HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CHRISTIAN ALEXANDER DORSETT,

Plaintiff,

v.

CITY OF BELLEVUE POLICE CHIEF STEPHEN MYLETT; JAMES HERSHEY; JOHN HOFFMAN; DEBRA INGRAM; JASON McELYEA; ROBIN PEACEY; CHRISTOPHER WYCHE; SCOTT WHITE; and WILLIAM McGUIGAN,

Defendants.

NO. 2:16-cv-00719-RAJ

DEFENDANTS' REPLY TO MOTION FOR SUMMARY JUDGMENT

NOTE ON MOTION CALENDAR: AUGUST 26, 2016

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I. UNDISPUTED FACTS

These facts are not disputed. The Plaintiff and his neighbor, Bhavpreet Bhamber, got into a fight on a public street on May 19, 2015.[1] Defendants Peacey and Wyche were dispatched to the scene and performed an investigation.[2] They interviewed witnesses and, "[a]fter reviewing the video and the facts of the case," determined that they would make a referral to the City Prosecutor for charging considerations because the Plaintiff was observed to be the instigator in the fight; he struck Mr. Bhamber first.[3] A referral was thereafter made, and the Plaintiff escaped criminal prosecution for one reason: Mr. Bhamber chose not to press charges.[4]

The Plaintiff then sued Mr. Bhamber, claiming he started the fight, and was owed damages.[5] He admits that his suit against Mr. Bhamber is identical to his suit against each of the Defendants.[6] The Honorable Peter Nault presided over a bench trial, reviewed the evidence, concluded that the Plaintiff was the aggressor, and dismissed the Plaintiff's claims.[7] The Plaintiff did not appeal Judge Nault's decision.[8] The only piece of evidence which the Plaintiff claims Judge Nault did not review before issuing his dismissal was the video which the investigating officers referenced in their reports as having reviewed during their investigation,[9] although the Plaintiff does admit that Judge Nault reviewed a transcript of the video prior to issuing his ruling.[10] The Plaintiff also offered the following statement during his deposition:

> Q: So [Judge Nault] said he wasn't going to take the video and you accepted that?

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[1] Morrone Decl., Ex. 1 (Judge Nault's Order of Dismissal); *see also* Dkt. 25 (Second Amended Complaint).
[2] *See* Dkt. 32, Attachment 4. Exhibit B to the Second Amended Complaint consists of police reports, witness statements, and other items pertinent to the investigation. The Plaintiff stipulated to use of these materials.
[3] *Id.*; *see also* Dkt. 16, Ex. A (Officer Wyche's Police Report, to which no objection was lodged by the Plaintiff).
[4] *Id.*; *see also* Dkt. 16, Ex. A.
[5] Morrone Decl., Ex. 1; *see also* Supp. Morrone Decl., Ex. 1 (Certified Documents from the Bhamber Lawsuit).
[6] Morrone Decl., Ex. 2 (Excerpts from the Plaintiff's Deposition), pp. 104:1-9; 114:7-12.
[7] Morrone Decl., Ex. 1; *see also* Supp. Morrone Decl., Ex. 1.
[8] The Plaintiff presented no evidence in Response to this contention. Motion at 15:17-18.
[9] Response at p. 3, ¶3.
[10] Morrone Decl., Ex. 2, p. 107:7-12.

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> A: I accepted it because I had done such a thorough presentation that even without the video, you could tell from the transcript that what they said wasn't true.[11]

After his suit against Mr. Bhamber failed, the Plaintiff harassed City of Bellevue employees,[12] and even impersonated high-ranking officials,[13] before bringing this lawsuit against each individually-named Defendant. He contends that Defendants Peacey and Wyche reached the wrong conclusion, and that each and every other individually-named Defendant should have rejected their findings. Therefore, according to the Plaintiff, everyone is part of a "conspiracy" to paint him as the aggressor, and violating virtually every conceivable law in the process.[14] But because the Plaintiff's claims are barred by collateral estoppel, because the individually-named Defendants are shielded by qualified immunity, and because the Plaintiff has not met his burden with respect to the myriad claims he advances, summary judgment is appropriate.

II. ARGUMENT

A. The Plaintiff's Claims Are Subject To Collateral Estoppel Because Judge Nault's Ruling Was An Adjudication On The Merits.

Collateral estoppel, also referred to as "issue preclusion," bars the re-litigation of an issue that has been previously decided. *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 326 (1979). The Plaintiff contends that Judge Nault's decision to involuntarily dismiss his identical claims against Mr. Bhamber does not collaterally estop his claims against the Defendants.[15] The sole basis for his claim is rooted in the contention that Judge Nault's ruling does not state that the dismissal was "with prejudice."[16] Indeed, the Plaintiff does not challenge *any* of the elements relevant to a collateral estoppel analysis, but merely argues that his identical claims against the

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[11] Morrone Decl., Ex. 2, p. 107:7-12.
[12] Dkt. 32, ¶117 (the Plaintiff's admission); *see also* Dkt. 14 (Declaration of Melissa Chin), Ex. A (Correspondence).
[13] Dkt. 14, Ex. B (rogue account for Chief Mylett); *see also* Chin Decl., Ex. 1 (rogue account for Mayor Balducci).
[14] *See* Motion for Summary Judgment, fn. 46 (citation to "conspiracy" testimony during deposition).
[15] Response at p. 3, ¶3; p. 4, ¶6; p. 11-12.
[16] *Id.*

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Defendants survive collateral estoppel because Judge Nault's involuntary dismissal of his claims is presumed to be "without prejudice," allowing him to re-file. He is not only mistaken, but he advances a frivolous argument. *See Warren v. Guelker*, 29 F.3d 1386, 1388 (9th Cir. 1994) (recognizing that Civil Rule 11 pleading requirements apply to pro se litigants).

" '[W]ith prejudice' is an acceptable form of shorthand for 'an adjudication upon the merits' " *Semtek Int'l Inc. v. Lockheed Martin Corp.*, 531 U.S. 497, 505 (2001) (citing an authoritative treatise). The Supreme Court has thus held that an adjudication on the merits "is the opposite of a dismissal without prejudice." *Id.* Orders of dismissal are *always* considered to be with prejudice *unless* the order explicitly states otherwise. *Taguinod v. World Sav. Bank, FSB*, 755 F. Supp. 2d 1064, 1068 (C.D. Cal. 2010) (emphasis added) (citing *Swaida v. Gentiva Health Servs.*, 238 F. Supp. 2d 325, 328 (D.Mass. 2002)); *see also Mitchell v. Bannum Place of Wash., D.C., Inc.*, 532 F. Supp. 2d 104 (D.D.C. 2008) (involuntary dismissal is with prejudice, and thus operates as an adjudication on the merits for res judicata purposes, unless the court's order specifically states otherwise); *Bosley v. The Chubb Institute*, 516 F. Supp. 2d 479 (E.D.Pa. 2007) (dismissal for any reason other than lack of jurisdiction, improper venue, or failure to join a party is considered to be with prejudice even if the judgment did not so specify).

The Plaintiff's admittedly identical claims against the Defendants were resolved against him following a full-scale bench trial.[17] The non-jury trial occurred on October 30, 2015.[18] Both sides presented argument, and had the opportunity to present evidence.[19] Judge Nault reserved his ruling on that date, but ultimately dismissed the Plaintiff's claims on November 20, 2015, and a resultant judgment was entered.[20] This constitutes a final adjudication on the merits. *Pedrina*

[17] Morrone Decl., Ex. 1; *see also* Supp. Morrone Decl., Ex. 1.
[18] Supp. Morrone Decl., Ex. 1.
[19] Supp. Morrone Decl., Ex. 1.
[20] Supp. Morrone Decl., Ex. 1.

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v. Chun, 906 F. Supp. 1377, 1401 (D.Haw. 1995), aff'd, 97 F.3d 1296 (9th Cir. 1996) ("Clearly, either a bench or jury trial is an adjudication on the merits of a case."). The Plaintiff is thus barred from re-litigating his identical claims against the Defendants. This Court should reject the Plaintiff's frivolous argument and dismiss his lawsuit against the Defendants.

B. The Individually-Named Defendants Are Entitled To Qualified Immunity.

The Plaintiff does not rebut the legal analyses offered in the Defendants' Motion for Summary Judgment with respect to qualified immunity. Instead, the Plaintiff merely repackages the same bald assertions which he generally outlines in his Second Amended Complaint, and does so without citing to any particular fact in the record. This is insufficient to rebut an issue properly before the Court on summary judgment. *Dark v. Curry Cnty.*, 451 F.3d 1078, 1082 n.2 (9th Cir. 2006) (internal citations omitted). Bringing forth competent, admissible evidence is the sole task issued to a non-moving party. *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 888-89 (1990). The Plaintiff's failure to avail himself to this burden is fatal to his opposition.

But even if we were to perform the analysis the Plaintiff does not perform himself, the Plaintiff cannot meet either prong of a qualified immunity analysis, and presents no facts to support an unconstitutional deprivation. To overcome qualified immunity, the Plaintiff needed to present competent evidence of the following: (1) that the official violated a statutory or constitutional right, and (2) that the right was "clearly established" at the time of the challenged conduct. *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). Liability only inures for violating "clearly established law," such that "every reasonable official" would perceive the constitutional violation. *Ashcroft v. al-Kidd*, 131 S. Ct. 2074, 2083 (2011).

As to the first prong of the qualified immunity test—that the Defendants violated a statutory or constitutional right—the Plaintiff has conceded that the individually-named Defendants allegedly violated just two constitutional rights. First, he claims that his liberty

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interest in his reputation was harmed when the Defendants referred him for charging considerations based on his instigation of the fight.[21] But the Defendants cannot offend against the Plaintiff's reputation when they suspected the Plaintiff to have acted in contravention of the law, and, as a result, referred his action to the City Prosecutor for prosecutorial review. This is especially true when Judge Nault viewed the same set of facts and *independently* concluded that the Plaintiff was the wrong-doer/aggressor in the fisticuffs exchanged with Mr. Bhamber. Thus, the referral to the City Prosecutor was not improper, and no constitutional right was violated.

Second, he claims that his Fourth Amendment right to be free from an unlawful seizure was violated when he was arrested by Officer Wyche.[22] But the Plaintiff has not established that he was ever arrested, let alone "seized" in violation of the Fourth Amendment. Indeed, the Supreme Court has ruled that an unlawful Fourth Amendment "seizure" occurs when an individual is restrained from walking away. *Terry v. Ohio*, 392 U.S. 1, 16-17 (1968); *see also* Manual of Model Civil Jury Instructions for the District Courts of the Ninth Circuit, Instruction 9.19 (defining an unreasonable seizure as "when, under all of the circumstances, a reasonable person would not have felt free to ignore the presence of law enforcement officers and to go about [his] [her] business"). But the Plaintiff admits that he was never so restrained. Instead, he candidly admitted during his deposition that he was free to come and go during the investigation, and only conjured up his "arrest" theory several weeks after the melee with Mr. Bhamber when he reviewed records in response to a public records request.[23] The Plaintiff was never "seized"

[21] Morrone Decl., Ex. 2, p. 125:9-16.
[22] *Id.*
[23] The Plaintiff contends that the internal documents constitute a "citation" such that he was "arrested" under Bellevue Police Department Policy 5.00.090. Response at 6. Aside from the fact that the issuance of a citation does not constitute a Fourth Amendment seizure, the Plaintiff was never issued a citation for any arrest, Wyche Decl., ¶ 4, thereby negating this issue even if it had merit (which it does not). Instead, Officer Wyche merely filled out internal forms and sent them along to the City Prosecutor for charging considerations. Wyche Decl., ¶ 4. Indeed, the Plaintiff *admits* in his Response that he was never actually issued these documents, but only obtained them in response to a public records request. Response at p. 7, ¶ 13. No arrest has occurred.

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in contravention of the Fourth Amendment.

As to the second prong of the qualified immunity test—that the right was "clearly established" at the time of the challenged conduct—the Plaintiff presents no case law, nor any set of facts, which suggest that each and every individually-named Defendant somehow violated his right to reputational purity when he was referred to the City Prosecutor for charging considerations related to his instigation of the fight. Further, the Plaintiff presents no case law, nor any set of facts, to suggest that Defendant Wyche violated a clearly established law by filling out internal documents and referring him to the City Prosecutor for consideration of criminal prosecution. Indeed, these are the very tasks police officers are expected to undertake, which the Plaintiff acknowledged during his deposition:

> Q: And so you would acknowledge that Officers Peacey and Wyche have authority if they believe that charges against you were appropriate that they had the authority to make those recommendations?
>
> A: Appropriate charges, correct.
>
> ***
>
> Q: And that they would be charged with making a recommendation or not making a recommendation for what they perceived to be criminal charges?
>
> A: Correct.[24]

Each individually-named Defendant should be dismissed from this litigation since they are entitled to qualified immunity.

C. The Remaining Claims—Alleged Wrongful Arrest, Excessive Force, And First Amendment Violations—Should Also Be Dismissed.

The Defendants carefully reviewed the law and the facts with respect to the Plaintiff's remaining claims of wrongful arrest, excessive force, and violations of the First Amendment.[25]

[24] Morrone Decl., Ex. 2, pp. 69:16-23; 70:16-23.
[25] *See* Motion at 16:12-21:5.

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But, just as he failed to do with qualified immunity, the Plaintiff did not rebut the arguments and authorities regarding dismissal of these claims. Instead, the Plaintiff once again aired a list of unsupported grievances, and did so without citing to any particular fact in the record. This is insufficient to rebut an issue properly before the Court on summary judgment. *Dark*, 451 F.3d at 1082 n.2 (internal citations omitted). Bringing forth competent, admissible evidence is the sole task issued to a non-moving party. *Lujan*, 497 U.S. AT 888-89. The Plaintiff's failure to avail himself to this burden is fatal to his opposition with respect to these claims. Nonetheless, and as it pertains to any specifics which may be inferred even under the most liberal reading of his several pleadings, the Plaintiff's claims should be dismissed.

1. There Can Be No Recovery For Wrongful Arrest Because The Plaintiff Was Never Arrested.

The Plaintiff does not appear to have addressed the issue of wrongful arrest outside the above-briefed area regarding qualified immunity. For the same reasons outlined above, as well as those reasons outlined in the opening Motion which do not appear to have been rebutted, the Plaintiff's claims of wrongful arrest fail. The Defendants respectfully refrain from offering additional briefing, which seems unnecessary given the Plaintiff's failure to offer a substantive rebuttal. The Plaintiff's wrongful arrest claim should be dismissed since he was never arrested, let alone "seized" in contravention of the Fourth Amendment.

2. The Plaintiff's Allegations Regarding Excessive Use Of Force Fall Woefully Short Of Any Actionable Claim For Damages.

The Plaintiff admitted in his deposition that his excessive use of force claim was limited to one instance in which Officer Peacey became frustrated with him during her interview, and threw up her arms in exasperation.[26] The opening Motion outlined why this contention falls

[26] Dkt. 32, ¶45; *see also* Morrone Decl., Ex. 2, pp. 104:21-105:6.

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short of anything close to constituting an excessive use of force,[27] and the Plaintiff presented no counter-argument or authority in rebuttal. In fact, the only mention of excessive force in the Plaintiff's Response simply reaffirms his prior admission, and is coupled with the admission that Officer Peacey's exasperated gesture (assuming it occurred at all) did not curb his efforts to discuss the events with her during the interview.[28] The Defendants respectfully refrain from offering additional briefing, which seems unnecessary given the Plaintiff's failure to offer a substantive rebuttal. The Plaintiff's excessive use of force claim should be dismissed.

3. The Plaintiff Did Not Have His Speech Curtailed, And Has No Basis To Recover Damages.

The Plaintiff's last claim is that his right to free speech was somehow infringed upon.[29] His claims turn on two discernable contentions, both of which fail as a matter of law. First, as analyzed in the opening Motion,[30] the Plaintiff claimed that Officer Peacey told him not to speak at one point during her interview, but to listen.[31] Then, just a few paragraphs later in the Second Amended Complaint, the Plaintiff *admits* that he was able to speak with Officer Peacey during the interview.[32] If this were not enough to undo his claim with respect to Officer Peacy—which it is—his claim is further undone by the admission in his Response that any effort by Officer Peacey to silence him during her interview "failed."[33] Thus, by his admissions, there was no contravention of any right to speak, and there is no evidence of any intent to chill the Plaintiff's speech, either. *See, e.g., Tamayo v. Blagojevich*, 526 F.3d 1074, 1086 (7th Cir. 2008) (holding

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[27] *See* Motion at 17:16-19:12.
[28] Response at p. 12, ¶ 1 (discussing that the exasperated gesture was an attempt "to coerce the Plaintiff into silence," but that it the attempt "failed").
[29] *See generally*, Dkt. 32.
[30] *See* Motion at 19:3-20:1; *see also* Dkt. 32, ¶45.
[31] Dkt. 32, ¶45.
[32] Dkt. 32, ¶48, 50, 57.
[33] Response at p. 12, ¶ 1 (discussing that the exasperated gesture was an attempt "to coerce the Plaintiff into silence," but that it the attempt "failed").

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that "a party may plead itself out of court by pleading facts that establish an impenetrable defense to its claims [which occurs] when it would be necessary to contradict the complaint in order to prevail on the merits.").

Second, the Plaintiff earlier claimed that his First Amendment rights were infringed upon because Defendant Police Chief Mylett would not agree to meet when the Plaintiff insisted on filming the meeting.[34] This was addressed in the opening Motion, and the Plaintiff offered no rebuttal thereto. By offering no rebuttal, the Plaintiff's claims are subject to dismissal for the reasons stated in the opening Motion. *See generally* Fed. R. Civ. P. 56; *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986) (summary judgment is appropriate if the non-moving party fails to rebut by making a factual showing "sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial.").

The Plaintiff appears to convert the City of Bellevue's actions to safeguard its employees from improper harassment into a claim for violation of his First Amendment Rights.[35] Any such effort fails as a matter of law. As outlined in the opening Motion, the Defendants did not take action against the Plaintiff's errant use of Twitter. Instead, the Defendants merely informed Twitter of the Plaintiff's confusing "Chf_Mylett" Twitter handle given Twitter's parody policy. It was Twitter who told the Plaintiff that he was in violation of their parody policy, to which he tacitly acknowledged by changing his Twitter handle altogether. The City's actions do not contravene the First Amendment, and the Plaintiff cited no authority to the contrary. Since the Plaintiff suffered no curtailment to his First Amendment rights, his claims should be dismissed.

D. Contentions That Mr. Bhamber Should Have Been Arrested Are Not Actionable.

Having provided no rebuttal, the Plaintiff abandoned any claim that he should be

[34] Dkt. 32, ¶¶112-115.
[35] Response at p. 8, ¶ 3; p. 13, ¶ 4.

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compensated for the fact that the victim, Mr. Bhamber, should have been arrested.[36] This renders his claim subject to dismissal. Fed. R. Civ. P. 56; *see also Celotex*, 477 U.S. at 322.

E. There Is No Cause Of Action For Damages Under The Washington State Constitution.

Having provided no rebuttal, the Plaintiff abandoned any claim that he should be compensated for violations with respect to the Washington State Constitution.[37] This renders his claim subject to dismissal. Fed. R. Civ. P. 56; *see also Celotex*, 477 U.S. at 322.

F. All Remaining "Kitchen Sink" Claims Should Be Dismissed With Prejudice.

The Plaintiff alleged a long list of *possible* causes of action in his Second Amended Complaint and his several pleadings filed with this Court.[38] Rather than going through and disproving his frivolously long list, the Defendants simply asserted in their opening Motion that no tangentially-alleged cause of action could be proven by the Plaintiff—and simply put the Plaintiff to his proof. *Young v. Key Pharm., Inc.*, 112 Wn. 2d 216, 226 (1989) (affidavits are not required to support a summary judgment motion when the non-moving party has the burden of proof at trial); *see also Fairbank v. Wunderman Cato Johnson*, 212 F.3d 528, 532 (9th Cir. 2000) (*Celotex* showing can be made by "pointing out through argument-the absence of evidence to support plaintiff's claim"). Having failed to articulate any additional causes of action in his Response, any and all claims which the Plaintiff was neither able articulate, nor meet his burden of proof, should be dismissed.

G. Any Claims Against The City Should Also Be Dismissed With Prejudice.

The Defendants moved for summary judgment regarding *potential* claims of municipal liability against the City of Bellevue (*i.e.*, *Monell* liability).[39] This was because the Plaintiff

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[36] *See generally* Response.
[37] *See generally* Response.
[38] *See* Dkt. 32, ¶¶141-261(a) – (j).
[39] Motion at 22:21-23:25.

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suggested that his claims reached beyond the individually-named Defendants, and stretched all the way to the City as a whole. His contentions fail for three reasons. First, because plaintiff failed to establish a constitutional violation (analyzed above), there can be no municipal liability against the City of Bellevue. *See City of Los Angeles v. Heller*, 475 U.S. 796, 799 (1986) ("If a person has suffered no constitutional injury ... the fact that the departmental regulations might have authorized the use of [unconstitutional conduct] is quite beside the point.").

Second, the Plaintiff ignored his burden under *Monell* by providing no Response thereto. Instead, he merely airs a laundry list of grievances which, allegedly, illustrate his "conspiracy" theory. None of these grievances, however, demonstrates that the City has a policy or practice which infringed upon his constitutional rights. His failure to address his burden under *Monell* is fatal to his opposition. *See* Fed. R. Civ. P. 56; *see also Celotex*, 477 U.S. at 322.

Third, and even if this Court dug through the Plaintiff's several pleadings to look for facts to perform the *Monell* analysis the Plaintiff did not perform himself, any claim against the City *still* fails. A plaintiff cannot succeed on a § 1983 claim against a local government unless he can show that " 'action pursuant to official municipal policy of some nature caused a constitutional violation.' " *Berry v. Baca*, 379 F.3d 764, 767 (9th Cir. 2004) (quoting *Monell v. Dep't. of Soc. Servs.*, 436 U.S. 658, 694 (1978)). To make such a showing, the plaintiff has the burden to establish the following: (1) that he possessed a constitutional right of which he was deprived; (2) that the local governmental body had a policy; (3) that this policy "amounts to deliberate indifference" to the plaintiff's constitutional right; and (4) that the policy is the "moving force behind the constitutional violation." *Oviatt v. Pearce*, 954 F.2d 1470, 1474 (9th Cir.1992) (quoting *City of Canton v. Harris*, 489 U.S. 378, 389-91 (1989)).

Here, the Plaintiff had the burden of showing that the City instituted and maintains a policy that caused him to suffer a constitutional violation. *Berry*, 379 F.3d at 767. He did not

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meet this burden since he did not prove "the existence of a widespread practice that ... is so permanent and well settled as to constitute a 'custom or usage' with the force of law." *Gillette v. Delmore*, 979 F.2d 1342, 1349 (9th Cir.1992). Where the violation is alleged to have resulted from the municipality's omissions—*i.e.*, a failure to act regarding an unconstitutional custom or practice—a plaintiff must show that the municipality's deliberate indifference led to its omission and that the omission caused the employee to commit the constitutional violation. *Gibson v. County of Washoe, Nev.*, 290 F.3d 1175, 1186 (9th Cir.2002).

But the Plaintiff proved no such case, and offered no such evidence. Nothing offered by the Plaintiff suggests that the City sanctioned or created a policy of conspiring against him, especially given his status as the aggressor. Nor could any such conspiracy be proven in this collateral case since Judge Nault, in a separate adjudication on the merits, also found the Plaintiff to be the wrongdoer. Further, there is simply no evidence that City officials ratified an unconstitutional series of events, let alone an illegal policy or custom which was perpetuated over and over. *See Gillette*, 979 F.2d at 1347-48 (no ratification since the Plaintiff provided insufficient evidence that decision-maker made a deliberate choice to follow a particular course). Having presented no evidence that Defendant Chief Mylett, or anyone of requisite authority, caused or sanctioned a series of unconstitutional events to transpire, the Plaintiff failed to meet his *Monell* burden. This Court should dismiss any and all claims against the City of Bellevue.

III. CONCLUSION

For the foregoing reasons, the Defendants respectfully request that the Court dismiss all of the Plaintiff's claims with prejudice.

RESPECTFULLY SUBMITTED this 26th day of August, 2016.

s/ Jon Ryan Morrone
Jon Ryan Morrone, WSBA #37871
Attorney for Defendants

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CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of August, 2016, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all parties who have appeared.

s/ Jon Ryan Morrone
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