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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

NORVAL HOVERSON,

Plaintiff,

v.

KLICKITAT COUNTY, et al.,

Defendants.

CASE NO. C16-5959 BHS

ORDER GRANTING  
DEFENDANTS’ MOTION TO  
AMEND ANSWER

This matter comes before the Court on Defendants Klickitat County Sheriff Department and Klickitat County’s (“Defendants”) motion to amend answer (Dkt. 15). The Court has considered the pleadings filed in support of and in opposition to the motion and the remainder of the file and hereby grants the motion for the reasons stated herein.

**I. PROCEDURAL AND FACTUAL HISTORY**

On October 18, 2016, Plaintiff Norval Hoverson (“Hoverson”) filed a complaint against Defendants in Clark County Superior Court for the State of Washington. Dkt. 1-2. Hoverson alleges that, on September 18, 2013, Defendants’ employees used excessive force while Hoverson was incarcerated in the Klickitat County Jail. *Id.*

1 On November 16, 2016, Defendants removed the matter to this Court. Dkt. 1. On  
2 February 9, 2017, Defendants answered and, relevant to the instant motion, did not assert  
3 a statute of limitations defense. Dkt. 10.

4 On April 7, 2017, the Ninth Circuit Court of Appeals issued its decision in *Boston*  
5 *v. Kitsap Cty.*, 852 F.3d 1182 (9th Cir. 2017), holding that compliance with the state 60-  
6 day administrative exhaustion requirement does not toll the statute of limitations for  
7 causes of action under 42 U.S.C. § 1983.

8 On June 1, 2017, Defendants moved to amend their answer to add a statute of  
9 limitations defense. Dkt. 15. On June 12, 2017, Hoverson responded. Dkt. 17. On June  
10 19, 2017, Defendants replied. Dkt. 18.

## 11 II. DISCUSSION

12 State law governs the statutes of limitations for section 1983 actions as well as  
13 questions regarding tolling and waiver. *Wilson v. Garcia*, 471 U.S. 261, 269 (1985);  
14 *Lucchesi v. Bar-O Boys Ranch*, 353 F.3d 691, 696 (9th Cir. 2003). In Washington a  
15 “party waives a statute of limitations affirmative defense (1) by engaging in conduct that  
16 is inconsistent with that party’s later assertion of the defense or (2) by being dilatory in  
17 asserting the defense.” *Greenhalgh v. Dep’t of Corr.*, 170 Wn. App. 137, 144 (2012).

18 In this case, Defendants did not waive the statute of limitations defense.  
19 Defendants’ failure to assert the defense *before* it became relevant is not conduct  
20 inconsistent with the current request to assert the defense. Moreover, seeking leave to  
21 assert the defense one month after the Ninth Circuit’s mandate issued is not dilatory.  
22

