
In The United States Court of Appeals
For The Ninth Circuit

Levi Lyon and LYON PRYDE MUSIC, LLC, A WYOMING LIMITED
LIABILITY COMPANY,

Plaintiffs-Appellants,

v.

COUNTY OF THURSTON, et al.;

Defendants-Appellees

On Appeal from the United States District Court for the
Western District of Washington at Seattle
Civil Action No. 3:23-cv-05450-SKV

**OPENING BRIEF OF APPELLANT
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2. THURSTON COUNTY BOARD OF COUNTY COMMISSIONERS
3. THURSTON OFFICE OF THE COUNTY PROSECUTOR
4. STATE OF WASHINGTON
5. WASHINGTON STATE LIQUOR AND CANNABIS CONTROL BOARD
6. WASHINGTON STATE DEPARTMENT OF COMMUNITY DEVELOPMENT
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**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

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Instructions for this form: <http://www.ca9.uscourts.gov/forms/form34instructions.pdf>

9th Cir. Case Number(s) 25-887

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Levi Lyon, and Lyon Pryde Music, LLC

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- ☒ I have reviewed this form, FRAP 26.1, and Circuit Rule 26.1-1 and, to the best of my knowledge, have no information to disclose at this time.

Signature /s/ Levi Lyon

Date November 3, 2025

(use “s/[typed name]” to sign electronically-filed documents)

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INTRODUCTION

This appeal arises from the arrest of Appellant Lyon and the seizure of his vehicles pursuant to a search warrant that was facially invalid and, in effect, no warrant at all. The felony charges were dismissed before trial when the State failed to produce a valid search warrant. Lyon then brought a 42 U.S.C. § 1983 action; the district court nevertheless granted summary judgment to the State and County Appellees. In doing so, the lower court resolved disputed issues of material fact, failed to view the record and draw reasonable inferences in the nonmovant's favor as Rule 56 requires, and subsequently denied leave to amend. The court also relied upon immunities that do not exist in Washington State. This Court should reverse and remand for further proceedings.

JURISDICTIONAL STATEMENT

The United States District Court for the Western District of Washington had subject-matter jurisdiction under 28 U.S.C. § 1331 because the complaint asserted claims under 42 U.S.C. § 1983, and supplemental jurisdiction regarding the state-tort claims under 28 U.S.C. § 1367(a).

Appellants Levi Lyon and LYON PRYDE MUSIC, LLC filed civil action in the lower court on January 20, 2023, and the district court dismissed it with prejudice on January 16, 2025.

The magistrate judge's final order dismissed all causes of action and all claims against all defendants and did not permit leave to amend. Appellants timely filed

their notice of appeal on February 10, 2025; therefore, this Court has jurisdiction under 28 U.S.C. § 1291.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

A. Whether the trial court erred and violated FRCP Rule 56 by impermissibly weighing the evidence in favor of the Appellees in place of the jury,

B. Whether the trial court erred in claiming that the defendant officers had probable cause to arrest the defendant and therefore were immune from suit under 42 USC §1983 and state causes of action such as malicious prosecution

C. Whether there were disputed issues of fact that prevented a summary judgment being issued on the malicious prosecution cause of action

D. Whether the trial court abused its discretion by not permitting Appellant Lyon to amend his complaint considering there were material facts in contention.

REVIEWABILITY AND THE STANDARD OF REVIEW

A. FRCP Rule 56 Summary Judgment

The parties' positions and courts ruling were discussed in the Ruling on Summary Judgement at ER 5-7.

In the Ninth Circuit, district courts' summary judgment decisions are reviewed *de novo*. *Rano v. Sipa Press, Inc.*, 987 F.2d 580, 584 (9th Cir.1993). "In doing so, we view the evidence in the light most favorable to the nonmoving party and determine whether there are any genuine issues of material fact and whether the district court correctly applied the relevant substantive law. "*Id.*

All allegations of material fact are taken as true and construed in the light most favorable to the nonmoving party. *See id.* The court need not, however, accept as true allegations that contradict matters properly subject to judicial notice or by exhibit. *See Mullis v. United States Bankr. Ct.*, 828 F.2d 1385, 1388 (9th Cir. 1987). Nor is the court required to accept as true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences. *See Clegg v. Cult Awareness Network*, 18 F.3d 752, 754-55 (9th Cir. 1994).

“Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge, whether he is ruling on a motion for summary judgment or for a directed verdict. The evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255, 106 S. Ct. 2505, 2513–14, 91 L. Ed. 2d 202 (1986). “Rather, the purpose of Rule 56 is to enable a party who believes there is no genuine dispute as to a specific fact essential to the other side's case to demand at least one sworn averment of that fact before the lengthy process of litigation continues.” *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 888–89, 110 S. Ct. 3177, 3188–89, 111 L. Ed. 2d 695 (1990).

Accordingly, both Orders from the lower court are summary judgment decisions and thus on appeal are reviewed *de novo*. *See* ER-5-21; ER-22-34.

B. Probable Cause

The parties positions and the court's decision on this issue are discussed in the court's ruling at ER 13-14, ER 16, 17, 19, 28

Because it is a question of law, a probable cause determination is reviewed *de novo* on appeal. See *United States v. McConney*, 728 F.2d 1195, 1199 (9th Cir. 1984). Probable cause exists when the facts and circumstances within the officer's knowledge are sufficient to cause a reasonably prudent person to believe that a crime has been committed." *Lassiter v. City of Bremerton*, 556 F.3d 1049, 1053 (9th Cir. 2009) (citing *Ybarra v. Illinois*, 444 U.S. 85, 91 (1979)).

Probable cause does not require evidence that is conclusive of guilt, but it does require "a fair probability, given the totality of the evidence," that a suspect has committed a crime. *Garcia v. County of Merced*, 639 F.3d 1206, 1209 (9th Cir. 2011) (internal quotation marks omitted).

While conclusive evidence of guilt is of course not necessary under this standard to establish probable cause, '[m]ere suspicion, common rumor, or even strong reason to suspect are not enough.' " *Id.* (quoting *McKenzie v. Lamb*, 738 F.2d 1005, 1008 (9th Cir.1984)) *Torres v. City of Los Angeles*, 548 F.3d 1197, 1206–07 (9th Cir. 2008).

C. Malicious Prosecution

The parties positions and the court's ruling are discussed at ER 19,

In a malicious prosecution action the issue of probable cause is a question of law which we review de novo. *See id.* At 868, 765 P.2d at 499, 254 Cal.Rptr. at 337. *Lucero v. Stewart*, 892 F.2d 52, 54 (9th Cir. 1989)

Additionally, only if and where the facts are undisputed, the existence of probable cause is purely a legal question which should be answered by the trial court. *See Dutt v. Kremp*, 108 Nev. 1076, 844 P.2d 786, 790 (Nev. 1992), overruled on other grounds by *LaMantia*, 38 F.3d at 880.

D. Standard of Review Dismissal with Prejudice Without Leave to Amend

The parties positions and the court's ruling is discussed at ER 13.

Absent unusual circumstances, “[d]ismissal without leave to amend is improper unless it is clear, upon *de novo* review, that the complaint could not be saved by any amendment.” *Polich v. Burlington N., Inc.*, 942 F.2d 1467, 1472 (9th Cir.1991). A district court's failure to consider the relevant factors and articulate why dismissal should be with prejudice instead of without prejudice may constitute an abuse of discretion. *See Foman v. Davis*, 371 U.S. 178, 9 L. Ed. 2d 222, 83 S. Ct. 227 (1962), at 182; *see also Schreiber Distrib. Co. v. Serv-Well Furniture Co.*, 806 F.2d 1393, 1401 (9th Cir. 1986); *Klamath-Lake Pharm. Ass'n v. Klamath Med. Serv. Bureau*, 701 F.2d 1276 (9th Cir. 1983).

STATEMENT OF THE CASE

Relevant History

1. Appellant Levi Lyon formed LYON PRYDE MUSIC, LLC, in approximately 2012, as a legal cannabis advertising and promotion business and operated it through the end of 2019. ER-84 (Lyon Decl.).

2. In 2019, Levi Lyon and his then-girlfriend, Courtland Crabtree, lived in his two buses, which he purchased with funding assistance from Richard Podszus. ER-94 (Podszus Decl.). His buses were used as residences and for business. From spring 2019 through November 23, 2019, one of those buses was parked, on average, one to two nights per week on property owned by the owner of Uncle Ando's. ER-59 (Lyon Decl. ¶ 3); ER-86 (Lyon Decl. ¶ 9).

3. In spring 2019, before entering into business together, at the request of management at Uncle Ando's Wurld of Weed¹ and Lyon, Washington State Liquor and Cannabis Board ("WSLCB"), Officer Sam Eikum visited Uncle Ando's to advise on the legality of Lyon and LYON PRYDE MUSIC, LLC's advertising and promotions. During the visit, she looked inside Lyon's bus, observed beds and clothing indicating he used it as a residence, and smelled cannabis smoke. She approved

¹ Uncle Ando's Wurld of Weed is a Washington I-502–licensed retail cannabis store.

Lyon’s promotions plan and did not state that anyone smoking on the bus was unlawful. ER-59 (Lyon Decl. ¶ 2); ER-86 (Lyon Decl. ¶ 4).

4. Relevant background— On August 8, 2019, Levi Lyon obtained a medical marijuana license valid through February 8, 2020. Before beginning his investigation of Lyon, WSLCB Officer Satterly was instructed by his supervisor, Joshua Bolender, to serve as the lead investigator regarding Lyon for operating a marijuana club and distributing marijuana. He was given no explanation for the assignment, although he understood that WSLCB had Lyon under scrutiny before the investigation began. ER-105 (Lyon’s Medical Marijuana License); ER-99 (Satterly Decl. ¶15).

5. Undisputed Facts — September 27, 2019, WSLCB officers—including Jacob Garness—arrived at Uncle Ando’s in plainclothes and undercover. While in the parking lot, Officer Garness spoke with Lyon, Garness then entered one of Lyon’s buses without a warrant, as he was tasked with doing so. The bus smelled strongly of cannabis and was filled with smoke. Once aboard the bus, Courtland Crabtree asked him to sign a form on an iPad. ER-68 (Garness Decl. ¶¶ 4–6).

6. Disputed Facts — September 27, 2019, whether Crabtree offered Officer Garness cannabis, (2) whether the iPad waiver was a membership form which was intended to bypass Washington law and WSLCB regulations or instead was used to screen entrants at charity or promotional events and to exclude minors or questionable persons, and (3) whether during the parking-lot exchange Lyon directed Garness to a “smoke bus” to sample cannabis for free as “product sharing”. ER-68 (Garness

Decl. ¶ 5); ER-60 (Lyon Decl. ¶¶ 12–13); ER-63 (Lyon Decl. ¶ 27); ER-61 (Lyon Decl. ¶ 17).

7. Undisputed Facts — October 18, 2019, during the second investigative operation WSLCB officers—including Jacob Garness—again arrived at Uncle Ando’s in plainclothes and undercover. At around 5pm, one of Lyon’s buses arrived at a lot adjacent to Uncle Ando’s, which was across the street. Lyon exited the bus, and was then playing music and offering free snacks. Garness was again tasked with entering Lyon’s bus and did so. He went to Uncle Ando’s parking lot. He then left the area and returned approximately three hours later, at which point he again boarded the bus. Approximately seven people were inside, including Crabtree. The bus was filled with smoke and smelled of cannabis. ER-68-69 (Garness Decl.).

8. Disputed Facts — October 18, 2019, (1) whether seven people were sharing cannabis joints, (2) whether Crabtree offered Officer Garness cannabis, (3) whether Crabtree offered Garness a cannabis cupcake, and (4) whether it was later logged into evidence. ER-60 (Lyon Decl. ¶¶ 12-13); ER-69 (Garness Decl. ¶¶ 10–11); ER-147–155 (inventory and photographs).

9. Undisputed Facts — October 19, 2019, During the third undercover operation, WSLCB officers—including Jacob Garness—again arrived at a vacant lot directly north of Uncle Ando’s, owned by the same owner as Uncle Ando’s. The officers were again in plainclothes and undercover. There were multiple tents at the lot dis-

playing Uncle Ando’s branded merchandise. Multiple individuals entered and exited Lyon’s bus. When Garness entered the bus, it was filled with smoke and smelled of cannabis. ER-70 (Garness Decl. ¶¶ 12–14).

10. Disputed Facts — October 19, 2019, (1) whether Crabtree gave Garness a wristband to enter Lyon’s bus and consume cannabis, (2) whether an individual associated with “Astro Cannabis” provided cannabis purchased from Crabtree for \$20, and (3) whether that cannabis—including the contents of two pre-rolled joints—was placed into evidence. ER-70 (Garness Decl. ¶¶ 13–14); ER-60 (Lyon Decl. ¶¶ 12–14); ER-147–155 (inventory and photographs).

11. Undisputed Facts — November 23, 2019, the fourth and final day of the WSLCB’s undercover operation—Officers including Satterly, Garness and Justin Pattinson together with officers from the Thurston County Narcotics Task Force, arrived at Uncle Ando’s at approximately noon, and disc golf was being played in the northern lot. Shortly thereafter, Officers Garness and Pattinson located Lyon near a tent which was outside his bus. At some point, Lyon asked Officer Pattinson to complete a waiver on an iPad before entering his bus, and he did so. The two officers then entered the bus, which smelled of cannabis. Crabtree was seated at the back of the bus in front of cannabis pipes and “dab rings” [sic]. The officers then identified themselves as WSLCB officers and detained all occupants of the bus. Lyon and Crabtree were advised of their Miranda rights. Officer Satterly applied

for a telephonic search warrant from a Cowlitz County Superior Court judge. Officers from the Thurston County Narcotics Task Force then seized Lyon’s bus and its contents. ER-70-71 (Garness Decl.).

12. Disputed Facts — November 23, 2019, (1) whether, once inside the bus, Crabtree loaded and passed dab devices containing cannabis concentrates to individuals onboard who then smoked them, (2) whether she lit a “dab ring” [sic] and passed it to Officer Pattinson, (3) whether Officer Satterly made and submitted a sworn affidavit by email with his search warrant application to the judge, (4) whether the items obtained and the inventory list made pursuant to the search and seizure of Lyon’s bus match the Officers’ description of the items seized, (5) whether any cannabis seized belonged to Lyon, and (6) whether any cannabis seized was in a quantity in excess of the legal limit. ER-60 (Lyon Decl. ¶¶ 12–13); ER-70–71 (Garness Decl.); ER-66 (Satterly Decl.); ER-147-155 (inventory and photographs).

13. Thereafter, WSLCB officers, together with the Thurston County Narcotics Task Force, seized Lyon’s second bus on or about November 25, 2019. ER-124 (Settlement Agreement and Order of Dismissal).

14. Lyon and Crabtree were then charged pursuant to the searches and seizures arising from the 2019 investigation. On or about February 28, 2020, in Lewis County Superior Court case no. 20-1-001130-21, Lyon was charged with five felonies arising from the 2019 events, (I) *Delivery of Marijuana* October 19, 2019 — RCW 69.50.401(1), (II) *Delivery of Marijuana* November 23, 2019 — RCW

69.50.401(1), (III) *Conducting or Maintaining a Marijuana Club* October 19, 2019 — RCW 69.50.465, (IV) *Possession of Marijuana with Intent to Manufacture or Deliver* November 23, 2019 — RCW 69.50.401(1), and (V) *Conducting or Maintaining a Marijuana Club* November 23, 2019 — RCW 69.50.465.

16. Thereafter, on or about November 19, 2020, Lyon’s counsel filed a motion to dismiss and to suppress evidence. The court granted the motion, and on or about January 11, 2021, dismissed the case after the prosecutor failed to produce a complete search warrant, including a sworn affidavit supporting the November 23, 2019 search warrant purportedly drafted by Officer Satterly. ER-100 (Satterly Decl. ¶19).

17. Shortly after the dismissal, a Thurston County deputy prosecutor notified Lyon that his property was subject to forfeiture proceedings set for March 12, 2021. ER-106 (Notice of Forfeiture Hearing).

18. Between February and March 2021, Lyon’s counsel contacted Prosecutor Elizabeth McMullen. She stated that, to avoid the forfeiture hearing, Lyon had to sign a stipulation agreement and that the offer was “take-it-or-leave-it”; she would not agree to any modifications to the order. On March 12, 2021, consistent with that position, the Settlement Agreement and Order of Dismissal was approved and executed by Levi Lyon, Elizabeth McMullen, and Richard Podszus, providing for the return of property seized in 2019. ER-136 (Counsel–Prosecutor McMullen Emails); ER-123 (Settlement Agreement and Order of Dismissal).

On January 20, 2023, Appellants Levi Lyon and his company LYON PRYDE MUSIC, LLC filed suit in the Superior Court of Washington for Pierce County.

19. On May 17, 2023, the State of Washington filed a notice of removal to the U.S. District Court for the Western District of Washington (Tacoma Division). The case was later transferred to the Seattle Division.

20. The original complaint asserted ten (10) causes of action, (1) civil conspiracy, (2) claims under 42 U.S.C. § 1983—specifically First Amendment retaliation, Fourth Amendment unreasonable search and seizure, Fourteenth Amendment procedural and substantive due process, Eighth Amendment excessive fines, Ninth Amendment, Tenth Amendment, and Fourteenth Amendment Equal Protection and Privileges or Immunities; (3) violations of the Washington Constitution, Article I, (4) violations of the Washington Constitution, Article XI, (5) ultra vires, (6) tortious interference with business and contracts, (7) intentional infliction of emotional distress, (8) malicious prosecution, (9) barratry, and (10) conversion and trespass to chattels.

21. The defendants were Thurston County, the Thurston County Board of County Commissioners, the Thurston County Sheriff, the Thurston County Prosecutor, the State of Washington, the Washington State Liquor and Cannabis Board, the Washington State Department of Community Development, the Washington State Patrol, and John and Jane Does 1–20.

22. Pursuant to motions for Summary Judgment filed, Plaintiffs original complaint was dismissed with prejudice and no leave to amend.

SUMMARY OF ARGUMENT

Warrant/Seizure. The record contains disputes about whether any valid warrant including a sworn affidavit existed, if any telephonic authorization issued and whether that was valid which are material Fourth Amendment issues that preclude summary judgment.

Probable Cause. Material fact issues exist regarding what officers observed and what Lyon did or did not do. Whether those observations established probable cause presents classic fact questions inappropriate for resolution on summary judgment.

Stipulation/Preclusion/Accord & Satisfaction. The Settlement Agreement resolved return versus forfeiture issues and does not unambiguously adjudicate, or release, claims about property damage or continued retention. Ambiguity about scope and intent, privity, and potential injustice foreclose preclusion as a matter of law at this stage.

Destruction of Property & Retention. Sworn, first-hand declarations describe pre-seizure condition and post-return damage to the buses and contents; the County's small, unclear photos do not eliminate disputes. Reasonableness of any damage and the continued retention are jury issues.

Limitations/Tolling. Even if facially late, equitable tolling is supported by record facts (continued seizure of the buses and contents and pending felony charges) and, at minimum, presents triable issues that bar dismissal on limitations grounds.

Leave to Amend. Dismissal with prejudice without leave to amend was improper under Rule 15 and *Foman*; any futility finding depended on contested probable-cause determinations and should not foreclose amendment.

ARGUMENT

A. The District Court’s Order: The District Court erred Regarding Thurston County Defendants

The District Court’s Order regarding the Thurston County Defendants acknowledges that the County of Thurston, and its officers participated in the November 23, 2019 seizure of Lyon’s property when they assisted in its search, seizure and subsequent storage.

The Order states; “The only evidence the Court has of Thurston Defendants’ involvement in these events is their admission to handling the seizure and storage of Plaintiff Lyon’s personal property, and Plaintiffs have not raised a genuine dispute as to the truth of this.”

Relevant to this Appeal, the District Court essentially found (1) There was no evidence to support the destruction of property claim as to the Thurston County Defendants (2) The Stipulation Agreement and Order of Dismissal waived any and all

future claims related to not only the forfeiture hearing, but also (3) waived all the claims related to probable cause and illegal actions by Thurston County. ER-22-34 (Order on Summary Judgment).

Lyon therefore appeals his Fourth Amendment claims for unlawful seizure of property, unreasonable continued detention of property, and destruction of property, as disposed of in this order with respect to the Thurston County defendants including John and Jane Does.

B. The District Court's Order Regarding Washington State Defendants

Relevant to this Appeal, the District Court essentially found (1) Probable Cause existed to arrest Lyon (2) the search and seizure of Lyon's property was conducted pursuant to a valid warrant (3) there were no material facts in dispute (4) the Thurston County settlement agreement indemnifies the Washington State Defendants (5) since probable cause existed, the malicious prosecution claim cannot lie.

The court states; Plaintiffs' allegations regarding State Defendants' actions are either inaccurate (for example, Plaintiffs classify the search, seizure, detention, and arrest of Plaintiff Lyon as "illegal," which it was not) or they fall far short of the high bar for constituting "outrageous" behavior. ER-5-21 (Order on Summary Judgment).

Lyon therefore appeals his Fourth Amendment claims for unlawful search and seizure of his person and his property, malicious prosecution, unreasonable continued

detention of property, trespass to chattels, intentional infliction of emotional distress, and tortious interference with business and contracts, as disposed of in this order with respect to the individual WSLCB officer defendants John and Jane Does.

C. Genuine Issues of Material Fact Precluded Summary Judgment Against Lyon in the District Court

The District Court improperly decided multiple issues of material fact despite Lyon designating a jury to be the fact finder in his case. Legitimate inferences drawn from those facts, and the weight of evidence were not in the purview of the lower court to decide. See *Anderson supra*. In spite of this prohibition, the District Court adopted wholesale the facts and evidence of the Appellees submissions.

D. Search Warrant Affidavit Facially Invalid

Appellees claimed and the District Court agreed that a search warrant affidavit existed and was handled as follows, (1) that an affidavit was emailed, in conjunction with an application for a search warrant, to Judge Stephan Warning, (2) Judge Warning was contacted by telephone and gave his consent to sign the search warrant on his behalf, and, (3) the affidavit and application were resubmitted within ten days after the initial seizure. ER-73-76 (Bolender Decl.); ER-65-66 (Satterly Decl.). However, no such affidavit appears anywhere in the record.

Additionally, Officer Satterly states that he did not obtain all of the facts related to probable cause and apply for a search warrant until November 23, 2019—the last

day of the undercover investigation. By contrast, Bolender, his supervisor, states that he reviewed the affidavit and application beforehand in accordance with WSLCB policy, prior to submission to the court, but provides no timeframe for that review. ER-73-76 (Bolender Decl.). If, as Satterly claims, the affidavit was first prepared and submitted on November 23, 2019, and Bolender was not on scene, then Bolender's 'prior review' could only have occurred remotely and on that same date. Yet despite multiple discovery requests, Appellees produced no emails or other electronic transmissions reflecting any such review or submission of the alleged affidavit. ER-56-57, (Osinski Decl. ¶¶6-7) ; ER-79, (Osinski Decl. ¶ k); ER-100 Satterly Decl. ¶19).

The only document in the record that purports to be the search warrant authorizing the seizure of Appellant's two vehicles and personal property is facially invalid. ER-142-144 (Search Warrant). It is three (3) pages, it lists Cowlitz County Superior Court Judge Stephan Warning as the issuing judge but is signed by WSLCB Officer Robbie Satterly—no judge's signature appears on the document. The document also misidentifies Judge Warning as a Lewis County judge and is not accompanied by any sworn affidavit. ER-66 (Satterly Decl. ¶¶5-7). While Federal Appellate Courts have held that a warrant may be construed with reference to a supporting application or affidavit if the warrant uses appropriate words of incorporation, the supporting documents **must** accompany the warrant. *See United States v. McGrew*, 122 F.3d 847, 849–850 (C.A.9 1997); *United States v. Williamson*, 1 F.3d 1134, 1136, n. 1 (C.A.10 1993); *United States v. Blakeney*, 942 F.2d 1001, 1025–1026

(C.A.6 1991); *United States v. Maxwell*, 920 F.2d 1028, 1031 (C.A.D.C.1990); *United States v. Curry*, 911 F.2d 72, 76–77 (C.A.8 1990); *United States v. Roche*, 614 F.2d 6, 8 (C.A.1 1980).

In this case, however, the warrant did not incorporate any other documents by reference, including the alleged affidavit. Indeed, it is undisputed that the underlying criminal case against Lyon was dismissed and the charges were never re-filed due to the prosecution being unable to provide the court with the affidavit allegedly presented to the judge. ER-100 (Satterly Decl. ¶19).

A warrant that lacks one of the four (4) elements in the Fourth Amendment is plainly invalid. The Fourth Amendment states unambiguously that “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*.” *Groh v. Ramirez*, 540 U.S. 551, 557, 124 S. Ct. 1284, 1289, 157 L. Ed. 2d 1068 (2004).

Given that the Oath or Affirmation requirement is set forth in the text of the Constitution, no reasonable officer could believe that a warrant that plainly did not comply with that requirement was valid. *See Harlow v. Fitzgerald*, 457 U.S. 800, 818–819, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982) (“If the law was clearly established, the immunity defense ordinarily should fail, since a reasonably competent public official should know the law governing his conduct”).

Because Appellees did not present any search warrant affidavit at the summary-judgment stage, there is a genuine dispute of material fact as to whether Officer

Satterly ever drafted and submitted an affidavit with the warrant to seize Plaintiff Lyon's buses and personal property. Viewing the evidence in Lyon's favor as Rule 56 requires, a jury could find that his buses were seized without a valid warrant in violation of the Fourth Amendment.

E. Illegal Seizure of Property

While the District Court stated that the seizure was not illegal, considering the lack of affidavit as discussed above, the seizure was clearly illegal. The District Court also decided that even if Lyon had a cause of action related to the seizure of his vehicles, that such an action would be outside the relevant statute of limitations. ER-18 (Order on Summary Judgment ¶5); ER 13 (Order on Summary Judgment).

As Section 1983 does not contain its own statute of limitations, the federal courts apply the forum state's statute of limitations for personal injury actions. In the state of Washington, the statute of limitations for a personal injury claim is three years. RCW 4.16.080(2). *See Butler v. Nat'l Cmty. Renaissance of Cal.*, 766 F.3d 1191, 1198 (9th Cir. 2014).

Contrary to the analysis of the District Court, in the Ninth Circuit it is recognized that the Fourth Amendment governs the **entirety of the duration** of the retention of the seized property, and not just the initial seizure.

The Fourth Amendment “is implicated by a delay in returning the property, whether the property was seized for a criminal investigation, to protect the public, or to punish the individual.” *Sandoval v. County of Sonoma*, 72 F.Supp.3d 997 (N.D. Cal. 2014).

The Fourth Amendment doesn't become irrelevant once an initial seizure has run its course. *See United States v. Jacobsen*, 466 U.S. 109, 104 S. Ct. 1652, 80 L. Ed. 2d 85 (1984); *Lavan v. City of Los Angeles*, 693 F.3d 1022, 1030 (9th Cir. 2012); *see also Manuel v. City of Joliet, Ill.*, 580 U.S. 357, 358, 137 S. Ct. 911, 914, 197 L. Ed. 2d 312 (2017) (holding that the Fourth Amendment governed the entirety of plaintiff's 48-day detention). A seizure is justified under the Fourth Amendment only to the extent that the government's justification holds force. Thereafter, the government must cease the seizure or secure a new justification. Especially as in the case of an impounded vehicle. *See Brewster v. Beck*, 859 F.3d 1194, 1197 (9th Cir. 2017).

Similarly, in this case, Appellees have provided no sufficient justification, therefore the Fourth Amendment governed the entirety of the seizure and retention, which ended on March 12, 2021, meaning that the statute of limitations did not run until March 12, 2024. ER-123 (Settlement Agreement and Order of Dismissal). As the statute of limitations had not yet expired when he filed suit, a jury could therefore find for Lyon in that his possessory interest for his vehicles was substantially interfered with in violation of the Fourth Amendment.

F. District Court Erred by Ruling on Facts

The District Court also improperly decided material facts regarding probable cause in the arrest of Lyon. Viewing the evidence in the light most favorable to Lyon, no officer saw Lyon use, possess or deliver any marijuana or marijuana products. ER-96-100 (Satterly Decl.), ER-73-76 (Bolender Decl.) ER-67-72 (Garness Decl.), ER-65-66 (Satterly Decl.). Therefore, the officers did not have, and the District Court improperly found, probable cause pursuant to all five (5) felony counts pursued against Lyon. Without any such observations, none of the officers could have had a reasonable basis to believe that Lyon had committed any of the five (5) offenses Lyon was arrested for and charged with. *See Garcia supra*.

Even considering the fact that Lyon was not on board the buses during the encounters in the investigation, and did not personally view the interactions between Crabtree, and officers Garness and Pattinson, his testimony clearly states that there was no unsmoked cannabis product on the buses, except for his personal legal amount secured safely in the bus, and perhaps what other persons may have brought with them for their personal use. No evidence presented in the lower court circumvents that account. ER-58-64 (Lyon Decl.) ER-84-86 (Lyon Decl.) ER-115-122 (Lyon Decl.).

The fact that the officers noticed the odor of cannabis and saw smoke in Lyon's buses even on multiple dates likewise cannot be the basis for probable cause. Using,

possessing and/or delivering marijuana is not a crime under Washington law, unless certain criteria are met:

RCW 69.50. 4013 (Possession of useable cannabis, cannabis concentrates, or cannabis-infused products—Delivery) Holds in pertinent part:

(3)(a) The possession, by a person 21 years of age or older, of useable cannabis, cannabis concentrates, or cannabis-infused products in amounts that do not exceed those set forth in RCW 69.50.360(3) is not a violation of this section, this chapter, or any other provision of Washington state law. Wash. Rev. Code Ann. §69.50.4013 (West)

(4)(a) The delivery by a person 21 years of age or older to one or more persons 21 years of age or older, during a single 24 hour period, for noncommercial purposes and not conditioned upon or done in connection with the provision or receipt of financial consideration, of any of the following cannabis products, is not a violation of this section, this chapter, or any other provisions of Washington state law:

- (i) One-half ounce of useable cannabis;
- (ii) Eight ounces of cannabis-infused product in solid form;
- (iii) 36 ounces of cannabis-infused product in liquid form unless the cannabis-infused product in liquid form is packaged in individual units containing no more than four milligrams of THC per unit;
- (iv) 100 milligrams of THC within a cannabis-infused product in liquid form if the product is packaged in individual units containing no more than four milligrams of THC per unit; or
- (v) Three and one-half grams of cannabis concentrates.

(b) The act of delivering cannabis or a cannabis product as authorized under this subsection (4) must meet one of the following requirements:

- (i) The delivery must be done in a location outside of the view of general public and in a nonpublic place; or
- (ii) The cannabis or cannabis product must be in the original packaging as purchased from the cannabis retailer.
- (5) No person under 21 years of age may manufacture, sell, distribute, or knowingly possess cannabis, cannabis-infused products, or cannabis concentrates, regardless of THC concentration. This does not include qualifying patients with a valid authorization.
- (6) The possession by a qualifying patient or designated provider of cannabis concentrates, useable cannabis, cannabis-infused products, or plants in accordance with chapter 69.51A RCW is not a violation of this section, this chapter, or any other provision of Washington state law.
- (7) For the purposes of this section, “public place” has the same meaning as defined in RCW 66.04.010, but the exclusions in RCW 66.04.011 do not apply.
- (8) For the purposes of this section, “use a controlled substance” means to introduce the substance into the human body by injection, inhalation, ingestion, or any other means. Wash. Rev. Code Ann. § 69.50.4013 (West)

RCW 69.51A.050 Medical cannabis, *lawful possession--*
State not liable

- (1) The lawful possession or manufacture of medical cannabis as authorized by this chapter shall not result in the forfeiture or seizure of any property.
- (2) No person shall be prosecuted for constructive possession, conspiracy, or any other criminal offense solely for being in the presence or vicinity of medical cannabis or its use as authorized by this chapter.
- (3) The state shall not be held liable for any deleterious outcomes from the medical use of cannabis by any qualifying patient. Wash. Rev. Code Ann. § 69.51A.050 (West)

Cannabis consumption in Washington State is legal for adults 21 and older, but it is restricted to private property with the owner's permission. Public consumption of cannabis is generally illegal, a person cannot use cannabis in public places such as parks, sidewalks, restaurants, or concerts. Doing so is a civil infraction. The “cannabis club” statute underscores the general prohibition against public consumption.

RCW 69.50.465. (Conducting or maintaining cannabis club—Penalty) Holds in pertinent part:

- (1) It is unlawful for any person to conduct or maintain a cannabis club by himself or herself or by associating with others, or in any manner aid, assist, or abet in conducting or maintaining a cannabis club.
- (2) It is unlawful for any person to conduct or maintain a public place where cannabis is held or stored, except as provided for a licensee under this chapter, or consumption of cannabis is permitted.
- (3) Any person who violates this section is guilty of a class C felony punishable under chapter 9A.20 RCW.
- (4) The following definitions apply throughout this section unless the context clearly requires otherwise.
 - (a) “Cannabis club” means a club, association, or other business, for profit or otherwise, that conducts or maintains a premises for the primary or incidental purpose of providing a location where members or other persons may keep or consume cannabis on the premises.
 - (b) “Public place” means, in addition to the definition provided in RCW 66.04.010, any place to which admission is charged or for which any pecuniary gain is realized by the owner or operator of such place. Wash. Rev. Code Ann. § 69.50.465 (West)

Lyon's buses were converted at great expense to also serve as living quarters. The buses were Lyon's residences and were permissively parked on a private lot and not open to the public. Lyon's buses were private property. ER-85 (Lyon Decl. ¶¶5-7).

In Washington state, it is illegal to consume cannabis in any form within a motor vehicle when it is on a public highway. This law applies to all vehicles, including motorhomes and RVs. Possessing an open container of cannabis while in a vehicle on a public highway is also considered a traffic infraction.²

Lyon's buses were not in motion upon a highway at any time during the investigation, and therefore neither Lyon nor any person in the buses were subject to being cited for consuming cannabis or having an open container.

Finally, the handwritten search-warrant inventory is barely legible and conflicts with portions of the officers' accounts. For example, Officer Garness states that on October 18, 2019, Crabtree gave him a cannabis cupcake that he accepted and logged into evidence; yet no such item appears on the inventory list. He also states that on October 19, 2019, he purchased a \$20 "promotional" bag from Crabtree that contained two pre-rolled cannabis joints and that he logged all items into evidence; yet neither a \$20 bag nor two pre-rolled joints appears on the inventory. ER-69 (Garness Decl. ¶ 11); ER-70 (Garness Decl. ¶ 14); ER-147–155 (inventory and photographs).

² Possessing or consuming cannabis in vehicle on highway Wash. Rev. Code Ann. § 46.61.745 (West)

The Appellees evidence does not factually support any presumption that the officers confiscated marijuana in quantities in excess of those allowed for personal consumption. There are no illegal marijuana quantities in the inventory list, in any deposition, nor in any declaration, and regarding the evidence photographs, the District Court determined the photographs to be “small and inscrutable”. ER-33 (Order on Summary Judgment)).

Therefore, viewing the facts in the light most favorable to Lyon, a jury could find that the officers lacked probable cause as to every count he was charged with.

G. Plaintiffs Suffered a Malicious Prosecution

A plaintiff must prove the following elements to establish a malicious prosecution claim under Washington State law: (1) that the prosecution claimed to have been malicious was instituted or continued by the defendant; (2) that there was want of probable cause for the institution or continuation of the prosecution; (3) that the proceedings were instituted or continued through malice; (4) that the proceedings terminated on the merits in favor of the plaintiff, or were abandoned; and (5) that the plaintiff suffered injury or damage as a result of the prosecution. See *Hanson v. City of Snohomish*, 121 Wn.2d 552, 558 (1993) (quoting *Peasley v. Puget Sound Tug & Barge Co.*, 13 Wn.2d 485, 497 (1942)). Before trial, malice may be inferred from a prima facie case of want of probable cause. See *Barker v. Waltz*, 40 Wash. 2d 866, 870, 246 P.2d 846, 848 (1952).

As demonstrated and discussed above, no officer could have reasonably believed that Lyon was violating the Washington statutes he was charged with, therefore the second prong is met as there was no probable cause to institute criminal proceedings against him. Considering that the WSLCB officers including Satterly also drafted and executed the facially invalid warrant, the first prong is met as it was personally instituted by the officers. The third prong is also met as, at minimum, Officer Satterly admits he personally attended the proceedings in the Lewis County Superior Court, presumably to testify against Lyon on behalf of the state in order to obtain felony conviction(s) against him, therefore he continued or furthered the prosecution against Lyon. The proceedings were definitely terminated on the merits and in Lyon's favor on January 11, 2021, so the fourth prong is met as his motion to dismiss and suppress illegally seized evidence was granted and the case dismissed. Finally, Lyon states he suffered injury as the result of the prosecution, financially, he filed bankruptcy, mentally and emotionally, and his personal and romantic relationships ended or were strained, therefore he meets the fifth prong.

Hence, a jury could find that, at minimum the subject WSLCB officers, including Satterly maliciously prosecuted him in violation of Washington State law.

H. 42 U.S.C. § 1983 — Fourth Amendment Destruction of Property

Lyon's claim for the damage to his buses and other missing personal property is a distinct Fourth Amendment claim. The destruction of property by state officials constitutes a "seizure" under the Fourth Amendment. *Fuller v. Vines*, 36 F.3d 65,

68 (9th Cir. 1994), overruled on other grounds by *Robinson v. Solano County*, 278 F.3d 1007, 1013 (9th Cir. 2002). As with any seizure under the Fourth Amendment, “[r]easonableness is the touchstone”: thus, courts must “look to the totality of the circumstances to determine whether the destruction of property was reasonably necessary to effectuate the performance of the law enforcement officer’s duties.” *San Jose Charter of Hells Angels Motorcycle Club v. City of San Jose*, 402 F.3d 962, 975 (9th Cir. 2005); see also *Fuller v. Vines*, 36 F.3d 65, 68 (9th Cir. 1994), overruled on other grounds by *Robinson v. Solano County*, 278 F.3d 1007, 1013 (9th Cir. 2002).

The District Court granted the Thurston County Appellees Motion for Summary Judgment based on Claim Preclusion, Accord and Satisfaction and FRCP Rule 56 standards.

At summary judgment, sworn declarations based on personal knowledge that set forth specific facts are competent evidence and can create genuine disputes of material fact. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248–55 (1986); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322–24 (1986); see also Fed. R. Civ. P. 56(c)(4). Lyon submitted a detailed declaration establishing that the buses (outfitted for ~\$50,000) were in “great condition,” roadworthy, and livable when seized, but returned ruined and unusable due to exposure, water, and mold damage, flat tires, and inoperability. ER-58 (Lyon Decl. ¶6.)

A second percipient declaration, a first-hand material fact witness who had funded the buses' purchase, corroborates pre-seizure condition and post-return damage ("extensive rust and mold," "totaled"). ER-94 (Richard Podszus Decl. ¶¶2–3.) Under *Anderson*, the court was required to credit these facts and draw all reasonable inferences for Lyon, not weigh credibility. 477 U.S. at 255.

As the movant, Thurston County Appellees bore the initial burden to "show the absence of a genuine issue of material fact" or the absence of evidence on an essential element. *Celotex*, 477 U.S. at 323. It did not negate Lyon's condition-and-damage showing nor establish that the undisputed record compels a reasonableness finding as a matter of law. See *James River Ins. Co. v. Herbert Schenk, P.C.*, 523 F.3d 915, 923 (9th Cir. 2008).

Thurston County Appellees supplied photographs which were, as the district court noted, "small and inscrutable," and they do not show the buses' condition either **before** or **after** seizure. Those exhibits do not defeat the specific, first-hand declarations. ER-33 (Order on Summary Judgment); ER-149-155 (inventory and photographs).

The District Court improperly discounted Podszus's declaration as insufficient "scintilla," citing *Arpin v. Santa Clara Valley Transp. Agency*, 261 F.3d 912, 922 (9th Cir. 2001). However, *Arpin* involved conclusory assertions that failed to dispute key facts; here, both declarations are specific, first-hand, and corroborative.

Anderson requires that such sworn specifics be believed at this stage. 477 U.S. at 255.

In Washington, collateral estoppel applies only when: (1) the earlier and later **issues are identical**; (2) there was a **final judgment on the merits**; (3) the party against whom estoppel is asserted was a party or in **privity** with a party to the prior adjudication; and (4) application of estoppel would **not work an injustice**. See *Christensen v. Grant County Hosp. Dist. No. 1*, 152 Wn.2d 299, 306–07, 96 P.3d 957 (2004), see also *Weaver v. City of Everett*, 194 Wn.2d 464, 472–75, 450 P.3d 177 (2019). Critically, estoppel reaches only issues **actually litigated** and **necessarily decided**. *Christensen*, 152 Wn.2d at 306–07.

Identity of issues is absent. The forfeiture matter asked whether there was probable cause that the *property* was used or intended to be used in violation of the Uniform Controlled Substances Act under RCW 69.50.505; Lyon’s federal claims challenge (i) damage to the buses (reasonableness under the Fourth Amendment) and (ii) unreasonable continued retention once any justification lapsed—issues not necessary to and not decided in forfeiture. *Christensen*, 152 Wn.2d at 306–07.

As to the second prong, whether the judgment was “final on the merits” is dubious. The Settlement Agreement ended the forfeiture dispute without adjudicating the reasonableness of the officers’ property damage or the constitutional propriety of post-seizure retention. Collateral estoppel generally does not attach to issues not actually litigated and necessarily decided. *Christensen*, 152 Wn.2d at 306–07.

Even where the technical elements might be arguendo met, Washington courts refuse estoppel where applying it would work an injustice, including when the prior forum or stakes did not afford a full and fair incentive to litigate the now-contested issue. *Weaver*, 194 Wn.2d at 472–75. A forced “take-it-or-leave-it” forfeiture stipulation aimed at getting property back is not the forum to litigate bus destruction or months-long retention under federal standards. ER-136 (Counsel–Prosecutor McMullen Emails).

The Settlement Agreement’s text and purpose were confined to resolving forfeiture i.e., return versus forfeiture and did not decide Fourth Amendment reasonableness of damage or continued retention. *See Christensen*, 152 Wn.2d at 306–07 (estoppel limited to issues actually and necessarily decided). Even if we were barred from arguing probable cause as to the Thurston County Appellees, the Fourth Amendment mandated that they returned the property as soon as they no longer have a legitimate reason for the retention of the vehicles. ER-123 (Settlement Agreement and Order of Dismissal); ER-136 (Counsel–Prosecutor McMullen Emails).

The Fourth Amendment does not hinge solely on probable cause; it forbids unreasonable seizures. Continued retention after the justification ends violates the Fourth Amendment. *Brewster v. Beck*, 859 F.3d 1194, 1196–99 (9th Cir. 2017).

Thus, even if the Thurston County Appellees could rely on probable cause, the Fourth Amendment required the return of the vehicles once any legitimate basis for

holding them dissipated. *Brewster*, 859 F.3d at 1197–99. Moreover, whether a warrant existed and whether it was facially valid are entirely separate from probable cause; a seizure pursuant to a facially invalid warrant (or no affidavit) is unreasonable. *See Weaver*, 194 Wn.2d at 472–75 (equitable preclusion principles); *Hells Angels*, 402 F.3d at 974–75 (reasonableness governs property damage).

The District Court determined that the WSLCB officers were not parties to the forfeiture proceeding but nevertheless treated them as in privity with Thurston County Appellees for preclusion. Privity requires a substantial identity of interests and adequate representation in the earlier matter; where WSLCB officers were not parties and the settlement did not actually adjudicate federal reasonableness issues, privity is not established under *Christensen/Weaver*. 152 Wn.2d at 306–07; 194 Wn.2d at 472–75. ER- 28 (Court’s Order on Summary Judgment).

Once property is no longer needed as evidence, a court may refuse to return it only if (1) the claimant is not the rightful owner, (2) the property is contraband, or (3) the property is subject to forfeiture. *Barlindal v. City of Bonney Lake*, 84 Wash. App. 135, 925 P.2d 1289 (1996).

Regarding the forfeiture proceedings, Lyon’s buses and personal property were clearly *not* subject to civil forfeiture under Washington State law.

RCW 69.50.4014 (Seizure and Forfeiture) holds in pertinent part:

(ii) No conveyance is subject to forfeiture under this section by reason of any act or omission established by the

owner thereof to have been committed or omitted without the owner's knowledge or consent;

(iii) No conveyance is subject to forfeiture under this section if used in the receipt of only an amount of cannabis for which possession constitutes a misdemeanor under RCW 69.50.4014; Wash. Rev. Code Ann. § 69.50.505 (West)

Finally, the lower court stated Even if Plaintiffs' claims were not barred by claim preclusion, they would be barred by accord and satisfaction." However, whether there has been an accord and satisfaction is a mixed question of law and fact. But where the facts are not in controversy, it is purely a question of law. *See U.S. Bank Nat. Ass'n v. Whitney*, 119 Wash. App. 339, 350, 81 P.3d 135, 141 (2003) *see also Kibler v. Frank L. Garrett & Sons, Inc.*, 73 Wash.2d 523, 525, 439 P.2d 416 (1968). ER-31-33 (Court's Order on Summary Judgment).

A jury could find the buses were not forfeitable and that the forfeiture stipulation did not bar Lyon's distinct Fourth Amendment retention claims, the record identifies no specific cannabis quantities, and Washington law exempts a "conveyance" from forfeiture when used only to receive a misdemeanor amount of cannabis and protects owners who lacked knowledge or consent. Because the stipulation resolved the return versus forfeiture without actually litigating or releasing the reasonableness of the property damage, its continued retention, collateral estoppel does not attach and Washington courts decline estoppel where doing so would work an injustice. Succinctly, a court may withhold property no longer needed as evidence only if the claimant is not the owner, the property is contraband, or it is lawfully

forfeitable, none of which a jury must accept on this record. And even apart from forfeiture, continued impound must be reasonable under the Fourth Amendment, a jury could find it was not.

The district court dismissed all claims against all defendants with prejudice in two orders. Lyon had not yet amended his complaint and although he did seek leave to amend to cure any pleaded deficiencies it was summarily denied. “The court should freely give leave when justice so requires.” Fed. R. Civ. P. 15(a)(2). The Ninth Circuit applies this policy with “extreme liberality.” *Owens v. Kaiser Found. Health Plan, Inc.*, 244 F.3d 708, 712 (9th Cir. 2001) (quoting *Morongo Band of Mission Indians v. Rose*, 893 F.2d 1074, 1079 (9th Cir. 1990)). In *Foman v. Davis*, 371 U.S. 178, 9 L. Ed. 2d 222, 83 S. Ct. 227 (1962), the Supreme Court offered the following factors a district court should consider in deciding whether to grant leave to amend. The Supreme Court instructs that, absent reasons such as undue delay, bad faith, dilatory motive, repeated failure to cure deficiencies, undue prejudice, or futility, leave “should, as the rules require, be ‘freely given.’” In *Foman v. Davis*, 371 U.S. 178, 9 L. Ed. 2d 222, 83 S. Ct. 227 (1962). The Ninth Circuit applies those *Foman* factors, including prior amendments. *Allen v. City of Beverly Hills*, 911 F.2d 367, 373 (9th Cir. 1990) (citing *Foman* factors, as well as “previous amendment”); *Hurn v. Ret. Fund Trust of the Plumbing, Heating & Piping Indus. of S. Cal.*, 648 F.2d 1252, 1254 (9th Cir. 1981). Here, the court stated that even if Lyon were allowed to add individual officers, they would be entitled to qualified immunity based on the court’s incorrect probable cause finding. But because Lyon could have added

further specific facts in an amended complaint, futility did not necessarily follow; under Rule 15 and *Foman*, leave to amend should have been granted. ER-22–34 (Court’s Order on Summary Judgment); ER-5–21 (Court’s Order on Summary Judgment).

Further, as to the § 1983 Fourth Amendment unreasonable search and seizure claims, the district court deemed time barred, RCW 4.16.080(2) imposes a three-year limitations period. Because the court found accrual on or about November 23, 2019, and Lyon filed on or about January 20, 2023, those claims are, on their face, outside the limitations period, which expired on or about November 23, 2022. Under § 1983, federal courts borrow Washington’s tolling rules in Washington, equitable tolling applies only when all factors are met: (1) the plaintiff has exercised diligence, (2) the defendant’s bad faith, false assurances, or deception interfered with the plaintiff’s timely filing, (3) tolling is consistent with (a) the purpose of the underlying statute and (b) the purpose of the statute of limitations, and (4) justice requires tolling the statute of limitations. *See Fowler v. Guerin*, 200 Wash. 2d 110, 515 P.3d 502 (2022).

As to the first prong, (1) Lyon was forced through a serious criminal case absent probable cause through potentially facing decades of prison time, despite being innocent, (2) Lyon was impeded as he could no longer conduct his business, additionally his relationships began to fall apart along coinciding with his financial state, (3) tolling here advances §1983’s remedial aim without frustrating limitations policies under Washington law, and (4) by the continued unreasonable seizure of his

buses, which he used as his homes, with their full contents, everything he owned, for more than a year, and five (5) pending felony counts, absent a valid warrant, in the interest of justice the court should permit tolling as the Appellees action, and at least with respect to their officers, was not only unreasonable but egregious. Therefore, tolling should be applied to Lyon's § 1983 causes of action and be applied to his claims accruing from the November 23, 2019 seizure.

The district court held Lyon failed to establish any element of tortious interference and, in the alternative, dismissed with prejudice on the ground that probable cause existed, because probable cause was lacking, that alternative basis was erroneous. ER-17 (Court's Order on Summary Judgment). Under Washington law, there are five elements to a claim of tortious interference with a contractual relationship or business expectancy (1) [T]he existence of a valid contractual relationship or business expectancy; (2) that defendants had knowledge of that relationship; (3) an intentional interference inducing or causing a breach or termination of the relationship or expectancy; (4) that defendants interfered for an improper purpose or used improper means; and (5) resultant damage. *See Ocean Beauty Seafoods LLC v. CAPTAIN ALASKA*, 603 F. Supp. 3d 1005, 1011 (W.D. Wash. 2022) (quoting *Pac. Nw. Shooting Park Ass'n v. City of Sequim*, 158 Wn.2d 342, 351, 144 P.3d 276 (2006)). ER-84-86 (Lyon Decl.); ER-87-92 (Physical Functional Evaluation of Levi Lyon).

In this case a jury could find, (1) Lyon and LYON PRYDE MUSIC, LLC had valid business expectancies with at least respect to Uncle Ando's and related vendors, (2) WSLCB officers and the Thurston County task force knew of those relationships

from on-site contacts and undercover entries, (3) their deliberate and unlawful searches and seizures and unlawful retention of his property and related directives disrupted and terminated those expectancies, (4) they acted with “improper means” with a facially invalid warrant and lacked probable cause as to Lyon; and (5) Lyon suffered greatly, lost revenue, his buses and equipment were damaged, and he lost goodwill—meeting Washington’s five-part test. ER-84-86 (Lyon Decl.); ER-93-95 (Podszus Decl.); ER-101-104 (Atcheson Decl.); ER-40-51 (Jung Decl.).

CONCLUSION

Because genuine disputes of material fact remain, the district court could not determine probable cause on summary judgment; any such finding was premature. Additionally, and for the reasons stated above, this Court should remand to the district court and grant leave to amend to substitute the individual officers for the Doe designations.

Respectfully submitted this 7th day of November, 2025.

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DECLARATION OF SERVICE

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CERTIFICATE OF COMPLIANCE

With Type-Volume Limitation, Typeface Requirements,
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This brief complies with the type-volume limitation of FED. R. APP. P. 32(a)(7)(B) because this brief contains 8,905 words, excluding the parts of the brief exempted by FED. R. APP. P. 32(a)(7)(B)(iii).

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Dated this November 7, 2025

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