APPENDIX A

United States Court of Appeals
For the Eighth Circuit

No. 18-1597

Mary R. MEIER

Plaintiff - Appellant

v.

St. Louis, Missouri, City Of; Doc's Towing, Inc.

Defendants - Appellees

St. Louis Board of Police Commissioners; Richard H. Gray, Member, St. Louis Board of Police Commissioners, in his official capacity; Thomas Irwin, Member, St. Louis Board of Police Commissioners, in his official capacity; Erwin Switzer, Member, St. Louis Board of Police Commissioners, in his official capacity; Bettye Battle-Turner, Member, St. Louis Board of Police Commissioners, in her official capacity; Francis G. Slay, in his official capacity as a member ex officio of the St. Louis City Board of Police Commissioners; St. Louis P.O. House, DSN 219

Defendants

Appeal from United States District Court
for the Eastern District of Missouri – St. Louis

Submitted: April 15, 2019
Filed: August 19, 2019

Before SMITH, Chief Judge, ARNOLD and KELLY, Circuit Judges.

KELLY, Circuit Judge.

Mary Meier sued the City of St. Louis and Doc's Towing, Inc., claiming that both defendants violated her rights under the Fourth and Fourteenth Amendments when her car was towed and stored without her consent or a warrant. The district court granted summary judgment in the defendants' favor, concluding that neither defendant was a party who could be held liable for any alleged constitutional violation under 42 U.S.C. § 1983. Because we conclude that Meier has adduced evidence sufficient to establish both defendants' liability, we reverse and remand for further proceedings.

I

In December 2015, St. Louis Metropolitan Police Department (SLMPD) Officer Ashley Kelly responded to a hit-and-run accident. Based on information received from the victim, she suspected that the vehicle that left the scene was a Ford F-150 truck registered to Meier. So she asked a SLMPD clerk to report the truck as "wanted" for an ordinance violation on the Regional Justice Information Service (REJIS) network.

REJIS is a computer network established by a cooperative agreement between the City of St. Louis and St. Louis County. It allows law enforcement agencies within the county to share information with each other.

On the early morning of March 17, 2016, Maryland Heights Police Department (MHPD) Officer Cliff House saw Ben Meier (Mary Meier's son) and a companion sitting in a truck in a hotel parking lot. House looked up the truck's license plate number on REJIS and saw that it was wanted by SLMPD. He approached the truck's occupants and eventually arrested them for reasons unconnected to the wanted report. He directed dispatch to arrange for the truck to be towed because of the wanted report, among other things. MHPD dispatch arranged for Doc's Towing to pick up the truck. When a driver from Doc's Towing arrived, House indicated that the truck was wanted by the City of St. Louis. The driver wrote "Maryland Heights Police Department," "Hold," and the date on the truck's back window and then towed it to Doc's Towing, where it was stored.

MHPD dispatch sent SLMPD a message through REJIS: "We have located this vehicle and we are towing it to Doc's Towing due to an arrest." SLMPD responded, "Please notify our First District Detective Bureau in the morning with arrest information." In the morning, SLMPD followed up with another message to MHPD: "Advise driver/owner of vehicle to respond to the First District Detective Bureau regarding release

of vehicle." MHPD mailed Meier a notice that the truck had been towed to Doc's Towing.

On March 18, Meier and her son went to Doc's Towing to get the truck back. An employee told them that MHPD had "released" the truck but that SLMPD still had a "hold" on the truck, and therefore it could not be released. Later that month, Ben Meier contacted SLMPD Detective John Russo to figure out how to remove the wanted hold on the truck. Russo explained that Ben would have to answer SLMPD's "questions relative to the accident."

Eventually, Meier hired a lawyer, Jeff Rath, to help her get the truck back. After numerous phone calls, Rath obtained a boilerplate "release order" form from SLMPD that "rescinded" the March 17 "hold order" on the truck. Rath faxed the release order to Doc's Towing on April 29. Doc's Towing then allowed Meier to retrieve the truck after paying a tow fee and a separate storage fee based on the number of days in storage. Unfortunately, the truck had been damaged during its time in storage, and an employee who mistakenly believed that the truck had been abandoned by its owner had already applied for salvage title. Doc's Towing attempted to remedy this error, but at the time briefing was completed on this appeal, Meier still had not obtained clean title for the truck.

II

Meier sued various defendants under 42 U.S.C. § 1983, a statute that establishes a cause of action

against a person who, under color of law, causes a violation of the plaintiff's constitutional rights. The district court granted summary judgment in favor of St. Louis and Doc's Towing, concluding that these two defendants could not be held liable under § 1983 because Meier had not adduced evidence establishing that either defendant acted pursuant to an official policy or that Doc's Towing had acted under color of law. "We review the grant of a summary judgment motion de novo and examine the record in the light most favorable to the nonmoving party." Smith v. Insley's Inc., 499 F.3d 875, 879 (8th Cir. 2007). "Summary judgment is only appropriate if the evidence viewed in this manner demonstrates that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Id. We address each appellee's liability in turn.

A

Municipalities like St. Louis may be held liable under § 1983 only if the alleged constitutional violation was caused by an "action pursuant to official municipal policy of some nature." Szabla v. City of Brooklyn Park, 486 F.3d 385, 389 (8th Cir. 2007) (en banc) (quoting Monell v. Dep't of Soc. Servs., 436 U.S. 658, 691 (1978)). Meier claims that SLMPD has a policy, albeit an unwritten one, of reporting vehicles as wanted on REJIS in hopes of detaining the vehicle against the owner's wishes and without a warrant. To establish the existence of such an "unwritten or unofficial policy," Meier must demonstrate "(1) the

existence of a continuing, widespread, persistent pattern of unconstitutional misconduct by the [municipality's] employees; (2) deliberate indifference to or tacit authorization of such conduct by the [municipality's] policymaking officials after notice to the officials of that misconduct; and (3) that [she] was injured by acts pursuant to the [municipality's] custom, i.e., that the custom was a moving force behind the constitutional violation." Brewington v. Keener, 902 F.3d 796, 801 (8th Cir. 2018) (quoting Corwin v. City of Independence, 829 F.3d 695, 700 (8th Cir. 2016)).

We conclude that Meier has adduced evidence from which a reasonable juror could find that each of these three elements is met. Rath testified during a deposition that in his experience as a criminal defense attorney, SLMPD "regularly" detains vehicles suspected of criminal involvement in hopes of identifying the owner or driver of the vehicle. Cynthia Jennings, the REJIS training officer, teaches officers throughout St. Louis County that "[w]anted means . . . once you stop that vehicle and confirm the status of it, that vehicle would then be held if it meets the criteria from the originating agency." SLMPD Captain Steven Mueller, whom SLMPD designated as its representative under Federal Rule of Civil Procedure 30(b)(6), also understands that reporting a vehicle as wanted on REJIS is a request that the investigating officer "[d]etain [the vehicle] for us." These statements, if believed, would demonstrate SLMPD employees' continuing, widespread, persistent practice of using wanted reports to seize vehicles without a warrant as an

investigative tool. St. Louis does not contest that Jenning and Mueller are policymaking officials, so their statements also demonstrate that SLMPD's policymaking officials are aware of this practice. See Dahl v. Rice County, 621 F.3d 740, 743 (8th Cir. 2010) ("A policy can be inferred from a single decision taken by the highest officials responsible for setting policy in that area of the government's business.").

A jury could also find that this policy resulted in Doc's Towing's retention of Meier's car. SLMPD reported Meier's truck wanted, and after it received MHPD's notice that the truck had been located, it instructed MHPD to "[a]dvise driver/owner of vehicle to respond to the First District Detective Bureau regarding release of vehicle." When Ben Meier contacted SLMPD, Detective Russo believed that there was a "hold placed [on the truck] as it is wanted for leaving the scene," and he told Ben to "respond to St. Louis Police Department to answer questions relative to the accident" to get the truck back. The release order provides further confirmation that the wanted report was intended to effect the seizure of Meier's truck, as it indicates that it rescinds a "hold order" entered the day that the truck was towed.

St. Louis argues that it uses "hold orders" to "authorize[] the towing of a vehicle" and that "'wanted' and 'hold' are not synonymous." Because SLMPD officers never issued a "hold order" for Meier's truck, St. Louis reasons, its policy cannot be responsible for the truck's seizure—MHPD and Doc's Towing simply misunderstood SLMPD's REJIS report. The evidence

viewed in Meier's favor does not support this argument. "Hold orders" are not mentioned in the REJIS manual, and Jennings understands a wanted report to "be synonymous with the word hold." As discussed above, several SLMPD employees, including policy-making officials and the individuals personally involved in Meier's case, believe a wanted report operates as a request "to take [the vehicle] into custody." And the release order issued by an SLMPD employee could be read to recognize that Meier's truck was held pursuant to a "hold order." A reasonable jury could find that Meier's truck was towed and held pursuant to SLMPD's unwritten but widespread and persistent policy of reporting vehicles as wanted for the purpose of detaining them without a warrant.

St. Louis also argues that regardless of its policy, it cannot be held liable because Meier has not brought claims against any individual SLMPD employee. It relies on Whitney v. City of St. Louis, 887 F.3d 857 (8th Cir. 2018), in which we stated that "absent a constitutional violation by a city employee, there can be no § 1983 or Monell liability for the City." Id. at 861. This argument misreads Whitney. Municipal liability requires a *constitutional violation* by a municipal employee, but it does not require the plaintiff to bring suit against the individual employee. See Webb v. City of Maplewood, 889 F.3d 483, 487-88 (8th Cir.) ("[O]ur case law has been clear . . . that although there must be an unconstitutional act by a municipal employee before a municipality can be held liable, there need not be a finding that a municipal employee is liable in his or her

individual capacity." (cleaned up)), cert. denied, 139 S. Ct. 389, 202 L.Ed.2d 289 (2018). Assuming that the seizure of Meier's truck violated her constitutional rights—an assumption that St. Louis does not dispute at this juncture—Meier has adduced evidence sufficient to establish St. Louis's liability for that violation.

B

To succeed on her § 1983 claim against Doc's Towing, Meier must demonstrate that the company was acting under color of law. See Insley's, 499 F.3d at 880. An act violating the Constitution is considered to have occurred under color of law if it is "fairly attributable" to a governmental entity. Id. (quoting Lugar v. Edmondson Oil Co., 457 U.S. 922, 937 (1982)). "The Supreme Court has recognized a number of circumstances in which a private party may be characterized as a [governmental] actor," including "where a private actor is a 'willful participant in joint activity with the [governmental entity] or its agents.'" Wickersham v. City of Columbia, 481 F.3d 591, 597 (8th Cir. 2007) (quoting Adickes v. S.H. Kress & Co., 398 U.S. 144, 151 (1970)). "The one unyielding requirement is that there be a 'close nexus' not merely between the state and the private party, but between the state and the alleged deprivation itself." Id. (quoting Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass'n, 531 U.S. 288, 295 (2001)).

Doc's Towing argues that Meier has not adduced any evidence of a "close nexus" between St. Louis and

the detention of her truck. But the evidence would allow a reasonable jury to find just that. As explained above, a jury could find that SLMPD intended Doc's Towing to detain Meier's truck until it obtained the information it was looking for and authorized the truck's release. A jury could also find that Doc's Towing understood SLMPD's intent and acted accordingly. When Meier attempted to retrieve the truck, a Doc's Towing employee refused to release it, explaining to her "that a hold from the St. Louis Police Department was put on the car." The president of Doc's Towing confirmed in a deposition that "Doc's Towing was told to hold [the truck] based on the City of St. Louis's 'wanted' and to hold it until the City of St. Louis released it." This was in accordance with Doc's Towing's policy of not releasing a vehicle with a "hold" or "wanted" on it without police authorization. Once Doc's Towing received the release order from SLMPD, it released the truck to Meier in accordance with its policy. When viewed in this light, the evidence indicates that SLMPD and Doc's Towing shared a mutual understanding concerning the truck and that Doc's Towing willfully participated in SLMPD's policy. See Magee v. Trs. of Hamline Univ., 747 F.3d 532, 536 (8th Cir. 2014) (holding that "a mutual understanding, or a meeting of the minds, between the private party and the state actor" is sufficient to establish that the private party was acting under color of law (quoting Pendleton v. St. Louis Cty., 178 F.3d 1007, 1011 (8th Cir. 1999))). We conclude that Meier has adduced evidence from which a reasonable juror could find that Doc's Towing was acting under

color of law when it refused to allow her access to her truck.

III

For the foregoing reasons, we reverse the district court's decision and remand for further proceedings.

APPENDIX B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

MARY MEIER, Plaintiff, vs. ST. LOUIS, MISSOURI, et al., Defendants.	)	Case No. 4:16 CV 1549 RWS

MEMORANDUM AND ORDER OF REMAND

(Filed Feb. 21, 2018)

Benjamin Meier crashed his mother Mary's truck into Natasha Naka-Akpodee's vehicle and left the scene of the accident. Akpodee took a photo of the license plate as Meier drove away and provided it to the St. Louis City police officer who responded to the scene of the accident. The officer subsequently entered the license plate number into the law enforcement data base REJIS as "wanted" in connection with a hit-and-run.

A few months later, Maryland Heights police officer Cliff House observed Meier and a female companion sitting in the truck acting suspiciously in a hotel parking lot in St. Louis County. Maryland Heights is in St. Louis County, not the City of St. Louis, and the Maryland Heights police department is not part of the St. Louis City police force. When House ran the plate with his dispatcher, the REJIS system alerted that the

vehicle was "wanted" by St. Louis City in connection with a hit-and-run accident. There is no dispute in this case that a "wanted" status indicates that there is no warrant and is instead a request for "lead information only." That means that upon discovering the truck, the Maryland Heights police department should have notified the REJIS system that the truck had been "located," which in turn would have permitted the St. Louis City police department to respond as to what it intended to do about the vehicle.[1] There is also no dispute that a "wanted" is different than a "hold order" and does not authorize an officer to seize a vehicle.

House decided to question Meier and his companion. He asked Meier about his involvement in the hit-and-run accident, which he falsely denied, and the identity of Meier's companion, who provided a false name. Meier also falsely denied knowing his companion's real name, despite claiming to be her fiancé. House called for back-up, and the two officers eventually arrested Meier (for interfering with an investigation and possessing a controlled substance) and his fiancée, who turned out to have an outstanding warrant. House decided to tow the truck because the occupants were being arrested, they were not guests at the hotel, and because of the "wanted." St. Louis City police never told House to seize or tow the truck, and House would have towed the truck even without the "wanted" because it was standard procedure in connection with the arrest. House admitted in his deposition that he

[1] The Maryland Heights police department never made such a designation in the REJIS system.

knew the difference between a "wanted" and a "hold order" and that a "wanted" order did not authorize the seizure of a vehicle. He also clarified that he towed the vehicle because of the arrest.

House contacted Maryland Heights dispatch and told them to contact Doc's Towing to tow the truck. When Doc's arrived, House informed Doc's Towing of the "wanted." St. Louis City police never contacted Doc's about the truck, never told Doc's it should tow the truck, and never told Doc's that it could not release the truck to plaintiff because of the "wanted." Doc's does not tow for the City of St. Louis.

Doc's towed the truck at the direction of House and sent plaintiff Mary Meier a certified letter notifying her of its possession of her truck. Plaintiff did not claim the letter and it was returned. The City of Maryland Heights also sent plaintiff a letter telling her that it (not the City of St. Louis) towed her vehicle to Doc's. Plaintiff alleges that she went to Doc's to pick up the truck but was told by a Doc's employee that she could not because of a "hold order" issued by the St. Louis City police department. Doc's admits that plaintiff was unable to obtain the truck when she came to retrieve it, but denies that plaintiff was told about a "hold" or that plaintiff unsuccessfully attempted multiple times to obtain her truck. Doc's eventually applied for a salvage title on the truck, claiming it did not know about plaintiff's efforts to retrieve her truck.

Plaintiff eventually sought the assistance of an attorney, who went to the St. Louis City police department and bugged one of the detectives until he signed

a release form to help plaintiff get her truck back. This release form was a preprinted form of the St. Louis City police department and was addressed to City of St. Louis Towing, not Doc's, because Doc's does not tow for the City of St. Louis. The St. Louis City police detective wrote on the form that the vehicle was "no longer wanted." The attorney (not the detective) then faxed this form to Doc's, and Doc's released the truck to plaintiff upon payment of fees. By that time, however, the salvage title had been issued to Doc's. Doc's gave the salvage title to plaintiff and tried to obtain clean title for plaintiff. However, apparently upon "advice of counsel" plaintiff has refused to complete the necessary paperwork to obtain clean title. Instead, she continues to claim damages because she does not have clean title.

Plaintiff's amended complaint alleges four claims. Federal removal jurisdiction arises from the first two claims, which are brought under 42 U.S.C. § 1983. Counts I and II are brought against both the City of St. Louis and Doc's and allege that the defendants deprived her of her truck without due process of law and that the deprivation amounted to an unreasonable seizure in violation of the Fourth Amendment. In particular, plaintiff alleges that placing a "wanted" on her truck amounted to a seizure of her property without a warrant, probable cause, or a prompt post-deprivation hearing. To hold a private actor like Doc's liable under § 1983, plaintiff alleges that Doc's acted "under color of law" because it "agreed with, conspired with, confederated with, and joined with defendants City of St. Louis and its police department to deprive plaintiff of her

vehicle." Counts III and IV are state law claims for conversion and unlawful merchandising practices brought solely against Doc's.

All parties have filed motions for summary judgment. Plaintiff's federal claims turn on two simple, undisputed facts. The Maryland Heights police department, not the City of St. Louis, seized plaintiff's truck. And whatever actions Doc's took, it did not act in concert with the City of St. Louis. Therefore, plaintiff's federal claims as pleaded against the defendants in this case fail as a matter of law.

The standards for summary judgment are well settled. In ruling on summary judgment, the Court views the facts and inferences therefrom in the light most favorable to the nonmoving party. *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). The moving party has the burden to establish both the absence of a genuine issue of material fact and that it is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Once the moving party has met this burden, the nonmoving party may not rest on the allegations in its pleadings but must set forth by affidavit or other evidence specific facts showing that a genuine issue of material fact exists. Fed. R. Civ. P. 56(c). At the summary judgment stage, the Court does not weigh the evidence and decide the truth of the matter but only determines if there is a genuine issue for trial. *Anderson*, 477 U.S. at 249.

Defendant City of St. Louis cannot be held liable under § 1983 on a *respondeat superior* theory. *Monell v. Department of Social Services of New York*, 436 U.S. 658, 694-95 (1978). The threshold question on municipal liability under § 1983 is "whether there is a direct causal link between a municipal policy or custom and the alleged constitutional deprivation." *City of Canton v. Harris*, 489 U.S. 378, 385 (1989). "This requires a plaintiff to show that the municipal policy was "the moving force behind the constitutional violation." *Mettler v. Whitledge*, 165 F.3d 1197, 1204 (8th Cir. 1999) (alteration, quotation marks and citation omitted).

Here, plaintiff has come forward with no evidence from which a reasonable fact finder could find that the City of St. Louis deprived plaintiff of her property. Plaintiff's truck was seized in conjunction with the arrest of her son by a Maryland Heights police officer, not a St. Louis City police officer. The truck was towed at the direction of the Maryland Heights police officer by Doc's, a towing company that does not tow vehicles for the City of St. Louis. The City of St. Louis never requested or instructed House to seize or tow the truck, and it never instructed Doc's to retain possession of the truck or refuse to release the truck to plaintiff. All the City of St. Louis did was issue a "wanted" in the REJIS system for plaintiff's truck after her son and the truck were involved in a hit and run accident.

Although plaintiff attempts to muddy the summary judgment waters by using the terms "wanted" and "hold order" interchangeably, the undisputed facts demonstrate that they are two different concepts.

There is no dispute in this case that the City of St. Louis never issued a "hold order" for plaintiff's truck. Instead, it put out a "wanted" in REJIS. The "wanted" just requested information if the truck was located by other law enforcement agencies. A "wanted" does not authorize the seizure of a vehicle and instead indicates that there is no warrant for arrest. The REJIS system never indicated that a warrant had been issued for the truck. Although House testified in his deposition that he towed the vehicle in part because of the "wanted," he also testified that he knew what "wanted" meant and that he would have towed the truck even in the absence of the "wanted" because he arrested Benjamin Meier and his fiancé. He also later clarified that the truck was towed in conjunction with arrest. There is simply no evidence in this case that would permit a reasonable fact finder to conclude that the City of St. Louis was the moving force behind the deprivation of plaintiff's property.

Nor did the City of St. Louis participate in the refusal to return plaintiff's truck. The City of St. Louis never communicated with Doc's about plaintiff's truck and never told Doc's that it could not release the truck because of the "wanted." Any information Doc's obtained about plaintiff's truck came from the Maryland Heights police department, not the City of St. Louis. And plaintiff cannot demonstrate that Doc's refused to release the truck pursuant to a "custom or policy" of the City of St. Louis because Doc's did not tow for the City of St. Louis. Whatever understanding (or rather, misunderstanding) Doc's had about what a "wanted"

meant did not come from the City of St. Louis, and the actions of Doc's and the Maryland Heights police department cannot be imputed to the City of the St. Louis for purposes of demonstrating liability in this case.

Nor does the release form issued by the City of St. Louis preclude summary judgment in this case. The pre-printed form was signed by a St. Louis City police officer in an effort to assist plaintiff because her lawyer insisted that she could not get her truck back without it. Importantly, the form is not even addressed to Doc's because Doc's does not tow for the City of St. Louis, and it was never sent to Doc's by the City of St. Louis. Instead, the form was faxed to Doc's by plaintiff's counsel. There is no evidence from which a reasonable fact finder could conclude that there was a custom or policy of the City of St. Louis to issue release forms for "wanted" vehicles, because the undisputed evidence demonstrates that "wanted" vehicles are not seized at the direction of the City of St. Louis simply because of a "wanted" status in REJIS. This form does not establish liability on the part of the City of St. Louis for the seizure of plaintiff's property as a matter of law.

Because plaintiff cannot demonstrate the City of St. Louis' liability under § 1983 as a matter of law, the Court need not, and therefore does not, address the issue of whether plaintiff established underlying constitutional violations in connection with the deprivation of her property. Defendant City of St. Louis is entitled to summary judgment on the claims asserted against it.

To prevail on a claim under 42 U.S.C. § 1983, a plaintiff must establish that the alleged deprivation was committed by a person acting under color of state law. *See Dossett v. First State Bank*, 399 F.3d 940, 947 (8th Cir. 2005). To be liable under § 1983, a private actor like Doc's must be "a willful participant in joint activity with the State in denying a plaintiff's constitutional rights." *Magee v. Trustees of Hamline University, Minnesota*, 747 F.3d 532, 536 (8th Cir. 2014) (internal quotation marks and citation omitted). A plaintiff must demonstrate "a mutual understanding, or a meeting of the minds, between the private party and the state actor." *Pendleton v. St. Louis County*, 178 F.3d 1007, 1011 (8th Cir. 1999) (internal quotation marks and citations omitted).

Plaintiff's § 1983 claims against Doc's fail because there is no evidence from which a reasonable fact finder could conclude that Doc's acted in concert with the City of St. Louis to deprive plaintiff of her property. As the undisputed facts set forth above demonstrate, Doc's had no contact with the City of St. Louis. Doc's towed plaintiff's truck at the direction of the Maryland Heights police department and refused to release plaintiff's vehicle based upon its interpretation of information provided by the Maryland Heights police department, not the City of St. Louis. Doc's does not do business with the City of St. Louis and did not engage in any concerted action or meeting of the minds with the City of St. Louis about plaintiff's truck. Plaintiff has only sued and alleged joint activity between Doc's and the City of St. Louis, so those are the only claims

and defendants before this Court. It is clear that plaintiff cannot prevail on the § 1983 claims made against Doc's in the amended complaint as a matter of law, so summary judgment in favor of Doc's must be granted on the federal claims.

Having dismissed all claims over which this Court had original jurisdiction, the Court has discretion to remand the remaining state law claims against Doc's back to state court. *See* 28 U.S.C. § 1367. The decision whether to exercise supplemental jurisdiction over state law claims when federal claims have been dismissed depends upon "factors such as convenience, fairness, and comity." *Pioneer Hi-Bred International v. Holden Foundation Seeds, Inc.*, 35 F.3d 1226, 1242 (8th Cir. 1994). Although discovery has concluded in this case, upon consideration of these factors the Court concludes that remand is appropriate. Doc's raises defenses to plaintiff's remaining claims for conversion and unlawful merchandising practices which touch on issues unique to state law and are more appropriately passed upon by the state court. Moreover, this case could and should have been remanded to state court well before now had defendants filed timely and appropriate motions to dismiss raising this straightforward threshold legal issue. Plaintiff elected to pursue her claims in state court and, given the nature of the remaining controversy as well as the interests of comity and fairness, the Court concludes that plaintiff's original choice of forum is the appropriate one for resolution of her state law claims against Doc's. Accordingly, I will deny all pending motions for summary judgment

relating to Counts III and IV of the amended complaint without prejudice to being refiled in state court.

Accordingly,

IT IS HEREBY ORDERED that plaintiff's motion for partial summary judgment [37] is denied in part and denied without prejudice in part as follows: plaintiff's motion for summary judgment on Counts I and II is denied, and plaintiff's motion for summary judgment on Count III is denied without prejudice to being refiled in state court.

IT IS FURTHER ORDERED that defendant Doc's Towing's motion for summary judgment [69] is granted in part and denied in part without prejudice as follows: defendant's motion for summary judgment is granted as to Counts I and II of plaintiff's amended complaint, and defendant Doc's Towing shall have summary judgment against plaintiff on Counts I and II of the amended complaint, and Counts I and II of the amended complaint are dismissed as to Doc's Towing. Defendant Doc's Towing's motion for summary judgment as to Counts III and IV of the amended complaint is denied without prejudice to being refiled in state court.

IT IS FURTHER ORDERED that defendant City of St. Louis' motion for summary judgment [71] is granted, and defendant City of St. Louis shall have summary judgment against plaintiff on all claims brought against it in the amended complaint.

IT IS FURTHER ORDERED that Counts III and IV of the amended complaint are remanded to state court.

IT IS FURTHER ORDERED that any other remaining pending motions are denied as moot.

A separate Judgment accompanies this Memorandum and Order of Remand.

/s/ Rodney W. Sippel
RODNEY W. SIPPEL
UNITED STATES
DISTRICT JUDGE

Dated this 21st day of February, 2018.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

MARY MEIER, Plaintiff, vs. ST. LOUIS, MISSOURI, et al., Defendants.	)	Case No. 4:16 CV 1549 RWS

JUDGMENT

(Filed Feb. 21, 2018)

For the reasons set out in the Memorandum and Order of Remand entered this same date,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that defendants shall have summary judgment against plaintiff on Counts I and II of the amended complaint, Counts I and II of the amended complaint are dismissed with prejudice, and plaintiff shall take nothing on Counts I and II of her amended complaint.

IT IS FURTHER ORDERED that Counts III and IV of the amended complaint are remanded to the Circuit Court for the City of St. Louis, Missouri.

/s/ Rodney W. Sippel
RODNEY W. SIPPEL
UNITED STATES
DISTRICT JUDGE

Dated this 21st day of February, 2018.

APPENDIX C

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No: 18-1597

Mary R. Meier

Appellant

v.

St. Louis, Missouri, City of

Appellee

St. Louis Board of Police Commissioners, et al.

Doc's Towing, Inc.

Appellee

St. Louis P.O. House, DSN 219

Appeal from U.S. District Court for the
Eastern District of Missouri – St. Louis
(4:16-cv-01549-RWS)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

September 25, 2019

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

APPENDIX D

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
STATE OF MISSOURI

MARY R. MEIER,	)	
Plaintiff,	)	
vs.	)	No. 4:16-CV1549
CITY OF ST. LOUIS, MISSOURI,	)	
-and-	)	
DOC'S TOWING, INC., a corporation,	)	Jury Trial Requested
Defendant's [sic]	)	

PLAINTIFF'S FIRST AMENDED COMPLAINT FOR DAMAGES
(leave to file granted in scheduling order #29)

Plaintiff Mary R. Meier for her first amended complaint for damages against defendants City of St. Louis, and Doc's Towing, Inc. states:

A. GENERAL ALLEGATIONS

1. At all times mentioned herein plaintiff Mary R. Meier was a citizen and resident of the United States of America and the State of Missouri.

2. At all times mentioned herein, defendant St. Louis City is a political subdivision of the State of Missouri and authorized to sue or be sued in its own name.

3. Defendant City of St. Louis is comprised of many departments and units, one of which is the St. Louis Metropolitan Police Department, which was responsible for operating a police department in the City of St. Louis, Missouri.

4. Defendant Doc's Towing, Inc. is a Missouri corporation, in good standing, which operates a towing company and tow and storage yard at 2810 Walton Road and 9408 Breckenridge Road.

5. At all times mentioned herein, plaintiff Mary Meier was the registered and title owner of a Red, 2013 Ford Pickup, VIN #1FTNF1CT1DKD36847.

6. On December 9, 2015 St. Louis Police Officer Kelly responded to a report of a hit and run accident in the City of St. Louis.

6 [sic]. In responding to the accident Officer Kelly interviewed a driver named Natasha Naka-Akpodee who reported that her vehicle was struck by an unknown male driver (not plaintiff Mary Meier) who left the scene of the accident.

7. Driver Naka-Akpodee informed Officer Kelly that she was able to get a photograph of the license plate of the vehicle which struck her vehicle.

8. From the photograph of the license plate it was believed that the hit and run vehicle was the red 2013 Ford Truck owned by plaintiff Mary Meier.

9. St. Louis Police Officer Kelly prepared a police report of the December 9, 2015 reported accident, incident report #15-062274.

10. On or about December 9, 2015 St. Louis Metropolitan Police Employee Lively (TRU Clerk Lively, DSN 8609) entered the 2013 Ford Truck into the REJIS computed [sic] system as a "wanted" vehicle per reference #25735471.

COUNT I

ACTION UNDER 42 U.S.C. § 1983 FOR DEPRIVATION OF PROPERTY (VEHICLE) WITHOUT DUE PROCESS OF LAW

Plaintiff for her first Count against defendants City of St. Louis and Doc's Towing, Inc. states:

11. She adopts each and every allegation of paragraphs 1-10 above.

12. On March 17, 2016 plaintiff's red Ford Pickup displayed Missouri license plate Number 4KU541 and said license plates were in the name of plaintiff Mary Meier.

13. On March 17, 2016 Maryland Heights, Missouri peace/police officer Cliff House observed the red "2013 Ford Truck" parked on the parking lot of the Days Inn Hotel located in St. Louis County and outside

the limits of the City of St. Louis at 1970 Craig Road in Maryland Heights, Missouri.

14. On March 17, 2016 Maryland Heights, Missouri Police officer Cliff House decided to conduct a computer records check on the license plate of the red ("2013 Ford Truck").

15. Officer House was advised and subsequently reported as follows:

> "A computer check of the license plate revealed it was wanted in the connection of a Leaving the Scene of an Accident, reported on 12-9-2015 by St. Louis City (District 1). The wanted entry is V25735471 and the report number is 15-062274."

16. As the result of the information he learned about the 2013 Ford Truck defendant Doc's Towing was summoned to and arrived on the scene of the parking lot to tow Meier's vehicle from the parking lot.

17. Officer House based his decision to and reported that the reason he had the 2013 vehicle towed was in part because of "the wanted entry of the vehicle."

18. On March 17, 2016 plaintiff's 2013 pickup truck was towed to Doc's Towing by Doc's Towing where it was stored at 9408 Breckenridge Road, St. Louis County, Missouri.

19. On March 17, 2016 at 00:57:22 the Defendant City of St. Louis received the following notice from the Maryland Heights Police Department in an entry in

the computer system/network REJIS: "We have located the vehicle and we are towing it to Docs Towing . . . "

20. In response to the REJIS notice and on March 17, 2016 at 00:59:30 the Defendant City of St. Louis Police Department responded to the Maryland Heights Police REJIS message as follows: "We have received your request and forwarded it to our south patrol division for a response. For further information you can contact south patrol at 314-444-0100. Thank you."

21. Defendant Doc's Towing maintained possession of the 2013 Ford Truck from March 17, 2016 to April 29, 2016 pursuant to the "wanted" placed in the REJIS computer system.

22. At no time from March 17, 2016 to April 29, 2016 did an employee or agent of the City of St. Louis or its police department visit Doc's Towing and inspect or search the 2013 Ford Truck.

23. At no time from March 17, 2016 to April 28, 2016 did an employee or agent of the City lift the wanted or the hold order on plaintiff's vehicle or advise Doc's Towing that they could release the vehicle.

24. At or near March 18 through March 22, plaintiff made demand and attempted to get her vehicle out of tow storage at Defendant Doc's Towing but was informed that the City of St. Louis Police Department placed a "Hold Order" on the vehicle which, according to defendant Doc's Towing, prevented Doc's Towing from releasing the vehicle.

25. It was the custom, policy, practice and procedure of the City of St. Louis Police Officers and the defendants City of St. Louis, Board of Police Commissioners, and its police officers to issue wanteds or "Hold Orders" on vehicles.

26. The issuance of a wanted or hold order, as a practical matter, served as a seizure or a seizure warrant for the seizure of the vehicle. However, the wanted or the hold order was not issued by a neutral and detached judicial officer nor was it pursuant to any judicially authorized procedure and therefore was an unlawful seizure when executed.

27. Neither the City of St. Louis nor any other peace officer provided plaintiff with any notice of the seizure or wanted or hold order on plaintiff's vehicle.

28. The wanted or "hold order" did not provide any direction or guidance regarding the procedure required to lift or remove the hold order, nor did it provide plaintiff with a prompt procedure for a hearing.

29. The seizure of the vehicle by defendants was without pre-deprivation hearing.

30. No prompt post-deprivation hearing, in a meaningful time and meaningful manner, was provided by defendants to plaintiff regarding return of her vehicle.

31. The seizure of the vehicle was an authorized action of the City of St. Louis and the St. Louis City police officers.

32. The seizure and retention was not random or unauthorized but pursuant to police custom, policy, practice and procedure of defendant City of St. Louis and their special orders.

33. Defendants have developed no meaningful post-deprivation hearing or judicial remedy for an owner of a seized vehicle in the situation where a vehicle is seized pursuant to a wanted or hold order.

34. Plaintiff was forced to hire an attorney to assist in the return of her vehicle and plaintiff and plaintiff's attorney got the run-around in attempting to obtain return and possession of the vehicle.

35. Defendant Doc's Towing, Inc. agreed with, conspired with, confederated with, and joined with defendants City of St. Louis and its police department to deprive plaintiff of her vehicle and thus each defendant acted under color of law by enforcing the wanted or hold order.

36. Plaintiff has been deprived of her vehicle without due process of law and is entitled to his [sic] actual damages pursuant to the provisions of 42 U.S.C. § 1983.

37. In addition to his [sic] actual damages, plaintiff is entitled to damages for the constitutional violations as heretofore described and reasonable attorney fees and costs.

WHEREFORE, plaintiff prays judgment on Count I against defendants City of St. Louis and Doc's Towing, Inc., jointly and severally, under Count I for damages

in an amount which will fairly and justly compensate her, for her attorney fees and costs, and for whatever other and further relief as to the Court shall seem [sic] meet and proper in the premises.

COUNT II

ACTION UNDER 42 U.S.C. § 1983 BY PLAINTIFF FOR UNREASONABLE SEIZURE

Plaintiff for her Second Count against defendants City of St. Louis and Doc's Towing, Inc. states:

38. She adopts each and every allegation of paragraphs 1 through 37 above.

39. Defendants seized and held the plaintiff's vehicle without the permission of plaintiff.

40. Defendants did not have a judicial warrant to search for or seize the described property.

41. The actions of the St. Louis Police Department of seizing a vehicle while it was located in St. Louis County was unauthorized under the law and exceeded the territorial limits of the power and authority of the St. Louis Police Department.

43 [sic]. Defendants lacked probable cause to prolong the seizure of the vehicle nor did the circumstances surrounding seizure come within any exception to the warrant requirement.

44. Plaintiff has been damaged by the unlawful seizure of her property within the meaning of the Fourth Amendment to the United States Constitution.

45. In addition to his [sic] actual damages, plaintiff is entitled to damages for the constitutional violations as heretofore described and reasonable attorney fees and costs.

WHEREFORE, plaintiff prays judgment on Count II against defendants City of St. Louis and Doc's Towing, Inc., jointly and severally, under Count II for damages in an amount which will fairly and justly compensate her, for her attorney fees and costs, and for whatever other and further relief as to the Court shall seem [sic] meet and proper in the premises.

COUNT III

FOR CONVERSION AGAINST DEFENDANT DOC'S TOWING

Plaintiff for her Third Count against Doc's Towing, Inc. and states:

46. She adopts each and every allegation of paragraphs 1 through 45 above.

47. In March of 2016 while the plaintiff's 2013 Ford Truck was in Doc's possession and plaintiff's efforts to get the Truck were refused because of the wanted or hold order, Doc's Towing applied through the Missouri Department of Revenue for a "Salvage" Title with an effective "purchase date" of March 17, 2016.

48. On the application for Title Doc's towing represented and wrote in, under oath, that the mileage of plaintiff's vehicle was 34,454.

49. On March 29, 2016 plaintiff appeared at the business office of Doc's Towing and made demand for return of the Ford 150 Truck and, in the process, displayed the title and proof of ownership and tendered the towing and all claimed fees including storage fees.

50. Plaintiff's March 29 tender and demand for possession of the vehicle was denied by Doc's Towing.

51. On March 29 Doc's Towing concealed from plaintiff that they had made application to the Missouri Department of Revenue for the salvage title.

52. In March and April plaintiff was unaware of and did not have notice that Doc's Towing made application to the Missouri Department of Revenue for the salvage title.

53. Doc's towing charges were stated to be in the amount of $105.00.

54. Plaintiff's attorney Jeffrey Rath went to the St. Louis Police Department on April 28, 2016 and, after waiting several hours, obtained a "release order" which was faxed to Doc's Towing on April 29, 2016.

55. Plaintiff appeared at Doc's Towing on April 29, 2016 to obtain possession of the vehicle and was forced to pay the towing fee of $105.00 and a storage fee of $1,320.00, a total of $1,425.00.

56. The plaintiff was then required to have a different towing company tow the Ford 150 from Doc's Towing on April 29, in that the vehicle was not operational in that it had a flat right front tire, a dead battery and there was body damage to the right side of the vehicle.

57. When plaintiff obtained possession of the vehicle on April 29, 2016 from Doc's Towing, it had over 40,300 miles and therefore, based upon the mileage recorded by Doc's Towing of 34,454, which Doc's Towing is estopped to deny, the vehicle was driven approximately 6,000 miles by Doc's towing or its agent or employee.

58. The State of Missouri, Department of Revenue issued a Salvage Title to plaintiff's vehicle to Doc's Towing.

59. The Salvage Title converted the title ownership from plaintiff to Doc's Towing.

60. As a result of defendant Doc's Towing action, plaintiff has been damaged.

61. Plaintiff has sustained general damages including loss of use and title to her vehicle including the following specific damages:

a. She was required to pay excess Storage fees;

b. there was physical damage to the vehicle and battery;

c. Damage, depreciation and reduction in value due to the addition of mileage and wear and tear;

d. Damage due to the status of title as a "Salvage" vehicle, which generally has a significant effect on the fair market value of the vehicle;

e. Lost time from work and employment;

f. Attorney fees in having the unlawful "hold order" removed; and

g. Plaintiff has lost the title and ownership of the vehicle.

WHEREFORE, plaintiff prays judgment on Count III against defendant Doc's Towing, Inc. under Count III for damages in an amount which will fairly and justly compensate her, for her attorney fees and costs, and for whatever other and further relief as to the Court shall seem [sic] meet and proper in the premises.

COUNT IV

FOR UNLAWFUL MERCHANDISING PRACTICES AGAINST DEFENDANT DOC'S TOWING

Plaintiff for her Fourth Count against Doc's Towing, Inc. and states:

72 [sic]. She adopts each and every allegation of paragraphs 1 through 61 above.

63. Defendant Doc's Towing is a towing and storage business in that Doc's Towing sells its vehicle towing and storage services to the public in trade or commerce.

64. Plaintiff purchased, owned and maintained the 2013 Ford ruck primarily for personal, family or household purposes.

65. In connection with the sale and storage of the towing and storage of plaintiff's 2013 Ford Truck defendant Doc's Towing used or employed the following unlawful merchandising practices:

a. in March 2016 when plaintiff called to ask about recovering the 2013 Ford Truck Doc's Towing concealed, suppressed and omitted to tell plaintiff that they had applied for a salvage title on the vehicle;

b. On March 29, 2016 plaintiff appeared at the business office of Doc's Towing and made demand for return of the Ford 150 Truck and, in the process, displayed the title and proof of ownership and tendered the towing and all claimed fees at which time Doc's Towing concealed, suppressed and omitted to tell plaintiff that they had applied for a salvage title on the vehicle;

c. On March 29, 2016 plaintiff appeared at the business office of Doc's Towing and made demand for return of the Ford 150 Truck and, in the process, displayed the title and proof of ownership and tendered the towing and all claimed fees but Doc's Towing refused to accept the tender and return the vehicle to plaintiff;

d. Doc's Towing continued to charge plaintiff storage fees after plaintiff tendered all fees claimed by Doc's Title;

e. Doc's Towing concealed, suppressed and omitted to tell plaintiff that they had applied for a salvage title when plaintiff paid Doc's Towing and obtained possession of the vehicle on or about April 29, 2016;

f. Doc's Towing concealed, suppressed and omitted to tell plaintiff that they perfected a salvage title when plaintiff paid Doc's Towing and obtained possession of the vehicle on or about April 29, 2016;

g. The application for title and its contents to the Missouri Department of Revenue by Doc's Towing regarding the nature and circumstances of the plaintiff's vehicle was deceitful, a fraud, a misrepresentation, and an unfair practice;

h. According to Doc's Towing it misrepresented the true mileage on plaintiff's vehicle to the Missouri Department of Revenue; and

i. In an affidavit to the Missouri Department of Revenue executed by Doc's Towing fraudulently stated averred to that "the owner of the abandoned property . . . (had) not made arrangements for payment of towing and storage charges".

66. As a result of defendant Doc's Towing action, plaintiff has been damaged.

67. Plaintiff has sustained and [sic] ascertainable amount of damages including loss of use and title to her vehicle including the following specific damages:

a. She was required to pay excess Storage fees;

b. there was physical damage to the vehicle and battery;

c. Damage, depreciation and reduction in value due to the addition of mileage and wear and tear;

d. Damage due to the status of title as a "Salvage" vehicle, which generally has a significant effect on the fair market value of the vehicle;

e. Lost time from work and employment;

f. Attorney fees in having the unlawful "hold order" removed; and

g. Plaintiff has lost the title and ownership of the vehicle.

68. Because of the action and conduct of defendant Doc's Towing, plaintiff is entitled to punitive and exemplary damages, and her attorney fees and costs.

WHEREFORE, plaintiff prays judgment on Count IV against defendant Doc's Towing, Inc. under Count IV for damages in an amount which will fairly and justly compensate her for her actual damages, for punitive dagmes [sic], for her attorney fees and costs, and for

whatever other and further relief as to the Court shall seem [sic] meet and proper in the premises.

By: */s/ Gregory C. Fenlon*

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Certificate of Service

A copy of the foregoing was filed with the Court's [sic] via electronic filing on July 17, 2017 with a copy served by operation of the court's electronic filing system on Christopher Carenza and Keith Cheung, attorneys for defendants.

By */s/ Gregory C. Fenlon*