

Hon. Robert J. Bryan

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA

TERRY ELLIS, et al

Plaintiffs,

v.

**CLARK COUNTY DEPARTMENT OF
CORRECTIONS, CLARK COUNTY, et al**

Defendants

NO. 3:15-cv-05449

PLAINTIFFS' MOTION
FOR PARTIAL
SUMMARY JUDGMENT

*Note on Motion Calendar
August 19, 2016*

Plaintiffs move for partial summary judgment finding Clark County and the named individual defendants personally liable for unlawful taking of Plaintiffs' personal property under 42 USC §1983 and for common law conversion.

Clark County Washington employees and offender Work Crews under the direction of County employees took the property of each plaintiff and disposed of it pursuant to an explicit policy to do so. In all cases but one, Defendants gave no advance notice that the property would be removed. In the one case, the plaintiff was given inadequate time to remove all of his property so what he was unable to remove in the short time provided was also disposed of. In four cases the plaintiffs asked for return of their property before it was disposed of but their requests were refused.

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Because there are no material issues of fact in dispute that the defendants deprived Plaintiffs of property under color of law without due process and without any other legal basis, Plaintiffs are entitled to summary judgment finding Defendants are liable for conversion and for violation of their rights under 42 U.S.C. § 1983.

FACTS

Clark County Corrections maintains Work Crews for convicted offenders to meet court obligations including jail sentences, community service, fines and fees. (www.clark.wa.gov/district-court/work-crewmabry) *Declaration of Peter Fels Ex. 1.* (Hereafter all Exhibits will just be referred to by their Exhibit number as “Ex.____”). In 2007 or 2008, Corrections became a department of District Court. *Ex. 13, Biffle dep. 23:4-6.*

“Correctional Work Crews” consist of individuals assigned by Clark County courts, State Department of Corrections or other alternative service programs. *Ex. 1; Ex. 16, Selga dep. 59:22-24.* Each Work Crew was directed by a Crew Chief, who is an employee of Clark County Department of Corrections. *Id.*, 59:25, 60:2. The crew chiefs were directed by Lynda Harper in 2012. *Ex. 14, Harper dep. 14:22–15:1, 16:24–17:5.* After Ms. Harper retired in December 2013, Lisa Biffle replaced her as program manager for the work program. *Ex. 13, Biffle dep. 21:2–7.* The program manager in turn was directed by Ela Selga, District Court Administrator. *Ex. 14, Harper dep. 17:11–18; Ex. 16, Selga dep. 17:1-3.* Ms. Selga was directed by the

District Court Judges.¹ *Ex. 16, Id.* 17:4-5.

Clark County Department of Corrections had a written policy dated March 28, 2012² which stated as follows:

Clark County Correctional Work Crews are expected to clean up homeless/transient camps as part of our contractual obligations for both the County and various municipalities.

PROCEDURES:

1. If a camp has been abandoned or there is no one currently at the site immediately clean the camp and restore the area.

2. If a camp is currently occupied, notify those present of their need to clean the camp and vacate the area. Inform them that we will leave the area and return in one hour. Any property still remaining will be disposed of....

.....

5. Cleaning up homeless camps is no different than cleaning up any other refuse.... *WP 115, Ex. 18.*

Ms. Selga delegated to the program manager to make the policy regarding homeless camps. After WP 115 was developed by Ms. Harper, Ms. Selga reviewed and signed off on it. *Ex. 16, Selga dep. 23:10-24:8.*

¹ There is no question of judicial immunity because the management of the Corrections Department was an administrative function and not a judicial function. *Forrester v. White*, 484 U.S. 219, 228-29 (1988). Department of Corrections was previously under the general administration of the County. *Ex. 15, Hagensen dep. 5:21-6:2, Ex. 14. Biffle dep. 22:14 - 23:2.*

² The parties have also referred to a version of WP115 dated May 10, 2012, which is not signed but otherwise appears to be identical to the March 28, 2012 version. When referring to the 2012 version of WP115, either or both versions are referenced. *See Ex. 18.*

Defendants developed a new policy (also numbered WP 115) dated June 11, 2013 after Plaintiff Ellis complained about the taking and destruction of his property. *Ex. 14, Harper dep. 77:6–21*. The policy was approved by Ms. Selga. *Ex. 16, Selga dep. 49:22-50:16*. The new policy stated: “Policy: Clark County District Court Offender Work Crews are NOT to remove any property or materials from any homeless/transient camp.” *Ex. 19*.

Each plaintiff had personal property taken by Corrections Work Crews pursuant to WP 115 and Clark County practices.

The specific facts for each plaintiff are as follows:

1. Samuel Bradish: Mr. Bradish was at his campsite in Vancouver on or about August 1, 2014, when the Work Crew arrived. The supervisor told him he had ten minutes to remove all of his belongings. (Note this is contrary to the new policy³ that was adopted in 2013. It also violated the 2012 policy which directed crew chiefs to give people one hour to remove their belongings.) Mr. Bradish had been camping with a friend and since she was not present, he took her possessions to Share House (a local homeless shelter) and then returned for his own belongings. By the time he returned, his own possessions had all been taken by the Work Crew. There was no notice posted and he had no other information regarding how he could attempt to retrieve his property. *Ex. 2, Bradish dec.*

³ WP 115, June 11, 2013. *See Ex. 19*.

2. Terry Ellis: On or about September 29, 2012 Mr. Ellis was waiting at a bus stop in Vancouver. A motorist had car trouble and Mr. Ellis went to lend assistance. He had to leave his bags by the bus stop. While he was rendering assistance to the motorist the Work Crew van pulled up in front of his bags. Mr. Ellis approached the Work Crew Chief, Defendant Jeff Miller, and told him the bags were his. Defendant Miller refused to let Mr. Ellis have his belongings back. Mr. Ellis explained that he had not abandoned his things, but Defendant Miller still refused to let him have his things back. Mr. Ellis was not given notice that his belongings would be taken. He was also not given information on how he could retrieve his property. *Ex. 3, Ellis dec.*
3. Ronald Fuller: One morning in April or May 2013 Mr. Fuller was called in to work by Labor Ready. He came down to Esther Short Park in Vancouver with his belongings. He did not want to take them to his job, so he placed them in bushes in the park. He called a friend of his to pick up his belongings from the park, and to keep them for him. Mr. Fuller's friend arrived in the park and saw the Work Crew cleaning in the park. The friend went to where Mr. Fuller had left his belongings, but they were gone. *Ex. 4, Fuller dec.*
4. Steven Gavin: In July 2012 Mr. Gavin was camping on the south side of Pearson Airfield in Vancouver. He temporarily left his campsite and belongings to get a meal. When he returned he saw the Work Crew leaving the

1 area of his campsite, and discovered that all of his belongings were gone. He
 2 was not given notice that his belongings would be taken. He was also not
 3 given information on how he could retrieve his property. *Ex. 5, Gavin dec.*

- 4 5. Adam Kravitz: Mr. Kravitz lost his belongings on two separate occasions.
 5 The first loss occurred in August 2012. He was camping along the Columbia
 6 River in Vancouver. He temporarily left his campsite and belongings. When
 7 he returned he saw the Work Crew picking up his campsite. He asked to have
 8 his property returned, but the Work Crew Chief refused. He was not given
 9 notice that his belongings would be taken. He was also not given information
 10 on how he could retrieve his property.

11
 12 The second loss occurred in December 2012. Mr. Kravitz was camping near
 13 the intersection of Interstate 5 and State Road 14 in Vancouver. He had been
 14 at this site for over a month. He temporarily left his campsite and belongings
 15 while he attended a Christmas party for homeless people sponsored by Share, a
 16 local non-profit organization. After the party he returned to his campsite and
 17 found all his belongings were taken. Based on the way his campsite had been
 18 cleared and the trees had been trimmed, he knew the Work Crew had been to
 19 his campsite and taken his things. *Ex. 6, Kravitz dec.*

- 20 6. Deana Lentz: In August 2012 Ms. Lentz was camping in Vancouver. She had
 21 been at this camping spot for almost a month. She went to work one day, and
 22

1 when she returned to her campsite she saw the Work Crew was there placing
 2 her property in the Work Crew's trailer. She asked if she could have her things
 3 back, but the Work Crew Chief said she could not. She was not given notice
 4 that her belongings would be taken. She was also not given information on
 5 how she could retrieve her property. *Ex. 7, Lentz dec.*

6 7. Christopher Mee: In August 2012 Mr. Mee was camping near the intersection
 7 of State Road 500 and St. Johns Boulevard in Vancouver. He temporarily left
 8 his campsite and belongings to get a meal. When he returned he saw the Work
 9 Crew in the area of his campsite. When he arrived at his campsite he found
 10 that all his property had been taken. He was not given notice that his
 11 belongings would be taken. He was also not given information on how he
 12 could retrieve his property. *Ex. 8, Mee dec.*

13 8. Todd Sparks: On or about November 1, 2014 Mr. Sparks was camping under
 14 the Mill Plain Blvd. overpass in Vancouver. He temporarily left his campsite
 15 and belongings to get breakfast. When he returned he saw the Work Crew
 16 leaving his camping area. He went to his campsite and found all his belongings
 17 were gone. He followed the Work Crew to their next stop. There he asked the
 18 Work Crew Chief if he could at least retrieve his medicine. The Work Crew
 19 Chief refused to let him get his belongings. He was not given notice that his
 20 belongings would be taken. He was also not given information on how he
 21 could retrieve his property. *Ex. 9, Sparks dec.*

1 Work Crews clean and maintain roadways, parks, and other public spaces
 2 pursuant to contracts Clark County makes with “user agencies”, such as City of
 3 Vancouver and Clark County Parks. *Ex. 13, Biffle dep. 54:25–55:16, Ex. 16, Selga*
 4 *dep. 32:25-33;20.* Corrections program manager Harper was concerned about
 5 changing policy regarding Work Crew treatment of property out of concern a new
 6 policy might conflict with user agency requirements. *Ex. 14, Harper dep. 70:2–72:6,*
 7 *Ex. 16, Selga dep. 42:11-15.*

8 Ms. Selga and Lynda Harper developed the 2013 version of WP 115 in
 9 consultation with the District Court judges. *Ex. 16, Selga dep. 43:3-23;49:2-50:6. Ex.*
 10 *14, Harper dep. 77:24 – 79:14.* Presiding Judge Hagensen initially determined that
 11 any property picked up by Work Crews should be tagged with a notice before being
 12 disposed of by the Work Crews. *Ex.20 (Hagensen March 2013 letter).* The idea was
 13 discarded with the June 11 publication of WP 115. *Ex. 19.* After the new policy was
 14 issued, neither Judge Hagensen nor Ms. Selga took steps to make sure crew chiefs
 15 were trained on the new policy. *Ex. 15, Hagensen dep. 39:7-18;Ex. 16, Selga dep.*
 16 *47:11-14;50:20-51:2.*

17 Over a year after taking over management of the program in 2014, Lisa Biffle
 18 determined the new policy WP 115 had not been implemented and decided it was
 19 necessary to provide Work Crew chiefs with training on the new policy. *Ex. 13, Biffle*
 20 *dep, 49:2 – 6, 49:16 – 20, 50:11 – 16.* The training was not conducted until October
 21 2015. *Ex. 13, Biffle dep. 59:23-60:4;69:25-71:7.*

1 Testimony of Plaintiffs, Work Crew members and Corrections administrators
 2 establishes that despite publication of the policy change in June 2013, the previous
 3 practice of removing and disposing of all property found by the Work Crews
 4 continued at least through November 2014. *Ex. 2, Bradish dec., Ex. 4, Fuller dec., Ex.*
 5 *8, Mee dec., Ex. 9, Sparks dec., Ex. 10, Hillstead dec., Ex. 11, Chumley dec.* There is
 6 no evidence any officer was reprimanded or disciplined for not following the new
 7 policy.

8 Pursuant to the 2012 version of WP 115, Clark County Corrections Work Crews
 9 picked up all property left in or on grounds where they worked and disposed of it. *Ex.*
 10 *14, Harper dep. 43:5–44:4, 49:2–9;50:9–13.* As Ms. Harper stated: “Anything they
 11 found that was not nature and belonging to the park, they would pick it up and take it.”
 12 *Ex. 14, Harper dep. 50:9–13.* Crew Chief Miller said: “Well, if it ain’t, I guess, a
 13 shrub, it gets picked up. It’s trash.” *Ex. 17, Miller dep. 33:23–34;34:1;34:10–35:10.*

14 After June 2013, the Work Crews continued to dispose of property they found
 15 through November 1, 2014, when Todd Sparks’ property was taken, following the
 16 2012 version of WP 115 and not the 2013 version of the policy. With regard to each of
 17 the plaintiffs, their property was taken and disposed of by Clark County Corrections
 18 Work Crews pursuant to the original official policy. (See discussion of individual
 19 plaintiff facts above.)

20 Defendants made no distinction for property that was not clearly abandoned. The
 21 crew chiefs understood the policy as requiring them to remove *all* property if nobody
 22

1 was present. *Ex. 14, Harper dep. 43:22–44:4, 49:2–9, 50:9–13, 53:24–54:5, 55:16–*
 2 *21; Ex. 17, Miller dep. 33:12–36:25;45:1–47:2.* If a “camp” was occupied, under the
 3 2012 policy crew chiefs were to instruct persons present to move themselves and their
 4 property. After one hour, the Work Crews were then to dispose anything left behind.
 5 *Ex. 18, WP 115.*

6 There is no material issue of fact regarding the County policy. It was to remove
 7 and dispose of any foreign objects or property found by Corrections Work Crews in
 8 areas they worked. The policy did not distinguish between abandoned property and
 9 property that was not abandoned. As quoted above, policy WP 115 required clean up
 10 of abandoned camps and camps where simply nobody was present. Once property was
 11 picked up, it was placed in the trailer behind the Work Crew van and taken to the
 12 dump to be disposed of at the end of the day. *Ex. 17, Miller dep. 36:2–25;38; Ex. 16,*
 13 *Selga dep. 58–60.* If anybody requested return of their property, the crew chiefs did
 14 not return it. *Ex. 17, Miller dep. 50–53:2.*

15 ARGUMENT

16 **1. Unabandoned property may not be taken by government agents without due** 17 **process of law.**

18 There is no question of fact that each plaintiff had his or her property taken by
 19 members of the Work Crew under the direction of a crew chief. In no case except for
 20 Sam Bradish was any plaintiff given the opportunity to remove his property before the
 21 Work Crew took it. In the case of Mr. Bradish, he was not given adequate warning or
 22

1 time to remove his own things (he chose to remove the property that was also present
 2 which belonged to a friend). In no other case was any plaintiff given prior notice or
 3 the opportunity to remove their property before it was disposed of by the Work Crews.
 4 In the cases of Mr. Ellis, Mr. Kravitz, Ms. Lentz and Mr. Sparks, when the plaintiffs
 5 requested return of their property, their requests were denied.

6 An officer who comes across an individual's property in a public area
 7 may seize it only if Fourth Amendment standards are satisfied—for
 8 example, if the items are evidence of a crime or contraband.

Kincaid v. City of Fresno, CV F-06-1445 OWW, 2008 WL 2038390, at
 *4 (E.D. Cal. May 12, 2008)

9 As we have repeatedly made clear, “[t]he government may not take
 10 property like a thief in the night; rather, it must announce its intentions
 11 and give the property owner a chance to argue against the taking.”
Clement v. City of Glendale, 518 F.3d 1090, 1093 (9th Cir.2008).

Lavan v. City of Los Angeles, 693 F.3d 1022, 1032 (9th Cir. 2012)

12 ...the Fourth Amendment forbids the killing of a person's dog, or the
 13 destruction of a person's property, when that destruction is
 14 unnecessary—*i.e.*, when less intrusive, or less destructive, alternatives
 exist.

*San Jose Charter of Hells Angels Motorcycle Club v. City
 of San Jose*, 402 F.3d 962, 977-78 (9th Cir. 2005)

15 1) “Theft” means:

16 (a) To wrongfully obtain or exert unauthorized control over the property
 17 or services of another or the value thereof, with intent to deprive him or
 her of such property or services... RCWA § 9A.56.020

18 Under Washington law, conversion is “the act of willfully interfering with any
 19 chattel, without lawful justification, whereby any person entitled thereto is deprived of
 20 the possession of it.” *Brown ex rel. Richards v. Brown*, 157 Wn.App. 803, 817, 239
 21 P.3d 602, 609 (Div. 1, 2010).

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“Wrongful intent is not an element of conversion, and good faith is not a defense.”

Id., 157 Wn.App. 818.

2. There are no material fact questions regarding municipal liability.

“Liability may attach to a municipality only where the municipality itself causes the constitutional violation through ‘execution of a government’s policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy.’ ” *Ulrich v. City and County of San Francisco*, 308 F.3d 968, 984 (9th Cir.2002) (quoting *Monell*, 436 U.S. at 694, 98 S.Ct. 2018). A municipal “policy” exists when “a deliberate choice to follow a course of action is made from among various alternatives by the official or officials responsible for establishing final policy with respect to the subject matter in question.” *Pembaur v. City of Cincinnati*, 475 U.S. 469, 483, 106 S.Ct. 1292, 89 L.Ed.2d 452 (1986) (plurality opinion). *Fairley v. Luman*, 281 F.3d 913, 918 (9th Cir.2002) (per curiam).

We have held that a municipal policy “may be inferred from widespread practices or evidence of repeated constitutional violations for which the errant municipal officers were not discharged or reprimanded.” *Menotti v. City of Seattle*, 409 F.3d 1113, 1147 (9th Cir. 2005)

Plaintiffs Ellis, Gavin, Kravitz, Lentz and Mee all had their belongings taken by the Work Crews pursuant to explicit policy. The County’s policy at this time was facially unconstitutional. It specifically directed the Work Crews to take property it found in homeless camps. It did so without regard to the Fourth Amendment rights of the people who lived in these camps.

The property of some of the Plaintiffs was taken by Corrections Work Crews after Judge Hagensen instructed them to stop doing so in March 2013 (Fuller) or after the revised WP 115 was issued in June, 2013 (Sparks & Bradish). However, the county is

1 still liable for actions of its Work Crews because it failed to adequately train or
 2 supervise crew chiefs on the new policy and Work Crews continued to operate under
 3 the old policy.

4 Work Crews continued to take and discard all foreign objects (things not planted
 5 or growing or placed there by government) they came across in the course of their
 6 cleaning duties through at least 2014.. *Ex. 9, Sparks dec., Ex. 10, Hillstead dec., Ex.*
 7 *11, Chumley dec.* The undisputed evidence is Plaintiffs Fuller, Sparks and Bradish
 8 had property taken by Work Crews even after the revised WP 115 was issued in 2013.
 9 Under *Menotti, supra*, it can be inferred that the official policy or custom of the
 10 County to remove all property continued until crew chiefs were fully trained.

11 There are two paths to municipal liability. *Gibson v. County of Washoe*, 290 F.3d
 12 1175, 1185 (9th Cir. 2002). Under the first path a plaintiff can show that the
 13 municipality itself violated the plaintiff's rights, or that it directed its employees to do
 14 so. *Id.* In order to prevail on this path the plaintiff must prove the municipality acted
 15 with "the state of mind required to prove the underlying violation," just as a plaintiff
 16 must against a natural person who violated the plaintiff's federal rights. *Id.* (citing
 17 *Monell* (city policy discriminating against pregnant women), *Pembaur* (policymaker's
 18 order to employees to serve capias), and *Remand v. County of San Diego*, 942 F.2d
 19 1435 (9th Cir. 1991) (county policy that policymakers knew would place aggressive
 20 and passive homosexuals in the same cell).

21 Under the second path a plaintiff can show a municipality is liable under Section
 22

1 1983 for its failure to train its employees. *City of Canton v. Harris*, 489 U.S. 378, 388
 2 (1989). This failure to train must amount to “deliberate indifference” on the part of
 3 the municipality to the rights of the persons whom its employees come into contact.
 4 *Id.* The deficiency in training must be closely related to the ultimate injury. *Id.* at
 5 391.

6 Plaintiffs Fuller⁴, Sparks and Bradish all had their belongings taken after the
 7 County changed its policy, but before the County had conducted training on the new
 8 policy. The undisputed facts are that for over two years the County failed to train its
 9 Work Crew Leads or Work Crew Chiefs on how this new policy should be
 10 implemented. In fact, it was not until this lawsuit was filed that Defendant Biffle
 11 decided she should provide training to the Leads and Chiefs. *Ex. 13, Biffle dep. 51: 9–*
 12 *14.* The County’s deliberate indifference toward training Work Crew chiefs on the
 13 2013 policy change resulted in Plaintiffs Fuller, Sparks and Bradish losing their
 14 property.

15 **3. Individual defendants are also liable for their actions.**

16 42 U.S.C. § 1983 creates a cause of action against a person who, acting under
 17 color of state law, deprives another of rights guaranteed under the Constitution.
 18To prove a case under section 1983, the plaintiff must demonstrate that (1) the
 19 action occurred “under color of state law” and (2) the action resulted in the
 20 deprivation of a constitutional right or federal statutory right. *Jones v. Williams*,
 297 F.3d 930, 934 (9th Cir. 2002).

21 ⁴ Plaintiff Fuller had his belongings taken in the Spring of 2013, close to the time
 22 that Judge Hagensen issued his letter to the County’s user agencies that the Work Crews
 would no longer take homeless people’s property. However, the policy was not formally
 changed until June of 2013.

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[a] supervisor may be liable if there exists *either* (1) his or her personal involvement in the constitutional deprivation, *or* (2) a sufficient causal connection between the supervisor's wrongful conduct and the constitutional violation. *Id.* 297 F.3d at 937 (citing *Redman v. County of San Diego*, 942 F.2d 1435, 1446 (9th Cir. 1991))

Plaintiffs named Jeffrey Miller, Lisa Biffle, Lynda Harper, Rafaela Selga and John Hagensen in their individual capacities. The evidence is undisputed that Mr. Miller directly participated in depriving at least Plaintiff Ellis of his property when he directed the Work Crew to remove Mr. Ellis' back packs and place them in the Work Crew's trailer and when he refused to allow Mr. Ellis to retrieve his property from the trailer. He also failed to provide Mr. Ellis with any information on how he could recover his property and he routinely disposed of the property collected during the work day at the landfill. Mr. Miller was acting under color of law as an employee of Clark County when he took these actions.

Ms. Harper developed the 2012 and 2013 versions of WP 115 and Ms. Selga approved them. Both participated in establishing the unconstitutional policy directing Work Crews to remove and destroy all property belonging to homeless people in the course of their daily work. Both supervisors were "personally involved" in the deprivation of all of the plaintiffs' rights. They wrote the unconstitutional policy. They failed to train their staff to differentiate abandoned property or trash from unabandoned property, with the result that plaintiffs' personal property was taken by the Work Crews and disposed of, without notice or opportunity to get their property back.

Judge Hagensen as presiding judge was nominally the chief policy maker for the Corrections Department during the relevant time period. Although he testified in his deposition that all judges participated equally in making operational policies, he agreed that ultimately while he was presiding judge of the District Court, he had the authority to make policy if necessary. *Ex. 15, Hagensen dep. 6-7:12;12:22-13:16.* Judge Hagensen was personally involved in the unconstitutional deprivations because he was aware Work Crews were cleaning up property and disposed of it. *Id. 15, 16:13.* However, he did not recall any discussions with regard to how to identify what property is abandoned. *Id. 16:14-16.* He never investigated what legal issues might be involved with having Work Crews pick up property from homeless camps or any other location. *Id., 22:23-23:13.* The judges never took any steps to determine if the Work Crews attempted to locate the owner of property that had some apparent value. *Id., 34-35.*

Furthermore it is evident that Corrections Department supervisors, Hagensen, Selga, Harper, and Biffle, all failed to train their staff on proper implementation of the 2013 policy until October 2015.

To impose liability on a local government for failure to adequately train its employees, the government's omission must amount to "deliberate indifference" to a constitutional right. This standard is met when "the need for more or different training is so obvious, and the inadequacy so likely to result in the violation of constitutional rights, that the policymakers of the city can reasonably be said to have been deliberately indifferent to the need." *Clouthier v. Cty. of Contra Costa*, 591 F.3d 1232, 1249 (9th Cir. 2010)

Knowing that Mr. Ellis had complained in early 2013 and that his complaint had brought about a change in policy, the supervisors were deliberately indifferent when they failed to train crew chiefs on the policy change. This failure inevitably led to the crews continuing their practice under the old policy. As a result, Plaintiffs' rights to keep their property (or to have it removed only pursuant to due process of law) were violated.⁵ *City of Canton v. Harris*, 489 U.S. 378, 389-90 (1989) ("in light of the duties assigned to specific officers or employees the need for more or different training is so obvious, and the inadequacy so likely to result in the violation of constitutional rights, that the policymakers of the city can reasonably be said to have been deliberately indifferent to the need.") (footnotes omitted).

Case law is and was clear that neither the government nor its agents may take a person's property without due process. The Fourth Amendment forbids the destruction of a person's property when a less intrusive or less destructive alternative exists. *San Jose Charter, supra*, 402 F.3d 977-78.

⁵ Under state law, the County is liable for the torts of its employees who are acting in the scope of their employment under respondeat superior. "(O)nce an employee's underlying tort is established, the employer will be held vicariously liable if 'the employee was acting within the scope of his employment.' " *Robel v. Roundup Corp.*, 148 Wn.2d 35, 52-53, 59 P.3d 611, 620 (2002). A municipal government can be held liable for torts because governmental immunity has been abolished by statute. *Savage v. State*, 127 Wn.2d 434, 444, 899 P.2d 1270 (1995) recon denied 1996. (Each plaintiff also filed a tort claim notice under state law.) Thus the County as well as individuals who participated in conversion of Plaintiffs' property while in the scope of their employment are liable in tort for damages.

1 A basic tenet of United States law and custom is the concept of private property.
 2 People are taught in kindergarten not to take property belonging to others. The Fifth
 3 Amendment to the Constitution prevents the government from taking private property
 4 without just compensation.

5 The first clause of the Fourth Amendment provides that the “right of the
 6 people to be secure in their persons, houses, papers and effects, against
 7 unreasonable searches and seizures, shall not be violated....” This text
 8 protects two types of expectations, one involving “searches,” the other
 9 “seizures.” A “seizure” of property occurs when there is some
 10 meaningful interference with an individual's possessory interests in that
 11 property. *United States v. Jacobsen*, 466 U.S. 109, 113, 104 S. Ct. 1652,
 12 1656, 80 L. Ed. 2d 85 (1984)

13 “The Fourth Amendment protects against unreasonable interferences in property
 14 interests regardless of whether there is an invasion of privacy.” *Miranda v. City of*
 15 *Cornelius*, 429 F.3d 858, 862 (9th Cir. 2005)(holding the city could seize a vehicle
 16 under a public caretaking function but only if it allows the owner due process, i.e.,
 17 “the opportunity to be heard at a meaningful time and in a meaningful manner.”)

18 The County has not established any community caretaking basis for destruction of
 19 Plaintiffs’ personal property. Assuming there is a community caretaking basis for
 20 removal of such personal effects as personal papers, sleeping bags, tents, clothing and
 21 camping equipment (although it is difficult to imagine any imminent danger presented
 22 by the presence of such items) the undisputed facts show the County gave no notice to
 23 any plaintiff (or anybody else) and gave no person an opportunity to recover the

property, even when some individuals identified their property before it was disposed of and requested its return.

The facts also show that a less destructive alternative to disposal of the property existed. Washington statutes provide a procedure for the storage and return of found property. RCW chapter 63 et seq. The County could have stored the property temporarily and posted notice how the property could be retrieved by its owners, i.e., it could have provided the Plaintiffs a meaningful opportunity to recover their lost property following statutory procedures.

CONCLUSION

Plaintiffs are entitled to summary judgment on Defendants' liability. There are no questions of fact. The undisputed facts show Defendant Clark County Department of Corrections had a policy to remove and dispose of any property found by Work Crews, whether abandoned or not. Plaintiffs lost their property pursuant to this policy. As a result, Plaintiffs were deprived of their property without due process by the individual defendants, who were acting under color of law as County employees in carrying out the removal and destruction of Plaintiffs' property by offender Work Crews. The taking of Plaintiffs' property was also conversion under state law.

§1983 Liability

Because each plaintiff lost their unabandoned property based on the County's 2012 formal policy to remove and dispose of property whether abandoned or not, or

1 pursuant to continuing practice following the 2012 policy even after the written policy
 2 was changed, they are each entitled to summary judgment on his/her §1983 claim
 3 against the County. *Fairley v. Luman, supra; Menotti v. Seattle, supra.*

4 Each plaintiff is also entitled to summary judgment against Ms. Selga, who
 5 authorized and approved the adoption of the 2012 policy. Plaintiffs Ellis, Gavin,
 6 Kravitz, Lentz and Mee all had their property taken by Work Crews before April
 7 2013. Work Crews took Mr. Fuller's property in April or May 2013, which was after
 8 District Court judges decided Work Crews would no longer remove and dispose of
 9 property but before the revised WP 115 was adopted on June 2013. Plaintiffs Sparks
 10 and Bradish lost their property to Work Crews in November 2014, apparently because
 11 no training was conducted to instruct Crew Chiefs how to implement the new policy.

12 Ms. Selga is liable for implementation of the unconstitutional policy. She also is
 13 liable to Plaintiffs Fuller, Sparks and Bradish for failing to train crew chiefs how to
 14 implement the new policy after March 2013 when it was obvious the original policy
 15 resulted in unconstitutional deprivations and continuation of the practices under that
 16 policy was likely to result in more violations. *City of Canton, supra.*

17 Judge Hagensen is liable to Plaintiffs Sparks and Bradish because he failed to do
 18 anything to assure Corrections staff changed their practices after he became aware the
 19 old policy was constitutionally infirm.

20 Lynda Harper is liable to each plaintiff except Sparks and Bradish because she
 21 developed and supervised the implementation of WP 115 until the time she retired.

22
 23 PLAINTIFFS' MOTION FOR PARTIAL SUMMARY
 24 JUDGMENT; NO. 3:15-cv-05449-RJB;
 25 Ellis et al. v. Clark County Dept. of Corrections et al

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(Work Crews took Mr. Sparks and Mr. Bradish's property in 2014 after Ms. Harper retired.)

Lisa Biffle is liable to Plaintiffs Sparks and Bradish because their property was taken and disposed of when she was Program Manager over the crew chiefs in 2014. She failed to assure the crew chiefs followed the 2013 policy or otherwise did not take and dispose of unabandoned property.

Jeffrey Miller is liable to Mr. Ellis because he took and disposed of Mr. Ellis' property knowing it was not abandoned when the law was clear that the government is prohibited from taking private property without due process.

Conversion liability

Jeffrey Miller is liable for conversion of Mr. Ellis' property. He willfully took Mr. Ellis's property and refused to return it without legal justification.

Clark County is liable to each plaintiff for conversion because it is vicariously liable for the actions of county employees acting in the scope of their employment.

Robel v. Roundup, supra.

Based on the foregoing, Plaintiffs are entitled to summary judgments in their favor.

DATED this 28th day of July, 2016.

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