

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Feb 19, 2021

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JASON CHARLES YOUKER,

Plaintiff,

v.

CALLIE HILLHOUSE; REPUBLIC
POLICE DEPARTMENT;
REPUBLIC POLICE OFFICERS;
CITY OF REPUBLIC; COUNTY OF
FERRY; and UNKNOWN
CITIZENS,

Defendants.

NO: 2:19-CV-177-RMP

ORDER GRANTING
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT

BEFORE THE COURT is a Motion for Summary Judgment by all Defendants in this matter. ECF No. 56. Plaintiff Jason Charles Youker, who is proceeding pro se and in forma pauperis, opposes Defendants' request for summary judgment dismissal of all of Plaintiff's claims. The Court has reviewed Defendants' Motion, ECF No. 56, statement of facts, ECF No. 59, and supporting documentation, ECF Nos. 57 and 60; Plaintiff's response, ECF No. 64, statement of facts, ECF No. 65, and supporting documentation, ECF Nos. 66 and 67; and Defendants' reply, ECF

ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY
JUDGMENT ~ 1

1 No. 68, statement of facts, ECF No. 69, and supporting documentation, ECF No. 70.
2 Further, the Court has reviewed the remaining docket, the relevant law, and is fully
3 informed.

4 LEGAL STANDARD

5 Summary judgment is appropriate when “the movant shows that there is no
6 genuine dispute as to any material fact and the movant is entitled to judgment as a
7 matter of law.” Fed. R. Civ. P. 56(a); *see also Celotex Corp. v. Catrett*, 477 U.S.
8 317, 322 (1986). A genuine dispute exists where “the evidence is such that a
9 reasonable jury could return a verdict for the nonmoving party.” *Anderson v.*
10 *Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A fact is material if it “might affect
11 the outcome of the suit under the governing law.” *Id.* “Factual disputes that are
12 irrelevant or unnecessary will not be counted.” *Id.*

13 The moving party bears the initial burden of demonstrating the absence of a
14 genuine issue of material fact. *See Celotex*, 477 U.S. at 323. If the moving party
15 meets this challenge, the burden shifts to the nonmoving party to “set out specific
16 facts showing a genuine issue for trial.” *Id.* at 324 (internal quotations omitted). “A
17 non-movant’s bald assertions or a mere scintilla of evidence in his favor are both
18 insufficient to withstand summary judgment.” *F.T.C. v. Stefanich*, 559 F.3d 924,
19 929 (9th Cir. 2009). In deciding a motion for summary judgment, the court must
20 construe the evidence and draw all reasonable inferences in the light most favorable
21

1 to the nonmoving party. *T.W. Elec. Serv., Inc. v. Pacific Electric Contractors Ass'n*,
2 809 F.2d 626, 631–32 (9th Cir. 1987).

3 **BACKGROUND**

4 *Context of the Case*

5 The following facts are undisputed unless otherwise noted. On September 17,
6 2014, the City of Republic, Washington, Police Department (“RPD”) and the Ferry
7 County, Washington, Sheriff’s Office (“FCSO”) assisted in executing a federal
8 search warrant at Mr. Youker’s property. ECF No. 57 at 12. Ferry County
9 Sherriff’s Deputy Talon Venturo assisted federal agents from the Drug Enforcement
10 Administration (“DEA”), the Bureau of Alcohol, Tobacco, Firearms and Explosives,
11 North Central Washington Narcotics Task Force (“NCWNTF”), Homeland Security
12 Investigations, and the United States Border Patrol. ECF No. 60 at 12.¹ Although
13 the parties dispute the identity of the agent who arrested Mr. Youker, there is no
14 dispute that an agent from the NCWNTF arrested Mr. Youker on September 17,
15 2014, for five counts of delivery of a controlled substance,

16
17
18 ¹ Mr. Youker contends that law enforcement executed the federal search warrant
19 “in the dark of night,” and Defendants ask to strike that assertion as
20 unsubstantiated, but the Court finds the time of day that the search warrant was
21 executed to be immaterial to the claims at issue in this matter. ECF Nos. 67 at 1;
69 at 2. Therefore, the Court declines to strike Mr. Youker’s description from the
record.

1 methamphetamine/heroin, in violation of Revised Code of Washington (“RCW”) §
2 69.50.401. ECF Nos. 65 at 1; 69 at 2.

3 In the execution of the federal search warrant, Deputy Venturo observed
4 suspected stolen property that formed the basis for a subsequent state warrant that
5 then-RPD Detective Loren Culp secured and executed on September 18, 2014. ECF
6 Nos. 57 at 14; 60 at 12–13. A Ferry County District Judge signed the search warrant
7 for two parcels of Plaintiff’s property, “including buildings, travel trailers and
8 vehicles on the property and hidden compartments above and below ground” and
9 authorized seizure of the property as evidence of the state crimes of first-degree
10 robbery and possession of stolen property. ECF No. 60 at 43–44. The FCSO and
11 RPD executed the search warrant on September 18 and/or 19, 2014. *See* ECF No.
12 57 at 14–15.

13 On October 1, 2014, DEA Agent Sam Keiser served Mr. Youker with a notice
14 of seizure and forfeiture and an inventory and return of the state search warrant at
15 the Spokane County Jail. *See* ECF No. 60 at 40–54. Plaintiff asserts that he
16 received only the first page of the notice but does not provide any evidence in
17 support of his contention. ECF No. 65 at 2. Agent Keiser emailed Deputy Venturo
18 on October 1, 2014, confirming that Agent Kaiser served the full 15-page notice to
19 Mr. Youker at the Spokane County Jail. ECF Nos. 60 at 14; 70 at 6.

20 The record in this matter contains an email dated October 29, 2014, from
21 Ferry County Prosecutor’s Office Deputy Prosecuting Attorney Emma Paulsen to

1 the “chief law enforcement officers of each [relevant] agency” alerting them of
2 “individuals [who] have requested seizure hearings to contest the seizure and
3 forfeiture of the seized property and have claimed an ownership interest.” ECF No.
4 66 at 5; *see also* ECF No. 64 at 1. Ms. Paulsen listed Mr. Youker as one of the
5 “Joint City County Case” defendants who had requested a seizure hearing. *Id.*
6 There is no indication in the record that Mr. Youker provided written notice of his
7 claim of ownership of the seized property to the FCSO.

8 On February 24, 2015, Ferry County Prosecutor’s Office Deputy Prosecuting
9 Attorney Kathryn “Katie” Burke emailed an address that may belong to Ferry
10 County Sheriff Raymond Maycumber asking “What all property of Youker’s do we
11 have that we want to forfeit?” ECF No. 66 at 37. On March 30, 2016, Ms. Burke
12 again emailed the address possibly assigned to Sheriff Maycumber along with
13 Detective Culp, stating in full:

14 Hey! I just read an article that DOJ has restored equitable sharing!
15 Have you guys heard that? I wonder if that means that we can get a
16 piece of the Youker pie?

17 FYI, I am still working on OUR forfeiture issue. Hoping to get some
18 answers soon.

19 ECF No. 66 at 38.

20 On June 14, 2016, Defendant Callie Hillhouse, Relief Civil Deputy for the
21 FCSO, sent Mr. Youker a letter informing him that he had sixty days to arrange to
retrieve the personal property that was still in the custody of the FCSO. ECF No. 57

1 at 27. The letter continued, “In accordance with Washington State Law, if we do not
2 hear from you within 60 days from the date of this notice, we will presume you no
3 longer wish to claim the property and it will be disposed of in accordance with the
4 applicable state law, RCW Chapter 63.40.” *Id.*

5 On approximately July 19, 2016, Mr. Youker appointed Destanie Daniel to
6 receive the property in the custody of the FCSO on his behalf. ECF Nos. 60 at 56;
7 66 at 14. After Ms. Hillhouse received the notarized release, she spoke with Ms.
8 Daniel by telephone on July 26, 2016, and learned that Ms. Daniel was gathering a
9 moving crew to retrieve the property. *Id.* However, as Ms. Hillhouse wrote to
10 Sheriff Maycumber on approximately August 11, 2016, “When [Ms. Daniel] arrived
11 on August 1, 2016, it was discovered that she had a warrant out of Snohomish
12 County. She was arrested and transported to Snohomish County Upon her
13 release from Snohomish County, she has made no other contact with me.”

14 *Id.* Mr. Youker alleges that Ms. Daniel was arrested and transported pursuant to a
15 “non-extradictable [sic]” warrant. ECF Nos. 64 at 3; 65 at 12. The record supports
16 that Ms. Daniel was arrested consistent with the warrant. ECF Nos. 60 at 59 (record
17 of misdemeanor warrant indicating that the warrant was for “Snohomish County
18 Only,” with a phone number provided for verification purposes, and listing the
19 extradition status as “No extradition—in state pick up only.”); 66 at 14 (letter from
20 Ms. Hillhouse to Sheriff Maycumber indicating that “Snohomish Co. verified that
21 the warrant was valid and they would take her”).

1 Mr. Youker further alleges that Ms. Hillhouse “immediately ran a [sic] illegal
2 criminal background check on Daniel, and discussed daniels [sic] non-extradictable
3 warrant with Prosecutor Burke on July 27, 2016[.]” ECF No. 65 at 2 (citing ECF
4 No. 66 at 39). The email from Ms. Hillhouse to Ms. Burke merely indicates that Ms.
5 Hillhouse “sent Jason Youker a 60 day notice on his property and received a
6 notarized statement back designating a third party to pick up the property[,]”
7 followed by redacted content consisting of less than one line of text. ECF No. 66 at
8 39. The Court finds no support in this document for Mr. Youker’s allegation that
9 Ms. Hillhouse ran an illegal criminal background check on Ms. Daniel.²

10 Ms. Hillhouse also recounted to Sheriff Maycumber that she had received two
11 letters from Arian Noma, an attorney practicing law in Tonasket, Washington. ECF
12 No. 66 at 14. Mr. Noma’s first letter was dated August 1, 2016, and indicated that
13 Mr. Noma represented Mr. Youker, who was incarcerated but “does not desire or
14 intend to give up any ownership rights in the property. . . .” ECF No. 66 at 14, 32.
15 Mr. Noma contested the application of RCW 63.40 to the disposition of Mr.
16 Youker’s seized property. *Id.* The FCSO unsuccessfully attempted to contact Mr.

17
18 ² The Court has scrutinized the parties’ statements of facts, and the materials that
19 they cite in support, to ensure that the assertions of fact upon which the Court
20 relies are supported by the evidence in the summary judgment record. *See* Fed. R.
21 Civ. P. 56(c). The Court finds it unnecessary to take the additional step of striking
portions of Plaintiff’s Statement of Material Facts, as Defendants request. *See*
ECF No. 69.

1 Noma to pursue whether Mr. Youker had executed a notarized release for him,
2 recalling that the phone number listed on Mr. Noma's letterhead was "not a working
3 phone number." *Id.*

4 The sixty-day period announced in the FCSO's June 14, 2016 letter ended on
5 August 13, 2016. ECF No. 66 at 14. In a letter dated August 22, 2016, Ms.
6 Hillhouse reported to Sheriff Maycumber that the FCSO had received a second
7 notarized statement from Mr. Youker dated August 16, 2016, re-authorizing Ms.
8 Daniel as well as three other people to retrieve his property. ECF No. 66 at 15. The
9 FCSO also received a letter from Mr. Noma dated August 20, 2016, requesting to
10 retrieve Mr. Youker's property between August 20, 2016, and September 7, 2016.
11 *Id.* It is unclear whether Mr. Noma was one of the individuals authorized by Mr.
12 Youker to retrieve the property. *See id.*

13 On November 2, 2016, the FCSO published a "Notice of Public Action" on
14 "November 12" for "rifles, pistols, vehicles, tools, and other misc. items from the
15 Sheriff's Evidence Room" ECF No. 57 at 30.

16 With respect to currency that had been seized, the NCWNTF Task Force
17 Supervisor, Josh Petker, sent Mr. Youker a letter dated June 21, 2017:

18 Pursuant to your letter dated 09/30/2014 claiming ownership for the
19 above listed property, you are hereby advised that a forfeiture hearing
20 has been scheduled. The hearing date is August 2, 2017 at 1300 hours.
21 The location will be the Okanogan County Sheriff's Office, 123 5th
Ave. N. Okanogan, WA room #200. If you cannot make a personal
appearance notify me prior to the hearing date so telephone
arrangements can be made.

1 ECF No. 66 at 10.

2 ***Procedural History***

3 Plaintiff initiated this case through a Complaint filed on May 24, 2019. ECF
4 No. 1. The Court screened Plaintiff’s Complaint pursuant to the Prison Litigation
5 Reform Act of 1995 and determined that Plaintiff failed to state a claim upon which
6 relief could be granted under 42 U.S.C. § 1983, based either on the alleged
7 unconstitutional seizure by the RPD of Plaintiff’s property, or on the alleged
8 violation by Callie Hillhouse of Plaintiff’s statutory forfeiture rights under the
9 Fourth, Fifth, and Fourteenth Amendments. ECF No. 11. With respect to seizure of
10 the property, the Court found that the three-year statute of limitations applicable to
11 section 1983 claims would bar relief unless Plaintiff alleged how equitable tolling
12 applied. *Id.* at 6. The Court gave Plaintiff an opportunity to file an amended
13 complaint to address the deficiencies. *Id.* at 8–9.

14 On September 9, 2019, Plaintiff timely filed a First Amended Complaint
15 claiming that: (1) Defendants “Republic Police Officers” violated Plaintiff’s Fourth
16 Amendment rights by illegally seizing his property; (2) one or all of the Defendants³
17 deprived Plaintiff of his due process rights when they seized his property; (3)
18 Defendants RPD, City of Republic, and Ferry County are liable for violation of

19 _____
20 ³ Plaintiff alleges that “Defendant’s [sic] committed an illegal seizure and
21 committed a constitutional due process violation[,]” without specifying which
Defendant allegedly acted unconstitutionally. ECF No. 14 at 11.

1 Plaintiff's rights under a theory of municipal or supervisor liability; (4) Defendants
2 Callie Hillhouse and Republic Police Officers violated constitutional rights by
3 committing "fraud and conspiracy." ECF No. 14. Plaintiff seeks compensatory and
4 punitive damages as well as "other and further relief" as the Court deems just. *Id.*
5 The Court directed the U.S. Marshals Service to serve the First Amended Complaint,
6 ECF No. 14, and Defendants answered on December 27, 2019, ECF No. 27.

7 The Court issued a Jury Trial Scheduling Order on March 4, 2020. ECF No.
8 40. The motion set a deadline of June 4, 2020, for any motion to amend pleadings or
9 add named parties. *Id.* at 3. On June 22, 2020, Plaintiff filed, without obtaining
10 leave from the Court, a Second Amended Complaint. ECF No. 47. This
11 unauthorized Second Amended Complaint included additional factual allegations
12 and named additional defendants but raised the same four claims as the First
13 Amended Complaint. *Id.* Defendants filed their Motion for Summary Judgment on
14 October 23, 2020 and objected to Plaintiff's unauthorized filing of the Second
15 Amended Complaint. ECF No. 56 at 3 n. 3. Plaintiff did not respond to Defendant's
16 objection and has not set forth any basis for this Court to accept his untimely Second
17 Amended Complaint. *See* ECF Nos. 64; 65 at 3 (referring only to First Amended
18 Complaint). As Plaintiff's Second Amended Complaint was untimely, was not
19 authorized, and Defendants objected to his filing in their Motion for Summary
20 Judgment, the First Amended Complaint remains the operative complaint in this
21 matter.

1 **DISCUSSION**

2 Section 1983 provides a cause of action for the “deprivation of any rights,
3 privileges, or immunities secured by the Constitution and laws” of the United States.
4 42 U.S.C. § 1983. To secure relief under section 1983, a plaintiff must demonstrate
5 two essential elements: (1) that the defendant violated a right secured by the U.S.
6 Constitution or federal statute; and (2) the violation was committed by a person
7 acting under the color of state law. *Collins v. City of Harker Heights*, 503 U.S. 115,
8 120 (1992).

9 ***Mr. Youker’s Claims Against the RPD and “Republic Police Officers”***

10 Mr. Youker claims that the RPD and/or unnamed “Republic Police Officers”
11 illegally seized his property, deprived him of his due process rights, and committed
12 fraud and conspiracy. ECF No. 14. Defendants argue that the RPD is not a proper
13 defendant, as a department of the City of Republic. *See* ECF Nos. 56 at 7; 68 at 2.

14 A county or municipality is subject to suit under 42 U.S.C. § 1983. *Monell v.*
15 *Dep’t of Soc. Servs.*, 436 U.S. 658, 690 (1978). However, a municipality may not be
16 sued under section 1983 solely because an injury was inflicted by an employee or
17 agent. *Id.* at 694. A municipality is not vicariously liable for the unconstitutional
18 acts of its employees under the theory of respondeat superior. *Id.* at 691. Rather,
19 counties or municipalities are “persons” subject to liability under 42 U.S.C. § 1983
20 only where official policy or custom causes the injury. *Id.* at 690.

1 Moreover, as the Court notified Mr. Youker in its screening order, municipal
2 or county departments generally are not considered “persons” within the meaning of
3 section 1983. ECF No. 11 at 4 (citing *United States v. Kama*, 394 F.3d 1236, 1239–
4 40 (9th Cir. 2005)); *see also Vance v. Cty. Of Santa Clara*, 928 F. Supp. 993, 995–
5 96 (N.D. Cal. 1996) (sua sponte dismissing Santa Clara Department of Corrections
6 as improper defendant). Mr. Youker has not addressed the Court’s previous
7 admonition that the RPD, as a municipal department, is not a “person” separate from
8 the City of Republic under section 1983. Based on the Ninth Circuit caselaw finding
9 police departments to be improper defendants in section 1983 actions, the Court
10 grants Defendants’ summary judgment motion with respect to dismissal of the RPD
11 and analyzes the four claims against it as if brought only against Defendant City of
12 Republic. *See Langley v. Tulare Police Dep’t*, No. 1:16-cv-00336-DAD-SKO, 2018
13 U.S. Dist. LEXIS 5424, at *2 n.1 (E.D. Cal. Jan. 10, 2018).

14 The Court addresses claims against the unnamed Republic Police Officer
15 Defendants claim-by-claim.

16 ***Fourth Amendment Claim***

17 Plaintiff claims that Republic Police Officers exceeded the scope of the state
18 search warrant executed on September 18, 2014,⁴ when they seized property that

19 ⁴ Plaintiff refers to the federal search warrant in his First Amended Complaint, but
20 it was the state search warrant that was executed on September 18, 2014. *See* ECF
21 Nos. 14 at 7; 57 at 14; 60 at 12–13.

1 Plaintiff asserts was not particularly described. ECF No. 14 at 7. Defendants
2 respond to Plaintiff’s Fourth and Fourteenth Amendment claims under section 1983
3 together. *See* ECF No. 68 at 5–6. Defendants also maintain that Plaintiff’s Fourth
4 and Fourteenth Amendment claims under section 1983 are barred by the applicable
5 three-year statute of limitations. *Id.* at 9.

6 The Court notes that Plaintiff’s filings do not make it clear whether Plaintiff
7 intends to assert a Fourth Amendment claim separate from his Fourteenth
8 Amendment claim concerning wrongful deprivation of his property with inadequate
9 process. *See* ECF No. 64 at 8–9 (contesting the duration of the seizure of his
10 property and the lack of a hearing).

11 The Fourth Amendment requires a warrant to be issued upon probable cause
12 and to describe with particularity the place to be searched and the persons or things
13 to be seized. U.S. Const. amend. IV; *see also United States v. Spilotro*, 800 F.3d
14 959, 964 (9th Cir. 1986). Moreover, a search or seizure pursuant to a valid warrant
15 is unreasonable under the Fourth Amendment to the extent that it exceeds the scope
16 of the warrant. *Horton v. California*, 496 U.S. 128, 140 (1990).

17 “A statute of limitations under § 1983 . . . begins to run when the cause of
18 action accrues, which is when the plaintiffs know or have reason to know of the
19 injury that is the basis of their action.” *RK Ventures, Inc. v. City of Seattle*, 307 F.3d
20 1045, 1058 (9th Cir. 2002). The statute of limitations is three years. *Boston v.*
21

1 *Kitsap Cty.*, 852 F3d 1182, 1185 (9th Cir. 2017). The disputed seizure occurred in
2 September 2014. Plaintiff did not file this lawsuit until May 24, 2019. ECF No. 1.

3 The Court looks to Washington state law to determine whether Plaintiff's
4 section 1983 claims qualify for equitable tolling of the statute of limitations. *Jones*
5 *v. Blanas*, 393 F.3d 918, 927 (9th Cir. 2004). "The predicates for equitable tolling
6 are bad faith, deception, or false assurances by the defendant and the exercise of
7 diligence by the plaintiff." *Millay v. Cam*, 135 Wash.2d 193, 206 (Wash. 1998).

8 Courts "typically permit equitable tolling to occur only sparingly, and should not
9 extend it to a garden variety claim of excusable neglect." *State v. Robinson*, 104

10 Wash. App. 657, 667 (Wash. 2001) (internal quotations omitted). Washington State

11 also allows for a tolling period if a person is incompetent or disabled to such a

12 degree that he or she cannot understand the nature of the proceedings. *See* RCW

13 4.16.190; *see also Williams v. Holevinski*, No. 04-cv-123-RHW, 2006 U.S. Dist.

14 LEXIS 52311, 2006 WL 2167105, *2 (E.D. Wash. July 31, 2006). While Defendant

15 carries the initial burden of proving that a statute of limitations applies, "plaintiff . . .

16 carries the burden of proof if [he] alleges that the statute was tolled and does not bar

17 the claim." *Pope v. McComas*, No. 07-cv-1191-RSM-JPD, 2011 U.S. Dist. LEXIS

18 45149, 2011 WL 1584213, at *7 (W.D. Wash. Mar. 10, 2011), *report and*

19 *recommendation adopted*, 2011 U.S. Dist. LEXIS 45140, 2011 WL 1584200 (W.D.

20 Wash. Apr. 26, 2011) (citing *Rivas v. Overlake Hospital Medical Center*, 164 Wn.2d

21 261, 267 (Wash. 2008)).

1 Although Plaintiff appears from the record to have been continuously
2 incarcerated since the relevant search warrant was executed, the Court does not find
3 any support for tolling based on Plaintiff's inability to understand the nature of the
4 seizure and forfeiture proceedings. Indeed, Plaintiff has demonstrated his ability to
5 understand the seizure and forfeiture proceedings by articulating his concerns in the
6 pleadings in this matter. Plaintiff does not offer evidence of bad faith, deception, or
7 false assurances by Defendants to support equitable tolling of the statute of
8 limitations for a Fourth Amendment claim beyond September 2017.

9 Even if the statute of limitations were tolled, which the Court finds no basis to
10 do, Plaintiff only generically objects that the state search warrant obtained on
11 September 18, 2014, did not provide for "seizure of everything a man owns." ECF
12 No. 64 at 3. The Court finds no support in the record for Plaintiff's allegation that
13 Defendants seized property beyond the scope of the relevant state search warrant.
14 Consequently, the Court finds that Mr. Youker has failed to state a claim on which
15 relief can be granted. Accordingly, the Court grants Defendants' summary judgment
16 motion with respect to a Fourth Amendment claim under section 1983.

17 ***Fourteenth Amendment Claims***

18 Plaintiff asserts that he was not afforded proper due process with respect to
19 the forfeiture of property seized during the execution of the September 18, 2014
20 state search warrant, and, therefore, his Fourteenth Amendment rights were violated
21 by the forfeiture. ECF No. 64 at 8–9.

1 Defendants argue that Plaintiff was provided adequate process pursuant to
2 RCW 10.105.010, a Washington statute providing for forfeiture of personal
3 property. Defendants further contend that Ms. Hillhouse should not have sent her
4 June 14, 2016 letter to Mr. Youker because he already had forfeited his rights to the
5 seized personal property under a Washington statute other than RCW 63.40, which
6 Ms. Hillhouse cited in her correspondence. ECF No. 56 at 4. Defendants argue that
7 RCW 10.105.010 provided the pre- and post-deprivation framework for Mr. Youker
8 to retrieve his property, and Mr. Youker did not timely notify the FCSO by
9 November 3, 2014, that he claimed an ownership or possessory interest over the
10 seized property under that statute. *Id.* Defendants continue, “Despite being
11 provided a second unwarranted chance to retrieve his property, Mr. Youker failed to
12 retrieve the property within the sixty days of Ms. Hillhouse’s letter and his property
13 was subsequently auctioned off by the FCSO on November 12, 2016.” ECF No. 56
14 at 5 (citing ECF No. 57 at 30).

15 Deprivation of property by a state actor, whether intentional or negligent, does
16 not support a claim under section 1983 if state law provides a meaningful post-
17 deprivation remedy. *Hudson v. Palmer*, 468 U.S. 517, 533 (1984) (intentional
18 deprivation of property not actionable under section 1983 where post-deprivation
19 remedy available); *Parratt*, 451 U.S. 527, 542–43 (1981) (negligent deprivation of
20 property not actionable where post-deprivation remedy available), *overruled on*
21 *other grounds by Daniels v. Williams*, 474 U.S. 327 (1986).

1 Under RCW 10.105.010, a defendant's personal property is subject to
2 forfeiture if it was: (1) used “in the commission of, or in aiding or abetting in the
3 commission of[,] any felony”; or (2) acquired for, during, or as a result of any
4 felony. RCW 10.105.010(1). The State also must meet certain procedural
5 requirements under RCW 10.105.010(3)-(5), such as giving the owner proper notice.
6 *State v. Trevino*, No. 47613-4-II, 2016 Wash. App. LEXIS 1618, at *4 (Ct. App.
7 July 12, 2016). Property seized pursuant to RCW 10.105.010 is deemed forfeited if
8 “no person notified the seizing law enforcement agency in writing of the person’s
9 claim of ownership or right to possession of [the seized property] within forty-five
10 days of its seizure” RCW 10.105.010(4).

11 The law is well established that a plaintiff does not state a viable section 1983
12 claim based on wrongful confiscation of property when the plaintiff “possesses an
13 adequate post-deprivation remedy under state law.” *Jeffries v. Reed*, 631 F. Supp.
14 1212, 1216 (E.D. Wash. 1986) (citing *Parratt*, 451 U.S. 527). Washington State
15 provides for a meaningful post-deprivation remedy for the loss of property by state
16 agents and employees through a common law tort claim. *Jeffries*, 631 F. Supp. at
17 1216 (citing *Franklin v. State Welfare Division*, 662 F.2d 1337, 1345–46 (9th Cir.
18 1981)); see also *Federal Way Dep’t of Pub. v. 1996 Toyota*, No. 41028-8-1, 1998
19 Wash. App. LEXIS 727, at *1–2 (Ct. App. May 18, 1998) (resolving an appeal
20 regarding a disputed claim of ownership of property seized pursuant to RCW
21 10.105.010 that was removed to state Superior Court).

1 Plaintiff's response and supporting materials rely on an October 29, 2014
2 email from an attorney in the Ferry County Prosecutor's Office, which included
3 Plaintiff in a list of individuals who had requested a seizure hearing, to attempt to
4 raise a material question of fact about whether Plaintiff timely claimed ownership of
5 the property after it was seized. However, whether Plaintiff properly claimed
6 ownership of the seized property within forty-five days of its seizure under RCW
7 10.105.010(4) is irrelevant to a Fourteenth Amendment civil rights claim because
8 Plaintiff does not challenge the constitutional adequacy of the forfeiture procedures,
9 but rather the individual actions of Defendants. Plaintiff's contentions are matters of
10 state tort law. *See Wright v. Fred Hutchinson Cancer Research Ctr.*, 269 F. Supp.
11 2d 1286, 1291–92 (W.D. Wash. Aug. 8, 2002) (holding that under the Supreme
12 Court decisions in *Parratt* and *Hudson*, "situations involving a deprivation caused
13 by random and unauthorized acts of state officials in contravention of established
14 state procedures cannot be predicted, making it virtually impossible to provide the
15 type of predeprivation notice and hearing that are generally required." Therefore,
16 "[i]n such circumstances, the 'meaningful post-deprivation remedy' provided by
17 state tort law is all the process that is due.") (quoting *Parratt*, 451 U.S. at 544).

18 Although there were repetitive notices and convoluted procedures for the
19 forfeiture of items seized from Plaintiff's property in September 2014, the Court
20 finds no genuine dispute regarding any fact material to Plaintiff's claim of a
21 Fourteenth Amendment violation. Plaintiff does not make any argument for why

1 state court post-deprivation procedures are inadequate or that the state pre-
2 deprivation notice and hearing procedures are defective. *See Logan v. Zimmerman*
3 *Brush Co.*, 455 U.S. 422, 436 (1982) (recognizing that a section 1983 claim may be
4 premised on an argument that the state’s established procedure infringed on the
5 plaintiff’s property interest, not on an assertion that a state employee’s random and
6 unauthorized act deprived a plaintiff of property). Moreover, Plaintiff has not
7 responded to the evidence produced by Defendants of the notice that Plaintiff was
8 provided with any evidence that he timely requested a hearing through written notice
9 to the FCSO in 2014 or that he timely complied with the requirements for claiming
10 the property set forth in Ms. Hillhouse’s June 2016 letter. Rather, the record
11 supports that Plaintiff had multiple opportunities to contest the forfeiture, and, as a
12 matter of law, Plaintiff’s Fourteenth Amendment claim is deficient because it
13 challenges an alleged deprivation caused by random acts of individual state officials,
14 which is not actionable under section 1983. Furthermore, Mr. Youker does not
15 argue that the post-deprivation remedy is inadequate or that the established state
16 procedures themselves deprive individuals of property without due process.
17 Therefore, the Court grants summary judgment to Defendants on Plaintiff’s section
18 1983 claim based on the Fourteenth Amendment.

19 ***Fraud and Conspiracy Claims***

20 Plaintiff argues that Defendants conspired against him beginning with the
21 execution of the search warrant in September 2014 “and continued through out [sic]

1 until defendant’s [sic] claimed property for themselves in August of 2016.” ECF
2 No. 64 at 7. Plaintiff offers as support Ms. Hillhouse’s letters to Sheriff
3 Maycumber, detailing Ms. Daniel’s arrest when she came to retrieve Plaintiff’s
4 property on August 1, 2016, and Ms. Burke’s statement regarding “Youker Pie” in
5 her email. *Id.* at 7–8. Plaintiff claims that Ms. Hillhouse made “fraudulent”
6 statements to Mr. Noma, that Ms. Hillhouse referenced in her letter to Sheriff
7 Maycumber. ECF No. 64 at 6–7. Specifically, Plaintiff claims that Ms. Hillhouse
8 “used fraudulent policy statements and statute RCW 63.40 illegally” when she wrote
9 to Mr. Youker that RCW 63.60 provided a sixty-day period from the June 14, 2016
10 Notice for Mr. Youker to claim the property. ECF No. 64 at 6–7. Defendants seek
11 summary judgment regarding Plaintiff’s fraud and conspiracy claims on the basis
12 that they arise under “tort law and do not involve any constitutional violations
13 actionable under section 1983.” ECF No. 68 at 3.

14 To state a claim for a conspiracy to violate Plaintiff’s constitutional rights
15 under section 1983, Plaintiff must state specific facts to support the existence of the
16 claimed conspiracy. *Burns v. Cty. of King*, 883 F.2d 819, 821 (9th Cir. 1989).
17 Those facts must indicate “an agreement or ‘meeting of the minds’ to violate
18 constitutional rights.” *Franklin v. Fox*, 312 F.3d 423, 441 (9th Cir. 2002) (quoting
19 *United Steelworkers of Am. v. Phelps Dodge Corp.*, 865 F.2d 1539, 1540–41 (9th
20 Cir. 1989) (en banc)). “To be liable, each participant in the conspiracy need not
21 know the exact details of the plan, but each participant must at least share the

1 common objective of the conspiracy.” *Id.* at 441. A court may infer this agreement
2 or meeting of the minds based on circumstantial evidence, such as the actions of the
3 defendants. *Mendocino Envtl. Ctr. v. Mendocino County*, 192 F.3d 1283, 1301 (9th
4 Cir. 1999). For instance, Plaintiff may rely on evidence that Defendants committed
5 acts that “are unlikely to have been undertaken without an agreement” to infer a
6 conspiracy. *Id.* In addition, a conspiracy to violate constitutional rights must be
7 predicated on a viable underlying constitutional claim. *See Thornton v. City of St.*
8 *Helens*, 425 F.3d 1158, 1168 (9th Cir. 2005). In addition, a section 1983 conspiracy
9 claim requires “an actual deprivation of constitutional rights.” *Hart v. Parks*, 450
10 F.3d 1059, 1071 (9th Cir. 2006). “The defendants must have, by some concerted
11 action, intended to accomplish some unlawful objective for the purpose of harming
12 another which results in damage.” *Mendocino Envtl. Ctr.*, 192 F.3d at 1301.

13 Plaintiff does not offer any support for his conspiracy claims beyond
14 conclusory allegations. While the Court understands why the statement in the record
15 about getting “a piece of the Youker pie” likely offends Mr. Youker, that statement
16 by a prosecutor who is not named as a defendant and in a context outside of the
17 primary events related to seizure of Plaintiff’s property, does not provide any
18 support that there was any agreement among Defendants to violate Plaintiff’s
19 constitutional rights. Non-defendant prosecuting attorney Ms. Burke made the
20 “Youker pie” statement, without any indication of what plan or objective that remark
21 could have implied and without evidence of any agreement with that statement by

1 Defendants. ECF No. 66 at 38; *see United Steelworkers of America v. Phelps Dodge*
2 *Corp.*, 865 F.2d 1539, 1541 (9th Cir. 1989) (holding that, to be liable, “each
3 participant in the conspiracy need not know the exact details of the plan, but each
4 participant must at least share the common objective of the conspiracy.”). “A mere
5 allegation of conspiracy without factual specificity is insufficient.” *Karim-Panahi v.*
6 *Los Angeles Police Dep’t*, 839 F.2d 621, 626 (9th Cir. 1988).

7 In addition to lacking detail, Plaintiff’s conclusory allegations also do not
8 describe a conceivable conspiracy. Had Defendants shared an objective of depriving
9 Mr. Youker of his property, they could simply have retained the property after 45
10 days elapsed following its seizure in September 2014. *See* RCW 10.105.010. There
11 is no indication that other Defendants cooperated with Defendant Hillhouse in the
12 RCW 63.60 process in summer and fall 2016 with any objective of depriving Mr.
13 Youker of his property. Moreover, Mr. Youker and his designees themselves missed
14 the 60-day deadline set by Ms. Hillhouse’s letter. Ms. Hillhouse was not in control
15 of their actions. It was the failure to act by Mr. Youker and his designees that
16 resulted in the forfeiture of the property. Therefore, the Court does not find
17 evidence supporting any conspiracy. Additionally, the Court does not find any
18 dispute of material fact with respect to Plaintiff’s conspiracy claim and,
19 consequently, grants summary judgment to Defendants on this issue.

20 With respect to fraud, federal courts look to state law for the elements of a
21 viable claim. *Kearns v. Ford Motor Co.*, 567 F.3d 1120, 1126 (9th Cir. 2009).

1 Under Washington state law, a fraud claim requires a showing of “(1) representation
2 of an existing fact; (2) materiality; (3) falsity; (4) the speaker’s knowledge of its
3 falsity; (5) intent of the speaker that it should be acted upon by the plaintiff; (6)
4 plaintiff’s ignorance of its falsity; (7) plaintiff’s reliance on the truth of the
5 representation; (8) plaintiff’s right to rely upon it; and (9) damages suffered by the
6 plaintiff.” *Stiley v. Block*, 130 Wn.2d 486, 505 (1996).

7 Plaintiff has made conclusory allegations of fraud that are insufficient to
8 support any of the required elements of a claim of fraud. For example, Plaintiff
9 maintains that Defendant Hillhouse invented a “fraud policy . . . requiring [Ms.]
10 Daniel to get a new notarized letter, then played more policy fraud games with
11 plaintiffs [sic] hired attorney, all to get a piece of the ‘Youker Pie.’” ECF No. 64 at
12 3. Plaintiff continues elsewhere in his response that: “Hillhouse is a civil deputy,
13 who violated constitutional rights intentionally to deprive [sic] plaintiff of his
14 property by changing policies in the act of returning property, using fraudulent
15 policy statements and statute RCW 63.40 illegally. Not-to-mention conspiring to
16 run illegal background checks to arrest a citizen who committed no crime. Hillhouse
17 knew that all this conduct she was committing was unlawful conduct.” *Id.* at 6.
18 However, Mr. Youker has not submitted any evidence to support that Defendant
19 Hillhouse intended to mislead by sending the June 2016 letter to Plaintiff. Nor is
20 there evidence in the record of an illegal background check or knowledge that
21 Defendant Hillhouse “was committing . . . unlawful conduct.” Without evidence

1 supporting those contentions, the Court finds that there are no material disputes of
2 fact with respect to any fraud claim by Plaintiff. Accordingly, summary judgment
3 for Defendants shall be entered on the fraud claim, as well.

4 ***Municipal and Supervisor Liability***

5 Defendants argue that Plaintiff has not shown either that: (1) the City of
6 Republic or Ferry County has engaged in any pattern of failing to properly train its
7 employees and that the alleged failure resulted in a violation of Mr. Youker's
8 constitutional rights; or (2) a single decision by a policymaker resulted in a violation
9 of Mr. Youker's constitutional rights. Plaintiff responds that a failure by the "City
10 and County to properly train their employees" resulted in the claimed constitutional
11 violations. ECF No. 64 at 9.

12 As discussed above, counties or municipalities are "persons" subject to
13 liability under 42 U.S.C. § 1983 only where official policy or custom causes the
14 constitutional injury. *Monell*, 436 U.S. at 690. Municipal liability attaches where "a
15 deliberate choice to follow a course of action is made. . . by the official or officials
16 responsible for establishing final policy with respect to the subject matter in
17 question." *Pembaur v. City of Cincinnati*, 475 U.S. 469, 483 (1986).

18 Because the Court has found that Plaintiff has not supported his claims of a
19 constitutional violation, there is no basis for the Court to proceed further in
20 determining whether the County or City's policies or customs were the moving
21 forces behind a constitutional violation. Accordingly, the Court grants Defendants'

1 summary judgment motion for dismissal of Plaintiff’s claim for liability against
2 Ferry County and the City of Republic.

3 ***Qualified Immunity***

4 Plaintiff argues that Defendant Hillhouse violated his clearly established
5 constitutional rights and is not immune from his section 1983 claim. ECF No. 64 at
6 5–6. Defendants argue that Ms. Hillhouse, the only named individual Defendant, is
7 entitled to qualified immunity from Mr. Youker’s claims. ECF No. 56 at 7–8.

8 The doctrine of qualified immunity shields government actors from civil
9 liability under 42 U.S.C. § 1983 if “their conduct does not violate clearly established
10 statutory or constitutional rights of which a reasonable person would have known.”
11 *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). The Supreme Court has set forth a
12 “two-step sequence for resolving government officials’ qualified immunity claims.”
13 *Pearson v. Callahan*, 555 U.S. 223, 232 (2009). “First, a court must decide whether
14 the facts that a plaintiff has alleged or shown make out a violation of a constitutional
15 right.” *Id.* “Second, if the plaintiff has satisfied this first step, the court must decide
16 whether the right at issue was ‘clearly established’ at the time of defendant’s alleged
17 misconduct.” *Id.*

18 The Supreme Court has emphasized that the qualified immunity standard sets
19 a low bar, explaining that “[q]ualified immunity gives government officials
20 breathing room to make reasonable but mistaken judgments about open legal
21 questions.” *Ashcroft v. al-Kidd*, 563 U.S. 731, 743 (2011). “When properly

1 applied,” qualified immunity shields from liability “all but the plainly incompetent
2 or those who knowingly violate the law.” *al-Kidd*, 563 U.S. at 743.

3 Having determined that there is no constitutional violation, the Court finds
4 that the first prong of qualified immunity is not satisfied, and, furthermore, that the
5 Court need not reach the clearly established prong. *See Pearson*, 555 U.S. at 232.

6 Accordingly, **IT IS HEREBY ORDERED:**

- 7 1. Defendants’ Motion for Summary Judgment, **ECF No. 56**, is
8 **GRANTED**.
- 9 2. Judgment shall be entered for Defendants on all counts.
- 10 3. All other pending motions in this matter are **DENIED AS MOOT**, and
11 all upcoming hearings are **STRICKEN**.
- 12 4. Given that the Court is granting summary judgment for Defendants
13 based on well-settled law, the Court certifies pursuant to 28 U.S.C. §
14 1915(a)(3) that appeal of this decision would not be taken in good faith.

15 **IT IS SO ORDERED.** The District Court Clerk is directed to enter this
16 Order, provide copies to Plaintiff and counsel, and **close the file** in this case.

17 **DATED** February 19, 2021.

18
19 *s/ Rosanna Malouf Peterson*
20 ROSANNA MALOUF PETERSON
21 United States District Judge