably intertwined" with a state court judgment. *Id.* Because the injury the Swartzes protest—the seizure and subsequent permanent placement of their livestock—was effectuated by several orders of the Superior Court of Washington County, their claims are inextricably intertwined with state court judg-

ments.

The state court's finding of probable cause and ordered seizure of the animals produced the injury claimed by the Swartzes. This is true even though the Swartzes now claim that the injury originated in a conspiracy among mixed state and private actors. To find that the defendants acted wrongfully in seizing the animals would call into question the state court's judgment that there was probable cause the animals were being neglected under Indiana law. The same problem arises with the court's permanent placement determination, reimbursement order, and the pretrial diversion agreement: if the animals were not being neglected, there would be no basis for permanently housing them elsewhere or for requiring the Swartzes to reimburse Heartland for the animals' care.

When a state court judgment is the cause of a plaintiffs' injury, *Rooker-Feldman* bars federal review. "If the injury alleged resulted from the state court judgment itself, *Rooker-Feldman* directs that the lower federal courts lack jurisdiction." *Crestview Vill. Apartments v. U.S. Dep't of Hous. & Urban Dev.*, 383 F.3d 552, 556 (7th Cir. 2004). This is the case even when plaintiffs allege that the state court judgment was obtained through the defendants' bad faith actions. In *Crestview*, for example, the plaintiff alleged that a conspiracy among city officials and private actors led to a state court ordering plaintiff to remedy alleged building code violations. *Id.* at 554–55. Despite the plaintiff's invocation of a civil rights conspiracy, this Court held that the injuries in the complaint were the practical result of a state court judgment, and thus barred under *Rooker-Feldman*:

> Each count of Crestview's federal complaint alleges that, as a result of a conspiracy involving defendants, it was injured in that it was "forced to defend unsubstantiated lawsuits, and excessively harsh administrative actions...." [] Thus, in essence, Crestview is challenging as baseless the state court order requiring Crestview

> to cure the building code violations. After all, Crestview's alleged injury—having to defend unsubstantiated lawsuits—was only complete after the state court entered the order and thereby made an implicit finding that the suit was not unsubstantiated.

Id. at 556; *see also Garry v. Geils*, 82 F.3d 1362, 1368 (7th Cir. 1996) ("The plaintiffs are essentially claiming injury due to a state judgment against them—the judgment condemning a portion of the Garry property. … While the plaintiffs complain that the defendants moved the proposed ditch location as an act of political retaliation against them, the injury alleged was only complete when the state court actually condemned the property."); *Wright v. Tackett*, 39 F.3d 155, 158 (7th Cir. 1994) ("Wright may not seek a reversal of a state court judgment simply by casting his complaint in the form of a civil rights action.") (internal quotation marks omitted).

In *Wright*, the plaintiff alleged a conspiracy of state and private actors in violation of § 1983 based on the "bald assertions" that courts ruled against him during a foreclosure, and that the private defendants "unlawfully participated in the foreclosure actions." *Id.* at 157. We held that there was no federal jurisdiction over the plaintiff's § 1983 conspiracy claims: "Although Wright's complaint presented several constitutional—albeit conclusory—claims, those claims are inextricably intertwined with the various state court determinations handed down previously." *Id.*

The Swartzes' alleged conspiracy, in which Lee, Lovejoy, and others worked in concert to give false claims of animal neglect to the court, is the type of claim routinely dismissed under *Rooker-Feldman*, as were the claims in *Crestview*, *Garry*, and *Wright*. *See, e.g., Matter of Lisse*, 921 F.3d 629, 641 (7th Cir. 2019) ("Nora's repeated fraud accusations do not change the calculus. … Federal courts do not exist to provide disappointed state-court losers a second bite at the apple."); *Mains v. Citibank, N.A.*, 852 F.3d 669, 677 (7th Cir. 2017) (holding that plaintiff's conspiracy claims

were "barred by *Rooker-Feldman*, because they are dependent upon and interwoven with the state-court litigation"); *Harold v. Steel*, 773 F.3d 884, 886–87 (7th Cir. 2014) (rejecting plaintiff's contention that false statements to court could be separated from resulting order, because "[n]o injury occurred until the state judge ruled against" plaintiff); *Kelley*, 548 F.3d at 605 ("We could not determine that defendants' representations and requests related to attorney fees violated the law without determining that the state court erred by issuing judgments granting the attorney fees. … [W]e are still barred from evaluating claims, such as this one, where all of the allegedly improper relief was granted by state courts.").

Here as well, the Swartzes' alleged injury was directly caused by the state court's orders: first to seize their animals, and then to permanently place them with other owners and force the Swartzes to reimburse Heartland for their care.

B. Reasonable Opportunity to Litigate

The *Rooker-Feldman* doctrine provides a safeguard for plaintiffs. The Swartzes must have had a "reasonable opportunity" to litigate in state court the claims they are bringing in their federal case for the bar to apply. *See Brokaw v. Weaver*, 305 F.3d 660, 668 (7th Cir. 2002). The Swartzes did not argue the *Rooker-Feldman* issue substantively in their briefing but did contest whether they were ever provided reasonable opportunity to litigate the existence of probable cause to seize their animals. Specifically, the Swartzes contend that: (1) the initial probable cause finding was ex parte; (2) under an Indiana statute, they were entitled to a post-seizure adversary hearing on probable cause; and (3) they were denied the opportunity to argue about the animals' welfare at any point. A review of the record shows that they had multiple opportunities to litigate whether the animals should have been seized, and thus *Rooker-Feldman* applies.

The ex parte nature of the initial probable cause hearing does not prevent the application of *Rooker-Feldman* be-

cause the Swartzes had other opportunities to litigate the issue. *See O'Malley v. Litscher*, 465 F.3d 799, 804 (7th Cir. 2006) (applying *Rooker-Feldman* where plaintiff had other opportunities to challenge the decision and noting that "it does not matter that the order was ex parte").[2]

First, the Swartzes were provided an effective opportunity to litigate the probable cause issue by contesting the state's motion for authority to permanently place the livestock. The Swartzes were represented by counsel, took part in two adversary hearings on the issue, and were able to take relevant discovery before the court entered any order, including the deposition of Lovejoy (whose allegedly false and incorrect report formed the crux of the alleged conspiracy to seize the Swartzes' animals). The court still found that its original probable cause finding was correct and that the animals should be placed elsewhere. The Swartzes could have provided their own evidence of the falsity of the animal welfare report, or evidence rebutting the state's evidence of animal neglect, but failed to do so.

Second, the Swartzes could have filed motions for reconsideration or to alert the court to new evidence, or used any other method by which litigants in Indiana may place arguments on the record. The Swartzes have not alleged any meaningful restraint on their ability to litigate in the state court.

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[2] The Swartzes argue that Indiana Code § 35-46-3-6 (the statute addressing the seizure of animals) entitled them to a post-seizure adversarial hearing on probable cause. But read in context, the statute contemplates a post-deprivation probable cause hearing only if such a hearing had not already occurred. Subsection (a) allows "[a]ny law enforcement officer" who has probable cause to believe an animal is being neglected to "take custody of the animal." No judicial hearing is required. In this case, Defendant Lee took a belt-and-suspenders approach by securing a judicial probable cause finding before attempting the seizure. This is why the state court judge denied the Swartzes' motion for a post-seizure probable cause hearing: the court had already determined that probable cause existed. *Rooker-Feldman* applies because the Swartzes had reasonable later opportunities to litigate their claims, regardless of whether they were afforded any specific statutory hearing under § 35-46-3-6.

Third, the Swartzes failed to appeal the state trial court's orders in the state appellate court, which would have constituted another reasonable opportunity to litigate whether their animals should have been seized. S*ee Gilbert v. Ill. State Bd. of Educ.*, 591 F.3d 896, 901–02 (7th Cir. 2010) ("[It] is enough to demonstrate that [plaintiff] did have a 'reasonable opportunity' to pursue his due process claim in Illinois state court" where plaintiff failed to pursue right to appeal claim to Illinois Supreme Court). Indiana courts have considered appeals from disgruntled litigants whose animals were confiscated under Indiana Code § 35-46-3-6. *See, e.g., Wolff v. State*, 87 N.E.3d 528, 532–34 (Ind. Ct. App. 2017); *Miller v. State*, 952 N.E.2d 292, 294–97 (Ind. Ct. App. 2011).

To be sure, there is a line of Seventh Circuit cases preserving civil rights claims in the face of allegedly improper probable cause findings due to a lack of reasonable opportunity to litigate. But these cases involved plaintiffs who lacked the Swartzes' several chances to pursue their claims in state court.

A leading case is *Brokaw*, in which the plaintiff claimed that county officials had conspired to make false claims of child neglect to justify removing her from her parent's care. 305 F.3d at 662. There, this Court reversed and remanded a lower court's dismissal under *Rooker-Feldman*, arguing that the plaintiff had no reasonable opportunity to pursue her claims regarding purportedly false neglect reports at the state level. In *Brokaw*, unlike this case, the state court proceeded under Illinois' Juvenile Court Act, which allowed the court to "consider only the question whether the minor is abused, neglected, delinquent, in need of supervision, or dependent." *Id.* at 668. Moreover, after the plaintiff had been seized, the court ordered her to remain in foster care during a hearing at which her parents were present, but not represented by counsel, allowed to speak, call witnesses, or cross-examine witnesses. *Id.* at 663. This is all contrary to the Swartzes' claims, as the Swartzes were represented by counsel, attended hearings, were allowed to testify, and took

discovery.

In sum, this case should have been dismissed for lack of jurisdiction under the *Rooker-Feldman* doctrine at its outset.[3]

III. Conclusion

For the foregoing reasons, we VACATE the judgment of the district court and REMAND WITH INSTRUCTIONS to dismiss the case for lack of subject matter jurisdiction.

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[3]The Swartzes' pro se complaint contains Fourth and Fourteenth Amendment claims under 42 U.S.C. § 1983. It also states that "[f]urther, the folks at Heartland have posted several libelous statements against Plaintiff disparaging their reputation … These statements were made in a malicious attempt to take and keep or distribute Plaintiffs livestock." The district court determined that the Swartzes had pleaded an Indiana state law libel claim and exercised supplemental jurisdiction over it; the libel action was dismissed on the merits. But as there was no federal subject matter jurisdiction over any claim, the district court never had jurisdiction over the libel claim. "When a district court does not have subject-matter jurisdiction over federal claims, it cannot exercise supplemental jurisdiction over any state claims." *Mains*, 852 F.3d at 679. The dismissal on the merits of the libel action, like all other dispositions in the district court, is vacated.

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen United States Courthouse
Room 2722 - 219 S. Dearborn Street - Chicago, Illinois 60604
Office of the Clerk - Phone: (312) 435-5850 - www.ca7.uscourts.gov

FINAL JUDGMENT

October 11, 2019

Before: JOEL M. FLAUM, Circuit Judge
DIANE S. SYKES, Circuit Judge
MICHAEL Y. SCUDDER, Circuit Judge

JAMIE SWARTZ, et al.,
Plaintiffs - Appellants

No. 18-3260 v.

HEARTLAND EQUINE RESCUE, et al.,
Defendants - Appellees

Originating Case Information:

District Court No: 4:16-cv-00095-TWP-DML
Southern District of Indiana, New Albany Division
District Judge Tanya Walton Pratt

We **VACATE** the judgment of the district court and **REMAND WITH INSTRUCTIONS** to dismiss the case for lack of subject matter jurisdiction. The above is in accordance with the decision of this court entered on this date. Each side shall bear their own costs.

form name: c7_FinalJudgment(form ID: 132)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

JAMIE SWARTZ, SANDRA SWARTZ, Plaintiffs, v. RANDY LEE, JODI LOVEJOY, MEGHAN COMBS, Defendants.	)))))))))))))	No. 4:16-cv-00095-TWP-DML

ORDER

This matter is before the Court following the Mandate (Dkt. 7205) issued by the United States Court of Appeals, for the Seventh Circuit, which vacated the judgment of the district court and remanded with instruction to dismiss the case for lack of subject matter jurisdiction. Each side to bear their own costs. Accordingly, the Court dismisses this matter for lack of subject matter jurisdiction.

IT IS SO ORDERED.

Date: 11/6/2019

s/ Tanya Walton Pratt
TANYA WALTON PRATT, JUDGE
United States District Court
Southern District of Indiana

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

JAMIE SWARTZ, SANDRA SWARTZ, Plaintiffs, v. RANDY LEE, JODI LOVEJOY, MEGHAN COMBS, Defendants.	)))))))))))))	No. 4:16-cv-00095-TWP-DML

FINAL JUDGMENT

The Court, having this day, issued its order dismissing this matter for lack of subject matter jurisdiction, the Court hereby enters **JUDGMENT** in favor of Defendants. Plaintiff shall take nothing by way of their complaint.

SO ORDERED:

Dated: 11/6/2019

s/ Tanya Walton Pratt
TANYA WALTON PRATT, JUDGE
United States District Court
Southern District of Indiana

Laura Briggs, Clerk
United States District Court
By: Deputy Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

JAMIE SWARTZ, SANDRA SWARTZ, Plaintiffs,	)	
v.	)	No. 4:16-cv-00095-TWP-DML
HEARTLAND EQUINE RESCUE, UPLANDS PEAK SACNTUARY, RANDY LEE, JODI LOVEJOY, MICHELLE PRUITT, JO CLAIRE CORCORAN, DEBBIE MOORE, KELLY JO FITHIAN-WICKER, MARNIE BENNETT, and MEGHAN COMBS, Defendants.	)	

AMENDED ORDER ON DEFENDANTS' MOTIONS TO DISMISS PLAINTIFF'S SECOND AMENDED COMPLAINT AND MOTION FOR JUDGMENT ON THE PLEADINGS

This matter is before the Court on several pending motions. Defendants Heartland Equine Rescue ("Heartland"), Jo-Claire Corcoran ("Corcoran"), Debbie Moore ("Moore"), and Kelly Jo Fithian-Wicker ("Fithian-Wicker") (collectively, the "Heartland Defendants") and Defendants Uplands Peak Sanctuary ("Uplands") and Michelle Pruitt ("Pruitt") (collectively, "Uplands Defendants") each filed Motions to Dismiss. Respectively, (Filing No. 77) and (Filing No. 79). Defendant Marnie Bennett ("Bennett") has filed a Motion for Judgment

on the Pleadings. (Filing No. 82). The disputes in this action surround allegations by *pro se* Plaintiffs Jamie Swartz and Sandra Swartz (collectively "the Swartzes"), that the Defendants violated their Fourth and Fourteenth Amendment rights under 42 U.S.C. § 1983 ("Section 1983"). Specifically, the Swartzes allege that the Defendants conspired and made false report in order to seize the Swartzes' livestock. In their Second Amended Complaint, the Swartzes also allege claims of libel against the Heartland Defendants and Pruitt (Filing No. 96)[1]. For the reasons that follow, the Court **GRANTS** Heartland Defendants' and Uplands Defendants' Motions to Dismiss, and **GRANTS** Bennett's Motion for Judgment on the Pleadings.

I. BACKGROUND

The following facts are not necessarily objectively true. But as required when reviewing a motion to dismiss, the Court accepts as true all factual allegations in the operative Second Amended Complaint and exhibits attached thereto, and draws all reasonable inferences in favor of the Swartzes as the non-moving party. *See Bielanski v. County of Kane*, 550 F.3d 632, 633 (7th Cir. 2008).

Heartland is an organization located in Clark Couty, Indiana, that rescues horses believed to be neglected which includes working with law enforcement on neglect

[1] The Heartland and Uplands Defendants' Motions to Dismiss and Ms. Bennett's Motion for Judgment on the Pleadings, were all filed in response to the Swartzes' Amended Complaint (Filing No. 70). Thereafter, the Swartzes filed a Motion for Leave to file a Second Amended Complaint (Filing No. 85). On January 27, 2017, over objection of Ms. Bennett, the Court granted leave to file the Second Amended Complaint (Filing No. 95). The Court explained that briefing on the motions to dismiss would not have to start over, rather "it is simpler and more fair to the defendants in this *pro se* case to permit amendment but not require briefing on motions to dismiss to start from scratch." (Filing No. 95 at 2.) The Court set firm deadlines for the Swartzes to file responses to the motions and the Defendants were instructed that their reply briefs should take into account the allegations of the Second Amended Complaint, which is the operative complaint (Filing No. 96).

situations. Uplands is also an animal rescue organization, located in Washington County, Indiana, that takes in rescued animals. Defendant Randy Lee ("Lee") is the Washington County Animal Control Officer and Defendant Meghan Combs ("Combs") is the Washington County Sheriff Dispatcher.

On June 14, 2014, Lee, Combs, Heartland, and Uplands seized the Swartzes' livestock pursuant to a June 13, 2014 court order. (Filing No. 96 at 5.) The Swartzes allege that the probable cause for the court order was based on false and misleading information. *Id*. The following summarizes the alleged events leading up to the seizure.

Several months prior to the June 14, 2014 seizure, the Swartzes contacted their local veterinarian because they felt their horses were not thriving as they should have. The Swartzes followed the recommendation of their local vet. (Filing No 96 at 5). Also prior to June 14, 2014, Bennett trespassed on the Swartzes' property to inspect the feed stocks for the Swartzes' horses and goats. Bennett was a close friend and confidant of a Heartland employee, Debbie Moore ("Moore"), and Bennett encouraged Heartland and Lee to seize the livestock and distribute the livestock to Heartland and Uplands. Corcoran and Fithian-Wicker were also employed by Heartland during the relevant time period, and Moore, Corcoran, and Fithian-Wicker all were integral actors in Heartland's rescue endeavors by encouraging Lee and State Veterinarian Dr. Jodi Lovejoy ("Dr. Lovejoy") to confiscate the animals (Filing No. 96 at 4). After seizing their livestock, several Heartland employees began posting libelous statements on Facebook regarding the incident, which inferred criminal activity on the part of the Swartzes. *Id*. at 6. These statements disparaged the Swartzes reputation.

Attached to the Second Amended Complaint are screenshots of the libelous statements (Filing No. 96-1). Additionally, attached is an exhibit of an online petition and chat, posted shortly after the Swartzes' animals were seized, which seeks harsh criminal penalties and depicts a severely

malnourished horse. (Filing No. 96 at 6, Filing No. 96-2.) The online picture is not their horse, and the posting was Pruitt's malicious attempt to have them fined and put in jail. *Id.*

Lee visited the Swartz residence on multiple occasions by himself and with Dr. Lovejoy, who evaluated the animals and provided recommendations. (Filing No. 96 at 5.) Dr. Lovejoy evaluated the horses according to the "Henneke[2]" body condition scale to determine neglect. Dr. Lovejoy also evaluated the goats' body conditions, which according to the Swartzes was incorrectly based on a scale for sheep, which have different body types. *Id*. The Swartzes followed all of Dr. Lovejoy's recommendations and their livestock had ample feed, water, and shelter. *Id*. The Swartzes had not neglected their livestock as reported in the criminal charges that were filed against them following the seizure. *Id*.

The Second Amended Complaint alleges that "Uplands Peak knew that the State actors would act and agreed with the co-conspirators at Heartland for Animal Control and the State Vet to seize the Swartz livestock as the goats went to Uplands Peak." Dr. Lovejoy visited the Swartzes' residence for the last time on June 4, 2014, and she falsely reported that the animals were in immediate jeopardy. (Filing No. 96 at 5.) Probable cause to seize the animals was found pursuant to a court order on June 13, 2014, and the animals were seized the next day. *Id*. Heartland made a posting to its organizational Facebook page recounting the details of the June 14, 2014 seizure including the animals' living conditions. (Filing No. 96-9.)

II. LEGAL STANDARD

[2] The Henneke horse body condition scoring system is a numerical scale used to evaluate the amount of fat on a horse's body. Scores range from one to nine with one being very poor and nine being extremely fat; the ideal range for most horses is from four to six. WIKIPEDIA https://en.m.wikipedia.org/wiki/Henneke_horse_body_ condition_scoring_ system (last visited September 13, 2017).

A. Rule 12(b)(6)

Federal Rule of Civil Procedure 12(b)(6) allows a defendant to move to dismiss a complaint that has failed to "state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). When deciding a motion to dismiss under Rule 12(b)(6), the court accepts as true all factual allegations in the complaint and draws all reasonable inferences in favor of the plaintiff. *Bielanski v. County of Kane*, 550 F.3d at 633 (7th Cir. 2008). However, courts "are not obliged to accept as true legal conclusions or unsupported conclusions of fact." *Hickey v. O'Bannon*, 287 F.3d 656, 658 (7th Cir. 2002).

The complaint must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). In *Bell Atlantic Corp. v. Twombly*, the Supreme Court explained that the complaint must allege facts that are "enough to raise a right to relief above the speculative level." 550 U.S. 544, 555 (2007). Although "detailed factual allegations" are not required, mere "labels," "conclusions," or "formulaic recitation[s] of the elements of a cause of action" are insufficient. *Id.*; *see also Bissessur v. Ind. Univ. Bd. of Trs.*, 581 F.3d 599, 603 (7th Cir. 2009) ("it is not enough to give a threadbare recitation of the elements of a claim without factual support"). The allegations must "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests." *Twombly*, 550 U.S. at 555. Stated differently, the complaint must include "enough facts to state a claim to relief that is plausible on its face." *Hecker v. Deere & Co.*, 556 F.3d 575, 580 (7th Cir. 2009) (citation and quotation omitted). To be facially plausible, the complaint must allow "the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 556).

B. Rule 12(c)

Federal Rule of Civil Procedure 12(c) permits a party to move for judgment on the pleadings after the parties have

filed the complaint and answer. Rule 12(c) motions are reviewed under the same standard as a motion to dismiss under 12(b)(6). *Frey v. Bank One*, 91 F.3d 45, 46 (7th Cir. 1996). Like a Rule 12(b)(6) motion, the court will grant a Rule 12(c) motion only if "it appears beyond doubt that the plaintiff cannot prove any facts that would support his claim for relief." *N. Ind. Gun & Outdoor Shows, Inc. v. City of S. Bend*, 163 F.3d 449, 452 (7th Cir. 1998) (*quoting Craigs, Inc. v. General Elec. Capital Corp*., 12 F.3d 686, 688 (7th Cir. 1993)). The facts in the complaint are viewed in a light most favorable to the non-moving party; however, the court is "not obliged to ignore any facts set forth in the complaint that undermine the plaintiff's claim or to assign any weight to unsupported conclusions of law." *Id*. (*quoting R.J.R. Serv., Inc. v. Aetna Cas. & Sur. Co*., 895 F.2d 279, 281 (7th Cir. 1989)). "As the title of the rule implies, Rule 12(c) permits a judgment based on the pleadings alone. . . . The pleadings include the complaint, the answer, and any written instruments attached as exhibits." *Id*. (internal citations omitted).

III. DISCUSSION

As an initial matter, the Court notes that the Swartzes have attached several exhibits to their Second Amended Complaint. Because they are attached to the Complaint, the Court may consider the attachments in deciding the motions to dismiss without having to convert the motion to one for summary judgment. *See Tierney v. Vahle*, 304 F. 3d 734, 738. (7th Cir. 2002). Documents attached to a motion to dismiss are considered part of the pleadings if they are referred to in the plaintiff's complaint and are central to his claim. *Wright v. Associated Ins. Companies Inc*., 23 F.3d 1244 (7th Cir. 1994). Such documents may be considered by a district court in ruling on the motion to dismiss. *Id.*

The Heartland Defendants and Uplands Defendants filed individual Motions to Dismiss the Swartzes' Amended Complaint and Bennett filed a Motion for Judgment on the Pleadings. For purposes of this discussion, the Heartland and Uplands Defendants' arguments raised in response to

the Amended Complaint are considered jointly. The Court will first address the Heartland Defendants' and Uplands Defendants' Motions to Dismiss and then turn to Bennett's Motion for Judgment on the Pleadings.

A. Heartland and Uplands Defendants' Motions to Dismiss

The Heartland Defendants and Uplands Defendants set forth three reasons for dismissing the Second Amended Complaint. First, they allege the Swartzes failed to raise factual allegations against them that explain how they conspired with state officials to seize their livestock. Second, they argue that the alleged statements are not defamatory. Finally, they argue that the state law claim for libel should be dismissed for lack of subject matter jurisdiction should the Court grant dismissal based on the Court's original jurisdiction.

1. Section 1983 Claims

"Relief under section 1983 is available to a plaintiff who can demonstrate that a person acting under color of state law deprived the plaintiff of a right, privilege, or immunity secured either by the Constitution or by federal law." *Vasquez v. Hernandez*, 60 F.3d 325, 328 (7th Cir. 1995).

> Private persons jointly, engaged with state officials in the prohibited action, are acting 'under color' of law for purposes of the statute. To act 'under color' of law does not require that the accused be an officer of the State. It is enough that he is a willful participant in joint activity with the State or its agents.

Vickery v. Jones, 100 F.3d 1334, 1344 (7th Cir. 1996) (*quoting Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 158, 90 S.Ct. 1598, 26 L.Ed.2d 142 (1970)).

The Swartzes allege that their "livestock was seized

by Randy Lee, under direction from Dr. Lovejoy and under encouragement from members of Heartland and Upland Peaks", depriving them of property in contravention of their constitutional rights under the Fourth and Fourteenth Amendments (Filing No. 96 at 45). The Second Amended Complaint states "[p]resent and assisting with the seizure of the livestock were, Randy Lee, Meghan Combs, Jo-Claire Corcoran, Kelly Jo-Fithian Wicker, Debbie Moore and people from three television stations." (Filing No. 96 at 6.) The Second Amended Complaint makes several repeated references specifically as to these Defendants in particular and Bennett regarding their encouragement as "integral actors in Heartland Equine Rescue's endeavors and acted under color of law by assisting authorities with the illegal seizure of the livestock and conspiring with and agreeing to the seizure." *Id*. at 4. The Heartland Defendants respond that the Second Amended Complaint does not allege how they participated in the confiscation of the livestock, or if they were active participants in the seizure, or merely received the livestock after the seizure. (Filing No. 78 at 5). The Uplands Defendants respond that the Swartzes' Section 1983 argument, including their allegation of Uplands "encouragement", is based on its mission: "being a not for profit corporation animal rescue organization that takes in rescued animals" (Filing No. 80 at 6). Further, both the Uplands Defendants and the Heartland Defendants argue the Swartzes do not provide factual allegations to support a conspiracy claim or that they reached an understanding with state officials to deprive the Swartzes of their constitutional rights.

In response to the both Defendants', the Swartzes quote from the Second Amended Complaint and argue that their recitations are not merely labels or conclusions, but are well pled facts that are sufficient to raise a right to relief. (Filing No. 103 at 1-2.) The Swartzes also take issue with Seventh Circuit decisions and the legal analysis presented by Uplands and Pruitt and argue that the "definition of acting 'under color of law' is controlled by the United States Supreme Court and not by any added requirement by any other tribunal." (Filing No. 104 at 2). This Court, however,

is bound by precedent of both the United States Supreme Court and the Seventh Circuit Court of Appeals. Nevertheless, the *Wilson v. Warren Cty. Illinois*, 2016 WL 3878215, at *2 (7th Cir. July 18, 2016) case that Uplands (same question) has cited in its brief quotes directly from the United States Supreme Court case *Adickes* that the Swartzes have also cited (Filing No. 80 at 4).

The Swartzes also allege that Combs, in her role as Washington County Sheriff Dispatcher, contacted Heartland who then contacted Uplands and in concert they emailed Dr. Lovejoy to tell her that they had someone to take the goats one week before the seizure. (Filing No. 104 at 2).

"Mere allegations of joint action or a conspiracy do not demonstrate that the defendants acted under color of state law and are not sufficient to survive a motion to dismiss." *Fries v. Helsper*, 146 F.3d 452, 458 (7th Cir. 1998). For actions under color of law, there must be some understanding or "meeting of the minds" between the private actor and state actor to deny plaintiffs a constitutional right. *See Adickes*, 398 U.S. at 158. This requires the plaintiff to demonstrate the existence of a joint action, concerted effort, or general understanding among the defendants. *See id*. Here, at most, the Second Amended Complaint alleges that the Heartland Defendants and Uplands Defendants committed conspiracy by encouraging the seizure of livestock by state officials, but there is no information regarding factual allegations supporting the Defendants' encouragement. Specifically, the Second Amended Complaint presents an allegation concerning an email from Heartland employee, Moore, to the State vet. The allegation states:

> [T]hey have 'someone to take goats' on June 6th, 2014, so Uplands Peak had already agreed with Heartland (thus encouraging Heartland) to take the goats and this was a week before the seizures. Therefore, Uplands Peak knew that the State Actors would act and agreed with co-conspirators at Heartland for Animal

> Control and the state vet to seize the Swartz livestock as the goats went to Uplands Peak.

(Filing No. 96 at 5). This email alone does not show an understanding between Heartland, Uplands, and state officials to deprive the Swartzes of constitutional rights; rather, it is a conclusory allegation of conspiracy based on the Defendants carrying out their organizational missions of rescuing suspected neglected animals. A governmental seizure must be unreasonable to constitute a Fourth Amendment violation. *Belcher v. Norton*, 497 F.3d 742, 748 (7th Cir. 2007).

Even accepting as true that Bennett, Heartland, and Uplands alerted state authorities (who later investigated and monitored the case) of a suspected animal neglect situation, and that Dr. Lovejoy's recommendations evaluated the neglect of the animals on incorrect scales, the Swartzes' claim does not succeed. The Second Amended Complaint fails to show these individual actions were agreements among the Defendants to participate in joint activity to deprive the Swartzes of their constitutional rights in effecting a seizure based on the information available at the time. The mere fact that Uplands and Heartland were each involved with the mechanics and planning of housing the rescued animals after the seizure, fails to show how they were involved in a larger conspiracy with the state to violate the Swartzes' constitutional rights.

Although the Swartzes allege that the probable cause for the seizure of their animals was based on false information, they fail to provide factual allegations as to how the Heartland Defendants and Uplands Defendants were involved in pursuing the court order for seizure other than being present and assisting with the seizure case. Further, the Second Amended Complaint does not allege that Heartland and Uplands employees did not have a good faith basis to rely on the seizure warrant. While "detailed factual allegations" are not required to overcome a Rule 12(b)(6) motion, mere "labels," "conclusions," or "formulaic recitation[s] of the elements of a cause of action" are insufficient. *Twombly*, 550

U.S. at 555. The Swartzes' allegations against the Heartland Defendants and Uplands Defendants amount only to legal conclusions of conspiracy under the vague guise of "encouragement" supported only by facts of Heartland and Uplands carrying out their duties in their organizational missions of rescuing suspected neglected animals. Accordingly, the Swartzes have not set forth a viable claim against the Heartland Defendants or Uplands Defendants under Section 1983, and their Motions to Dismiss this are **granted**.

2. Indiana Libel Law

The Heartland Defendants and Uplands Defendants both move to dismiss the Swartzes' state law libel claim, asserting lack of specificity as a defense. In support of their defamation claim, the Second Amended Complaint contains screenshots of Facebook posts and comments between Lee and the Heartland Defendants (Filing No. 96-4) and exhibits the online petition in question that the Swartzes allege was posted by Pruitt depicting a stock photo of a severely malnourished horse that did not belong to them. (Filing No. 96-1.)

To maintain an action for defamation, a plaintiff must prove four elements: "(1) a communication with a defamatory imputation; (2) malice; (3) publication; and (4) damages." *Kelley v. Tanoos*, 865 N.E.2d 593, 596-97 (Ind. 2007). A communication is defamatory *per se* if it imputes: "(1) criminal conduct; (2) a loathsome disease; (3) misconduct in a person's trade, profession, office, or occupation; or (4) sexual misconduct." *Id.* at 596. The defamatory nature of a communication must appear without resort to extrinsic facts or circumstances. *Branham v. Celadon Trucking Servs., Inc.*, 744 N.E.2d 514, 522 (Ind. Ct. App. 2001).

The Second Amended Complaint alleges that Pruitt "posted a picture of a horse that didn't belong to Plaintiffs in association with the criminal case which was eventually dismissed and committed libel." (Filing No. 96 at 6.) However the Swartzes' exhibit reveals that the posting was made

by someone named Laurie Fanelli ("Fanelli") (Filing No. 96-1). Pruitt argues that the only way this particular posting can be determined to be defamatory in nature is by referring to extrinsic evidence as nothing on the face of the posting is attributable to Pruitt or the Swartzes. In addition, the posting was made by Fanelli, Pruitt's name does not appear anywhere on the posting and the Swartzes have not alleged that Pruitt is somehow connected to Fanelli. *Id.* The Court notes that another party, Mark D. Pruitt, whom the Swartzes have not alleged a connection to Pruitt, commented on the posting saying, "This case is likely to go to trial. The couple will accept no plea deal, they say the[y] have done nothing wrong and want their animals back. . ." (Filing No. 96-3). Even assuming that Mark D. Pruitt is connected to Pruitt, his comments cannot be attributed to Pruitt. Therefore, the Swartzes have pled insufficient facts to support a libel claim against Pruitt.

With respect to the Heartland Defendants, the Swartzes argue their statements were defamatory *per se* as they referenced the Swartzes' alleged criminal conduct of animal neglect. However, a plaintiff must still show defamatory imputation, malice, and publication. Nevertheless, truth is a complete defense to defamation. *Gatto v. St. Richard School, Inc.*, 774 N.E.2d 914, 924 (Ind. Ct. App. 2002). Further, under Indiana law, defamatory statements may be protected by a qualified privilege of common interest. *Id.* "The qualified privilege applies to communications made in good faith on any subject matter in which the party making the communication has an interest or in reference to which he has a duty, either public or private, either legal, moral, or social, if made to a person having a corresponding interest or duty." *Id.* at 924-25.

The Swartzes' defamation claim is based on a series of Facebook posts made by the Heartland Defendants in reference to the seizure, rescue, and the Swartzes' criminal case. (Filing No. 96.) The Swartzes allege that "[t]hese statements were made in a malicious attempt to take and keep or distribute Plaintiffs [sic] livestock" (Filing No. 96 at 6). Many of

Heartland's statements recounted the factual details of the actual seizure and Heartland's rescue in concert with State actors and three news stations, which captured footage and pictures of the rescue, including the physical conditions and living conditions of the livestock just before Heartland's rescue. (Filing No. 96-9 at 1.) Another statement makes reference to the passing of a horse, "Maude", and within that statement Heartland mentions the "Washington County seizure" and imputes the Swartzes' neglect of Maude. (Filing No. 96-7 at 1.) On January 15, 2015, Heartland made a Facebook posting recounting the details of the seizure hearing and Heartland's testimony at the hearing. (Filing No. 96-8 at 1.) Lee responded on the post to "keep them pics for court they look amazing" and "you all did a wonderful job with them and [I] thank you. . . trying my best to make sure charges stick [I] will be talking to them tomorrow." *Id*. Heartland responded to the post, "I wonder if the Swartz have ever looked at the page and seen what their poor skinny horses look like now that they have actually been fed." *Id*. Lee responded, "remember people these people was given 4 chances to fix the problem and they didn't". There are comments on another post, which appear to be in reference to a picture of a rescued horse, although the horse is not pictured in the exhibit, where another poster commented on how the horse looks great now. (Filing No. 96-10 at 1.) Heartland responded, "Yes Robin it's amazing what a difference food will make, too bad the owners didn't understand that concept." *Id*.

The Swartzes contend that these defamatory statements were false. Some of Heartland's comments contain inappropriate opinions and suggestions including relaying their opinions, in a public forum, on how an ongoing case will turn out. Nevertheless, Heartland argues that Heartland made many of the comments with grounds for belief in its truth and the Swartzes have not alleged that these statements were made with malice. (Filing No. 107 at 3-4.) Accepting the Swartzes' allegations, that some of the statements were false and that truth is not a complete defense, the qualified privilege applies here to protect the defamatory

statements. Thus, the defamation claim fails as a matter of law.

The qualified privilege arises out of the necessity for full and unrestricted communication on matters that parties have a common interest or duty. *Gatto*, 774 N.E.2d at 925. "In the absence of a factual dispute, the applicability of the privilege is a question of law to be determined by a court." *Kelley*, 865 N.E.2d at 597. In *Gatto*, the Indiana Court of Appeals held that schools and parents have a corresponding interest to the free flow of information, and that the school's defamatory statement was protected under a qualified privilege when the school communicated the termination of a teacher's employment to parents. *Id*. at 925-26. Here, Lee and the Heartland Defendants had a common interest in the seizure and rescue of the livestock in investigating and following through on their professional duties with regards to the Swartzes' criminal and seizure case. Therefore, their Facebook comments fall squarely under the protection of a qualified privilege. The Heartland Defendants' general posts and comments to other Facebook posters are protected by the truth and/or qualified privilege defenses. Combs, who was also a state actor involved in the seizure with a qualified privilege, commented "so happy they are getting a chance at the life they are supposed to have. Can't wait to visit and see the improvements it has been a long year trying to get something done for these guys." (Filing No. 96-9 at 1.) Because Heartland is a rescue agency, its comments to its own Facebook page – which is followed by people also having a legal, social, or moral interest in rescuing horses believed to be neglected – the qualified privilege protects these statements of common interest. Because the statements are protected, the Swartzes' libel claim fails. Accordingly, the Swartzes cannot set forth a viable claim against the Heartland Defendants or Uplands Defendants for defamation and their Motions to Dismiss is **granted**.

3. Lack of Subject Matter over Supplemental State Law Claim

The Swartzes argue that the supplemental claim should not be dismissed because the Section 1983 claims should not be dismissed. Because the Court has determined that dismissals of all claims against the Heartland Defendants and the Uplands Defendants are warranted, the Court **denies** Heartland Defendants and Uplands Defendants' Motions to Dismiss the supplemental state law claims in the alternative as moot, since the Court has exercised supplemental jurisdiction over the state law claims.

B. Bennett's Motion for Judgment on the Pleadings

Bennett's Motion for Judgment on the Pleadings (Filing No. 82) sets forth two reasons for dismissing the Second Amended Complaint. First, she alleges that the Swartzes failed to raise factual allegations against her to show that she was acting under color of state law. Second, she argues that the Swartzes' constitutional rights were not violated and that they have not pled sufficient facts to prove a violation.

1. Section 1983 Claim

The specific Section 1983 factual allegation against Bennett is that she trespassed on the Swartzes' property to inspect the feed stocks for the Swartzes' horses "and being a close friend and confidant of Debbie Moore, encouraged Meghan Combs, Debbie Moore, and Randy Lee, the Washington County Animal Control Officer to seize the Plaintiff's [sic] livestock" (Filing No. 96 at 4). Bennett argues that the Swartzes have not pled sufficient facts to show that she was acting under color of state law. The Swartzes respond that Bennett "acted under color of law by 'searching' their feed stocks at the behest of Combs and Lee and she acted in concert with the State Actors and Heartland to effect a seizure of Plaintiffs' livestock" (Filing No. 105 at 2).

Similar to the allegations against Heartland and Uplands, the Swartzes allege that Bennett, in concert with all

of the Defendants, encouraged the state actors to seize their livestock and that her trespass was part of the larger conspiracy. *Id*. Accepting as true, that Bennett did trespass and check on the feed stocks of the animals, the remainder of the allegations against Bennett amount to legal conclusions and are not entitled to a presumption of truth. "Mere conjecture that there has been a conspiracy is not enough to state a claim. A private person does not conspire with a state official merely by invoking an exercise of the state official's authority." *Tarkowski v. Robert Bartlett Realty Co*., 644 F.2d 1204, 1208 (7th Cir. 1980). It is not sufficient to allege that the private party and the state merely acted in concert or with a common goal, rather there must be factual allegations to suggest a "meeting of the minds" in depriving the plaintiff of constitutional rights. *See id*. at 1206. (affirming district court's dismissal of complaint that suggested that whatever purpose the State's Attorney may have had in discriminatorily enforcing zoning ordinances would have been shared with, and prompted and encouraged, by the private defendants).

Bennett's Motion for Judgment on the Pleadings is evaluated under the same legal standards as Heartland Defendants' and Upland Defendants' Motions to Dismiss. As discussed at length above, for a Section 1983 conspiracy claim, the Swartzes must allege factual allegations that plausibly show a "meeting of the minds" or understanding between Bennett and the state actors to deprive them of constitutional rights. Here, whatever Bennett's motives were for trespassing onto the Swartzes' property, the Swartzes have not alleged factual allegations detailing how Bennett had an understanding with the state actors to seize the livestock. The Swartzes support their conspiracy allegation with a legal conclusion that Bennett was motivated by the encouragement of Moore, Combs, and Lee. At most, Bennett's trespass and private investigation of the feed stocks, subsequently led to authorities conducting their own investigation into the animals' living conditions, but this is not sufficient to show Bennett and the state actors were in concert. Because the Swartzes have not pled sufficient facts to take Bennett's

alleged private trespass from a private action to a joint action with the State to deprive them of their constitutional rights, Bennett's Motion for Judgment on the Pleadings on this issue is **granted**.

2. The Swartzes' Constitutional Rights were not Violated

Bennett argues that the Swartzes' constitutional rights were not violated because although the Swartzes were deprived of their property, they were afforded due process of law (Filing No. 83 at 6). The Swartzes allege that Bennett, at the behest of Combs and Lee, acting under color of state law, violated the Fourth and Fourteenth Amendment when she searched their animals' feedstocks (Filing No. 105 at 2). Bennett responds that the Swartzes' constitutional rights were not violated because the animals were seized pursuant to a lawful court order (Filing No. 83-1) based on probable cause and the Swartzes had post-deprivation remedies available. (Filing No. 83 at 6-7.)

The Fourth Amendment only regulates government activity that constitutes a "search" or "seizure". *Caldwell v. Jones*, 513 F.Supp.2d 1000, 1006 (N.D. Ind. 2007). The Swartzes have not pled sufficient facts to prove that Bennett's private trespass and "search" was in concert with state actors to deprive them of their livestock, therefore their Fourth Amendment claim based on this conduct cannot survive. Further, even if Bennett was acting under the color of state law, this would still not constitute a violation under the Fourth Amendment. "Nor is the government's intrusion upon an open field a 'search' in the constitutional sense because that intrusion is a trespass at common law." *Oliver v. U.S.*, 466 U.S. 170, 183-84 (1970).

Similarly, Bennett did not violate the Swartzes' Fourteenth Amendment rights as the Second Amended Complaint does not contain factual allegations that she was involved in the actual seizure of the livestock. The conclusion that Bennett "encouraged" the state actors to seize the livestock

is not sufficient, nor is it entitled to a presumption of truth. More than "mere conclusory" statements and "threadbare recitals" of the elements of an offence must be identified and are not entitled to an assumption of truth. *Iqbal*, 556 U.S at 678.

The Swartzes also allege that the probable cause affidavit was based on false information, commencing with Bennett's inspection of the feedstocks. Accepting as true, that the probable cause affidavit contained false information, the Swartzes were afforded due process both before and after the seizure. "[W]hen deprivations of property are effected through random and unauthorized actions of state employees and the state provides an adequate postdeprivation remedy, the requirements of due process are satisfied and the plaintiff may not maintain a § 1983 suit in federal court." *Wilson v. Civil Town of Clayton, Ind.*, 839, F.2d 375, 383 (7th Cir. 1988). The pleadings reveal that Washington County Ordinance 90.99 (C) provided the Swartzes a post-deprivation remedy for an alleged improper seizure of their animals. (Filing No. 83-2 at 5.) This Ordinance provides an option for remedying an alleged improper seizure of their animals. Because the Swartzes have not pled sufficient facts to show that Bennett acted in concert with state actors in effecting a seizure and the Swartzes were provided a post-deprivation remedy, the seizure of the animals did not constitute a Fourteenth Amendment violation.

The Swartzes have failed to plead factual allegations supporting their claim that Bennett acted under color of state law. Additionally, the Swartzes have not pled sufficient allegations to show that their constitutional rights were violated by the trespass or resulting seizure. Therefore, Bennett's Motion for Judgment on the Pleadings regarding this issue is **granted**.

C. Dismissal with prejudice

The Court concludes that dismissal of the Swartzes claims should be with prejudice. Fed. R. Civ. P. 15 directs

that courts should "freely" grant leave to amend a pleading "when justice so requires". Fed. R. Civ. P. 15(a)(2). Nevertheless, courts are instructed to deny leave to amend "[w]here the problems with a claim are substantive rather than the result of an inadequately or inartfully pleaded complaint [and] an opportunity to replead would be futile". *In re Sanofi Secs. Litig.*, 87 F. Supp. 3d 510, 548-49 (S.D.N.Y. 2015); *Airborne Beepers & Video, Inc. v. A T & T Mobility LLC*, 499 F.3d 663, 666 (7th Cir. 2007). Because they are proceeding *pro se*, the Court previously granted the Swartzes leave to file a Second Amended Complaint. *See* Filing No. 95. The Amended Complaint and Second Amended Complaint provided the Swartzes an opportunity to cure substantive problems with their claims. The Court concludes that dismissal with prejudice is appropriate to the Heartland Defendants, the Upland Defendants and Bennett, because it would be futile to allow the Swartzes to file a fourth complaint against them.

IV. CONCLUSION

For the reasons herein, the Heartland Defendants' and Uplands Defendants' Motions to Dismiss (Filing No. 77; Filing No. 79) are **GRANTED** and these claims are **DISMISSED** with prejudice. Additionally, Bennett's Motion for Judgment on the Pleadings (Filing No. 82) is **GRANTED**, and these claims are **DISMISSED** with prejudice. The claims against Dr. Jodi Lovejoy, Randy Lee, Meghan Combs remain pending.

SO ORDERED.

Date: 9/26/2017

s/ Tanya Walton Pratt
TANYA WALTON PRATT, JUDGE
United States District Court
Southern District of Indiana

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

JAMIE SWARTZ,	)	
SANDRA SWARTZ,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 4:16-cv-00095-TWP-DML
	)	
	)	
RANDY LEE,	)	
JODI LOVEJOY,	)	
MEGHAN COMBS,	)	
	)	
Defendants.	)	

ENTRY ON DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT AND MOTION TO STRIKE PLAINTIFFS' SURREPLY

This matter is before the Court on Defendants Randy Lee's ("Lee") and Meghan Combs' ("Combs") (collectively, "Sheriff Defendants") Motion for Summary Judgment (Filing No. 162), and Defendant Jodi Lovejoy's ("Dr. Lovejoy") Motion for Summary Judgment, (Filing No. 166). The disputes in this action surround allegations by *pro se* Plaintiffs Jamie Swartz and Sandra Swartz (collectively, "the Swartzes"), that the Defendants violated their Fourth and Fourteenth Amendment rights under 42 U.S.C. § 1983 ("§ 1983"). Specifically, the Swartzes allege the Defendants conspired and made false reports in order to seize the Swartzes' livestock on less than probable cause. Also before the Court is Dr. Lovejoy's Motion to Strike Plaintiffs' Surreply (Filing No. 188). For the reasons that follow, the Court **grants** the Sheriff Defendants' and Dr. Lovejoy's Motions for Summary Judgment, and **denies** the Motion to Strike.

I. BACKGROUND

This statement of facts is not necessarily objectively true, but as the summary judgment standard requires, the undisputed facts and the disputed evidence are presented in the light reasonably most favorable to the Swartzes as the non-moving party. *See Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133, 150 (2000).

The Swartzes reside in Washington County, Indiana, on 24 acres of land, with 4 acres of flat, clear pasture where their animals could roam. There is a 60 foot round pen on the four-acre pasture. In April 2011, the Swartzes purchased a horse, Goliath. (Filing No. 163-1 at 16.) In 2012, they were given a donkey named Radar. When they acquired Radar, his front hooves were severely overgrown. In April 2013, Mr. Swartz purchased five more horses. From 2011 to 2013, the Swartzes acquired six goats.

Lee is the Animal Control Officer with the Washington County Sheriff Department and Combs is the Records Clerk for the Washington County Sheriff Department. In the Spring of 2012, Lee first visited the Swartzes' property inquiring about Goliath and Radar's overgrown hooves. Dr. Lovejoy, Doctor of Veterinarian Medicine, is a field veterinarian for the Indiana Board of Animal Health ("BOAH"). In April 2013, Lee contacted Dr. Lovejoy concerning a thin horse he had observed on the Swartzes' property and requested Dr. Lovejoy's assistance in evaluating the horse and its circumstances. (Filing No. 168-1 at 1-2.)

On May 1, 2013, after receiving additional complaints regarding the condition of the Swartzes' livestock, Lee and Dr. Lovejoy visited the Swartzes' property to perform the first of four inspections of their animals that spanned over a year. (Filing No. 163 at 3; Filing No. 163-3.) At that time, Dr. Lovejoy found that some of the horses were below normal body condition, that overall the health and well-being of the horses on the property were not in immediate jeopardy, but there was concern the Swartzes' ownership of some of the

animals "show signs of significant neglect." (Filing No. 163-3.) Dr. Lovejoy concluded the situation "requires continued monitoring to determine if Mr. Swartz was willing and/or able to provide adequate care for the horses under his ownership and care." (*Id.*)

On January 15, 2014 and February 26, 2014, pursuant to new complaints Lee had received concerning the condition of the Swartzes' animals, Lee and Dr. Lovejoy performed rechecks. (Filing No. 163-4.) Pursuant to those rechecks, Dr. Lovejoy concluded there "remains significant concern over the will and ability of Mr. and Mrs. Swartz to provide adequate care for the number of horses they currently own and/or care for." (*Id.*) Dr. Lovejoy determined the Swartzes would be allowed the opportunity "to continue providing care for the horses with rechecks planned to monitor the situation." (Filing No. 163-4.)

The Swartzes were continually addressing the severely overgrown hooves and other concerns with their animals. In fact, the first time that Dr. Lovejoy and Lee visited the Swartzes' property together, a farrier, Dan Dowdy ("Dowdy") was there to address the overgrown hooves, which is a common problem with Midwestern donkeys. (Filing No. 176-1 at 2; Filing No. 176-5.) Dowdy, visited the Swartzes' residence 12 times from May 1, 2013 to mid-December 2013. *Id*. Lee visited the Swartzes' residence on multiple occasions by himself and with Dr. Lovejoy, who evaluated the animals and provided recommendations.

During each of her inspections, Dr. Lovejoy evaluated the horses using the Henneke body condition scoring system, which evaluates the amount of fat and muscling on a horse and gives a Body Condition Score ("BCS") from 1.0 (emaciated) to 9.0 (extremely fat). (Filing No. 167 at 5.) The Swartzes' animals that Dr. Lovejoy inspected were also evaluated pursuant to BOAH's Standards of Care 2013 for All Livestock and Poultry. These Standards of Care are codified in the Indiana Administrative Code under 345 IAC 14-2 et seq. *Id*. All of Dr. Lovejoy's inspections were part of her duties with

BOAH.

The Swartzes take issue with the Henneke BCS scoring and note that Dr. Henneke, Ph.D., has published materials stating:

> Over the past decade, the … BCS has become, in many if not most cases, the sole reason for seizure for neglect or abuse. The problem with this is that the BCS was not designed to reflect the health or well-being of the horse. The BCS provides an estimate of stored body fat, period.

(Filing No. 180-19 at 1). The Swartzes also take issue with Dr. Lovejoy's scoring system regarding the goats. Dr. Lovejoy evaluated the goats' body conditions improperly, as the scoring system that she used to evaluate them was designed for sheep, and sheep and goats have different body types.

Dr. Lovejoy's concerns were based on (1) Mr. Swartz's report of feeding a mix of grain and added corn to the horses, making it difficult to determine the nutritional content being provided, and (2) new issues observed at an inspection performed February 26, 2014. (Filing No. 168-1 at 4.) The new issues Dr. Lovejoy observed at the February 26, 2014 inspection were that (1) all of the horses lacked access to water, and (2) there was no grain observed on the property. *Id.* at 5. Dr. Lovejoy observed that the horses' water tank was empty at the time of the February, 26, 2014 inspection. Mr. Swartz filled the water tank while Dr. Lovejoy was present, and she observed that all of the horses eagerly approached the tank as it was filling and drank from it. Regarding the grain, it was stored in Mr. Swartz's car.

The Swartzes followed all of Dr. Lovejoy's recommendations and provided their livestock with feed, water, and shelter. (Filing No. 176-1.) Dr. Lovejoy visited the Swartzes' residence for the last time on June 4, 2014, and falsely reported that the animals were in immediate jeopardy. (Filing No. 96 at 5.) Lee and Dr. Lovejoy were encouraged by Combs

and others to seize the Swartzes' livestock and to confiscate their animals (Filing No. 96 at 5). In particular, on June 14, 2014, the Swartzes' livestock was seized by Lee "under direction from Dr. Lovejoy and under encouragement from the members of Heartland Equine Rescue ("Heartland") and Upland Peaks Sanctuary ("Upland Peaks") and others.[1]" *Id.*

On June 13, 2014 Lee signed a probable cause affidavit affirming that he had been investigating the welfare of certain animals, that he believed probable cause existed that the crime of neglect of a vertebrate animal had been committed and pursuant to IC 35-46-3-6, and he had authority to seize said animals. (Filing No. 163-6.) That same day, probable cause to seize the animals was found by a judge who signed an Order to Seize. (Filing No. 163-7). Pursuant to a court order dated June 13, 2014, the animals were seized the next day. The Swartzes allege that probable cause for the court order was based on false and misleading information.

On June 20, 2014, three counts of abandonment/neglect of a vertebrate animal were filed against the Swartzes, all Class A Misdemeanors under Indiana law. (Filing No. 163-10). That same date, the a Washington Circuit Court judge entered an Order affirming the finding of probable cause, issuing summons against the Swartzes, and setting the matter for an initial hearing. (Filing No. 163-11.) The Swartzes' requested a probable cause hearing, but did not post the required bond. Their request for a hearing was denied by the judge. A year later, a hearing was held on August 27, 2015 at which time the Swartzes were given value for the seized animals which was discounted from the reimbursement costs owed to Heartland for the care and treatment of the animals confiscated on June 14, 2014. (Filing No. 163-12.)

[1] Heartland is an organization located in Clark County, Indiana, that rescues horses believed to be neglected which includes working with law enforcement on neglect situations. Uplands is also an animal rescue organization, located in Washington County, Indiana, that takes in rescued animals.

On November 4, 2015, the Swartzes entered into a pretrial diversion agreement, deferring prosecution for 12 months and were ordered to pay fees and court costs. (Filing No. 163-13.) Ultimately, by agreement with the State of Indiana, the Washington Circuit Court judge granted the State's motion to dismiss finding the Swartzes had complied with the terms and conditions of their pretrial diversion, thereby dismissing the criminal action against them. (Filing No. 163-14.)

Post seizure, Dr. Lovejoy conducted four follow-up visits to check on the condition of the seized animals. (Filing No. 163-15.) Ultimately, Dr. Lovejoy concluded the animals removed from the Swartzes' care showed significant improvement in their body conditions while receiving typical, normal care. *Id*. Maude, a 20 year plus horse died from pneumonia and one goat died from complications following surgery. (Filing 176-15.) Of the five remaining horses and five remaining goats, all appeared to be in normal body condition, and their foster care provisions were meeting the needs of the animals. *Id*. Dr. Lovejoy recommended that the impounded animals would be best served if placed in permanent homes with individuals able and willing to provide care and management adequate to meet their needs. *Id*. The state court judge agreed with that recommendation.

On January 27, 2017, the Swartzes filed an amended complaint under Title 42 U.S.C. § 1983 alleging the Sheriff Defendants, Dr. Lovejoy and others[2], acted in concert to cause certain of their livestock to be seized by the Washington

[2]The Amended Complaint contained allegations against Defendants Heartland, Jo-Claire Corcoran, Debbie Moore, and Kelly Jo Fithian-Wicker (collectively, the "Heartland Defendants") and Defendants Uplands Peak and Michelle Pruitt (collectively, "Uplands Defendants") and Defendant Marnie Bennett ("Bennett"). Each filed Motions to Dismiss, except Bennett filed a Motion for Judgment on the Pleadings. The Court granted the Heartland Defendants' and Uplands Defendants' Motions to Dismiss (Filing No. 77; Filing No. 79) and Bennett's Motion for Judgment on the Pleadings (Filing No. 82), and those claims were dismissed with prejudice. The claims against Dr. Lovejoy, Lee, and Combs remained pending. (Filing No. 161.)

County Animal Officer on less than probable cause and their animals were distributed to Uplands Peak and Heartland based on false information and improper diagnostic analysis (by Dr. Lovejoy) in violations of their Fourth and Fourteenth Amendment rights under the United States Constitution. (Filing No. 96 at 4.)

Regarding Combs, she made oral complaints to Lovejoy on April 26, 2013 (Filing No. 180-33 at 2). Combs also had incidentally driven by the Swartzes' property on occasion and personally observed the poor state of their animals. (Filing No. 180-31 at 2.) Combs assisted Dr. Lovejoy on June 4, 2014, when she performed a Capillary Refill Test. (Filing No. 187 at 10.) The day after the seizure, Combs posted to Heartland's webpage "[s]o happy they [the Swartzes' livestock] are getting a chance at the life they are supposed to have. Can't wait to visit and see the improvements[;] it has been a long year trying to get something done for these guys." (Filing No. 180-22.)

II. LEGAL STANDARD

The purpose of summary judgment is to pierce the pleadings and to assess the proof in order to see whether there is a genuine need for trial. *Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). Federal Rule of Civil Procedure 56 provides that summary judgment is appropriate if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). In ruling on a motion for summary judgment, the court reviews the record in the light most favorable to the non-moving party and draws all reasonable inferences in that party's favor. *Anderson*, 477 U.S. at 255; *Zerante*, 555 F.3d at 584. The party seeking summary judgment bears the initial responsibility of informing the court of the basis for its motion, and identifying "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any," which demonstrate the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*,

477 U.S. 317, 323 (1986) (noting that, when the non-movant has the burden of proof on a substantive issue, specific forms of evidence are not required to negate a non-movant's claims in the movant's summary judgment motion, and that a court may, instead, grant such a motion, "so long as whatever is before the district court demonstrates that the standard . . . is satisfied."). *See also* Fed. R. Civ. P. 56(c)(1)(A) (noting additional forms of evidence used in support or defense of a summary judgment motion, including: "depositions, documents, electronically stored information, affidavits or declarations, stipulations . . . , admissions, interrogatory answers, or other materials"). Thereafter, a non-moving party, who bears the burden of proof on a substantive issue, may not rest on its pleadings but must affirmatively demonstrate by specific factual allegations that there is a genuine issue of material fact that requires trial. *Hemsworth*, 476 F.3d at 490; *Celotex Corp*., 477 U.S. at 323–24; Fed. R. Civ. P. 56(c)(1).

Local Rule 56-1(f) provides that the court will assume that "the facts as claimed and supported by admissible evidence by the movant are admitted without controversy except to the extent that:" 1) the non-movant specifically controverts the facts with admissible evidence; 2) the movant's facts are not supported by admissible evidence; or 3) the facts, alone or in conjunction with other admissible evidence, allow the court to draw reasonable inferences in the non-movant's favor sufficient to preclude summary judgment.

"A document filed *pro se* is to be liberally construed, and a *pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers." *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (citations and quotation marks omitted). However, it is also well established that *pro se* litigants are not excused from compliance with procedural rules. Further, as the United States Supreme Court has noted, in the long run, experience teaches that strict adherence to the procedural requirements specified by the legislature is the best guarantee of evenhanded administration of the law. *Feresu v. Trs. of Ind. Univ*., 2017 U.S. Dist. LEXIS 66452, at *18–19 (S.D. Ind.

May 2, 2017).

III. DISCUSSION

The Swartzes bring their claims of civil rights violations under 42 U.S.C § 1983. In particular, they allege that their livestock was seized by Randy Lee, under direction from Dr. Lovejoy and under encouragement from Combs and others, depriving them of property in contravention of their constitutional rights under the Fourth and Fourteenth Amendments. (Filing No. 96 at 4-5.) All Defendants assert that they are protected by qualified immunity for their actions in relation to the investigation and seizure of the Swartzes' animals. (Filing No. 162; Filing No. 166.) In evaluating whether the Swartzes' claims can survive summary judgment, the Court will first address the constitutional challenges and then determine whether Defendants are entitled to immunity from the Swartzes' § 1983 claims. Although the Sheriff Defendants and Dr. Lovejoy have filed individual summary judgment motions, for purposes of this discussion, the arguments are considered jointly.

A. Motions to Strike

Dr. Lovejoy and the Sheriff Defendants have made motions to strike certain filings made by the Swartzes. The Court notes at the outset that motions to strike are generally disfavored. *Heller Fin., Inc. v. Midwhey Powder Co., Inc.*, 883 F.2d 1286, 1294 (7th Cir. 1989). Dr. Lovejoy has filed a Motion to Strike Plaintiffs' Surreply and Declaration (Filing No. 188), as well as a request that the Court strike the Declaration of David Davis ("Davis") (Filing No. 185 at 3). Local Rule 56-1(d) allows a party to file a surreply *only if* a movant cites new evidence in the reply or objects to the admissibility of the evidence cited in the response, and even then, the surreply must be limited to the new evidence and objections. S.D. Ind. L.R. 56-1(d). On January 11, 2018, the Swartzes filed a Surreply to Defendant Jodi Lovejoy's Amended Reply in Support of Motion for Summary Judgment, attaching a "Second Declaration of Jamie Swartz". (Filing No. 187 at 10.)

Mr. Swartz's Second Declaration includes statements related to the Swartzes' Response Brief to co-Defendants Lee and Combs' Motion for Summary Judgment, Combs' assistance in performing a Capillary Refill Time test on June 4, 2014, and statements regarding the Swartzes' farrier, Dan Dowdy. (*Id.* at 10–11.) Dr. Lovejoy argues that none of these statements relate to the Swartzes' designation of David Davis as an expert or fact witness, and thus should be stricken.

Local Rule 56-1(l) provides that the court "may, in the interest of justice or for good cause, excuse failure to comply strictly with [L.R. 56-1]". The Swartzes ask the Court to accept their Surreply, stating that good cause exists as the information in the Surreply is indeed a response to "new evidence". The court has great discretion in ruling on a motion to strike. Recognizing the Swartzes' *pro se* status and determining that Dr. Lovejoy would not be prejudiced if the Court were to consider the Swartzes' Surreply and Second Amended Declaration of Jamie Swartz in relation to their Motion for Summary Judgment, the Court finds in the interest of justice that the Surreply should be considered. Therefore, the Motion to Strike (Filing No. 188) is **denied**.

Dr. Lovejoy also argues that the Declaration of David Davis (Filing No. 176-6) should be stricken for late disclosure and Davis should be excluded as a Rule 26(a) or (e) witness. Again, recognizing the Swartzes' *pro se* status, the Court **denies** the request to strike Davis' Declaration, and that declaration will be considered. Given the Court's determination that summary judgment is appropriate, the request to strike Davis as a Rule 26 witness (Filing No. 185 at 3), is **denied** as moot.

Finally, the Sheriff Defendants request that the Swartzes' Response be stricken as untimely filed (Filing No. 183 at 1). The deadline for filing the Response to the Sheriff Defendants' summary judgment motion was December 5, 2017. The Swartzes filed their Response (Filing No. 175) on December 6, 2017. Recognizing the Swartzes' *pro se* status and their inability to docket using CM/ECF, the Court ex-

cuses the late filing. The one day late filing caused no prejudice to the Defendants, therefore, the request to strike the Swartzes response is **denied**.

B. The Swartzes' Fourth Amendment Claim

The Fourth Amendment to the United States Constitution protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. Amend. IV. "With few exceptions, the Fourth Amendment generally requires that the issuance of a warrant supported by probable cause precede any search." *United States v. Parker*, 469 F.3d 1074, 1077 (7th Cir. 2006). In the Seventh Circuit, the courts defer to the warrant-issuing judge's initial determination of probable cause if "there is substantial evidence in the record supporting the judge's decision." *United States v. Lloyd,* 71 F.3d 1256, 1262 (7th Cir.1995). "Probable cause exists if the information available would justify a reasonable belief that a crime has been committed." *Mahnke v. Garrigan*, 428 Fed. Appx. 630, 634 (7th Cir. 2011).

> Before taking action, an officer is not required to engage in a technical legal inquiry to determine whether every element of a particular statute is satisfied. Rather, what matters is the reasonableness of the officer's exercise of judgment at the time it was made, without the benefit of hindsight and regardless whether the officer's belief turned out to be correct.

Id. (citing *Siliven v. Indiana Dep't. of Child Servs*., 635 F.3d 921, 925–26 (7th Cir. 2011); *Chelios v. Heavener*, 520 F.3d 678, 686 (7th Cir. 2008).

An officer's probable cause determination depends on the elements of the applicable criminal statute. *See Pourghoraishi v. Flying J, Inc*., 449 F.3d 751, 761 (7th Cir.2006). Indiana Code § 35-46-3-6, provides that law enforcement may seize an animal if probable cause exists to believe it has been

abandoned or neglected under IC § 35-46-3-7. The inquiry is not to determine whether every element of a particular statute is satisfied, rather, what matters is the reasonableness of the officer's exercise of judgment at the time it was made, without the benefit of hindsight and regardless whether the officer's belief turned out to be correct. *Stokes v. Bd. Of Educ. Of the City of Chicago*, 599 F.3d 617, 622 (7th Cir. 2010). As applied here, Lee relied on his personal observations and Dr. Lovejoy's recommendations before filing animal cruelty charges against the Swartzes. After charges were issued, on June 20, 2014 the Washington Superior Court entered an Order Affirming Probable Cause and Issuance of Summons, finding probable cause existed for the issuance of a summons on those charges.

The Swartzes have not offered any evidence demonstrating a genuine dispute that probable cause was not established for the seizure of their livestock. Dr. Lovejoy's reports contained substantial information showing the consistent deterioration of a pony, donkey, horses, and goats. (Filing No. 163-3, Filing No. 163-4; Filing No. 163-5; Filing No. 163-15.) In addition, the photographs of the animals depict deteriorated conditions. (Filing No. 163-8.) Dr. Lovejoy witnessed, first-hand, the condition of these animals on the last visit of June 4, 2014, only ten days before the seizure. During the seizure on June 14, 2014, they found goats nailed shut into the barn lying in their own feces, emaciated horses, lack of drinking water, and lack of proper food. The Swartzes protest the subjective nature of Dr. Lovejoy's evaluations and recommendation; however, there is nothing improper about providing her subjective, expert opinion. That plaintiff has a differing subjective opinion does not defeat summary judgment. For example: Mr. Swartz concedes in his declaration that the goats were in a stall with the door nailed shut making it difficult to access the goats. In contrast, Mr. Swartz argues that Dr. Lovejoy was the only one that needed to use a ladder to get in and out of the pen and he personally had no problem accessing the goats' pen and the goats could just jump in and out. Mr. Swartz does not dispute that there was a buildup of manure in the goats' pen making the floor

level higher, but explains that the pen was well bedded. He admits that Goliath and Radar had overgrown hooves, but complains that Dr. Lovejoy never left instructions on how to trim or care for goats' hooves.

The Swartzes challenge Dr. Lovejoy's methods of testing and her misuse of the Henneke score and say she lied about what she observed. However, the designated evidence shows that Dr. Lovejoy documented each of her inspections, transcribed her findings and conclusions with detailed reports, and also supplemented and corroborated her findings with hundreds of photographs of the animals and their circumstances during the course of her involvement. What is apparent is that Dr. Lovejoy and the Swartzes have differing opinions on what constitutes livestock neglect. Importantly, what matters is the reasonableness of Dr. Lovejoy's exercise of judgment at the time it was made, without the benefit of hindsight and regardless whether her belief turned out to be correct. *See Stokes* at 622.

Finally, the Court agrees with Dr. Lovejoy that the Swartzes' Fourth Amendment claims against her fail as a matter of law because Dr. Lovejoy did not participate in the seizure, nor did she participate in drafting the probable cause affidavit or obtaining the seizure warrant, and therefore she lacks the requisite "personal involvement" for the Swartzes' § 1983 claim. For these reasons, the Court finds no Fourth Amendment violations by Dr. Lovejoy.

Regarding Lee and Combs, they relied upon the Dr. Lovejoy's conclusions with respect to the physical health of the Swartzes' animals and viewed first-hand the neglect and poor conditions of the animals. Lee attempted to work with the Swartzes for well over a year to remedy what he considered deteriorating conditions. Like the officers in *Mahnke*, Lee and Combs "had probable cause to believe that the horses were being kept in violation of [Indiana] law." *Mahnke*, 428 Fed.Appx. at 635. In *Mahnke*, a deputy sheriff seized five horses from Mahnke's farm, because the deputy thought the horses appeared to be starving and had other concerns

regarding their conditions. An explanation for the condition of the horses was offered, but the sheriff did not accept that explanation. The court determined that the alternative explanation, "did not, as Mahnke asserts, negate probable cause for the seizure. Although a police officer cannot consciously disregard information that would bring clarity to a confusing situation, *Askew v. City of Chicago*, 440 F.3d 894, 895–96, there is a meaningful distinction between disregarding potentially exculpatory information and *disbelieving* it." *Mahnke* at 635 (emphasis in original).

Here, the Swartzes argue that Lee and Combs lied and gave false and misleading information in the affidavit for probable cause; however, as noted above, differing subjective opinions do not constitute falsehood or lies. There is simply no evidence, absent the Swartzes' conclusory and subjective opinions, that Lee or Combs "entertained serious doubts as to the truth of their statements, had obvious reasons to doubt the accuracy of the information reported, or failed to inform the judicial officer of facts they knew would negate probable cause." *Beauchamp*, 320 F.3d at 743. The Court finds that the factual disputes raised by the Swartzes are immaterial to the central issue: whether Lee had a reasonable basis to believe the Swartzes' animals were in immediate jeopardy when he signed the affidavit for probable cause. The Court finds no Fourth Amendment violation occurred because the undisputed evidence shows there was probable cause to seize the livestock at issue, and it was not unreasonable under the circumstances.

C. The Swartzes' Fourteenth Amendment Claim

The Swartzes' also assert claims against the Sheriff Defendants and Dr. Lovejoy under 42 U.S.C. § 1983 for violation of their Fourteenth Amendment rights based on their allegation that they were deprived of their property without being afforded due process of law. In particular, the Swartzes allege that Combs and Lee, acting under color of state law, violated their Fourteenth Amendment because the probable cause affidavit was based on false information. Accepting as

true, that the probable cause affidavit contained false information, the Swartzes were afforded due process both before and after the seizure. "[W]hen deprivations of property are effected through random and unauthorized actions of state employees and the state provides an adequate post-deprivation remedy, the requirements of due process are satisfied and the plaintiff may not maintain a § 1983 suit in federal court." *Wilson v. Civil Town of Clayton, Ind.*, 839, F.2d 375, 383 (7th Cir. 1988). The Swartzes were represented by counsel throughout the seizure proceedings and criminal proceedings. Washington County Ordinance 90.99 (C) provided the Swartzes a post-deprivation remedy for an alleged improper seizure of their animals. This Ordinance specifically provides an option for remedying an alleged improper seizure of their animals. Because the Swartzes were provided a post-deprivation remedy, the seizure of the animals did not constitute a Fourteenth Amendment violation.

In addition, the Swartzes had an opportunity in the state criminal proceedings to challenge the confiscation of the animals and Dr. Lovejoy's methods and findings, to prove the animals should have been returned to them, and to raise their claims of a conspiracy to violate their civil rights. They were represented by private counsel during those proceedings, and had an opportunity to, and did in fact, depose Dr. Lovejoy and present evidence and argument on their own behalf. A state trial court judge determined that probable cause existed to seize the animal and the Swartzes had a statutory right to a hearing on that determination. Although the state court judge denied their request for a probable cause hearing, ruling that probable cause had already been established to initially seize the animals, the Swartzes still had a full and fair opportunity to raise their purported issues with regards to Dr. Lovejoy's evaluation and methods. In subsequent proceedings, a state trial court judge determined that the animals should be permanently placed with other people, and ordered the Swartzes to pay restitution to Heartland for boarding the animals after the seizure. Further, the state trial court credited the Swartzes the value of the livestock seized to offset any restitution they were re-

quired to pay. The Swartzes cannot now seek to reverse the finding and order of the state trial court through a §1983 lawsuit. A seizure arising from a criminal investigation does not threaten due process where, as here, the state requires a fair and reliable determination of probable cause as a condition to the seizure. *See Memphis Light, Gas and Water Div. v. Craft*, 56 L.Ed.2d 30 (1978); *Reams v. Irvin*, 561 F.3d 1258, 1264 (11th Cir. 2009).

Moreover, principles of collateral estoppel also bar the Swartzes' challenge on whether the seizure and disposition of the animals was legal and proper. No Fourteenth Amendment claims survive because the Swartzes were afforded adequate due process at all times.

D. Defendants are entitled to Qualified Immunity

Qualified immunity protects government officials from liability "when they act in a manner that they reasonably believe to be lawful." *Gonzalez v. City of Elgin*, 578 F.3d 526, 540 (7th Cir. 2009). In other words, government officials performing discretionary functions are entitled to qualified immunity if their conduct could reasonably have been thought consistent with the rights they are alleged to have violated. *Borello v. Allison*, 446 F.3d 742, 746 (7th Cir. 2006) (citing *Sornberger v. City of Knoxville*, 434 F.3d 1006, 1013 (7th Cir. 2006)). Qualified immunity not only protects a defendant from liability, but also from the burden of standing trial. *Id*. As such, "courts should determine as early on in the proceedings as possible whether a defendant is entitled to qualified immunity." *Id*. When presented with a qualified immunity defense, the court must first "(1) determine whether the plaintiff has alleged the deprivation of an actual constitutional right and, (2) if so, determine whether that right was clearly established at the time of the alleged violation." *Sparing v. Village of Olympia Fields*, 266 F.3d 685, 688 (7th Cir. 2001) (citing *Saucier v. Katz*, 533 U.S. 194 (2001)).

Although qualified immunity is an affirmative defense, the burden of defeating an assertion of qualified im-

munity rests with the plaintiff. *Id.* (citing *Spiegel v. Cortese*, 196 F. 3d 717 (7th Cir. 1999)). Accordingly, the Swartzes bear the burden of showing that the constitutional right allegedly violated was clearly established before the Sheriff Defendants and Dr. Lovejoy acted by offering either a closely analogous case or evidence that the Sheriff Defendants and Dr. Lovejoy's conduct so patently violated the constitutional right that reasonable officials would know so without guidance from the courts. *Gossmeyer v. McDonald*, 128 F.3d 481, 496 (7th Cir. 1997) (citing *Casteel v. Pieschek*, 3 F.3d 1050, 1053 (7th Cir. 1993)).

The "clearly established" standard requires the contours of the right to be sufficiently clear such that a reasonable official would understand that what he is doing violates that right. *Wilson v. Layne*, 526 U.S. 603, 614-15 (1999); *Doe v. Bobbitt*, 881 F.2d 510, 511 (7th Cir. 1989). In ascertaining whether a particular right has been "clearly established," the Seventh Circuit looks either to binding precedent from the U.S. Supreme Court or this Circuit or, in the absence of controlling authority on point, such a clear trend in the case law that the recognition of the right by a controlling precedent was merely a question of time. *Donovan v. City of Milwaukee*, 17 F.3d 944, 952 (7th Cir. 1994).

The Swartzes' claims for damages are barred because the Sheriff Defendants and Dr. Lovejoy's actions were discretionary functions based upon their professional judgments. The Swartzes have not pointed to any Supreme Court or Seventh Circuit precedent establishing that a state employed veterinarian can be held liable under § 1983 for providing her professional opinion regarding the health and well-being of animals while performing an animal welfare investigation or submitting a court ordered recommendation. Likewise, they have not pointed to any Supreme Court or Seventh Circuit precedent establishing that an Animal Control Officer and Records Clerk employed by a county sheriff's department can be held liable under § 1983 for performing their official duties.

The Swartzes argue that Dr. Lovejoy and Lee acted incompetently and knowingly helped establish false probable cause. (Filing No. 175 at 33.) Even if probable cause did not actually exist, Dr. Lovejoy and Lee are still protected by qualified immunity because they could reasonably believe the Swartzes' animals were neglected and improperly cared for. *See Abbot v. Sangamon County, Ill.*, 705 F.3d 706, 714-15 (7th Cir. 2013) (finding that "officers who reasonably but mistakenly believe that probable cause exists" are shielded by qualified immunity). The probable-cause standard inherently allows room for reasonable mistakes, *see Brinegar*, 338 U.S. at 176, 69 S.Ct. 1302, but qualified immunity affords an added layer of protection by shielding officers from "suit for damages if 'a reasonable officer could have believed [the arrest] to be lawful, in light of clearly established law and the information the [arresting] officers possessed.'" *Hunter v. Bryant*, 116 L.Ed.2d 589 (1991). The Swartzes cannot overcome the validity of the judicial finding of probable cause in this case, and no Fourth Amendment violations can be shown. In addition, the Swartzes were afforded due process under the law, so no Fourteenth Amendment violations can be shown. Accordingly, the Defendants are entitled to qualified immunity as a matter of law on the § 1983 claims.

E. Conspiracy Claim

Finally, the Court will address the conspiracy claim. To sustain a claim of conspiracy, there must be some understanding or "meeting of the minds" between the private actor and state actor to deny plaintiffs a constitutional right. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 158 (1970). This requires the Swartzes to demonstrate the existence of a joint action, concerted effort, or general understanding among the Defendants. Again, at most the Swartzes offer only vague allegations that the Sheriff Defendants and Dr. Lovejoy were "encouraged" to seize livestock by private entities (the Heartland Defendants and Uplands Peak Defendants), however there are no factual allegations supporting such encouragement. The Swartzes offer nothing more than conclusory allegations of conspiracy based on the Defendants carrying out

their governmental missions of seizing suspected neglected animals.

The Swartzes allege that Combs, in her role as Washington County Sheriff Records Clerk, contacted Heartland who then contacted Uplands Peak and in concert they emailed Dr. Lovejoy to tell her that they had someone to take the goats one week before the seizure. (Filing No. 104 at 2.) The Swartzes also present an allegation concerning a posting from Combs on Heartland's website. The posting states: "[s]o happy they [the Swartzes' livestock] are getting a chance at the life they are supposed to have. Can't wait to visit and see the improvements[;] it has been a long year trying to get something done for these guys." (Filing No. 180-22.) Neither the email or posting show an understanding between Uplands Peak, Heartland, Combs, and state officials to deprive the Swartzes of constitutional rights; rather, it is a conclusory allegation of conspiracy based on the Defendants carrying out their organizational missions of rescuing suspected neglected animals. The Swartzes have failed to allege or present actual evidence, facts, or an independent knowledge, that such "encouragement" took place. The law requires more to sustain a claim of conspiracy. The subjective, unsupported "inference" drawn from an email and posting comment, without more, is not enough. The Swartzes have presented no evidence that there was a "meeting of the minds," therefore the conspiracy claims do not survive summary judgment.

IV. CONCLUSION

For the reasons stated above, Randy Lee's and Meghan Combs' and Dr. Lovejoy's Motions for Summary Judgment (Filing No. 162, Filing No. 166) are **GRANTED**. Dr. Lovejoy's Motion to Strike Plaintiffs' Surreply (Filing No. 188) is **DENIED**. This action is **TERMINATED**.

Final judgment will issue in a separate document.

SO ORDERED.

Date: 9/27/2018

s/ Tanya Walton Pratt
TANYA WALTON PRATT, JUDGE
United States District Court
Southern District of Indiana

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

JAMIE SWARTZ, SANDRA SWARTZ,	)	
Plaintiffs,	)	
v.	)	Case No. 4:16-cv-00095-TWP-DML
RANDY LEE, JODI LOVEJOY, MEGHAN COMBS,	)	
Defendants.	)	

FINAL JUDGMENT

The Court, having this day made its Entry of final Judgment, now enters **FINAL JUDGMENT**.

Judgment is hereby entered in favor of Defendants Randy Lee, Jodi Lovejoy, and Meghan Combs, and against Plaintiffs Jamie Swartz and Sandra Swartz. Plaintiffs shall take nothing by way of their Second Amended Complaint, and this action is hereby **TERMINATED**.

Dated: 9/27/2018

s/ Tanya Walton Pratt
TANYA WALTON PRATT, JUDGE

United States District Court
Southern District of Indiana

Laura A. Briggs, Clerk of Court
Deputy Clerk

Federal Constitutional Provisions

4th Amendment Unreasonable searches and seizures
The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

14th Amendment
Sec. 1. [Citizens of the United States.] All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

. . .

Sec. 5. [Power to enforce amendment.] The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

Federal Statutes

42 USC § 1983. Civil action for deprivation of rights
Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory of the District of Columbia, subjects, or causes to be subjected, any

citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

State Statutes

Indiana Code 2018

IC 35-46-3-6 Impoundment of animals; probable cause hearings; penalties; custody; bond

Sec. 6. (a) This section does not apply to a violation of section 1 of this chapter.

(b) Any law enforcement officer or any other person having authority to impound animals who has probable cause to believe there has been a violation of this chapter or IC 15-20-1-4 may take custody of the animal involved.

(c) The owner of an animal that has been impounded under this section may prevent disposition of the animal by an animal shelter that is caring for the animal by posting, not later than ten (10) days after the animal has been impounded, a bond with the court in an amount sufficient to provide for the animal's care and keeping for at least thirty (30) days, beginning from the date the animal was impounded. The owner may renew a bond by posting a new bond, in an amount sufficient to provide for the animal's care and keeping for at least an additional thirty (30) days, not later than ten (10) days after the expiration of the period for which a previous bond was posted. If a bond expires and is not renewed, the animal shelter may determine disposi-

tion of the animal, subject to court order. If the owner of an animal impounded under this section is convicted of an offense under this chapter or IC 15-20-1-4, the owner shall reimburse the animal shelter for the expense of the animal's care and keeping. If the owner has paid a bond under this subsection, the animal shelter may euthanize an animal if a veterinarian determines that an animal is suffering extreme pain.

(d) If the owner requests, the court having jurisdiction of criminal charges filed under this chapter of IC 15-20-1 shall hold a hearing to determine whether probable cause exists to believe that a violation of this chapter or IC 15-20-1 has occurred. If the court determines that probable cause does not exist, the court shall order the animal returned to its owner, and return of any bond posted by its owner.

(e) Whenever charges are filed under this chapter, the court shall appoint the state veterinarian under IC 15-17-4-1 or the state veterinarian's designee to:

(1) investigate the condition of the animal and the circumstances relating to the animal's condition; and

(2) make a recommendation to the court under subsection (f) regarding the confiscation of the animal.

(f) The state veterinarian or the state veterinarian's designee who is appointed under subsection (e) shall do the following:

(1) Make a recommendation to the court concerning whether confiscation is necessary to protect the safety and well-being of the animal.

(2) If confiscation is recommended under subdivision (1), recommend a manner for handling the confiscation and disposition of the animal that is in the best interests of the animal.

The state veterinarian or the state veterinarian's designee who submits a recommendation under this subsection shall articulate to the court the reasons supporting the recommendation.

(g) The court:

(1) shall give substantial weight to; and

(2) may enter an order based upon;

a recommendation submitted under subsection (f). . . .

CIVIL CASE NO: 4:16-cv-0095-TWP-DML

IN THE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

JAMIE SWARTZ
SANDRA SWARTZ
PLAINTIFFS

V.

HEARTLAND EQUINE RESCUE
UPLANDS PEAK SANCTUARY
RANDY LEE
JODI LOVEJOY
MICHELLE PRUITT
JO CLAIRE CORCORAN
DEBBIE MOORE
KELLY JO FITHIAN-WICKER
MARNIE BENNETT and
MEGHAN COMBS

SECOND AMENDED COMPLAINT

I. JURISDICITIONAL STATEMENT

Federal jurisdiction is proper in this cause as alleged violations of the 4th and 14th Amendments to the Constitution of the United States of America and 42 USC Sections 1983 and 1985 invoke jurisdiction by way of 28 USC Sections 1331 and 1343(3).

Jurisdiction in the Southern District of Indiana, New Albany Division is proper because the Plaintiff lives in

Washington County Indiana and all of the events which give rise to this cause of action occurred in Washington County Indiana and Washington County is in the Southern District of Indiana, New Albany Division.

II. PARTIES

Plaintiffs:

Jamie Swartz, 7747 N. Rush Creek, Salem, IN 47167
Sandra Swartz, 7747 N. Rush Creek, Salem, IN 47167

Defendants:

Heartland Equine Rescue
3812 Speith Rd
Henryville, IN 47126

Uplands PEAK Sanctuary
4205 W. Grandview Road
Salem, IN 47167

Randy Lee
Washington County Animal Control
Officer c/o Washington County Sheriff's Dept.
801 Jackson St, Salem, IN 47167

Meghan Combs
Washington County Sheriff Department
Officer c/o Washington County Sheriff's Dept.
801 Jackson St, Salem, IN 47167

Jodi Lovejoy
Veterinarian for the Indiana State Board of Animal Health
c/o Office of the State of Veterinarian
Discovery Hall, Suite 100
1202 East 38th Street
Indianapolis, IN 46205-2898

Michelle Pruitt
c/o Uplands PEAK Sanctuary
4205 W. Grandview Road
Salem, IN 47167

Jo Claire Corcoran
c/o Heartland Equine Rescue
3812 Speith Rd
Henryville, IN 47126

Debbie Moore
c/o Heartland Equine Rescue
3812 Speith Rd
Henryville, IN 47126

Kelly Jo Fithian -Wicker
c/o Heartland Equine Rescue
3812 Speith Rd
Henryville, IN 47126

Marnie Bennett
9284 N. Rush Creek Road
Salem, Indiana 47167

GENERAL ALLEGATIONS

1) At all times relevant to this action, Jamie Swartz and Sandra Swartz lived at 7747 N. Rush Creek, Salem, IN, which is in Washington County, Indiana.

2) All of the events which give rise to this cause of action occurred in Washington County Indiana.

3) Randy Lee was a State Actor as he was employed as the Washington County Animal Control Officer at all times relevant to this cause and acted under color of law.

4) Jodi Lovejoy was a State Actor as she was employed as a State Veterinarian at all times relevant to this cause of action and acted under color of law.

5) Uplands Peak Sanctuary was an organization in Washington County Indiana that "rescued" animals that were believed to be neglected, at all times relevant to this cause.

6) Michelle Pruitt, at all times relevant to this cause was an integral part of Uplands Peak Sanctuary. She is co-owner and co-founder of Uplands Peak.

7) Heartland Equine Rescue at all times relevant to this cause was an organization at Henryville in Clark County Indiana that rescued horses believed to be neglected.

8) Jo Claire Corcoran, Debbie Moore, and Kelly Jo Fithian-Wicker at all times relevant to this cause were integral actors in Heartland Equine Rescue's endeavors and acted under color of law by assisting the authorities with the illegal seizure of the livestock and conspiring with and agreeing to the seizure.

9) Meghan Combs was a State Actor as she was employed as a Washington County Sheriff Dispatcher that accompanied Randy Lee and was a confidant of Marnie Bennett at all times relevant to this cause, and acted under color of law.

10) Marnie Bennett at all times relevant to this cause was a close friend and confidant of Debbie Moore and Meghan Combs and lived at 9284 N. Rush Creek Road, Salem, Indiana 47167.

42 U.S.C Section 1983

Plaintiffs herein allege that the defendants and all of them, acted in concert to cause certain livestock of Plaintiffs to be seized by the Washington County Animal Control Officer on less than probable cause and distributed to Uplands Peak Sanctuary and Heartland Equine Rescue based on false information and improper diagnostic analysis contrary to the 4th and 14th Amendments to the Constitution of the

United States, and said livestock was retained by Uplands Peak and Heartland.

Prior to the seizure on June 14th, 2014, Marnie Benett had trespassed on the Plaintiffs property to inspect the feed stocks for Plaintiffs horses and goats and being a close friend and confidant of Debbie Moore, encouraged Meghan Combs, Debbie Moore and Randy Lee, the Washington County Animal Control Officer to seize the Plaintiff's livestock including several horses, six goats and a donkey to distribute the said livestock to Heartland and Uplands Peak. Bennett acted under color of law by "trespassing" for Combs and Lee and agreed with Heartland and the State Actors to get the livestock of Plaintiffs seized.

Several months prior to the seizure, the Plaintiffs had contacted the local veterinarian because they felt that their horses were not thriving as they should have. They followed the recommendations of their local vet.

After Bennet's trespass and encouragement from Bennett, Moore, and Combs, Randy Lee acting under color of law visited the Plaintiffs residence by himself and then later on multiple occasions along with Dr. Jodi Lovejoy. Dr. Lovejoy made recommendations which the Plaintiffs followed. Dr. Lovejoy evaluated the horses in accordance with the "Henneke" body condition scale to determine neglect, which according to Dr. Henneke, the founder of that scale, is improper and the scale is meant only for analysis for breeding purposes. Dr. Lovejoy also evaluated the goats according to a body condition analysis meant for sheep which is incorrect as goats and sheep are of different body types. The Plaintiffs followed all the directions given to them by Dr. Lovejoy who visited their residence unannounced on multiple occasions and the livestock had ample feed, water and shelter and they had not neglected their livestock contrary to some of the reports. However, the livestock was seized by Randy Lee, under direction from Dr. Lovejoy and under encouragement from the members of Heartland and Upland Peaks. There were allegations of neglect, lack of feed, water and

shelter and criminal charges were filed against Plaintiffs.

There was an email from Debbie Moore to the State vet stating they have "someone to take goats" on June 6th 2014, so Uplands Peak had already agreed with Heartland (thus encouraging Heartland) to take the goats and this was a week before the seizures. Therefore, Uplands Peak knew that the State actors would act and agreed with the co-conspirators at Heartland for Animal Control and the state vet to seize the Swartz livestock as the goats went to Uplands Peak.

Dr. Lovejoy visited for the last time on June 4th, 2014, and on June 6th, Heartland was posting they were getting Plaintiff's livestock. Dr. Lovejoy's report falsely stated the animals were in immediate jeopardy and Randy Lee, Meghan Combs and Heartland confiscated the livestock pursuant to court order on June 13th, 2014 on a probable cause based on false and misleading information. Present and assisting with the seizure of the livestock were, Randy Lee, Meghan Combs, Jo-Claire Corcoran, Kelly Jo-Fithian Wicker, Debbie Moore and people from three television stations.

Meghan Combs accompanied Randy Lee and Dr. Lovejoy on the June 4th, 2014 visit offering Dr. Cooper as personal veterinarian for the Plaintiffs to consult. After seizure of animals Meghan Combs posted on Facebook that she had been involved in this case over the past year to get animals removed from the Plaintiff's property.

Plaintiffs were injured by losing the value of their livestock and having them seized illegally in contravention of the 4th and 14th Amendments due to the conspiracy of all of the Defendants.

As ancillary to this action, Michelle Pruitt posted a picture of a horse that didn't belong to Plaintiffs in association with the criminal case which was eventually dismissed and committed libel. The date of the posting of the picture is unknown, but the picture was of a severely malnourished

horse which would infer criminal activity by the Swartzs for animal neglect a copy of that post is attached as ex. A. The posting was shortly after the animals were seized in conjunction with an online petition which was trying to get the local prosecutor to give harsh penalties to the Swartzs. That picture was extremely misleading to anyone who was looking at the online petition. Further such a misleading representation had to be malicious attempt to have the Swartz's fined and put in jail. The reputation of the Swartzs was severely damaged with the inference that they were engaged in criminal activity.

Further, the folks at Heartland have posted several libelous statements against Plaintiff disparaging their reputation in relation to the incident which would infer criminal activity by the Swartzs thus disparaging their reputation. A copy of the statements Plantiffs have found so far are attached as ex B. These statements were made in a malicious attempt to take and keep or distribute Plaintiffs livestock.

DECLARATION UNDER PENALTY OF PERJURY

The undersigned declares under penalty of perjury that they are the plaintiffs in the above action, and have read the above complaint, and that the information contained therein is true and correct to the best of their knowledge.

Respectfully submitted,

s/ Jamie Swartz
Jamie Swartz, *Pro Se*
7747 N. Rush Creek
Salem, IN 47167

s/Sandra Swartz
Sandra Swartz, *Pro Se*
7747 N. Rush Creek
Salem, IN 47167

88D01-1406-MC-000338
IN THE SUPERIOR COURT
COUNTY OF WASHINGTON
STATE OF INDIANA

PROBABLE CAUSE AFFADAVIT

Animal Control Officer Randy Lee of Washington County Animal Control does affirm:

1. That he has been investigating the welfare of certain animals whose condition is detailed in the attached Animal Welfare Report prepared by Dr. Lovejoy;
2. That this affiant believes that probable cause exists that the crime of neglect of a vertebrate animal has been committed and that pursuant to IC 35-46-3-6 he has the authority to seize said animals;

I affirm under the penalties for perjury that the foregoing representations are true.

Dated this 13 day of June, 2014

s/ Randy Lee
Randy Lee, Affiant

Witnessed by Frank Newkirk Jr., Judge of the Washington Superior Court - June 13, 2014 at 4:11 p.m.

88D01-1406-MC-000338
IN THE SUPERIOR COURT
COUNTY OF WASHINGTON
STATE OF INDIANA

CAUSE NO.: 88D01-

ORDER TO SEIZE

To Washington County Animal Control Officer Randy Lee:

WHEREAS, the Court has reviewed the Affidavit for Probable Cause and Animal Welfare Case Report attached and submitted by Randy Lee, and the Court being duly advised in the premises, now finds that there is probable cause that the crime of abandonment or neglect of a vertebrate animal in violation of I.C. 35-46-3-7 has been committed;

And therefore pursuant to IC 35-46-3-6 Section 6(b) which states that "any law enforcement officer or other person having authority to impound animals who has probable cause to believe there has been a violation of this chapter... may take custody of the animal involved" does now Order the seizure of said animals located 7747 North Rush Creek Road, Salem, Indiana.

So ORDERED this 13 day of June 2014 at 4:11 p.m.

s/ Frank Newkirk, Jr.
Frank Newkirk, Jr., Judge
Washington Superior Court

IN THE WASHINGTON CIRCUIT COURT
STATE OF INDIANA
COUNTY OF WASHINGTON

CAUSE NUMBER: 88C01-1406-CM-000326

STATE OF INDIANA

vs

JAMIE SWARTZ

ORDER AFFIRMING PROBABLE CAUSE AND ISSUANCE OF SUMMONS

The State of Indiana by its Deputy Prosecuting Attorney, Melissa Campbell, files an Affidavit for Probable Cause which is examined by the Court. From said examination, the Court finds on the 16TH day of JUNE, 2014, that probable cause does exist for the summons of the Defendant for the crime of: **ABANDONMENT/NEGLECT OF A VERTEBRATE ANIMAL, A CLASS A MISDEMEANOR (3 COUNTS). Cause is now set for Initial Hearing on the 24TH day of JULY, 2014 at 8:30 A.M.** Order entered this 20 day of June, 2014.

s/ Larry W. Medlock
Larry W. Medlock, Judge
Washington Circuit Court

Filed w/the Clerk and Entered
Into RJO 6-20-2014

Minute Entry from CCS
CAUSE NO. 88C01-1406-CM-000325
STATE OF INDIANA vs SANDRA SWARTZ

07/24/2014 Hearing Journal Entry

Hearing held. State by Melissa Campbell. Defendant in person and with counsel, Dale Arnett. Parties agree to consolidate cases. Order to follow.

IN THE WASHINGTON CIRCUIT COURT
STATE OF INDIANA
COUNTY OF WASHINGTON

STATE OF INDIANA

vs

SANDRA SWARTZ CAUSE NO.88C01-1406-CM-000325
JAMIE SWARTZ CAUSE NO.88C01-1406-CM-000326

ENTRY ON HEARING JANUARY 15, 2015

Comes now the Court and having taken the State's Motion for Authority to Find Permanent Placement for Foster Animals and the Defendant's Motion to set a Hearing to determine whether there was probable cause to impound the Defendant' s animals now hereby finds and orders the following:

1. That the Defendant's Motion to Set a probable cause hearing is DENIED..In that the Court affirmed probable cause and directed the issuance of summons on June 20,2014.

2. That the States Motion for Authority to Find Permanent Placement for Foster Animals is DENIED at this time.

3. That the Court directs the State Veterinary or it's designee to make a recommendation to the Court concerning the disposition of the animals confiscated and the reasons supporting recommendation.

SO ORDERED this 30 day of January, 2015.

s/ Larry W. Medlock
Larry W. Medlock, Judge
Washington Circuit Court

cc: Prosecutor
Dale Arnett
Jodi Lovejoy, DVM

IN THE CIRCUIT COURT
FOR WASHINGTON COUNTY
STATE OF INDIANA

STATE OF INDIANA

vs. CAUSE NO: 88C0I-1406-CM-000326

JAMIE SWARTZ

ORDER GRANTING AUTHORITY

This matter having coming before the Court on the State of lndiana's Motion for Authority to Find Permanent Placement, and the Court having considered the same, does now grant an order granting authority to the personnel at the Heartland Equine Rescue and Uplands Peak Sanctuary to find permanent placement for the animals in their care.

SO ORDERED this 14 day of April 2015.

s/ Larry W. Medlock
Larry W. Medlock, Judge
Washington Circuit Court

Distribution to:

Defendant
PA
Dale Arnett

WASHINGTON CIRCUIT COURT
STATE OF INDIANA
COUNTY OF WASHINGTON

STATE OF INDIANA

vs

SANDRA SWARTZ CAUSE NO.88C01-1406-CM-000325
DOB 12/10/1966

ORDER

ON PRETRIAL DIVERSION AGREEMENT

Comes now the State of Indiana by its Prosecuting Attorney's office and comes now the defendant and files Pretrial DIVERSION Agreement.

The Court now accepts Pretrial DIVERSION Agreement and hereby orders this cause to be deferred for 12 MONTHS. The Court orders the Defendant to pay $50.00 initial Pretrial DIVERSION User Fee and $10.00 per month thereafter on or before the 15th day of each month, starting on the 15th day of November, 2015.

The Court further orders the following:

1. Not commit another offense during the period of this agreement.
2. Pay Court Cost in the amount of $163.00.
3. Support his/her dependents.
4. Report to the Washington County Prosecutor's Office and notify of any change of address or employment within 7 days.
5. Follow Court Order regarding reimbursement.

Court authorizes the Clerk of this Court to collect all payments associated with this agreement. Cash bond ordered applied.

ALL OF WHICH IS ORDERED this 4 day of November, 2015.

s/ Larry W. Medlock
LARRY W. MEDLOCK, Judge
Washington Circuit Court

CC: Prosecuting Attorney
Dale Arnett

IN THE WASHINGTON CIRCUIT COURT
STATE OF INDIANA
COUNTY OF WASHINGTON

CAUSE NUMBER: **88C01-1406-CM-000326**

STATE OF INDIANA

VS

JAMIE SWARTZ

ORDER GRANTING MOTION TO DISMISS

COMES NOW the State of Indiana and files its Motion to Dismiss the above entitled cause and the Court, being duly advised that the Defendant has complied with all terms and conditions of pre-trial diversion agreement, does hereby order that said motion to dismiss be granted.

All of which is ordered this 21 day of March, 2016.

s/ Larry W. Medlock
Larry Medlock, Judge
Washington Circuit Court

TCN:
Dale Arnett

IN THE WASHINGTON CIRCUIT COURT
STATE OF INDIANA
COUNTY OF WASHINGTON

CAUSE NUMBER: **88C01-1406-CM-000325**

STATE OF INDIANA

VS

SANDRA SWARTZ

ORDER GRANTING MOTION TO DISMISS

COMES NOW the State of Indiana and files its Motion to Dismiss the above entitled cause and the Court, being duly advised that the Defendant has complied with all terms and conditions of pre trial diversion agreement, does hereby order that said motion to dismiss be granted.

All of which is ordered this 21 day of March, 2016.

s/ Larry W. Medlock
Larry Medlock, Judge
Washington Circuit Court

TCN:
Dale Arnett

IN THE
WASHINGTON CIRCUIT COURT

CAUSE NO 88C01-1406-CM-000325
& 88C01-1406-CM-000326

STATE OF INDIANA

VS

SANDRA SWARTZ,
JAMIE SWARTZ

TRANSCRIPT OF HEARING
APRIL 2, 2015

MS. MELISSA CAMPBELL
DEPUTY PROSECUTING ATTORNEY
806 MARTINSBURG ROAD, STE 202
SALEM, IN. 47167

812 883 6560

FOR THE STATE

MR. DALE ARNETT
ATTORNEY AT LAW
102 HOSPITAL ROAD
WINCHESTER, IN. 47394

765 584 2507

FOR THE DEFENDANTS

NANCY ROBERTS
OFFICIAL COURT REPORTER
812 883 5302, EXT 1204

TRANSCRIPT OF HEARING APRIL 2, 2015

THE COURT:

88C01-1406-CM-325 and 326, State of Indiana versus Sandra Swartz and Jamie Swartz.

This matter was set for a pre trial conference, uh, last time we were here, there were arguments in regards to uh, the placement of animals, certain animals uh, which I took under advisement and issued an order to the State Veterinarian's Office to give me an assessment and a report with respect to that issue, this matter is set for uh, trial on April the 14th.

Uh, Ms. Campbell, what's the State's position in regards to uh, the placement of animals at this particular point in time now that you've seen the report.

MS. MELISSA CAMPBELL, DEPUTY PROSECUTING ATTORNEY:

I would ask, Judge, that the Court enter an order consistent with the recommendation of the Dr. Lovejoy.

THE COURT:

Mr. Arnett?

MR. DALE ARNETT:

Uh, Your Honor, we, we would to such a placement, uh, they were removed upon probable cause which is a fairly low standard and we know that our system of justice isn't perfect and, uh, we can go back maybe to the case of Mohamed Ali where he was uh, he wouldn't step forward to go into the military and then he eventually acquitted in Federal Court, cost him millions of dollars, uh, it's not exactly like this case, but, but those things happen and, and judge we feel that my clients would be, uh, put at a financial disadvantage if they would get acquitted in this case then uh, you know, they've lost a few thousand dollars worth of livestock.

So, we would object, Judge.

THE COURT:

Understand.

Well, Mr. Arnett, I, I know you don't come down here a lot, but my general position is, well, if I'm gonna err, I'm gonna err in favor of those that are not capable of caring for themselves, children, adults, incapacitated adults, uh, animals, I, I'm gonna grant the State's request for placement of the animals. Based upon the report that I read and the initial uh, finding of probale cause and the report that I, I know that's not your position and I understand you've done a good job on behalf of your clients, but I'm gonna place the animals.

Now, with regards to the, uh, trial date

MR. DALE ARNETT:

Your Honor, Uh, We'd move for a continuance, we have a little bit more discovery to do and, and I'm not asking to put it out a long ways may be sixty (60) days. I've taken the deposition of Dr. Lovejoy, uh, and I didn't, wasn't able to get all the answers that I needed. I'm gonna have to depose Officer Lee, uh, because he was, I, I thought I could get it with Dr. Lovejoy just didn't get everything I needed.

THE COURT:

Understand, understand and I'll grant that request. Uh, Officer Lee, should be easily enough found, so, you can depose him.

MR. DALE ARNETT:

But

THE COURT:

How much time do you need?

MR. DALE ARNETT:

If, if we could about sixty (60) days I could get every thing I need cause we have gotten some recent discovery and, uh, photos and, uh

THE COURT:
State's position?

MS. MELISSA CAMPBELL, DEPUTY PROSECUTING ATTORNEY:
We do note that would be granted over the State's objection.

THE COURT:
I, I did say that I was gonna grant that didn't I.

MS. MELISSA CAMPBELL, DEPUTY PROSECUTING ATTORNEY:
Yes.

THE COURT:
I will show that over the State's objection.
Alright about sixty (60) days. Last one Mr. Arnett, we are gonna get this matter resolved.

MR. DALE ARNETT:
Yes, yes.

THE COURT:
Alright, Nancy, somewhere between forty-five (45) and sixty-five (65) days or seventy-five (75) days.

MS. NANCY ROBERTS, COURT REPORTER:
June the 9th.

THE COURT:
June the 9th.

MR. DALE ARNETT:
That works for me.

THE COURT:
June 9th.

MS. MELISSA CAMPBELL, DEPUTY PROSECUTING ATTORNEY:
Thank you.

THE COURT:
Anything else Mr. Arnett?

MR. DALE ARNETT:
No, Your Honor, thank you, very much.

THE COURT:
Ms. Campbell?

MS. MELISSA CAMPBELL, DEPUTY PROSECUTING ATTORNEY:
No, thank you.

THE COURT:
Alright, we'll be off the record.

STATE OF INDIANA
IN THE WASHINGTON CIRCUIT COURT
COUNTY OF WASHINGTON

STATE OF INDIANA

VS

SANDRA SWARTZ CAUSE NO. 88C01-1406-CM-000325
JAMIE SWARTZ 88C01-1406-CM-000326

REPORTER'S CERTIFICATE

I, NANCY ROBERTS, Official Court Reporter of the Washington Circuit Court, Washington County, State of Indiana, do hereby certify that I am a Court Reporter of said Court, duly appointed and sworn to report the evidence of

causes tried therein.

I certify that the transcript, as prepared by me, is full, true and complete.

IN WITNESS THEREOF, I have hereunto set my hand and affixed my SEAL this 26" day of July 2017.

s/ Nancy Roberts
Nancy Roberts
Official Court Reporter
Washington Circuit Court

Respectfully Submitted,

/s/ Dale Arnett
Dale W. Arnett #13919-68
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