

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

**Jun 26, 2026**

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WASHINGTON

LUCAS McCOMAS, CHRIS EAKLE,  
AUSTIN KEY, and IAN SUTTON,

Plaintiffs,

v.

CHELAN COUNTY, CHELAN  
COUNTY SHERIFF'S OFFICE, and  
Sheriff MIKE MORRISON, with the  
latter both individually and in his official  
capacity,

Defendants.

No. 2:26-cv-00105-MKD

ORDER GRANTING IN PART AND  
DENYING IN PART  
DEFENDANTS' MOTION TO  
DISMISS AND GRANTING  
DEFENDANTS' MOTION TO  
STRIKE

**ECF Nos. 9, 16**

Before the Court is Defendants' Joint Motion to Dismiss Plaintiffs'

Complaint, ECF No. 9, and Defendants' Joint Motion to Strike Declarations of

Lucas McComas, Chris Eakle, Austin Key, Ian Sutton, and Mary Schulz, ECF No.

16. The Court has reviewed the motions and record and is fully informed. For the

reasons explained below, the Court grants in part and denies in part Defendants'

Motion to Dismiss, ECF No. 9, and grants Defendants' Motion to Strike, ECF No.

16.

**BACKGROUND**

1  
2 Plaintiffs Lucas McComas, Chris Eakle, Austin Key, and Ian Sutton are all  
3 employees of the Chelan County Sheriff’s Office. ECF No. 1 at 3. Plaintiffs  
4 allege that in summer 2022, they had each “completed [a] merit-based Civil  
5 Service test, and each was ranked in the top four position for promotion to the rank  
6 of sergeant.” *Id.* 5. In September 2022, Plaintiffs McComas, Key, and Eakle were  
7 promoted to the rank of sergeant. *Id.* at 8.

8 In Fall 2022, Sheriff Brian Burnett ran for re-election against Defendant  
9 Mike Morrison. *Id.* Plaintiffs allege that “[b]oth candidates implicitly, if not  
10 directly, compelled law enforcement personnel to declare their allegiance and then  
11 support them respectively.” *Id.* at 9. Sheriff Burnett “published his employee  
12 supporters in photos . . . the list included . . . Plaintiffs McComas, Eakle, Key, and  
13 Sutton.” *Id.* In November 2022, Defendant Morrison was elected as Sheriff of  
14 Chelan County. *Id.* at 10. That same month, Sheriff Burnett promoted Plaintiff  
15 Sutton to sergeant “to ensure Plaintiff Sutton’s merit right to that rank when the  
16 position was slated to be funded in July 2023.” *Id.* at 11.

17 In December 2022, fearing retaliation from Defendant Morrison against  
18 Plaintiffs, “Sheriff Burnett notified Plaintiffs that he would ask the Commission to  
19 reclassify Plaintiffs to their former position as deputies, and thereby return  
20 Plaintiffs to the Sergeant’s reinstatement list, to protect their merit entitlements to

1 their sergeant’s rankings.” *Id.* Sheriff Burnett also “advised Plaintiffs to make the  
2 same request to the Commissioners to voluntarily ‘step down’ to return to the  
3 protected deputy status and reinstatement list, so that when sergeants’ positions  
4 became vacant, they would be entitled to return to their sergeant’s positions.” *Id.*  
5 at 12. In December 2022, Plaintiffs made the request. *Id.*

6 Defendant Morrison notified Plaintiffs in December 2022 that he would be  
7 reducing all four Plaintiffs from their positions as sergeants. *Id.* at 14. Defendant  
8 Morrison also “stated that the Plaintiffs ‘will have the right to be placed on a  
9 Sergeant reinstatement list until it expires.’” *Id.* at 15. Plaintiffs allege that  
10 Defendant Chelan County Commissioners knew Plaintiffs “voluntary reduction  
11 was being forced upon them for their speech and [was] intended as protection  
12 against retaliation” but “the Civil Service Board approved Plaintiffs’ requests to be  
13 reduced to deputy roles, and returned to the reinstatement list.” *Id.* at 16.  
14 However, in late December, Defendant Morrison issued an email stating that  
15 “Plaintiffs would not be allowed to step down voluntarily, or voluntarily reduced in  
16 rank . . . but would now remain in their roles as sergeants . . .” *Id.* at 17.

17 On January 1, 2023, after taking office, Defendant Morrison “demoted each  
18 Plaintiff sergeant as probationary employees from their earned rank as sergeants to  
19 the rank of deputy, thereby denying them the right to reinstatement as well.” *Id.* at  
20 18. Plaintiffs allege that Defendant Morrison made multiple statements tying their

1 demotion to their support of Sheriff Burnett. *Id.* at 20. Plaintiffs also allege that,  
2 on January 4, 2023, the Chelan County Civil Service Commission certified a  
3 “Sergeant Reinstatement List - 01/01/2023 - Indefinite” for each Plaintiff, but  
4 Defendant Morrison declared the reinstatement list invalid. *Id.* at 20-21. Plaintiffs  
5 further allege that “[s]ergeants’ positions have been available and funded at the  
6 Chelan County Sheriff’s Office, and Defendants have refused to place Plaintiffs  
7 into those positions.” *Id.* at 22. Plaintiffs characterize Defendants’ alleged  
8 retaliation as a “continuing constitutional offense” and allege continuing economic  
9 and noneconomic damages. *Id.*

10 In Summer 2024, Plaintiffs McComas and Eakle filed complaints with  
11 Chelan County’s Human Resources alleging retaliation. *Id.* at 20. Defendant  
12 Chelan County “declined to properly investigate Plaintiffs’ retaliation complaints  
13 [and] forwarded Plaintiffs’ complaints to Defendants’ prosecuting attorney, who  
14 summarily told Plaintiffs that their retaliation complaints had no merit.” *Id.*

15 Plaintiffs bring claims against Defendants Chelan County, Chelan County  
16 Sheriff’s Office, and Morrison under: (1) 42 U.S.C. § 1983 regarding First  
17 Amendment speech and retaliation; and (2) intentional infliction of emotional  
18 distress. ECF No. 1 at 22-38. Defendants moved to dismiss for failure to state a  
19 claim. ECF No. 9. Defendants subsequently moved to strike declarations of Lucas  
20

1 McComas, Chris Eakle, Austin Key, Ian Sutton, and Mary Schultz, which were  
2 submitted in support of Plaintiffs’ response to the motion to dismiss. ECF No. 16.

### 3 LEGAL STANDARD

4 “To survive a [Fed. R. Civ. P. 12(b)(6)] motion to dismiss, a complaint must  
5 contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is  
6 plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell*  
7 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “Threadbare recitals of the  
8 elements of a cause of action, supported by mere conclusory statements, do not  
9 suffice.” *Id.* In considering a motion to dismiss for failure to state a claim, the  
10 Court must accept as true the well-pleaded factual allegations and any reasonable  
11 inference to be drawn from them, but legal conclusions are not entitled to the same  
12 assumption of truth. *Id.* A complaint must contain either direct or inferential  
13 allegations respecting all the material elements necessary to sustain recovery under  
14 some viable legal theory. *Twombly*, 550 U.S. at 562. “Factual allegations must be  
15 enough to raise a right to relief above the speculative level.” *Id.* at 555.

### 16 DISCUSSION

17 Defendants move to dismiss Plaintiffs’ Complaint in its entirety, contending  
18 that Plaintiffs’ claims under 42 U.S.C. § 1983 are time barred and that Plaintiffs  
19 have failed to plausibly allege a claim for intentional infliction of emotional  
20 distress. ECF No. 9 at 5.

1            *1. Motion to Strike*

2            Defendants move to strike the declarations Plaintiffs filed in support of their  
3 response to Defendants’ motion to dismiss. ECF No. 16. Plaintiffs argue that  
4 “[t]he Court should deny Defendants’ motion to strike, convert the motion [to  
5 dismiss] to a Rule 56 motion under Rule 12(d), continue hearing and allow for  
6 proper discovery into Defendants’ claimed facts under Rule 56(f) . . .” ECF No. 18  
7 at 19. The Court declines to do so.

8            When considering a motion to dismiss, “[r]eview is limited to the complaint;  
9 evidence outside the pleadings cannot normally be considered in deciding a  
10 12(b)(6) motion.” *Cervantes v. City of San Diego*, 5 F.3d 1273, 1274 (9th Cir.  
11 1993). “A court may, however, consider certain materials – documents attached to  
12 the complaint, documents incorporated by reference in the complaint, or matters of  
13 judicial notice – without converting the motion to dismiss into a motion for  
14 summary judgment.” *U.S. v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003). Rule  
15 12(d) provides that, “[i]f, on a motion under Rule 12(b)(6) or 12(c), matters outside  
16 the pleadings are presented to and not excluded by the court, the motion must be  
17 treated as one for summary judgment under Rule 56.” However, “[w]hether to  
18 convert a Rule 12(b)(6) motion into one for summary judgment pursuant to Rule  
19 12(d) is at the discretion of the district court.” *Barnes v. Sea Hawai’i Rafting,*  
20 *LLC*, 493 F.Supp.3d 972, 976 (D. Haw. 2020) (quoting *Adobe Sys. Inc. v. Blue*

1 *Source Grp., Inc.*, 125 F. Supp. 3d 945, 968 (N.D. Cal. 2015)), *aff'd sub nom.*

2 *Barnes v. Kris Henry, Inc.*, 2022 WL 501582 (9th Cir. Feb. 18, 2022).

3 “The central question in determining whether to convert a Rule 12 motion  
4 into one for summary judgment is whether the proffered materials and additional  
5 procedures required by Rule 56 will facilitate disposition of the action or whether  
6 the court can base its decision upon the face of the pleadings.” *United States v.*  
7 *Walker River Irrigation District*, 473 F.Supp.3d 1150, 1154 (D. Nev. 2020)  
8 (simplified). Further, “courts regularly decline to convert a motion to dismiss into  
9 one for summary judgment when the litigation is in its early stages.” *Benton v.*  
10 *Executive Hotel Seattle, LLC*, 2021 WL 764135, at \*3 (W.D. Wash. Feb. 26, 2021)  
11 (citing *Williams v. Cty. of Alameda*, 26 F.Supp.3d 925, 936 (N.D. Cal. 2014));  
12 *Barnes*, 493 F.Supp.3d at 976.

13 The Court exercises its discretion and declines to convert the motion to a  
14 Rule 56 motion for summary judgment. This case was filed less than four months  
15 ago and deadlines for discovery and trial have not yet been set. Further, the motion  
16 can be decided considering only the complaint under the proper Rule 12(b)(6)  
17 standard. Accordingly, the Court grants Defendants’ Motion to Strike.

18 2. 42 U.S.C. § 1983 Claim

19 Defendants argue that Plaintiffs’ federal claims are time barred pursuant to  
20 RCW 4.16.080(2) and that RCW 4.96.020, Washington’s presentment statute, does

1 not toll the statute of limitations for § 1983 claims. ECF No. 9 at 8. Plaintiffs  
2 contend that the continuing violations doctrine applies and that the plain meaning  
3 of RCW 4.96.020 tolls the statute of limitations for § 1983 claims. ECF No. 10 at  
4 6.

5 A § 1983 action accrues, and the statute of limitations begins to run, when  
6 plaintiffs know or have reason to know of the injury that forms the basis of their  
7 action. *Knox v. Davis*, 260 F.3d 1009, 1013 (9th Cir. 2001). “[C]ontinuing impact  
8 from past violations is not actionable.” *Id* (simplified). Under Washington state  
9 law, the statute of limitations for a § 1983 claim is three years. RCW 4.16.080(2);  
10 *see RK Ventures, Inc. v. City of Seattle*, 307 F.3d 1045, 1058 (9th Cir. 2002).

11 Washington’s claims presentment statute provides:

12 No action subject to the claim filing requirements of this section shall  
13 be commenced against any local governmental entity, or against any  
14 local governmental entity’s officers, employees, or volunteers, acting  
15 in such capacity, for damages arising out of tortious conduct until  
16 sixty calendar days have elapsed after the claim has first been  
17 presented to the agent of the governing body thereof. The applicable  
18 period of limitations within which an action must be commenced shall  
19 be tolled during the sixty calendar day period. For the purposes of the  
20 applicable period of limitations, an action commenced within five  
court days after the sixty calendar day period has elapsed is deemed to  
have been presented on the first day after the sixty calendar day period  
elapsed.

RCW 4.96.020. “RCW 4.96.020 contains a special statute of limitations  
[and] does not operate to toll the state’s general residual limitations period

1 applicable to § 1983 actions.” *Boston v. Kitsap County*, 852 F.3d 1182,  
2 1189 (9th Cir. 2017).

3 The continuing violations doctrine may be invoked by showing a “series of  
4 related acts, one or more of which falls within the limitations period, or the  
5 maintenance of a discriminatory system both before and during that period.”  
6 *Gutowsky v. County of Placer*, 108 F.3d 256, 259 (9th Cir. 1997) (quoting *Green v.*  
7 *Los Angeles Cnty. Superintendent of Schs.*, 883 F.2d 1472, 1480 (9th Cir. 1989)).  
8 The Supreme Court has narrowly construed the doctrine in holding that it does not  
9 apply to “discrete acts” merely because they are plausibly or sufficiently related to  
10 each other. *Nat’l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 114 (2002).

11 Plaintiffs allege a constitutional injury occurred on January 1, 2023, when  
12 Plaintiffs were demoted. ECF No. 1 at 18. Plaintiffs filed the Complaint on March  
13 4, 2026, over three years after the alleged injury. *Id.* at 40. This is outside of  
14 Washington’s three-year statute of limitations for § 1983 claims and  
15 RCW 4.96.020 does not toll the statute of limitations. *See Boston*, 852 F.3d at  
16 1189.

17 Plaintiffs have not sufficiently alleged a continuing violation. Plaintiffs  
18 characterize Defendants’ conduct as ongoing because Defendant Morrison  
19 allegedly continues to treat the January 2023 reinstatement list as invalid, sergeant  
20 positions allegedly have been available and funded, Defendants allegedly have

1 refused to place Plaintiffs into those positions, and Plaintiffs continue to suffer  
2 harm. ECF No. 1 at 20-22. But the pleaded constitutional injury occurred when  
3 Defendant Morrison allegedly demoted Plaintiffs from sergeant to deputy and  
4 denied them reinstatement rights because of their protected speech. *Id.* at 18-19.  
5 Plaintiffs knew of that injury on January 1, 2023. *Id.* at 18. Even treating  
6 Defendant Morrison's alleged rejection of the reinstatement list as a separate  
7 adverse act, that act occurred in January 2023 and is also untimely.

8 Plaintiffs' general allegation that Defendants have refused to place them into  
9 later available sergeant positions also does not constitute a continuing violation.  
10 The Complaint does not identify any specific vacancy, request for reinstatement,  
11 denial, decisionmaker, or date within the limitations period, nor does it allege facts  
12 supporting a reasonable inference that any timely non-selection was an  
13 independent retaliatory act. As pleaded, Plaintiffs allege continuing effects of the  
14 January 2023 demotions and denial of reinstatement rights, not a continuing  
15 violation.

16 Likewise, the 2024 HR complaints do not make the § 1983 claim timely.  
17 Although Plaintiffs allege that Defendant Chelan County failed to properly  
18 investigate those complaints and that the prosecuting attorney concluded they  
19 lacked merit, they do not plausibly allege that the handling of those complaints  
20

1 caused a new constitutional injury or constituted an independently actionable  
2 adverse employment action.

3 Because the Complaint establishes on its face that the § 1983 claim accrued  
4 in January 2023, and because amendment would not cure that limitations defect,  
5 Plaintiffs' § 1983 claim is dismissed with prejudice.

6 *3. Intentional Infliction of Emotional Distress Claim*

7 Defendants argue that Plaintiffs have not plausibly alleged a claim for  
8 intentional infliction of emotional distress. ECF No. 9 at 14-18.

9 “‘Outrage’ and ‘intentional infliction of emotional distress’ are synonyms  
10 for the same tort.” *Kloepfel v. Bokor*, 66 P.3d 630, 631 n.1 (Wash. 2003) (citation  
11 omitted). The elements of this claim are: “(1) extreme and outrageous conduct; (2)  
12 intentional or reckless infliction of emotional distress; and (3) actual result to the  
13 plaintiff of severe emotional distress.” *Dicomes v. State*, 782 P.2d 1002, 1012  
14 (Wash. 1989) (citation omitted).

15 Plaintiffs allege that “Defendants’ use of law enforcement officers for  
16 personal gain . . . is extreme and outrageous conduct.” ECF No. 1 at 38. Plaintiffs  
17 further allege that Defendants conduct continues to inflict emotional distress on  
18 Plaintiffs. *Id.* “[T]he Court must accept as true the well-pleaded factual  
19 allegations and any reasonable inference to be drawn from them.” *Ashcroft*, 556  
20

1 U.S. at 678. Accordingly, Plaintiffs sufficiently pleaded an intentional infliction of  
2 emotional distress claim.

3       However, the Court’s jurisdiction over state law claims that form “part of the  
4 same case or controversy” arises out of 28 U.S.C. § 1367(a). “Ordinarily, if  
5 federal claims are dismissed before trial[,] the state claims should be dismissed as  
6 well.” *S. Cal. Edison Co. v. Orange Cnty. Transp. Auth.*, 96 F.4th 1099, 1109 (9th  
7 Cir. 2024) (quoting *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 726  
8 (1966)). “When a district court ‘has dismissed all claims over which it has original  
9 jurisdiction,’ it ‘may decline to exercise supplemental jurisdiction’ over remaining  
10 state law claims.” *Pell v. Nuñez*, 99 F.4th 1128, 1135 (9th Cir. 2024) (quoting 28  
11 U.S.C. § 1367(c)(3)). The Ninth Circuit requires that a district court provide notice  
12 and opportunity to be heard before it *sua sponte* declines to exercise supplemental  
13 jurisdiction. *Ho v. Russi*, 45 F.4th 1083, 1086 (9th Cir. 2022).

14       Because Plaintiffs’ remaining intentional infliction of emotional distress  
15 claim raises a question of state law, the Court gives notice that it intends to decline  
16 supplemental jurisdiction over it. Consistent with the below schedule, the parties  
17 shall file a brief setting forth their positions as to whether the Court should exercise  
18 supplemental jurisdiction.

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

