

NO. 67450-1-I

**COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON**

FRANK LOUIS ZAMFINO,

Appellant,

v.

WASHINGTON STATE DEPARTMENT OF CORRECTIONS, and
KING COUNTY DEPARTMENT OF ADULT AND JUVENILE
DETENTION,

Respondents.

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2012 APR 13 P11 3:23

RESPONDENT'S BRIEF

ROBERT M. MCKENNA
Attorney General

NEWELL D. SMITH
Assistant Attorney General
WSBA No. 11974
800 5th Avenue, Suite 2000
Seattle, WA 98104-3188
206-464-7352

ORIGINAL

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	ASSIGNMENT OF ERROR ON CROSS-APPEAL.....	2
III.	ISSUES ON CROSS APPEAL.....	3
IV.	RESTATEMENT OF ISSUES ON APPEAL.....	3
V.	STATEMENT OF THE CASE.....	3
	A. Procedural History.....	3
	B. Statement of Facts.....	5
VI.	ARGUMENT.....	8
	A. Standard of Review.....	8
	B. The Trial Court Correctly Dismissed Zamfino’s Civil Rights Claim Under 42 U.S.C. § 1983.....	8
	C. Zamfino’s State Law Claim Should Have Been Dismissed Because the Statute of Limitations for False Imprisonment is Two Years.....	10
	1. False Imprisonment as an Intentional Tort in Washington.....	10
	2. Zamfino Cannot Avoid the Statute of Limitations by Describing His Claim as Negligence.....	11
	3. Zamfino’s Complaint Only Alleges the Intentional Tort of False Imprisonment.....	15
	D. In the Alternative, the Trial Court Erred in Allowing Recovery of Damages in a Negligence Case Where There Was No Evidence of Damage or Harm.....	18

E. Zamfino Was Not Entitled to an Award for Nominal Damages Under a Negligence Cause of Action.....	21
F. Assuming Zamfino’s Negligence Claim Should Not Have Been Dismissed in its Entirety, Zamfino Did Not Have a Right to Have Nominal Damages Set by a Jury	22
1. The Issue of the Assessment of Nominal Damages Should Not Be the Subject of an Appeal.....	22
2. There is No Right to a Jury Trial to Assess Nominal Damages	23
3. Assuming Zamfino’s Negligence Claim Should Not Have Been Dismissed in its Entirety, the Trial Court Did Not Err in Setting the Amount of Nominal Damages at \$1,000	24
VII. CONCLUSION	27

TABLE OF AUTHORITIES

Cases

<i>Baska v. Scherzer</i> , 156 P.3d 617 (Kan. 2007).....	14
<i>Bender v. City of Seattle</i> , 99 Wn.2d 582, 664 P.2d 492 (1983).....	14
<i>Bourgeois v. Hughes</i> , 55 So.3d 1195 (Ala. Civ. App., 2010).....	25
<i>Boyles v. City of Kennewick</i> , 62 Wn. App. 174, 813 P.2d 178 (1991).....	12
<i>Brown v. State</i> , 927 P.2d 938 (Kan. 1996).....	17
<i>Cagle v. Burns and Roe, Inc.</i> , 106 Wn.2d 911, 726 P.2d 434 (1986).....	21
<i>Celotex Corp. v. Catrett</i> , 477 U.S. 317, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986).....	19
<i>Cline v. City of Seattle</i> , 2007 WL 2671019, *5 (W.D. Wash. 2007).....	12
<i>Cummings v. Connell</i> , 402 F.3d 936 (9th Cir. 2005).....	25
<i>Duarte v. Zachariah</i> , 22 Cal. App. 4th 1652, 28 Cal. Rptr. 2d 88 (1994).....	22
<i>Erlin v. United States</i> , 364 F.3d 1127 (9th Cir. 2004).....	17
<i>Ermine v. City of Spokane</i> , 143 Wn.2d 636, 23 P.3d 492 (2001).....	26

<i>Folsom v. Burger King</i> , 135 Wn.2d 658, 958 P.2d 301 (1998).....	8
<i>Ford v. Trendwest Resorts, Inc.</i> , 146 Wn.2d 146, 43 P. 3d 1223 (2002).....	24
<i>Gilmartin v. Stevens Inv. Co.</i> , 43 Wn.2d 289, 261 P.2d 73 (1953).....	26
<i>Haubry v. Snow</i> , 106 Wn. App. 666, 31 P.3d 1186 (2001).....	19
<i>Heckart v. City of Yakima</i> , 42 Wn. App. 38, 708 P.3d 407 (1985).....	11
<i>Hoaglin v. Decker</i> , 713 P.2d 674 (Or. App., 1986)	22
<i>Hontz v. State</i> , 105 Wn.2d 302, 714 P.2d 1176 (1986).....	9
<i>Housman v. Byrne</i> , 9 Wn.2d 560, 115 P.2d 673 (1941).....	15
<i>Hutchins v. 1001 Fourth Avenue Associates</i> , 116 Wn.2d 217, 802 P.2d 1360 (1991).....	19
<i>Johnson v. Cook</i> , 24 Wash. 474, 64 P. 729 (1901)	23
<i>Kilcup v. McManus</i> , 64 Wn.2d 771, 394 P.2d 375 (1964).....	10
<i>Kinegak v. Alaska Dept. of Corrections</i> , 129 P.3d 887 (2006).....	15
<i>Kleve v. Negangard</i> , 330 F.2d 74 (6th Cir. 1964)	13
<i>Lee v. Bergesen</i> , 58 Wn.2d 462, 364 P.2d 18 (1961).....	23

<i>Leek v. Northern Pac. Ry. Co.</i> , 65 Wash. 453, 118 P. 345 (1911)	26
<i>Love v. Port Clinton</i> , 524 N.E. 2d 166 (Ohio 1988)	13
<i>Minger v. Reinhard Distributing Co., Inc.</i> , 87 Wn. App. 941, 943 P.2d 400 (1997).....	24, 26
<i>Momah v. Bharti</i> , 144 Wn. App. 731, 182 P.3d 455 (2008).....	8
<i>MYD Marine Distributors Inc. v. Donovan Marine, Inc.</i> , 2009 WL 701003, *4 (S.D. Fla. 2009)	13
<i>Newell v. City of Salina</i> , 276 F. Supp. 2d 1148 (D. Kan. 2003).....	17
<i>Pappas v. Zerwoodis</i> , 21 Wn.2d 725, 153 P.2d 170 (1944).....	22
<i>Pittman v. Oregon Employment Department</i> , 509 F.3d 1065 (9th Cir. 2007)	8
<i>Scott v. Uljanov</i> , 140 A.D.2d 830, 528 N.Y.S.2d 435 (N.Y. App. Div. 3 1988)	13
<i>Seely v. Gilbert</i> , 16 Wn.2d 611, 134 P.2d 710 (1943).....	11
<i>Sell v. Price</i> , 527 F. Supp. 114 (D. Ohio, 1981)	13
<i>Snow-Erlin v. United States</i> , 470 F.3d 804 (9th Cir. 2006), <i>cert denied</i> , 552 U.S. 811(2007).....	16, 17
<i>Sofie v. Fibreboard Corp.</i> , 112 Wn.2d 636, 771 P.2d 711 (1989).....	23
<i>Stalter v. State</i> , 151 Wn.2d 148, 86 P.3d 1159 (2004).....	14

<i>Steele v. Organon, Inc.</i> , 43 Wn. App. 230, 716 P.2d 920 (1986).....	25
<i>Storseth v. Folsom</i> , 50 Wash. 456, 97 P. 492 (1908)	23
<i>Strong v. Terrell</i> , 147 Wn. App. 376, 195 P.3d 977 (2008).....	18
<i>U.S. v. Van Alstyne</i> , 584 F.3d 803 (9th Cir. 2009)	25
<i>Wash. Fed'n of State Emps., Council 28 v. Office of Fin. Mgmt.</i> , 121 Wn.2d 152, 849 P.2d 1201 (1993).....	8
<i>Wash. State Republican Party v. Wash. State Pub. Disclosure Comm'n</i> , 141 Wn.2d 245, 4 P.3d 808 (2000).....	9
<i>Will v. Michigan Dept. of State Police</i> , 491 U.S. 58, 109 S. Ct. 2304, 105 L. Ed. 2d 45 (1989).....	8, 9
<i>Zok v. State</i> , 903 P.2d 574 (Alaska, 1995)	25, 26

Statutes

28 U.S.C. § 2680(h).....	16
42 U.S.C. § 1983.....	passim
RCW 4.16.100	2
RCW 4.16.100(1).....	10, 11
RCW 4.92.110	11
WAC 137-30-020.....	1

Other Authorities

18B Fed. Prac. & Proc. Juris. § 4478.3 (2d ed., 2011 update)..... 17

Black's Law Dictionary 418 (8th ed. 2004)..... 24

C. McCormick, *Damages* § 21, at 87 (1935)..... 25

Restatement (Second) § 35 15

Restatement (Second) of Torts § 45..... 10

Rules

CR 10(a) (1)..... 9

CR 59(4)..... 4, 20

CR 8(f)..... 9

Fed. R. App. P. 32.1..... 12

RAP 14.1..... 12

RAP 9.12..... 8, 20

I. INTRODUCTION

Frank Zamfino claims the Washington State Department of Corrections (DOC) unlawfully imprisoned him 185 days beyond the maximum expiration date¹ of his sentence for Assault in the Second Degree-Domestic Violence while armed with a firearm.² Mr. Zamfino's complaint seeks "damages and other appropriate relief under 42 USC Section 1983 for violation of the plaintiff's civil rights under color of law and negligence under state law." CP at 4. His complaint does not specify the constitutional provision or federal statute that serves as the basis for his civil rights claim nor does he specify the nature of the negligence he alleges under state law.

The trial court correctly dismissed Mr. Zamfino's claim for damages for violation of his civil rights under 42 U.S.C. § 1983 because his complaint does not name an individual defendant. Neither the State of Washington nor DOC is a "person" under the plain terms of 42 U.S.C. § 1983. Consequently, neither is a proper party to a civil rights action.

The trial court also correctly characterized Mr. Zamfino's claim for negligence as a claim for false imprisonment because the "loss of

¹ This is the sentence imposed by the trial court without Earned Release Time. WAC 137-30-020.

enjoyment of life and great mental anguish” he experienced were caused by imprisonment rather than negligence.³ Because Mr. Zamfino filed his complaint two years and four months after his release from prison, the trial court correctly dismissed his claim for false imprisonment. RCW 4.16.100; CP at 202; RP at 27.

But the trial court erred when it declined to award summary judgment on a claim for “nominal damages proximately caused by the negligence of [DOC].” DOC cross appeals the trial court’s denial of summary judgment on Mr. Zamfino’s negligence claim as well as the trial court’s determination that dismissal of the false imprisonment claim did not subsume the negligence claim. Although DOC recognizes the appropriateness of reasonable compensation for false imprisonment, the complaint Mr. Zamfino filed in this action is not a legal basis for remedy. DOC requests that this court apply the relevant law and dismiss Mr. Zamfino’s claim in its entirety.

II. ASSIGNMENT OF ERROR ON CROSS-APPEAL

1. The trial court erred in not dismissing the state law claims on the basis of the statute of limitations.
2. The trial court erred in allowing recovery of damages in a negligence case where there was no admissible evidence Zamfino had been harmed presented at the time of summary judgment.

³ Although Mr. Zamfino’s complaint did not allege false imprisonment (CP at 3-5), DOC argued that this was the only applicable tort and that he had alleged negligence to avoid the statute of limitations.

3. The trial court erred in awarding nominal damages for negligence.

III. ISSUES ON CROSS APPEAL

1. Did the trial court err in denying DOC summary judgment on negligence where Zamfino produced no evidence he had been harmed?
2. Did the trial court err in awarding nominal damages on this claim?

IV. RESTATEMENT OF ISSUES ON APPEAL

1. Did the trial court correctly find that DOC was not a proper party under 42 U.S.C. § 1983, and, consequently, that Zamfino's civil rights action must be dismissed?
2. Did the trial court correctly find that Zamfino's claim for false imprisonment, insofar as imprisonment was the basis of his state law claim against DOC, must be dismissed because his complaint was filed beyond the statute of limitations?
3. Did the trial court correctly find that Zamfino's claim for negligent infliction of emotional distress, insofar as "great mental anguish" was the basis of his state law claim against DOC, must be dismissed because there was no objective evidence of injury?

V. STATEMENT OF THE CASE

A. Procedural History

On February 19, 2009, Frank Zamfino filed a complaint against DOC alleging a claim under 42 U.S.C. § 1983 for "violation of [his] civil rights under color of law" and for negligence. Mr. Zamfino alleged he had been "imprisoned beyond his appropriate release date for a minimum of 185 days." CP at 3-5. Mr. Zamfino was released from DOC on

October 11, 2006. He filed his complaint two years and four months after the date of his release (February 19, 2009) and served it on DOC almost five months after filing (July 10, 2009). CP at 1, 60-63.

DOC moved for summary judgment on June 23, 2010. CP at 10-18. After a continuance requested by Mr. Zamfino, the trial court granted DOC's motion, in part, on October 6, 2010. CP at 110-12. The Court dismissed all claims except an award of nominal damages for negligence. CP at 112.

DOC requested reconsideration, maintaining there can be no liability in negligence for nominal damages. CP at 114-17. The motion was denied. CP at 219-20. Mr. Zamfino's request for reconsideration was also denied. CP at 120-27. His motion was supported by his own declaration describing the symptoms he experienced as a result of his false imprisonment. CP at 127-28. The trial court denied Mr. Zamfino's request for reconsideration, under CR 59(4) and related case law, because the information in the declaration could have been provided prior to entry of the court's judgment.⁴ CP at 120-21.

⁴ The clerk's papers include the materials the trial court found to be untimely because they could have been provided prior to the hearing. CP at 120-21. DOC requests that pages 122-37 be excluded from this court's consideration under CR 59(4) and that the references to that untimely evidence in Zamfino's opening brief be stricken because they are unsupported by the record relied upon by the trial court. RAP 9.12; CP at 120-21; Appellant's Br. at 10-11.

After denial of reconsideration, and in order to obtain a final judgment⁵ in accordance with the case law on “nominal” damages, DOC requested that the trial court set the amount of the nominal damages it had awarded on summary judgment. DOC did so with no admission of liability and without prejudice to DOC’s right to contest the trial court’s denial of summary judgment and award of nominal damages on Mr. Zamfino’s negligence claim. CP at 153-62. The court set nominal damages at \$1,000. CP at 161-62. DOC paid the \$1,000 and \$250 in attorney’s fees and costs by depositing these amounts with the Clerk. DOC was dismissed from the case. CP at 210-11.

On July 22, 2011, Mr. Zamfino filed a notice of appeal of the final order dismissing DOC after satisfaction of judgment. CP at 212-15. DOC filed a cross-appeal on August 4, 2011, appealing the trial court’s denial of summary judgment on Mr. Zamfino’s negligence claim, its award of nominal damages, and its denial of reconsideration. CP at 216-17.

B. Statement of Facts

On April 20, 2001, Mr. Zamfino was sentenced to imprisonment for 45 months after conviction for “Assault in the Second Degree-

⁵ Mr. Zamfino prematurely appealed the trial court’s original judgment.

Domestic Violence.”⁶ CP at 22-26. His sentence included a 36-month weapon enhancement, since he was found to have committed the crime while armed with a firearm. CP at 22-26. The certification for probable cause stated that he had attempted to rape a former girlfriend while holding a gun to her head. CP at 27-29.

Mr. Zamfino began his DOC incarceration on May 18, 2001, but was released pending appeal on June 6, 2001. CP at 30-31. His appeal release was ordered to be supervised, and he was required to notify the DOC of his address and the address of any employer. CP at 31. On October 2, 2001, Mr. Zamfino was found to have willfully violated the terms and conditions of his release, and a bench warrant issued. CP at 32-38. He was located in the Inyo County Jail in California, where he had served 12 days on an unrelated charge, and transferred to DOC on October 25, 2001. CP at 39-40. He was held in King County Jail until his sentencing violation⁷ hearing took place on January 4, 2002, when he was again released on supervised appeal release. CP at 42.

⁶ His sentence was calculated by DOC to be 1369 days; the statutory maximum for this Class B felony was 10 years and \$50,000 fine. CP at 4, 24. Mr. Zamfino alleges he was held an additional 185 days. CP at 4-5.

⁷ Zamfino appealed the standard of review applied at his sentencing violation hearing and prevailed. As a result of his successful appeal, DOC should have included the 72 days Zamfino was incarcerated in King County as days served on the 2000 assault sentence. CP at 4. It did not.

On April 1, 2003, the Washington Supreme Court denied the petition for review related to his domestic violence assault, and Mr. Zamfino was required to return to DOC custody to complete his sentence. CP at 44. Mr. Zamfino did not turn himself in, and a felony warrant of commitment was issued on April 29, 2003. CP at 44. He was classified as on escape status as of July 28, 2003. CP at 46. On November 18, 2003, Mr. Zamfino was extradited from a jail in Milwaukee, Wisconsin, where he had been in custody since September 2, 2003, on charges of battery and criminal damage to property for having assaulted two women. CP at 48-52, 54.

Mr. Zamfino was held by DOC after his extradition to Washington State. He was released by DOC on October 11, 2006, after serving his sentence for the 2000 assault. CP at 55-56.

Mr. Zamfino filed a claim under the Washington Tort Claims Act dated March 30, 2008, claiming that he had been unlawfully held beyond his sentence. CP at 58-59. In his Tort Claim, Mr. Zamfino states: “I claim damages from the State of Washington in the sum of \$ To Be determined.” CP at 59.

Mr. Zamfino filed his complaint on February 19, 2009. CP at 60-63. His complaint states that he was released on October 11, 2006, more than 28 months prior to filing. His complaint states that he was

“imprisoned” 185 days beyond his sentence, 72 of those days were spent in the King County Jail for the sentencing violation he successfully appealed. CP at 4-5.

VI. ARGUMENT

A. Standard of Review

“The de novo standard of review is used by an appellate court when reviewing all trial court rulings made in conjunction with a summary judgment motion.” *Folsom v. Burger King*, 135 Wn.2d 658, 663, 958 P.2d 301 (1998); *Momah v. Bharti*, 144 Wn. App. 731, 749, 182 P.3d 455 (2008). This court reviews the trial court’s order on the record before the trial court at the time of the motion for summary judgment. RAP 9.12; *Wash. Fed’n of State Emps., Council 28 v. Office of Fin. Mgmt.*, 121 Wn.2d 152, 163, 849 P.2d 1201 (1993).

B. The Trial Court Correctly Dismissed Zamfino’s Civil Rights Claim Under 42 U.S.C. § 1983

The trial court correctly dismissed Mr. Zamfino’s 42 U.S.C. § 1983 claim for lack of subject matter jurisdiction because Zamfino sued the “Washington State Department of Corrections” which is not a “person” subject to suit under § 1983. *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 71, 109 S. Ct. 2304, 105 L. Ed. 2d 45 (1989); *Pittman v. Oregon Employment Department*, 509 F.3d 1065, 1072 (9th Cir. 2007);

Wash. State Republican Party v. Wash. State Pub. Disclosure Comm'n, 141 Wn.2d 245, 285–86, 4 P.3d 808 (2000); *Hontz v. State*, 105 Wn.2d 302, 309, 714 P.2d 1176 (1986).

In *Will*, a § 1983 case initially filed in the Michigan state courts, the Supreme Court found that “a State is not a person within the meaning of § 1983.” *Will*, 491 U.S. at 64. It reached this conclusion after analyzing the language of the statute (finding it “decidedly awkward” if the statute were to read: “every person, including a State, who, under color of any statute . . . of any State. . . subjects. . .”) and noting that reading the statute in this way did not provide reason to depart from the often expressed understanding that “in common usage, the term ‘person’ does not include the sovereign”). *Will*, 491 U.S. at 64. The Court found this approach particularly applicable in a case where “it is claimed that Congress has subjected the States to liability to which they had not been subject before.” *Will*, 491 U.S. at 64.

Mr. Zamfino errs in arguing that CR 8(f) or CR 10(a) (1) control in such a case. Appellant’s Br. at 12-14. All courts interpreting the civil rights statute since *Will* was decided agree that the State of Washington, as well as state agencies like DOC, are not “persons” subject to suit under 42 U.S.C. § 1983 and that claims against them must be dismissed. *See, e.g., Hontz*, 105 Wn.2d at 309.

C. Zamfino’s State Law Claim Should Have Been Dismissed Because the Statute of Limitations for False Imprisonment is Two Years

1. False Imprisonment as an Intentional Tort in Washington

Mr. Zamfino’s complaint states that he was “imprisoned beyond his appropriate release date for a minimum of 185 days.” CP at 4. False imprisonment is a common law tort recognized by the State of Washington.⁸ *Kilcup v. McManus*, 64 Wn.2d 771, 778, 394 P.2d 375, 379 (1964). The statute of limitations for false imprisonment is two years. RCW 4.16.100(1).

Mr. Zamfino’s complaint states that he was released on October 11, 2006. CP at 4. Mr. Zamfino filed his complaint on February 19, 2009, two years and four months after his release date. CP at 1-5. His claim for having been unlawfully “imprisoned”⁹ is therefore barred by the two-year

⁸ The *Kilcup* court affirmed the understanding of false imprisonment and its legal ramifications included in § 35 of the Restatement (First) of Torts: “Our understanding of a false imprisonment and the legal ramifications thereof is cogently expressed in the treatment on the subject in 1 Restatement, Torts § 35, et seq., with which we are in accord.” *Kilcup*, 64 Wn.2d 771, 778.

Although Restatement (Second) of Torts does not materially alter the basic elements of the tort, it does “add language explicitly stating that failure to release a prisoner on time is false imprisonment.” *Kinegak v. Alaska*, 129 P.3d 887, 892-93 (2006) (relying upon Restatement (Second) of Torts § 45). The Restatement (Second) of Torts was applicable throughout the period at issue in this case.

The difference between definition of false imprisonment in Restatement (First) of Torts § 35 and Restatement (Second) of Torts § 35 is stylistic. The Reporter’s Notes state that: “No other change in substance is intended.” *See also Kinegak v. Alaska*, 129 P.3d at 892-93 (2006) (“The Restatement (Second) . . . does not materially change the basic elements of the tort.”)

⁹ CP at 4.

statute of limitations for false imprisonment, RCW 4.16.100(1). *Heckart v. City of Yakima*, 42 Wn. App. 38, 708 P.3d 407 (1985). Under the revised Tort Claims Act, RCW 4.92.110, the statute of limitations would have been tolled an additional 60 plus 5 days after Mr. Zamfino filed his tort claim, but, even under the most generous application of the claims statute, he filed his complaint two months after the statute of limitations barred his claim. His state law claim for having been “imprisoned beyond his appropriate release date” should, therefore, have been dismissed in its entirety.

2. Zamfino Cannot Avoid the Statute of Limitations by Describing His Claim as Negligence

In his complaint, Mr. Zamfino identified his claim for “imprisonment beyond his appropriate release date” as a state law negligence claim. But as the Washington Supreme Court has ruled, regarding another intentional tort: “Appellant cannot evade the statute of limitations by disguising her real cause of action by the form of her complaint.” *Seely v. Gilbert*, 16 Wn.2d 611, 615, 134 P.2d 710 (1943) (limitation period for assault and battery cannot be avoided by “endeavor[ing] to conceal the real cause of action and make it one for conspiracy”).

Where both an intentional tort and negligence are alleged for claims under the same facts, Washington appellate courts have looked to the basic nature of the action and the factual allegations of the complaint to determine which limitation period applies. The statute of limitations cannot be avoided by renaming a claim or seeking to repackage the real cause of action. *Boyles v. City of Kennewick*, 62 Wn. App. 174, 813 P.2d 178 (1991) (the “factual allegations” in plaintiff’s complaint “determine the applicable statute of limitation”). Merely alleging negligence as a cause of action does not mean that the negligence statute of limitations applies. Otherwise, virtually any intentional tort might be couched in negligence terms in order to avoid the two-year statute of limitations that has applied to intentional torts in the State of Washington since the Nineteenth Century. As federal district court Judge Marsha Pechman observed in *Cline v. City of Seattle*, 2007 WL 2671019, *5 (W.D. Wash. 2007)¹⁰: “The Court also agrees with the City Defendants that to the extent Plaintiff’s complaint can be construed as asserting state-law negligence claims, such claims would appear to be false arrest claims

¹⁰ RAP 14.1 allows a party to cite to an unpublished case from jurisdictions other than Washington State only if citation to that opinion is permitted under the law of the jurisdiction of the issuing court. Fed. R. App. P. 32.1 approves citation to an unpublished case issued after January 1, 2007. The *Cline* decision was filed on September 7, 2007. In accordance with RAP 14.1, a copy of the *Cline* decision is included as Appendix B.

couched in negligence terms and would be subject to the two-year statute of limitations for a false arrest claim.”

Other jurisdictions considering the issue have affirmed that where the gravamen of the claim is false imprisonment, a plaintiff may not recharacterize it as a negligence claim to avoid the statute of limitations. *Sell v. Price*, 527 F. Supp. 114, 116 (D. Ohio, 1981) (false imprisonment statute of limitations applied where plaintiff had contended that her complaint sounded in “negligence,” where it was undisputed that the actual act of confinement was intentional); *Scott v. Uljanov*, 140 A.D.2d 830, 528 N.Y.S.2d 435, 436 (N.Y. App. Div. 3 1988) (where both negligence and false imprisonment pled and claim was for confinement without legal authority, false imprisonment rather than negligence statute of limitations applied.); *see also Kleve v. Negangard*, 330 F.2d 74, 75-76 (6th Cir. 1964) (false imprisonment statute of limitations applied where plaintiff had tried to recharacterize claim to be one for damage to his character and good reputation, etc.); *MYD Marine Distributors Inc. v. Donovan Marine, Inc.*, 2009 WL 701003, *4 (S.D. Fla. 2009)¹¹ (Where the “gist” of the action is for an intentional tort, an attendant claim for negligent supervision still comes under the statute of limitations for the intentional tort.); *Love v. Port Clinton*, 524 N.E. 2d 166, 168 (Ohio 1988)

¹¹ *See n.9 supra.*

(“Where the essential character of an alleged tort is an intentional, offensive touching, the statute of limitations for assault and battery governs even if the touching is pled as an act of negligence.”); *see also Baska v. Scherzer*, 156 P.3d 617, 627-28 (Kan. 2007). The foundation of Mr. Zamfino’s “negligence” claim is that he “was imprisoned a minimum of 185 days beyond the time for which he was sentenced. . .” CP at 5. The basis of a false imprisonment claim is the unlawful violation of a person’s right of liberty or the restraint of that person without legal authority. *Bender v. City of Seattle*, 99 Wn.2d 582, 591, 664 P.2d 492 (1983). “It is well established that a jail is liable for false imprisonment if it holds an individual for an unreasonable time after it is under a duty to release the individual.” *Stalter v. State*, 151 Wn.2d 148, 155, 86 P.3d 1159 (2004).¹² “If the person arrested is detained or held by the officer for a longer period of time than is required, under the circumstances, without such warrant or authority, he will have a cause of action for false imprisonment against the officer and all others by whom he has been unlawfully detained or held.” *Housman v. Byrne*, 9 Wn.2d 560, 561-62,

¹² In *Stalter* the Washington Supreme Court considered cases brought by two individuals (*Stalter* and *Brooks*). The statute of limitations was not at issue in either case. *Stalter* filed claims for false arrest and negligence. *Brooks* filed claims for false imprisonment, negligence, and violation of his civil rights under 42 U.S.C. § 1983. The issue in both cases was the county’s duty to investigate an arrestee’s claim that he has been misidentified. The gravamen of both *Stalter* and *Brooks*’ case was misidentification and, consequently, *Stalter* is readily distinguishable from this case. In both cases, the county did not intend to imprison or confine the particular person it confined. Here, the actual act of confining and imprisoning Mr. Zamfino was intentional.

115 P.2d 673, 674 (1941). This is the sole claim articulated in Mr. Zamfino's complaint.

3. Zamfino's Complaint Only Alleges the Intentional Tort of False Imprisonment

Where, as here, the actual confinement was intentional, the complaint articulates only a claim for false imprisonment, even where it alleges a defendant "negligently failed to accurately calculate the time served by Plaintiff." CP at 5. Recently, the Alaska Supreme Court considered a similar issue in *Kinegak v. Alaska Dept. of Corrections*, 129 P.3d 887, 892-93 (2006), a case interpreting the State of Alaska's statutory immunity for a false imprisonment claim. The *Kinegak* court overturned prior court precedent and determined that, in a case where an individual asserted facts in his complaint that satisfied the Restatement (Second) § 35 definition of false imprisonment, he should not be allowed to characterize his claim as "negligent record keeping" in order to avoid Alaska's statutory immunity for a false imprisonment claim. As the court concluded: "[O]nce it is established that DOC's negligent record keeping amounts to a reasonably well-known predicate for false imprisonment, Kinegak's claim fails." *Kinegak*, 129 P.3d at 893.

The Ninth Circuit Court of Appeals followed a similar analysis in a case involving the federal torts claims act. In *Snow-Erlin v. United States*,

470 F.3d 804 (9th Cir. 2006), *cert denied*, 552 U.S. 811(2007), the court considered whether a negligence claim for a miscalculation of an inmate's sentence was actually a claim for false imprisonment, precluding subject matter jurisdiction under 28 U.S.C. § 2680(h) which provides for federal immunity for tort claims for false imprisonment. The court concluded that although the plaintiff's claim was dressed as a claim of negligence, courts have "look[ed] beyond the labels used to determine whether a proposed claim is barred [under § 2680(h)]." *Snow-Erlin*, 470 F.3d at 808. "[I]f the gravamen of Plaintiff's complaint is a claim for an excluded tort under § 2680(h), then the claim is barred." *Id.*

In *Snow-Erlin* the plaintiff brought a federal tort claim alleging negligence in a miscalculation of her late husband's release date, which resulted in the plaintiff's late husband being released ten months after his scheduled release date. The Ninth Circuit rejected the plaintiff's argument that the defendants negligently handled her late husband's prison records, reasoning that the plaintiff could not use negligence to side-step § 2680(h)'s bar on false imprisonment. *Id.* at 807. The court held that the only harm alleged was that the government kept the late husband imprisoned for 311 days too long. *Id.* at 808. Therefore, the Ninth Circuit, looking beyond the plaintiff's label and characterization of the negligence claim, and focusing instead on the conduct on which the claim

was based, found that the gravamen of the plaintiff's complaint was a claim for false imprisonment. The facts in *Snow-Erlin* bear a strong resemblance to those in this action. As the Ninth Circuit held in *Snow-Erlin*, a plaintiff "cannot sidestep the FTCA's exclusion of false imprisonment claims by suing for the damage of false imprisonment under the label of negligence."¹³ *Snow-Erlin*, 470 F.3d. at 809. The same reasoning would apply to Zamfino labeling his claim that his sentence was miscalculated as a negligence claim to avoid the false imprisonment statute of limitations. See also *Newell v. City of Salina*, 276 F. Supp. 2d 1148, 1159 (D. Kan. 2003), citing *Brown v. State*, 927 P.2d 938 (Kan. 1996).

The trial court applied the correct statute of limitations to that portion of Mr. Zamfino's claim it identified as false imprisonment, but it erred when it failed to view his entire claim as time barred. RP at 27; CP

¹³ In an earlier appeal in the *Snow-Erlin* case, the Ninth Circuit held that a cause of action for miscalculating a release date does not accrue until a prisoner establishes that he is legally entitled to release from custody. *Erlin v. United States*, 364 F.3d 1127, 1133 (9th Cir. 2004). In looking at the plaintiff's complaint, the earlier opinion applied the negligence statute of limitations. *Erlin*, 364 F.3d 1127. As pointed out in Federal Practice and Procedure discussing the subject of "law of the case," "[t]he statement in the opinion (*Erlin*) that the action was for negligence described the claim as framed by the plaintiff; the court did not decide the question, not argued by either party, whether the claim in fact was for false imprisonment." 18B Fed. Prac. & Proc. Juris. § 4478.3 (2d ed., 2011 update). *Snow-Erlin* ruled that, since the issue of whether the claim was properly characterized as being for negligence or false imprisonment was not directly addressed in its earlier opinion in *Erlin*, a question passed over sub silentio does not become the law of the case. *Snow-Erlin*, 470 F.3d at 807-08.

at 223. Mr. Zamfino's state law claim for negligence is a claim for false imprisonment repackaged to avoid the statute of limitations. The trial court erred when it failed to dismiss his state law case in its entirety.

D. In the Alternative, the Trial Court Erred in Allowing Recovery of Damages in a Negligence Case Where There Was No Evidence of Damage or Harm¹⁴

At the time of summary judgment, DOC interpreted Mr. Zamfino's negligence claim to be a claim for negligent infliction of emotional distress because his complaint stated that he had suffered "loss of enjoyment of life and great mental anguish" as a result of his additional imprisonment. To state a claim for negligent infliction of emotional distress, Mr. Zamfino would have been required to prove that his emotional distress is accompanied by objective symptoms; his emotional distress needed to be susceptible to medical diagnosis and proved through medical evidence. *Strong v. Terrell*, 147 Wn. App. 376, 388, 195 P.3d 977 (2008). At the time of summary judgment, Mr. Zamfino did not produce medical evidence showing objective symptoms constituting a

¹⁴ DOC interpreted Zamfino's negligence claim to be a claim for negligent infliction of emotional distress, necessarily dismissed because he filed no objective evidence of "great mental anguish" in response to DOC's motion for summary judgment. Co-defendant King County (no longer a party on appeal) interpreted his negligence claim to be a claim for negligent investigation, necessarily dismissed because the tort does not exist at common law. Other courts considering similar claims have named the tort "negligent record keeping," but have found it to be swallowed by false imprisonment. The trial court did not identify a basis for the negligence claim on which it denied summary judgment to DOC. RP 26-27.

diagnosable emotional disorder. *Haubry v. Snow*, 106 Wn. App. 666, 678-79, 31 P.3d 1186 (2001).

Mr. Zamfino also did not produce sufficient evidence to defeat summary judgment if his claim is viewed as an unvarnished claim for common law negligence. Assuming, solely for purposes of argument, that Mr. Zamfino was entitled to claim that both false imprisonment and negligence, at the time of summary judgment he was required to respond to DOC's motion with admissible evidence that raised a material issue of fact regarding each element of the claims he alleged. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986) (on an issue where the nonmoving party will bear the burden of proof at trial, the moving party can prevail merely by pointing out to the trial court that there is an absence of evidence to support the non-moving party's case).

In order to establish a cause of action for common law negligence, Mr. Zamfino was required to prove each of the following elements by a preponderance of the evidence: (1) the existence of a duty owed to him by DOC; (2) breach of that duty; (3) injury resulting from the breach of duty; and (4) proximate cause between the breach of duty and the injury. *Hutchins v. 1001 Fourth Avenue Associates*, 116 Wn.2d 217, 220, 802 P.2d 1360 (1991).

At the time of DOC's summary judgment motion, which was continued at Mr. Zamfino's request, he provided *no evidence of injury*, the third element on which he was required to establish a material issue of fact in order to defeat summary judgment. The trial court, consequently, was correct when it decided not to award actual damages on Mr. Zamfino's negligence claim, but it erred when it awarded nominal damages.¹⁵ Mr. Zamfino failed to provide any admissible evidence on a necessary element of his claim. Washington law does not provide for nominal damages on a negligence claim.

It should be noted that, in Washington, damages for emotional distress, without medically verifiable objective symptoms, would have been available if Mr. Zamfino had claimed an intentional act by DOC by filing a false imprisonment claim within the statute of limitations:

This court has liberally construed damages for emotional distress as being available merely upon proof of "an intentional tort." *Cherberg v. Peoples Nat'l Bank*, 88 Wash. 2d 595, 602, 564 P.2d 1137 (1977); *see also Hunsley v. Giard*, 87 Wash. 2d 424, 431, 553 P.2d 1096 (1976); *Browning v. Slenderella Sys. of Seattle*, 54 Wash. 2d 440, 341 P.2d 859 (1959). As the court in *Hunsley* stated: "From early in its history, this court has allowed recovery

¹⁵ The clerk's papers include a declaration from Mr. Zamfino that was not presented to the trial court prior to summary judgment. CP at 136-37. It was excluded by the trial court on reconsideration under CR 59(4) because the evidence it contained could have been presented prior to the trial court's original decision. CP at 120-21. Zamfino has not assigned error to this ruling or appealed the order. CP at 212-15; App. Br. at 4. Even if Zamfino's declaration may have been adequate to establish harm under a subjective standard, it is inadmissible in this appeal. RAP 9.12.

of damages for mental distress, even without physical impact or injury, when the defendant's act was willful or intentional." *Hunsley*, 87 Wash. 2d at 431, 553 P.2d 1096.

Cagle v. Burns and Roe, Inc., 106 Wn.2d 911, 916, 726 P.2d 434 (1986).

In this case, the statute of limitations bars a claim for the intentional tort of false imprisonment. Consequently, if only a negligence claim is actionable, Mr. Zamfino has no ability to claim damages for emotional distress without some admissible evidence of harm.

If this court determines that Mr. Zamfino's negligence claim is not supplanted by false imprisonment, DOC requests that this court determine, as a matter of law, that no damages (either actual or nominal) may be awarded on the claim.

E. Zamfino Was Not Entitled to an Award for Nominal Damages Under a Negligence Cause of Action

The issue of nominal damages was not briefed at summary judgment. The trial court determined that it would award nominal damages, without substantive discussion, at the time of oral argument. RP at 1-27. DOC's subsequent request for reconsideration of the nominal damages award was denied. CP at 114-17, 219-20. Allowing a claim for nominal damages in a negligence cause of action was an error of law.

Although the issue has not been considered by Washington courts, the law in other jurisdictions is clear: "[A]ctual damage' in the sense of

‘harm’ is necessary to a cause of action in negligence; nominal damages are not awarded.” *Duarte v. Zachariah*, 22 Cal. App. 4th 1652, 1661-62, 28 Cal. Rptr. 2d 88 (1994).

There are many cases of tort in which nominal damages may be allowed, as, for example, in actions for * * * trespass to land * * *. But in this negligence case, nominal damages could not be awarded, because, as we have indicated, there is no right protected by the law against negligent action in a case of this kind unless there is actual damage.

Hoaglin v. Decker, 713 P.2d 674, 676 (Or. App., 1986), quoting from *Hall v. Cornett, et al*, 240 P.2d 231, 235 (Or. 1952).

F. Assuming Zamfino’s Negligence Claim Should Not Have Been Dismissed in its Entirety, Zamfino Did Not Have a Right to Have Nominal Damages Set by a Jury

1. The Issue of the Assessment of Nominal Damages Should Not Be the Subject of an Appeal

Mr. Zamfino assigns as error to the trial court’s decision to set nominal damages without a jury trial. Because of the nature of nominal damages, a nominal damage award does not warrant appellate review.

From as far back as 1901, the Washington Supreme Court has held that an appellate court ordinarily should not reverse a trial court’s assessment of or failure to award nominal damages. *Pappas v. Zerwoodis*, 21 Wn.2d 725, 736, 153 P.2d 170 (1944) (“[I]t is the settled rule in this state that where the sole object of the action is the recovery of damages, the failure to give nominal damages is not ground for reversal of a

judgment.”); *Johnson v. Cook*, 24 Wash. 474, 482, 64 P. 729 (1901) (“[T]he cause will not be reversed merely that nominal damages may be assessed.”).

In particular, where, as here, the appellant has not “not established any right to compensatory damages,” a failure to award nominal damages as requested by the appellant is not a grounds for reversal. *Lee v. Bergesen*, 58 Wn.2d 462, 466, 364 P.2d 18 (1961).

2. There is No Right to a Jury Trial to Assess Nominal Damages

If this court considers the issue of nominal damages and does not find error in the awarding of nominal damages for negligence, Mr. Zamfino errs in arguing he has a right to a jury trial on this issue. Appellant’s Br. at 6-7. There is no right to a jury where the sole issue is setting the amount of nominal damages. *Storseth v. Folsom*, 50 Wash. 456, 459, 97 P. 492 (1908) (Where there was “nothing upon which a verdict could be based or a judgment sustained for more than nominal damages . . . [the trial court] did not err in withdrawing the case from the consideration of the jury.”). *Sofie v. Fibreboard Corp.*, 112 Wn.2d 636, 771 P.2d 711 (1989), the only case cited by Mr. Zamfino on this question, deals solely with the issue of a statutory limit on non-economic damages

and does not contain any discussion of nominal damages. It therefore does not overrule *Storseth*.

In the rare case that does involve a remand to set nominal damages, the amount is usually set by the trial court, not a jury. *Ford v. Trendwest Resorts, Inc.*, 146 Wn.2d 146, 158, 43 P. 3d 1223 (2002); *on remand to Ford v. Trend West Resorts*, No. 97-2-19757-1-KNT, 2002 WL 34432035 (Wash. Super., Sep. 20, 2002) (trial court set nominal damages at \$1)¹⁶; *Minger v. Reinhard Distributing Co., Inc.*, 87 Wn. App. 941, 946, 943 P.2d 400 (1997) (appellate court ordered trial court to set nominal damages at \$100). Here the trial court has already set the amount of nominal damages and therefore a remand would not be necessary.

3. Assuming Zamfino's Negligence Claim Should Not Have Been Dismissed in its Entirety, the Trial Court Did Not Err in Setting the Amount of Nominal Damages at \$1,000

Given the nature of nominal damages, an award of \$1000 was not inappropriate. Nominal damages are intended to be '[a] trifling sum awarded when a legal injury is suffered but when there is no substantial loss or injury to be compensated' or '[a] small amount fixed as damages for breach of contract without regard to the amount of harm.' *Black's Law Dictionary* 418 (8th ed. 2004) (*emphasis added*).

¹⁶ The trial court opinion is not cited here for its precedential value but as an example of the actual process employed to set nominal damages in Washington courts.

In *Steele v. Organon, Inc.*, 43 Wn. App. 230, 235, 716 P.2d 920, 923 (1986), the court defined nominal damages by relying upon C. McCormick, *Damages* § 21, at 87 (1935), which “contrasts nominal damages, which are ‘usually fixed at some trivial amount’ with small compensatory damages, ‘which are measured by the loss actually suffered.’” See also *U.S. v. Van Alstyne*, 584 F.3d 803, 820 (9th Cir. 2009), citing *Cummings v. Connell*, 402 F.3d 936, 943 (9th Cir. 2005); *Bourgeois v. Hughes*, 55 So.3d 1195, 1201 (Ala. Civ. App., 2010) (“Nominal damages definitely are not intended as approximations of the compensatory damages that could have or should have been proven.”).

The Alaskan Supreme Court has addressed the issue of setting nominal damages:

Nominal damages are by definition minimal monetary damages. . . . Consequently, the jury could not properly have returned a large nominal damages award for Zok. Rather, nominal damages are usually one cent or one dollar. . . . Thus, had the jury been instructed that Zok was entitled to nominal damages, it could have awarded him only a nominal amount, e.g., one dollar.

Zok v. State, 903 P.2d 574, 578-79 (Alaska, 1995) (*citations omitted*).

In *Zok*, plaintiff asked for millions of dollars in nominal damages. The Court held that, “A nominal damages award greater than some trivial figure would have been legally excessive.” *Zok*, 903 P.2d at 578-79 n.5. Therefore, an award of compensatory damages, where only nominal

damages should have been allowed, would be error. *See Leek v. Northern Pac. Ry. Co.*, 65 Wash. 453, 118 P. 345 (1911) (jury verdict of \$500 reversed as excessive and compensatory where plaintiff was only entitled to recover nominal damages).

Nominal damages awards are “usually one cent or one dollar.” *Zok*, 903 P.2d at 579; *see also Ermine v. City of Spokane*, 143 Wn.2d 636, 640-41, 23 P.3d 492 (2001) (after jury awarded no damages, trial court awarded \$1 in nominal damages).

However, in some cases, such as civil rights cases, nominal damages have been awarded for amounts of more than one dollar. As an example, *Minger*, 87 Wn. App. at 946, set nominal damages at one hundred dollars. In *Gilmartin v. Stevens Inv. Co.*, 43 Wn.2d 289, 293, 261 P.2d 73 (1953), the trial court assessing nominal damages found “I assume ‘nominal damages’ is a sum anywhere from \$1.00 to \$100.00, perhaps. I fix it at \$25.00.”

Assuming, solely for purposes of argument, that Mr. Zamfino’s negligence claim survived summary judgment, the trial court in this case did not err when it awarded the amount of \$1,000. \$100 dollars adjusted

for the inflation since 1953 would be approximately \$1,000 in today's dollars.¹⁷

VII. CONCLUSION

Mr. Zamfino did not state a claim under either state or federal law.

DOC should have been granted summary judgment on all claims.

RESPECTFULLY SUBMITTED this 13th day of April 2012.

ROBERT M. MCKENNA
Attorney General

A handwritten signature in black ink, appearing to read "Newell D. Smith 16311 for". The signature is written over a horizontal line.

NEWELL D. SMITH, WSBA NO. 11974
Assistant Attorney General
Attorney for Defendants Washington State
Department of Corrections

¹⁷ On the date of DOC's motion to set nominal damages, \$100 was \$839 as calculated using the Bureau of Labor Statistics calculator, <http://data.bls.gov/cgi-bin/cpicalc.pl>.

CERTIFICATE OF SERVICE

I declare under penalty of perjury in accordance with the laws of the State of Washington that one copy of the Brief of Respondent's Washington State Department of Corrections, was sent via messenger to counsel for Appellant Frank Louis Zamfino at the following address:

Phil Mahoney, WSBA#1292
Law Office of Phil Mahoney
2366 Eastlake Avenue E #227
Seattle, WA 98102

DATED this 13th day of April 2012, at Seattle, Washington.


MICHELLE SORENSEN

APPENDIX A

RCW 4.16.100

Actions limited to two years.

Within two years:

- (1) An action for libel, slander, assault, assault and battery, or false imprisonment.
- (2) An action upon a statute for a forfeiture or penalty to the state.

[Code 1881 § 29; 1877 p 8 § 29; 1869 p 9 § 29; 1854 p 363 § 5; RRS § 160.]

APPENDIX B

Not Reported in F.Supp.2d, 2007 WL 2671019 (W.D.Wash.)

(Cite as: 2007 WL 2671019 (W.D.Wash.))

C

Motions, Pleadings and Filings

Judges and Attorneys

Only the Westlaw citation is currently available.

United States District Court, W.D. Washington,
at Seattle.

Michael C. CLINE, Plaintiff,

v.

CITY OF SEATTLE, et al., Defendants.

No. C06-1369MJP.

Sept. 7, 2007.

Michael C. Cline, Seattle, WA, pro se.

Stephen Powell Larson, Stafford Frey Cooper,
Seattle, WA, for Defendants.

ORDER GRANTING CITY DEFENDANTS' MOTION FOR SUMMARY JUDGMENT OF DISMISSAL

MARSHA J. PECHMAN, United States District Judge.

*1 This matter comes before the Court on a motion for summary judgment (Dkt. No. 41) filed by the nine remaining defendants in this case: (1) the City of Seattle; (2) Seattle City Councilman Nick Licata; (3) Seattle Police Chief R. Gil Kerkikowske; (4) Seattle City Attorney Thomas Carr; (5) Seattle Assistant City Attorney Kevin Kilpatrick; (6) Seattle Municipal Court Judge Pro Tem David Zuckerman; (7) Seattle Police Sergeant Maryann Parker; (8) Seattle Police Officer David Ku; and (9) Seattle Police Parking Enforcement Officer Carol Hendrickson (collectively, the "City Defendants"). Having reviewed the materials submitted by the parties on this motion and the balance of the record, the Court GRANTS the City Defendants' motion for summary judgment. The reasons for the Court's order are stated below.

Background

This case stems from Plaintiff's arrest on March 19, 2004. Both sides agree that on that day, Plaintiff approached Parking Enforcement Officer Carol Hendrickson as she was in the process of issuing a parking citation for his car. After that, their version of events diverge sharply.

In support of their motion, Defendants offered declarations from Officers Hendrickson and Ku in which they recount their versions of events. Officer Hendrickson states in her declaration that after Plaintiff approached her, he asked her to "push the delete" button. She says that after she refused, she started to hand the citation to Plaintiff. She maintains that Plaintiff then raised his arm and struck her vehicle (described as a "Cushman scooter") very hard, with his arm passing within inches of her face. Ms. Hendrickson states that she was frightened and radioed for help. Police Officer David Ku was nearby and states in his declaration that he saw Plaintiff strike Officer Hendrickson's vehicle and heard her radio for help, although he was not close enough to hear what Plaintiff said to Officer Hendrickson. Officer Ku arrested Plaintiff and took him to the police station. Plaintiff was booked into King County jail on charges of harassment and attempted property damage.

Plaintiff's version of events is quite different. In his brief in response to Defendants' motion, Plaintiff offered what he labels as an affidavit, where he describes his version of events as follows:

Mr. Cline: "Is it too late to stop the ticket?"

Mrs. Hendrickson: "Yes it's too late."

Mr. Cline: "Darn! O.K., well give me the ticket."

Then I stood there watching her push buttons and waiting for her to complete the ticket, and I didn't say a word.

I, Michael C. Cline do hereby certify, attest and

Not Reported in F.Supp.2d, 2007 WL 2671019 (W.D.Wash.)
(Cite as: 2007 WL 2671019 (W.D.Wash.))

state solemnly that “Mrs. Hendrickson never attempted to hand me the parking ticket,” and “I never demanded, ordered, asked, said, inquired, begged, pleaded, nor even knew about the existence of a “delete button” on her machine.”

I, Michael C. Cline do solemnly attest affirm and state that a Seattle Police Officer, Mr. David Ku personally told me, informed me, virtually in his exact words, word for word, that:

*2 “She has been assaulted before and I am going to teach people to just stand there and take it!!”

I solemnly attest, affirm and state I asked Officer Ku several times in different ways, “Please, Officer Ku, be reasonable”, “Officer Ku, please, be reasonable.”

(Dkt. No. 44.) In his response brief, Plaintiff states somewhat cryptically that he “made a common, everyday, and ordinary expressive gesture” after saying “Darn.” (Response at 4.) He says this gesture “can be described as: plaintiff ‘raised his right arm, and hand in a fist ...’ ” *Id.* He asserts that Officer Hendrickson ran away from him and called for help for no apparent reason. Plaintiff makes additional allegations that Officer Hendrickson was suffering from post-traumatic stress disorder and that Officer Ku was assigned to protect her on March 19th, but offers no competent evidence to support such allegations.

Following his arrest, Plaintiff was held in jail overnight and was released the next day. It appears that no complaint was filed against him at that point.

The week after his arrest, Plaintiff spoke to Seattle Police Sergeant Maryann Parker in Internal Investigations to request a copy of the police report for his arrest. Plaintiff asserts that he told Sergeant Parker that “there would have to be false information in the report to justify the arrest, but I have not seen the reports so I can not say what the false information is.” (Response at 8.) Plaintiff suggests

that he did not want to make a complaint against Officer Ku, but merely “wanted to see what false statements had been made.” *Id.* Sergeant Parker has submitted a declaration stating that she wrote up a preliminary investigation report after talking to Plaintiff, which was referred up the chain of command to her supervising Lieutenant. She states that no “full-blown” investigation was undertaken.

In May 2004, Plaintiff received notice that he had been charged with harassment based on the events of March 19th. Plaintiff suggests that this charge was filed against him in retaliation for the perception that he had made a complaint against Officer Ku. Plaintiff was represented by Northwest Defenders Association (NDA) in the criminal case. Plaintiff states that he “made numerous court appearances in an effort to put the matter to rest” and that he eventually “signed an ‘Agreement to Continue the case for dismissal’ on Sept. 21, 2004 to prevent Officer Ku and Mrs. Hendrickson from perjuring themselves in an official court.” (Response at 9.)

Under the “Agreement to Continue Case for Dismissal,” the parties agreed to continue the case for one year. (Dkt. No. 34, Ex. C.) The City agreed that it would move to dismiss the charges against Plaintiff after one year if Plaintiff committed no criminal law violations and performed 10 hours of community service. If Plaintiff failed to satisfy those conditions, both sides agreed the case would be presented to the judge on the record, with Plaintiff forfeiting his right to a jury trial, to call and question witnesses, and to testify. After Plaintiff completed these conditions, the case was dismissed on December 24, 2005.

*3 Plaintiff filed a 27-page lawsuit in this Court in September 2006. His complaint named 11 defendants. He voluntarily dismissed his claims against defendant Eileen Farley, the director of NDA. The Court also granted a summary judgment motion filed by Defendant Ray Ward, an NDA investigator, after Plaintiff indicated that he did not oppose dismissal of his claims against Mr. Ward.

Not Reported in F.Supp.2d, 2007 WL 2671019 (W.D.Wash.)
(Cite as: 2007 WL 2671019 (W.D.Wash.))

Nine Defendants remain in this case: (1) the City of Seattle; (2) Officer Ku; (3) Officer Hendrickson; (4) Seattle City Councilman Nick Licata; (5) Seattle Police Chief Gil Kerlikowske, (6) Seattle City Attorney Thomas Carr; (7) Assistant City Attorney Kevin Kilpatrick; (8) Seattle Municipal Court Judge Pro Tem David Zuckerman; and (9) Sergeant Parker.

Plaintiff brings claims under 42 U.S.C. § 1983, alleging violations of his constitutional rights. He also alleges claims under 42 U.S.C. § 14141 and various federal criminal statutes. Plaintiff's complaint could also be construed as maintaining various state-law claims, including claims for false arrest, false imprisonment, and malicious prosecution.

The nine remaining City Defendants have moved for summary judgment. In accordance with Local Civil Rule 7(d)(3), they properly noted their motion on the Court's motion calendar for Friday, June 15, 2007. Plaintiff filed a response brief, along with an unnotarized affidavit and a number of unauthenticated exhibits. In their reply brief filed on June 15th, the City Defendants moved to strike Plaintiff's exhibits, although they did not move to strike Plaintiff's unnotarized affidavit.^{FN1}

FN1. Defendants also noted that Plaintiff had failed to sign his response brief. The Court directed Plaintiff to file a signed copy of his response brief, and Plaintiff complied with that direction.

On June 20, 2007, Plaintiff called the Court to report that he did not receive the City Defendants' reply brief until several days after it was filed. The Court issued a minute order indicating that Plaintiff would have until June 27th to file a surreply in response to the City Defendants' motion to strike. The minute order specifically stated that the surreply "shall be limited to *three pages* and shall be limited to responding to Defendants' motion to strike." (Dkt. No. 46.)

Plaintiff's response to the City Defendants' motion to strike exceeded the three-page limit imposed by the Court. His response also was not limited to responding to the City Defendants' motion to strike, but instead sought to offer additional facts and arguments that he had not previously made in his response to the City Defendants' opening motion. He also filed additional exhibits and a declaration. The City Defendants then filed a surreply in which they moved to strike Plaintiff's response to their motion to strike, as well as his supporting declaration and exhibits.

Analysis

1. City Defendants' Motions to Strike

The City Defendants have made two requests to strike documents submitted by Plaintiff. First, in accordance with Local Civil Rule 7(g), they moved in their reply brief to strike exhibits that Plaintiff submitted in his response to the City Defendants' opening brief. (Reply at 1.) The City Defendants argued that the attachments to Plaintiff's response were inadmissible and they sought to "strike from the record the inadmissible attachments from Plaintiff's response, which would include every attachment except Mr. Cline's Affidavit." *Id.*

*4 Mr. Cline's unnotarized affidavit does not authenticate any of the documents Plaintiff submitted in his response to the City Defendants' motion for summary judgment. Under Ninth Circuit law, all unauthenticated exhibits submitted by Plaintiff must be stricken. *See, e.g., Canada v. Blain's Helicopters, Inc.*, 831 F.2d 920, 925 (9th Cir.1987) ("unauthenticated documents cannot be considered on a motion for summary judgment."). Therefore, the Court grants the City Defendants' motion to strike these unauthenticated exhibits.

The City Defendants have also moved to strike the documents that Plaintiff filed in his response to Defendants' motion to strike. As noted above, the Court issued a minute order authorizing Plaintiff to file a surreply to the City Defendants' motion to strike. The minute order provided that "Plaintiff's surreply shall be limited to *three pages* and shall be

Not Reported in F.Supp.2d, 2007 WL 2671019 (W.D.Wash.)
(Cite as: 2007 WL 2671019 (W.D.Wash.))

limited to responding to Defendants' motion to strike." (Dkt. No. 46) (emphasis in original). Plaintiff did not comply with these requirements. Instead, Plaintiff filed: (1) a five-page brief, rather than a brief limited to three pages; and (2) a declaration and additional exhibits. Plaintiff's five-page brief did not respond to the City Defendants' motion to strike, but instead offered new arguments regarding the merits of his claims. In addition, his declaration did not indicate that it was signed under penalty of perjury, as required by 28 U.S.C. § 1746. Finally, the exhibits he filed were not properly authenticated. For all of these reasons, the Court will grant the City Defendants' request to strike the materials that Plaintiff filed in his response to the City Defendants' motion to strike.

2. Plaintiff's Request for Continuance

In his response to the City Defendants' motion for summary judgment, Plaintiff appears to request a continuance of the summary judgment motion pursuant to Fed.R.Civ.P. 56(f). He notes that he has made discovery requests and asks that "the case be allow[ed] to proceed to allow time for defendants to respond." (Response at 4.)

Under Rule 56(f), a court may order a continuance where a party opposing a motion for summary judgment makes "(a) timely application which (b) specifically identifies, (c) relevant information, (d) where there is a basis for believing that the information sought actually exists." *Visa Int'l Serv. Ass'n v. Bankcard Holders of America*, 784 F.2d 1472, 1475 (9th Cir.1986). "The burden is on the party seeking additional discovery to proffer sufficient facts to show that the evidence exists, and that it would preclude summary judgment." *Chance v. Pac-Tel Teletrac, Inc.*, 242 F.3d 1151, 1161 n. 6 (9th Cir.2001). "The mere hope that further evidence may develop prior to trial is an insufficient basis for a continuance under Rule 56(f)." *Cont'l Mar. of San Francisco, Inc. v. Pac. Coast Metal Trade Dist. Council*, 817 F.2d 1391, 1395 (9th Cir.1987).

Although Plaintiff indicates that he has out-

standing discovery requests to the City Defendants, he does not indicate what specific information he is seeking in the discovery requests or how the discovery sought would preclude summary judgment against him. Therefore, the Court denies Plaintiff's Rule 56(f) request for a continuance of the summary judgment motion.

3. Statute of Limitations Bars Certain State-Law Claims

*5 Plaintiff's complaint could be construed as raising state-law claims for false arrest and false imprisonment. The City Defendants correctly note that those state-law claims would be barred because Plaintiff did not file his complaint before the expiration of the two-year statute of limitations for such claims. See RCW 4.16.100(1); *Hechart v. City of Yakima*, 42 Wash.App. 38, 39, 708 P.2d 407 (1985). The Court also agrees with the City Defendants that to the extent Plaintiff's complaint can be construed as asserting state-law negligence claims, such claims would appear to be false arrest claims couched in negligence terms and would be subject to the two-year statute of limitations for a false arrest claim. See *Boyles v. City of Kennewick*, 62 Wash.App. 174, 177, 813 P.2d 178 (1991).

4. Certain Federal Claims Asserted by Plaintiff Do Not Provide a Private Right of Action

Plaintiff's complaint suggests that he is bringing claims under 42 U.S.C. § 14141 and various federal criminal statutes. (Complaint ¶ 11.) As the City Defendants note, none of these statutes provide a private right of action by individuals. As a result, Plaintiff's claims under Section 14141 and federal criminal statutes must be dismissed.

5. Claims Against Councilman Nick Licata

Plaintiff's complaint names Seattle City Councilman Nick Licata as a defendant. Plaintiff alleges that Councilman Licata is chair of the committee that oversees the Seattle Police Department and "failed in his responsibility to properly fund the [Northwest Defenders] Association, which insured a defective and negligent defense for Plaintiff in this case." (Complaint ¶ 16.)

Not Reported in F.Supp.2d, 2007 WL 2671019 (W.D.Wash.)
(Cite as: 2007 WL 2671019 (W.D.Wash.))

The City Defendants argue that Plaintiffs' claims against Mr. Licata are barred by the legislative immunity doctrine. "Absolute legislative immunity attaches to all actions taken 'in the sphere of legitimate legislative activity.'" *Bogan v. Scott-Harris*, 523 U.S. 44, 54, 118 S.Ct. 966, 140 L.Ed.2d 79 (1998). Because Plaintiffs' claims against Mr. Licata are clearly based on legislative actions, the City Defendants are correct that any claims against Mr. Licata must be dismissed.

6. Claims Against City Prosecutors

Plaintiff has brought claims against: (1) Seattle City Attorney Thomas Carr; and (2) Assistant City Attorney Kevin Kilpatrick. Plaintiff alleges that Mr. Carr failed to "properly set, implement and supervise policy and subordinates to insure adherence to honest and ethical principles of conduct for those subordinate to him." (Complaint ¶ 18.) Plaintiff alleges that Mr. Kilpatrick is "responsible for signing the papers that [led] to charges being re-filed against Plaintiff as an act of retaliation against Plaintiff." (Complaint ¶ 19.)

The City Defendants argue that Plaintiffs' claims against Mr. Carr and Mr. Kilpatrick are barred by the doctrine of prosecutorial immunity. Under this doctrine, "[a] prosecutor is entitled to absolute immunity from a civil action for damages when he or she performs a function that is 'intimately associated with the judicial phase of the criminal process.'" *KRL v. Moore*, 384 F.3d 1105, 1110 (9th Cir.2004). These functions include "initiating a prosecution and presenting the State's case." *Id.* Plaintiff offers no evidence indicating that Mr. Carr or Mr. Kilpatrick took actions outside their protected functions. Therefore, Plaintiffs' claims against Mr. Carr and Mr. Kilpatrick will be dismissed.

7. Claims Against Municipal Court Judge Zuckerman

*6 Plaintiff has also brought claims against Seattle Municipal Court Judge Pro Tem David Zuckerman, who presided over Plaintiffs' intake hearing. Plaintiff complains about various alleged

actions and inactions by Judge Zuckerman at this hearing. (Complaint ¶ 20.)

The City Defendants have moved to dismiss claims against Judge Zuckerman based on the doctrine of judicial immunity. This doctrine bars claims based on actions taken by a judge in his judicial capacity, unless such actions are taken in a complete absence of all jurisdiction. *See Harvey v. Waldron*, 210 F.3d 1008, 1012 (9th Cir.2000). Here, all of Plaintiff's complaints about Judge Zuckerman's conduct focus on actions taken in his judicial capacity and there is no question regarding his jurisdiction. Therefore, these claims must be dismissed.

8. Claims Against Sergeant Parker

Plaintiff also brings claims against Sergeant Maryann Parker, who spoke to Plaintiff a week after his arrest. Plaintiff appears to complain that Sergeant Parker: (1) did not send him a copy of his arrest report; and (2) allegedly filled out a complaint form and attributed the complaint to Plaintiff without his consent. (Complaint ¶ 21.)

The City Defendants argue that Plaintiff's complaint fails to state a colorable constitutional claim or state-law violation against Sergeant Parker. The Court agrees. Because there is no apparent basis for Plaintiff to claim that Sergeant Parker's alleged actions violated his rights under the United States Constitution or state law, his claims against her must be dismissed. Even assuming a constitutional claim could somehow be construed, Sergeant Parker would be entitled to qualified immunity because Plaintiff points to no clearly established law prohibiting Sergeant Parker's actions.

9. Claims Against Police Chief Gil Kerlikowske and City of Seattle

Plaintiff also names Seattle Police Chief Gil Kerlikowske as a defendant, alleging that he was "responsible for setting and enforcing policies and procedures within the Seattle Police Department" and "failed to properly set, implement and supervise policy and subordinates." (Complaint ¶ 17.)

Not Reported in F.Supp.2d, 2007 WL 2671019 (W.D.Wash.)
(Cite as: 2007 WL 2671019 (W.D.Wash.))

Plaintiff also names the City of Seattle as a defendant.

Plaintiff does not allege personal involvement by Chief Kerlikowske in the alleged deprivation of his rights. To the extent Plaintiff seeks to maintain Section 1983 claims against Chief Kerlikowske for negligent supervision of his subordinates, such a claim must fail because Plaintiff has not raised a triable issue on claims that his constitutional rights were violated by any of the Police Chief's subordinates. *See, e.g., Webber v. Mefford*, 43 F.3d 1340, 1344-45 (10th Cir.1994) ("A claim of inadequate training, supervision, and policies under § 1983 cannot be made out against a supervisory authority absent a finding of a constitutional violation by the person supervised"). To the extent Plaintiff seeks to bring a claim based on policies approved or adopted by Chief Kerlikowske, such a claim must also fail. Plaintiff does not offer competent evidence of a policy that led to a constitutional violation. As discussed below, Plaintiff also has not raised a triable issue on whether his constitutional rights were violated by any police officers.

*7 Plaintiff's claims against the City of Seattle would also fail for the same reasons, given the lack of support for Plaintiff's constitutional claims against any of the city employees who allegedly violated his constitutional rights. In addition, Plaintiff has not provided competent evidence to suggest that the alleged violations of his constitutional rights resulted from a city policy or custom, as required by *Monell v. Dep't of Social Services of City of New York*, 436 U.S. 658, 694, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978).

10. Claims Against Officers Ku and Hendrickson

Finally, Plaintiff brings claims against Police Officer Ku and Parking Enforcement Officer Hendrickson. In essence, Plaintiff claims that Officers Ku and Hendrickson fabricated their version of events that allegedly occurred on March 19, 2004, which caused Plaintiff to be falsely arrested and imprisoned without probable cause. Plaintiff's complaint could also be construed as raising mali-

cious prosecution claims, as well as excessive force claims against Officer Ku.

A. False Arrest, False Imprisonment, and Malicious Prosecution Claims

As discussed earlier, a state-law claims for false arrest and imprisonment would be barred by a two-year statute of limitations. However, false arrest and imprisonment claims may also be brought under 42 U.S.C. § 1983 ("Section 1983"), which has a three-year statute of limitations in Washington. *RK Ventures, Inc. v. City of Seattle*, 307 F.3d 1045, 1058 (9th Cir.2002).

To prevail on a Section 1983 claim for false arrest or imprisonment, a plaintiff must "demonstrate that there was no probable cause to arrest him." *Cabrera v. City of Huntington Park*, 159 F.3d 374, 380 (9th Cir.1998). Similarly, a plaintiff seeking to maintain a malicious prosecution action under state or federal law must show a lack of probable cause. *See Hart v. Parks*, 450 F.3d 1059, 1071 (9th Cir.2006); *Clark v. Baines*, 150 Wash.2d 905, 911, 84 P.3d 245 (9th Cir.2004).

The City Defendants argue that Plaintiff cannot show a lack of probable cause for his arrest. They note that the declarations from Officers Ku and Hendrickson both assert that Plaintiff struck Officer Hendrickson's vehicle and argue that such an action would be sufficient to create probable cause for Plaintiff's arrest. In his first brief in response to the City Defendants' motion, Plaintiff did not specifically deny striking Officer Hendrickson's vehicle. The City Defendants argue that because Plaintiff did not dispute this point in his response to their motion, there is no genuine issue of material fact on whether there was probable cause for the arrest.

In his response to the City Defendants' motion to strike, Plaintiff offered a document labeled as a declaration in which he asserts that he did not strike Officer Hendrickson's vehicle. However, as discussed above, this declaration must be stricken because: (1) it was not properly submitted in response to Defendants' motion to strike; and (2) the declara-

Not Reported in F.Supp.2d, 2007 WL 2671019 (W.D.Wash.)
(Cite as: 2007 WL 2671019 (W.D.Wash.))

tion does not indicate that it was signed under penalty of perjury, as required by 28 U.S.C. § 1746. As a result, Plaintiff did not offer timely or admissible evidence to show a lack of probable cause for his arrest, and summary judgment may be granted in favor of Officers Ku and Hendrickson on false arrest, false imprisonment, and malicious prosecution claims under Section 1983.

*8 Even if Plaintiff had offered a timely and admissible declaration asserting that he did not strike Officer Hendrickson's vehicle, Plaintiff still would be unable to establish a lack of probable cause for his arrest under the circumstances presented here. It is undisputed that Plaintiff entered into an agreement to have his case dismissed on the condition that he perform 10 hours of community service and that he not commit any offenses for a year. If Plaintiff failed to perform those conditions, he agreed to submit the criminal case on the record and forfeited his right to a jury trial, to testify on his own behalf, and to cross-examine witnesses. This agreement effectively left Plaintiff unable to challenge the evidence in the police report supporting probable cause.

Courts have held that a civil rights plaintiff cannot demonstrate a lack of probable cause in similar circumstances to those presented here. For example, the Second Circuit held in *Roesch v. Otarola*, 980 F.2d 850, 853 (2d Cir.1992) that “[a] person who thinks there is not even probable cause to believe he committed the crime with which he is charged must pursue the criminal case to an acquittal or an unqualified dismissal, or else waive his Section 1983 claim.” *Roesch v. Otarola*, 980 F.2d 850, 853 (2d Cir.1992); see also *Swanson v. Fields*, 814 F.Supp. 1007 (D.Kan.1993) (similar). In *Roesch*, the plaintiff had attempted to bring false arrest, false imprisonment, and malicious prosecution claims after he entered a pre-trial diversionary program that resulted in the dismissal of charges after he completed certain conditions. Similarly, Mr. Cline was not acquitted on the harassment charge, nor did he receive an unqualified dismissal

of his case. Instead, the case was only dismissed on certain conditions, including 10 hours of community service by Plaintiff and his agreement to have his case tried on the record if he failed to comply with the conditions for dismissal. Under these circumstances, the Court finds that Plaintiff cannot demonstrate a lack of probable cause for his arrest.

B. Excessive Force Claim

Plaintiff also appears to claim that his constitutional rights were violated because he was handcuffed by Officer Ku for one hour and fifteen minutes following his arrest. Although Plaintiff analogizes being handcuffed to a form of torture, he has not offered evidence of any resulting injury from being handcuffed, nor has he claimed that he told any officers that the handcuffs were too tight or were causing him any injury. An excessive force claim generally will not arise under these circumstances. See, e.g., *Gonzalez v. City of New York*, 2000 WL 516682 at * 4 (E.D.N.Y. Mar.7, 2000) (noting that “if the application of handcuffs was merely uncomfortable or caused pain, that is generally insufficient to constitute excessive force”). Sergeant Fred Jordan has offered a declaration indicating that he does not recall any injury to Mr. Cline or that Mr. Cline complained of any injury, and Plaintiff has not offered evidence to dispute those points. As a result, Plaintiff has not raised a triable issue of fact for an excessive force claim against Officer Ku.

Conclusion

*9 Plaintiff's claims against City Councilman Nick Licata are barred by the doctrine of legislative immunity. His claims against City Attorney Thomas Carr and Assistant City Attorney Kevin Kilpatrick are barred by the doctrine of prosecutorial immunity. His claims against Seattle Municipal Court Judge Pro Tem David Zuckerman are barred by the doctrine of judicial immunity. His claims against Police Chief Gil Kerlikowske and the City of Seattle must be dismissed because there is no evidence that a police department or city policy caused a deprivation of Plaintiff's civil rights, nor

Not Reported in F.Supp.2d, 2007 WL 2671019 (W.D.Wash.)
 (Cite as: 2007 WL 2671019 (W.D.Wash.))

has Plaintiff raised a triable issue on whether any police or city employees violated his constitutional rights. Plaintiff has also not provided sufficient allegations or evidence to support a claim that Sergeant Maryann Parker violated his rights under the constitution or state law. Finally, Plaintiff's claims against Officers Ku and Hendrickson are subject to dismissal because he cannot demonstrate a lack of probable cause for his arrest, nor has he offered evidence to support a claim of excessive force against Officer Ku.

Therefore, the Court GRANTS the City Defendants' motion for summary judgment. The Clerk is directed to enter judgment in favor of Defendants and against Plaintiff. The Clerk is also directed to send copies of this order to Plaintiff and to counsel for Defendants.

W.D.Wash.,2007.

Cline v. City of Seattle

Not Reported in F.Supp.2d, 2007 WL 2671019
 (W.D.Wash.)

Motions, Pleadings and Filings (Back to top)

- 2007 WL 4892520 (Trial Motion, Memorandum or Affidavit) Plaintiff's Motion to Reconsider Facts, and Reconsider Granting Defendants' Motion for Dismissal (filed Sep 24, 2007) (Sep. 24, 2007) Original Image of this Document (PDF)
- 2007 WL 4892518 (Trial Motion, Memorandum or Affidavit) Plaintiff's Reply in Opposition to Defendants' Motion for Summary Judgment, Dismissal and Motion to Strike (June 27, 2007) (Jun. 27, 2007) Original Image of this Document (PDF)
- 2007 WL 4892519 (Trial Motion, Memorandum or Affidavit) Declaration of Michael Cline (June 27, 2007) (Jun. 27, 2007) Original Image of this Document with Appendix (PDF)
- 2007 WL 4892517 (Trial Motion, Memorandum or Affidavit) Plaintiff's Reply Oppose Defendants' Motion for Summary Judgment, of Dismissal Allow Continuance (June 11, 2007) (Jun. 21, 2007) Original Image of this Document (PDF)

- 2007 WL 4892516 (Trial Motion, Memorandum or Affidavit) Defendants' Reply in Support of Motion for Summary Judgment of Dismissal and Motion to Strike (Jun. 15, 2007) Original Image of this Document (PDF)
- 2007 WL 4892515 (Trial Motion, Memorandum or Affidavit) Plaintiff's Reply Oppose Defendants' Motion for Summary Judgment, of Dismissal Allow Continuance (June 11, 2007) (Jun. 11, 2007) Original Image of this Document (PDF)
- 2007 WL 1995724 (Trial Motion, Memorandum or Affidavit) Defendants' Motion for Summary Judgment of Dismissal (May 24, 2007) Original Image of this Document with Appendix (PDF)
- 2007 WL 4892514 (Trial Motion, Memorandum or Affidavit) Plaintiff's Reply & Do Not Oppose Defendant Ward's Motion for Summary Judgment, Request to Deny Costs, and Submission of Evidence (Mar 26, 2007) (Mar. 27, 2007) Original Image of this Document with Appendix (PDF)
- 2007 WL 1370642 (Trial Motion, Memorandum or Affidavit) Defendant Ray Ward's Motion for Summary Judgment (Mar. 8, 2007) Original Image of this Document (PDF)
- 2007 WL 4892513 (Trial Motion, Memorandum or Affidavit) Declaration of Eileen Farley in Support of Defendants' Motion for Summary Judgment (Mar. 8, 2007) Original Image of this Document with Appendix (PDF)
- 2007 WL 1093570 (Trial Pleading) Answer and Affirmative Defenses to Plaintiff's Complaint by Defendants the City of Seattle, Nick Licata, R. Gil Kerlikowske, Thomas Carr, Kevin Kilpatrick, David Zuckerman, Sgt. Maryann Parker, David Ku, and Carol Hendrickson (Feb. 13, 2007) Original Image of this Document (PDF)
- 2007 WL 4892512 (Trial Motion, Memorandum or Affidavit) Motion for Discovery Compel Defendants to Produce Documents Transcripts, Records (Feb 2, 2007) (Feb. 9, 2007) Original Image of this Document (PDF)
- 2:06cv01369 (Docket) (Sep. 22, 2006)

Not Reported in F.Supp.2d, 2007 WL 2671019 (W.D.Wash.)
(Cite as: 2007 WL 2671019 (W.D.Wash.))

Judges and Attorneys(Back to top)

Judges | Attorneys

Judges

• **Pechman, Hon. Marsha J.**

United States District Court, Western Washington
Seattle, Washington 98101

Litigation History Report | Judicial Motion Report |
Judicial Reversal Report | Judicial Expert Challenge
Report | Profiler

Attorneys

Attorneys for Defendant

• **Larson, Stephen P.**

Seattle, Washington 98101

Litigation History Report | Profiler

END OF DOCUMENT