

Hon. Robert J. Bryan

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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.

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

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

## 5 FACTS

6 Clark County Corrections maintains Work Crews for convicted offenders to meet  
7 court obligations including jail sentences, community service, fines and fees.  
8 ([www.clark.wa.gov/district-court/work-crewmabry](http://www.clark.wa.gov/district-court/work-crewmabry)) *Declaration of Peter Fels Ex. 1.*  
9 (Hereafter all Exhibits will just be referred to by their Exhibit number as “Ex. \_\_\_”). In  
10 2007 or 2008, Corrections became a department of District Court. *Ex. 13, Biffle dep.*  
11 *23:4-6.*

12 “Correctional Work Crews” consist of individuals assigned by Clark County  
13 courts, State Department of Corrections or other alternative service programs. *Ex. 1;*  
14 *Ex. 16, Selga dep. 59:22-24.* Each Work Crew was directed by a Crew Chief, who is  
15 an employee of Clark County Department of Corrections. *Id.*, 59:25, 60:2. The crew  
16 chiefs were directed by Lynda Harper in 2012. *Ex. 14, Harper dep. 14:22–*  
17 *15:1, 16:24–17:5.* After Ms. Harper retired in December 2013, Lisa Biffle replaced her  
18 as program manager for the work program. *Ex. 13, Biffle dep. 21:2–7.* The program  
19 manager in turn was directed by Ela Selga, District Court Administrator. *Ex. 14,*  
20 *Harper dep. 17:11–18; Ex. 16, Selga dep. 17:1-3.* Ms. Selga was directed by the  
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District Court Judges.<sup>1</sup> *Ex. 16, Id.* 17:4-5.

Clark County Department of Corrections had a written policy dated March 28, 2012<sup>2</sup> 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.*

<sup>1</sup> 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.*

<sup>2</sup> 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.*

1 Defendants developed a new policy (also numbered WP 115) dated June 11, 2013  
2 after Plaintiff Ellis complained about the taking and destruction of his property. *Ex.*  
3 *14, Harper dep. 77:6–21.* The policy was approved by Ms. Selga. *Ex. 16, Selga dep.*  
4 *49:22-50:16.* The new policy stated: “Policy: Clark County District Court Offender  
5 Work Crews are NOT to remove any property or materials from any  
6 homeless/transient camp.” *Ex. 19.*

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

9 The specific facts for each plaintiff are as follows:

- 10 1. Samuel Bradish: Mr. Bradish was at his campsite in Vancouver on or about  
11 August 1, 2014, when the Work Crew arrived. The supervisor told him he had  
12 ten minutes to remove all of his belongings. (Note this is contrary to the new  
13 policy<sup>3</sup> that was adopted in 2013. It also violated the 2012 policy which  
14 directed crew chiefs to give people one hour to remove their belongings.) Mr.  
15 Bradish had been camping with a friend and since she was not present, he took  
16 her possessions to Share House (a local homeless shelter) and then returned for  
17 his own belongings. By the time he returned, his own possessions had all been  
18 taken by the Work Crew. There was no notice posted and he had no other  
19 information regarding how he could attempt to retrieve his property. *Ex. 2,*  
20 *Bradish dec.*

21 \_\_\_\_\_  
22 <sup>3</sup> WP 115, June 11, 2013. *See Ex. 19.*

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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.*

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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.*

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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.

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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  
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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  
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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  
16 **ARGUMENT**

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

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

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.

9 *Kincaid v. City of Fresno*, CV F-06-1445 OWW, 2008 WL 2038390, at  
10 \*4 (E.D. Cal. May 12, 2008)

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

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

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

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

22 1) “Theft” means:

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

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

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

2 *Id.*, 157 Wn.App. 818.

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

4 “Liability may attach to a municipality only where the municipality itself  
5 causes the constitutional violation through ‘execution of a government’s  
6 policy or custom, whether made by its lawmakers or by those whose edicts  
7 or acts may fairly be said to represent official policy.’ ” *Ulrich v. City and  
8 County of San Francisco*, 308 F.3d 968, 984 (9th Cir.2002) (quoting  
9 *Monell*, 436 U.S. at 694, 98 S.Ct. 2018). A municipal “policy” exists when  
10 “a deliberate choice to follow a course of action is made from among  
11 various alternatives by the official or officials responsible for establishing  
12 final policy with respect to the subject matter in question.” *Pembaur v.  
13 City of Cincinnati*, 475 U.S. 469, 483, 106 S.Ct. 1292, 89 L.Ed.2d 452  
14 (1986) (plurality opinion). *Fairley v. Luman*, 281 F.3d 913, 918 (9th  
15 Cir.2002) (per curiam).

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

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

25 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 (9<sup>th</sup> 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 (9<sup>th</sup> 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  
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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 Fuller<sup>4</sup>, 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.  
 18 ....To 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 (9<sup>th</sup> Cir. 2002).

21 <sup>4</sup> 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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1 [a] supervisor may be liable if there exists *either* (1) his or her personal  
 2 involvement in the constitutional deprivation, *or* (2) a sufficient causal connection  
 3 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  
 (9<sup>th</sup> Cir. 1991))

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

13 Ms. Harper developed the 2012 and 2013 versions of WP 115 and Ms. Selga  
 14 approved them. Both participated in establishing the unconstitutional policy directing  
 15 Work Crews to remove and destroy all property belonging to homeless people in the  
 16 course of their daily work. Both supervisors were "personally involved" in the  
 17 deprivation of all of the plaintiffs' rights. They wrote the unconstitutional policy. They  
 18 failed to train their staff to differentiate abandoned property or trash from  
 19 unabandoned property, with the result that plaintiffs' personal property was taken by  
 20 the Work Crews and disposed of, without notice or opportunity to get their property  
 21 back.  
 22

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1 Judge Hagensen as presiding judge was nominally the chief policy maker for the  
 2 Corrections Department during the relevant time period. Although he testified in his  
 3 deposition that all judges participated equally in making operational policies, he  
 4 agreed that ultimately while he was presiding judge of the District Court, he had the  
 5 authority to make policy if necessary. *Ex. 15, Hagensen dep. 6-7:12;12:22-13:16.*  
 6 Judge Hagensen was personally involved in the unconstitutional deprivations because  
 7 he was aware Work Crews were cleaning up property and disposed of it. *Id. 15,*  
 8 *16:13.* However, he did not recall any discussions with regard to how to identify what  
 9 property is abandoned. *Id. 16:14-16.* He never investigated what legal issues might be  
 10 involved with having Work Crews pick up property from homeless camps or any other  
 11 location. *Id., 22:23-23:13.* The judges never took any steps to determine if the Work  
 12 Crews attempted to locate the owner of property that had some apparent value. *Id.,*  
 13 *34-35.*

14 Furthermore it is evident that Corrections Department supervisors, Hagensen,  
 15 Selga, Harper, and Biffle, all failed to train their staff on proper implementation of the  
 16 2013 policy until October 2015.

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

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

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

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17 <sup>5</sup> Under state law, the County is liable for the torts of its employees who are acting in the  
 18 scope of their employment under respondeat superior. "(O)nce an employee's underlying  
 19 tort is established, the employer will be held vicariously liable if 'the employee was  
 20 acting within the scope of his employment.' " *Robel v. Roundup Corp.*, 148 Wn.2d 35,  
 21 52-53, 59 P.3d 611, 620 (2002). A municipal government can be held liable for torts  
 22 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

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

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

9 **CONCLUSION**

10 Plaintiffs are entitled to summary judgment on Defendants' liability. There are no  
11 questions of fact. The undisputed facts show Defendant Clark County Department of  
12 Corrections had a policy to remove and dispose of any property found by Work  
13 Crews, whether abandoned or not. Plaintiffs lost their property pursuant to this policy.  
14 As a result, Plaintiffs were deprived of their property without due process by the  
15 individual defendants, who were acting under color of law as County employees in  
16 carrying out the removal and destruction of Plaintiffs' property by offender Work  
17 Crews. The taking of Plaintiffs' property was also conversion under state law.  
18

19 **§1983 Liability**

20 Because each plaintiff lost their unabandoned property based on the County's  
21 2012 formal policy to remove and dispose of property whether abandoned or not, or  
22

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.

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

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

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

10 **Conversion liability**

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

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

15 *Robel v. Roundup, supra.*

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

18 DATED this 28<sup>th</sup> day of July, 2016.

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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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