

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-02802-REB-MEH

JEREMY C. MYERS;
GREAT WESTERN SALAVAGE LTD.,

Plaintiffs,

v.

BRIAN KOOPMAN, Detective in the Loveland, Colorado Police department, in his official and individual capacity;
LUKE HECKER, Chief of Loveland Police Department, in his official and individual capacity;
DENNIS V. HARRISON, Chief of the Fort Collins Police Department, in his official and individual capacity;
JAMES A. ALDERDEN, Sheriff of Larimer County, Colorado, in his official and individual capacity;
City of LOVELAND, Colorado, a municipality;
City of FORT COLLINS, Colorado, a municipality;
LARIMER COUNTY, a County, by and through the LARIMER COUNTY BOARD OF COUNTY COMMISSIONERS;
LARRY ABRAHAMSON, District Attorney of the Eighth Judicial District in his official capacity; and
EIGHTH JUDICIAL DISTRICT OF COLORADO, a political subdivision of the State of Colorado,

Defendants.

REVISED SCHEDULING ORDER

**1. DATE OF CONFERENCE
AND APPEARANCES OF COUNSEL AND *PRO SE* PARTIES**

The Scheduling Conference was held February 1, 2010 at 9:45 a.m.
before Magistrate Judge Michael E. Hegarty, Courtroom 203, Byron G. Rogers United States Courthouse, Denver, Colorado.

Parties and Counsel are as follows:

Attorneys for Plaintiffs Jeremy C. Myers and Great Western Salvage LTD

Randall R. Meyers
Law Office of Randall R. Meyers
123 N. College Ave, Suite 330
Fort Collins, Colorado 80524
970-472-0140

Attorneys for Defendants Brian Koopman, Luke Hecker, and City of Loveland:

Kent N. Campbell
Kimberly B. Schutt
Wick & Trautwein, LLC.
323 S. College Ave., Suite 3
Fort Collins, Colorado 80524
970-482-4011
John R. Duval
Loveland City Attorney's Office
500 E. 3rd St.
Loveland, Colorado 80537
970-962-2540

Attorneys for Defendants James A. Alderden, Larimer County, Larimer County Board of County Commissioners, Larry Abrahamson and Eighth Judicial District of Colorado:

George H. Hass
Jeannine S. Haag
William G. Ressue
Larimer County Attorney's Office
224 Canyon Ave., Suite 200
P.O. Box 1606
Fort Collins, Colorado 80522
970-498-7450

Attorneys for Defendants Dennis V. Harrison and City of Fort Collins:

Steven M. Hamilton
Thomas Lyons
Hall & Evans, LLC
1125 17th Street, Suite 600
Denver, Colorado 80202
303-628-3300

2. STATEMENT OF JURISDICTION

This action arises under the Constitution and Laws of the United States and is

brought pursuant to Title 42 U.S.C. § 1983. Jurisdiction is conferred on this Court pursuant to Title 28 U.S.C. § 1331. Jurisdiction supporting Plaintiffs' claim for attorneys fees is conferred by Title 42 U.S.C. § 1988.

Venue is proper in the District Court of Colorado pursuant to Title 28 U.S.C. § 1391. All of the events contained herein occurred within the State of Colorado.

This case was removed to this Court pursuant to Title 28 U.S.C. § 1331, 1441 and 1446, and F.R.C.P. 81(c).

3. STATEMENT OF CLAIMS AND DEFENSES

a. Plaintiffs:

Plaintiffs allege that in the early morning hours of September 6, 2007, the Larimer County Drug Task Force prompted by the actions of Defendant Brian Koopman of the Loveland Police department, and approved and supervised by Defendants Luke Hecker, Dennis Harrison, and James Alderden, descended on Plaintiffs' property with SWAT teams, tanks and snipers. These actions were presumably based on Defendants' beliefs that a Meth lab was being operated by Jeremy Myers in the attic of the building where Myers lived.

Defendant Koopman had closely watched the property and the activities of Jeremy Myers. Koopman claimed to have a confidential informant who was providing "credible" support for his allegations. No evidence of any sale of drugs was uncovered. This was a Larimer County Drug Task Force operation. Defendants were members of or otherwise participated or controlled the task force and its operations. This activity was pursuant to the customs, policies and/or actual practices established and supervised by Defendants Luke Hecker, Dennis Harrison, and James Alderden.

When the LCDTF and its SWAT teams stormed onto the location, they broke into a building not even at the address in the affidavit, a building Jeremy Myers did not own or occupy and to which he had no access or ability to enter. The building, part of the well-known Great Western sugar factory that had existed on the property years before, was the location of the laboratory for the sugar factory operation. This information was readily available in the Larimer County records, indicating the building was the lab for the sugar factory. The "evidence" gathered in that building had been sitting in its exact location since 1985, covered with dust and untouched by anyone for decades prior to the search. The jar of white substance removed from the building was hailed as "a lot of dope" by one of the officers present, anxious to capture a headline in the local newspaper. Koopman and his team were more than glad to allow the media to develop front-page stories touting Jeremy Myers' major meth lab and criminal activity. This activity was conducted pursuant to the customs, policies and/or actual practices established and supervised by Defendants Luke Hecker, Dennis Harrison, and James Alderden.

Subsequent field tests were conducted on the gathered evidence. The field test process was conducted pursuant to the customs, policies and/or actual practices established and supervised by Defendants Luke Hecker, Dennis Harrison, and James Alderden. Rather than waiting for the Colorado Bureau of Investigations to conduct more accurate and complete tests, the Defendants arrested Jeremy Myers and had him charged. The "attic" where the lab was claimed to exist was so small one officer at a time had great difficulty even entering in it. The attic had nothing in it that Koopman swore the confidential informant had indicated was there. Ultimately, the "jar of dope"

touted on the front page of the local newspaper was proven to be free of drugs, as certified by an independent laboratory.

This is an action for damages against Defendants for violating Plaintiff Jeremy Myers' rights under the Fourth and Fourteenth Amendments of the United States Constitution, and for violating Plaintiff Great Western Salvage, Ltd's rights under the Fourteenth Amendments of the United States Constitution. Mr. Myers alleges that Defendants violated his Constitutional rights when, knowingly and with deliberate indifference to his Constitutional rights, they obtained an invalid search warrant without probable cause and with false statements in the affidavit, used excessive force to enter his premises – particularly since keys were offered to open the premises, and unlawfully maliciously prosecuted him. Defendants' conduct violated Plaintiffs' Constitutional rights to be free from unreasonable search and seizures, from malicious prosecution, and right to due process. Plaintiffs also allege that Defendants James A. Alderden, Dennis V. Harrison, Luke Hecker, The City of Fort Collins, The City of Loveland, and Larimer County failed to adequately train and supervise its deputies, officers and detectives and those acting under their direction and control, which failure resulted in the constitutional deprivations suffered by Plaintiffs. Defendants' unlawful conduct caused pain and suffering to Plaintiff and his family and caused damage to Plaintiff Great Western Salvage, Ltd.'s property. Defendants' conduct under color of state law proximately caused the deprivation of Plaintiffs' federally protected rights.

Defendants acted in concert by planning the events of the search and arrest with each Defendant assuming a role therein. All Defendants were made aware of the investigation, the facts supporting the investigation, and the subsequent search of the

premises and ensuing arrest.

- b. **Defendants:** Defendants have moved to dismiss all claims.

4. UNDISPUTED FACTS

The following facts are undisputed:

Defendants have not yet answered the Complaint and have, therefore, not yet ascertained undisputed facts, opting instead to file Motions to Dismiss. See Section 6.

5. COMPUTATION OF DAMAGES

Plaintiffs:

Plaintiffs claim appropriate compensatory damages, including but not limited to, emotional distress, loss of reputation, humiliation, and pain and suffering on all claims allowed by law in an amount to be determined at trial. Plaintiffs further claim all economic losses on all claims also allowed by law; punitive damages as allowed by law as determined at trial; attorney fees and all allowable costs of this action and any other relief this court may deem just and proper

Defendants: None.

6. REPORT OF PRECONFERENCE DISCOVERY AND MEETING UNDER FED.R.CIV.P. 26(f)

- a. The parties conducted a meeting pursuant to Fed. R. Civ. P. 26(f) on January 8, 2010 for purposes of the original scheduling order submitted on January 11, 2010 and again on January 22 and 25, 2010 for purposes of this revised scheduling order. All Defendants have separately filed a Motion to Dismiss.

- b. Participants were:

Attorney for Plaintiffs
Randall R. Meyers

Attorney for Defendants Brian Koopman, Luke Hecker, and City of Loveland
Kent N. Campbell

Attorneys for Defendants James A. Alderden, Larimer County, Larimer County Board of
County Commissioners, Larry Abrahamson and Eighth Judicial District of Colorado:
George H. Hass
Jeannine S. Haag

Attorneys for Defendants Dennis V. Harrison and City of Fort Collins
Steven M. Hamilton
Thomas Lyons

- c. The Plaintiffs do not propose any changes in the timing or requirement of disclosures pursuant to Rule 26(a)(1).
- d. Plaintiffs propose that disclosures pursuant to Rule 26(a)(1) be exchanged on or before March 15, 2010.
- e. The parties do not agree, at this time, to conduct any informal discovery, including joint interviews with potential witnesses, exchange of documents, and joint meetings with clients to discuss settlement. The parties are amenable to this if deemed appropriate.
- f. There has been no discussion regarding reducing litigation or discovery costs.
- g. Plaintiffs do not believe their claims will involve extensive electronically stored information.
- h. There have been no discussions regarding settlement. All Defendants have filed Motions to Dismiss currently pending before the Court.

7. CONSENT

All parties have not consented to the exercise of jurisdiction of a magistrate judge.

8. DISCOVERY LIMITATIONS

Plaintiffs propose no changes to the presumptive limitations in Fed. R. Civ. P. 30(a)(2)(A)(i) and 33(a)(i).

9. CASE PLAN AND SCHEDULE

Defendants City of Fort Collins and Dennis Harrison object to conducting discovery per the reasons stated in "Defendants' Revised Unopposed Joint Motion to Stay the proceedings, Including Vacating the Scheduling Conference, Pending Determination of the Motions to Dismiss" and in the Objection to this Court's Order denying that Motion that will be filed within the applicable time limit.

Insofar as proposed discovery is concerned the City of Loveland defendants will oppose any discovery pending resolution of the qualified immunity defense which will be raised at the appropriate time, if necessary, on behalf of defendants Brian Koopman and Luke Hecker, and due to plaintiffs' failure to state sufficient allegations in the complaint to show involvement by defendants Koopman, Hecker, and the City of Loveland in clearly established unconstitutional conduct, per the Ashcroft-Towmby standard for evaluating defendant's Motion to Dismiss.

- a. Deadline for Joinder of Parties and Amendment of Pleadings: March 22, 2010.
- b. Discovery (fact and expert) Cut-Off: August 1, 2010.
- c. Dispositive Motion Deadline: September 1, 2010.
- d. Expert Witness Disclosure: Plaintiff anticipates calling experts in the fields of economic damages; prosecutorial conduct; police procedures; crime scene forensic analysis; testing of controlled substances and any expert necessary for rebuttal or impeachment purposes.

City of Loveland defendants and City of Fort Collins defendants anticipate calling experts in the fields of economic damages; prosecutorial conduct; police procedures; crime scene forensic analysis; testing of controlled substances and any expert necessary for rebuttal or impeachment purposes.

- e. Limit on the number of experts: Seven (7).
- f. Initial expert witness disclosure pursuant to Rule 26(a)(2): June 15, 2010.
- g. Designation of rebuttal experts: July 15, 2010.
- h. Deposition Schedule:*

Name	Date	Time	Expected length
Brian Koopman	TBA	TBA	7 hours
Luke Hecker	TBA	TBA	7 hours
Dennis Harrison	TBA	TBA	7 hours
James Alderden	TBA	TBA	7 hours
Larry Abrahamson	TBA	TBA	7 hours
Representative of City of Loveland	TBA	TBA	7 hours
Representative of City of Fort Collins	TBA	TBA	7 hours
Representative of Larimer County and Board of County Commissioners	TBA	TBA	7 hours
Jeremy Myers	TBA	TBA	7 hours
Great Western	TBA	TBA	7 hours

* Defendants will have others.

- i. Written interrogatories to be submitted no later than 33 days prior to close of discovery.

- j. Submission of requests for production and admissions no later than 33 days prior to close of discovery.
- k. Depositions shall be limited to each named party; that party's experts, plus 10 depositions per side. The parties may request additional depositions upon good cause shown and agreement of all parties.

10. DATES FOR FURTHER CONFERENCES

a. A settlement conference will be held on further order of the Court. It is hereby ordered that all settlement conferences that take place before the magistrate judge shall be confidential.

Pro se parties and attorneys only need be present.

Pro se parties, attorneys, and client representatives with authority to settle must be present. (NOTE: This requirement is not fulfilled by the presence of counsel. If an insurance company is involved, an adjustor authorized to enter into settlement must also be present.)

Each party shall submit a Confidential Settlement Statement to the magistrate judge on or before five business days prior to the Conference, outlining the facts and issues, as well as the strengths and weaknesses of their case.

b. Status conferences will be held in this case at the following dates and times: **June 7, 2010 at 9:30 o'clock a.m.**

c. A final pretrial conference will be held in this case on October 29, 2010 at 9:15 o'clock a.m. A Final Pretrial Order shall be prepared by the parties and submitted to the court no later than five (5) days before the final pretrial conference.

11. OTHER SCHEDULING MATTERS

a. As to those requirements of this Section, the Defendants have filed Motions to Dismiss. Fort Collins defendants will be filing an Objection the Court's denial of Defendants Motion to Stay Proceedings.

b. Plaintiffs anticipate the length of trial at 10 days.

12. NOTICE TO COUNSEL AND PRO SE PARTIES

The parties filing motions for extension of time or continuances must comply with D.C.COLO.LCivR 6.1D. by submitting proof that a copy of the motion has been served upon the moving attorney's client, all attorneys of record, and all *pro se* parties.

Counsel will be expected to be familiar and to comply with the Pretrial and Trial Procedures or Practice Standards established by the judicial officer presiding over the trial of this case.

With respect to discovery disputes, parties must comply with D.C.COLO.LCivR 7.1A.

In addition to filing an appropriate notice with the clerk's office, a *pro se* party must file a copy of a notice of change of his or her address or telephone number with the clerk of the magistrate judge assigned to this case.

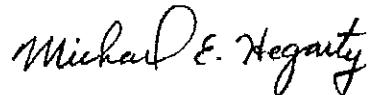
In addition to filing an appropriate notice with the clerk's office, counsel must file a copy of any motion for withdrawal, motion for substitution of counsel, or notice of change of counsel's address or telephone number with the clerk of the magistrate judge assigned to this case.

13. AMENDMENTS TO SCHEDULING ORDER

The scheduling order may be altered or amended only upon a showing of good cause.

Dated at Denver, Colorado, this 1st day of February, 2010.

BY THE COURT:



Michael E. Hegarty
United States Magistrate Judge

APPROVED:

Attorneys for Plaintiffs Jeremy C. Myers and Great Western Salvage LTD

s/ Randall Meyers

Randall R. Meyers
Law Office of Randall R. Meyers
123 N. College Ave, Suite 330
Fort Collins, Colorado 80524
970-472-0140

Attorneys for Defendants Brian Koopman, Luke Hecker, and City of Loveland:

s/ Kent N. Campbell

Kent N. Campbell
Kimberly B. Schutt
Wick & Trautwein, LLC.
323 S. College Ave., Suite 3
Fort Collins, Colorado 80524
970-482-4011

s/ John R. Duval

John R. Duval
Loveland City Attorney's Office
500 E. 3rd St.
Loveland, Colorado 80537
970-962-2540

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s/ Jeannine Haag

George H. Hass
Jeannine S. Haag
William G. Ressue
Larimer County Attorney's Office
224 Canyon Ave., Suite 200
P.O. Box 1606
Fort Collins, Colorado 80522
970-498-7450

Attorneys for Defendants Dennis V. Harrison and City of Fort Collins:

s/ Steven M. Hamilton

Steven M. Hamilton
Thomas Lyons
Hall & Evans, LLC
1125 17th Street, Suite 600
Denver, Colorado 80202
303-628-3300

CERTIFICATE OF SERVICE (CM/ECF)

I hereby certify that on this 25th day of January 2010, I electronically filed the foregoing Scheduling Order with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following e-mail addresses:

Attorneys for Defendants Brian Koopman, Luke Hecker, and City of Loveland:

Kent N. Campbell
Kimberly B. Schutt
Wick & Trautwein, LLC.
323 S. College Ave., Suite 3
Fort Collins, Colorado 80524
970-482-4011
kcampbell@wicklaw.com
kschutt@wicklaw.com

John R. Duval
Loveland City Attorney's Office
500 E. 3rd St.
Loveland, Colorado 80537
970-962-2540
duvalj@ci.loveland.co.us

Attorneys for Defendants James A. Alderden, Larimer County, Larimer County Board of County Commissioners, Larry Abrahamson and Eighth Judicial District of Colorado:

George H. Hass
Jeannine S. Haag
William G. Ressue
Larimer County Attorney's Office
224 Canyon Ave., Suite 200
P.O. Box 1606
Fort Collins, Colorado 80522
970-498-7450
George@hshh.com
Jeannine@hshh.com
William@hshh.com

Attorneys for Defendants Dennis V. Harrison and City of Fort Collins:
Steven M. Hamilton