

No. 73797-0-1

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

MICHAEL LEON,

Appellant,

v.

THE BOEING COMPANY et. al.,

Respondents.

RESPONDENTS' RESPONSE BRIEF

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I. Introduction

Over the past several years, Mr. Leon has repetitively sued The Boeing Company and a smattering of other defendants for claims related to allegedly-defamatory statements published online in January and February of 2013. Claims related to these allegations have been brought at least *17 times* in at least *seven different federal and state courts* across the country. In each of these cases, Leon's claims have been fully adjudicated and dismissed. But as soon as his claims are dismissed in one jurisdiction, Leon simply refiles the same claims against the same defendants in another. Leon's course of conduct illustrates that when he does not like a result in one jurisdiction he just moves to another to file the same set of assertions.

In late 2014, the District of Arizona fully reviewed Mr. Leon's litigation history to that point and determined that his claims were "frivolous" and "for the purpose of harassing" Boeing and other defendants. The District of Arizona then dismissed Mr. Leon's claims, designated him a vexatious litigant based on his "wrongful conduct" in "relitigating the same factual allegations and claims," and ordered that Mr. Leon not file any more actions related to the allegedly-defamatory statements.

Notwithstanding that order, a mere *two months* after the District of Arizona ordered Mr. Leon to stop filing suits he moved his litigation to Washington state court, and again sued Boeing and others in the Superior Court. In response to yet another filing of the same action by Mr. Leon, Boeing and the other defendant to this action, Marc Birtel, filed a Motion for Summary Judgment, arguing that Mr. Leon's claims were barred by the doctrine of res judicata. The trial court reviewed Mr. Leon's litigation history, including the District of Arizona's vexatious litigant order barring him from further suits raising the same adjudicated claims, and dismissed Mr. Leon's claims as previously litigated and therefore barred. The court also denied Mr. Leon's motion to defer dismissal so that he could take discovery on his underlying allegations.

In this appeal, Mr. Leon argues that the Superior Court erred in dismissing his claims. But in light of Mr. Leon's voluminous history of litigating these claims against Boeing and others the court's decision was well-supported and correct. The Superior Court's order dismissing Mr. Leon's claims should be affirmed in all respects.

II. Statement of the Issues¹

1. Whether the Superior Court erred in dismissing Mr. Leon's claims based on the doctrine of res judicata, after it found that Mr. Leon had litigated claims based on the same allegedly-defamatory statements against the same defendants several times before.
2. Whether the Superior Court erred in denying Mr. Leon's motion to take discovery prior to adjudicating the res judicata motion, after it found that no discovery would affect its resolution of that motion.

III. Statement of the Case

A. Procedural History

Mr. Leon filed suit against defendants Boeing and Marc Birtel (Defendants in this appeal) in the King County Superior Court on December 26, 2014. [Clerk's Papers ("CP") 3-8] Defendants answered on February 4, 2015. [CP 25-32] Defendants then filed a Motion for Summary Judgment on April 6, 2015, arguing that Mr. Leon's claims were barred by the doctrine of res judicata because those claims had been previously litigated to judgment against the same parties on multiple occasions (the "res judicata motion"). [CP 33-42]

¹ Defendants have attempted to restate here the issues it believes Mr. Leon has raised in this appeal.

In response, Mr. Leon moved to defer disposition of the res judicata motion, arguing that he needed to discover facts in order to respond.² [CP 80-83] The court denied that motion *sua sponte* and ordered Mr. Leon to file a response, stating that “no substantive discovery is required to craft a response.” [CP 159-160] Mr. Leon then responded to the pending res judicata motion. [CP 182-196]

At a June 26, 2015, oral argument on Defendants’ res judicata motion, the court walked through the test for applying the doctrine, finding that all the applicable factors were satisfied. [June 26, 2015 Verbatim Report of Proceedings (“RP”) at 23-26] The Superior Court granted Defendants’ motion, and dismissed Mr. Leon’s claims as barred by res judicata. [CP 206-207]

Mr. Leon filed a Notice of Appeal on July 27, 2015. [CP 208]

B. Factual Background

1. Mr. Leon’s Prior Cases

The claims brought by Mr. Leon in this case (that the Superior Court dismissed as previously litigated) center around allegations that he was injured by statements published in an article online at the website

² Mr. Leon filed other motions, including opposing a Motion for Limited Admission by Arizona counsel for Boeing who was familiar with Mr. Leon’s prior actions there. [CP 98-99] That motion and others are not described herein, as they are not germane to this appeal.

www.nextgov.com. As noted above, Mr. Leon has brought these same claims several times before, in numerous courts. In each case, the claims have been dismissed. The Superior Court found that the doctrine of res judicata barred Mr. Leon's present claims based on its review of a sampling of these prior cases. Those cases are described below.

a. April 2013: *Leon v. Boeing, et al.*, 13-cv-0286-JGZ; 13-cv-0287-JGZ; 13-cv-0288-JGZ; 12-cv-0289-GCB (D. Ariz.) (the "286 Cases")

In the 286 Cases, Mr. Leon brought identical claims in four separate suits against Boeing and other defendants. [CP 50] Those complaints alleged various torts, including defamation. [CP 49-50] The claims in those suits were based on statements allegedly made by Boeing and others, which were reported in January and February 2013 in a *www.nextgov.com* article (or, as described there, the "2013 internet defamation claims"). [*Id.*] After the bulk of those cases were consolidated, all of Mr. Leon's claims were dismissed. [CP 50-51] In dismissing the claims, the District of Arizona addressed the merits in detail and found that Mr. Leon failed to state any claim against Boeing and the other defendants. [CP 51]

b. January 2014: *Leon v. Meggitt, et al.*, 14-cv-00226-DCB (D. Ariz.) (the "226 Case")

In the 226 Case, Mr. Leon filed suit in the District of Arizona against Boeing, Mr. Birtel, and others. [CP 46] Mr. Leon made claims for

various torts, including defamation. [CP 52] Mr. Leon's claims were again based on statements allegedly made by Boeing, Mr. Birtel, and others in January and February 2013, as reported in a *www.nextgov.com* article. [*Id.*] The District of Arizona dismissed Mr. Leon's claims with prejudice [CP 49; 66], finding the claims to be "frivolous" and made "for the purpose of harassing" Boeing, Mr. Birtel, and others [CP 57].³

Further, the District of Arizona reviewed Mr. Leon's already-then-lengthy litigation history and found him to be a vexatious litigant based on his "wrongful conduct" of "relitigating the same factual allegations and claims." [CP 65] As a consequence, the Arizona court enjoined Mr. Leon from filing any further actions relating to several subjects including "statements about Plaintiff and published on the internet in January and February 2013."⁴ [CP 49; 67] The District of Arizona also ordered that

³ By the time the District of Arizona dismissed these claims, Mr. Leon had moved to amend his complaint to include new defendants, including Mr. Birtel. The District of Arizona held that its "findings in respect to the lack of merit of Plaintiff's tort claims . . . apply equally to . . . the new defendants Plaintiff proposes to add here," including Mr. Birtel. [CP 52]

⁴ In this appeal, Mr. Leon makes several arguments about the propriety of the vexatious litigant order, believing that it will be reversed by the Ninth Circuit Court of Appeals. While Defendants disagree, and believe the vexatious litigant order to be well-reasoned and that it will be affirmed by the circuit court, the propriety of the vexatious litigant order itself is not germane to this appeal. Instead, it is sufficient that the District of Arizona in that case dismissed Mr. Leon's claims as frivolous.

Mr. Leon file a copy of the court's order designating him vexatious with any future filings.⁵ [CP 68]

c. January 2014: *Leon v. Exponent, et al.*, 14-cv-0095-RAJ (W.D. Wash.) (the "095 Case")

In the 095 Case, Mr. Leon brought suit in the Western District of Washington against Boeing, Mr. Birtel, and others.⁶ [CP 75] He asserted claims for defamation, again based on the same statements published in the *www.nextgov.com* article. [*Id.*] The District of Washington dismissed the case. [CP 75-76] The court reasoned that Mr. Leon's claims were "incomprehensible," that his complaint was "frivolous and malicious," and that, in any event, Mr Leon "fail[ed] to state a claim on which relief may be granted."⁷ [CP 75 (citation and internal quotation marks omitted)] Further, the court reviewed a summary of Mr. Leon's litigation history provided by Boeing, and wrote that the court's "review of the docket in a few of those cases suggests that all of them raise the same sort of incomprehensible allegations." [CP 76]

⁵ Mr. Leon did not file this order with the Superior Court below.

⁶ In the interest of not inundating the Superior Court (and, indeed, this Court) with the voluminous pleadings and motions filed in prior cases, Defendants did not provide the Superior Court with the Complaint in the 095 Case, providing only the Western District of Washington's order dismissing the case. [CP 75] The Complaint in that matter named Mr. Birtel as a defendant. *Leon v. Exponent et al.*, 14-cv-0095 (W.D. Wash. Jan. 27, 2014), Doc. 4. Defendants can provide a copy of this (and other) prior filings if the Court believes that is necessary. RAP 9.11.

⁷ That order "operates as an adjudication on the merits." Fed. R. Civ. P. 41(b).

2. Mr. Leon's Present Case

a. Mr. Leon's Complaint

Mr. Leon filed the present case on December 26, 2014. [CP 3-8] He again named Boeing and Mr. Birtel as defendants. [CP 3] Mr. Leon made claims again for defamation, as well as interference with business expectancy. [CP 6-7] As before, Mr. Leon claimed that he had been injured by the statements allegedly made by Boeing and Mr. Birtel in January and February 2013, reported in the *www.nextgov.com* article. [CP 5-7]

b. Defendants' Motion for Summary Judgment on Res Judicata Grounds

On April 15, 2015, Defendants filed a Motion for Summary Judgment. [CP 33-42] The motion set forth the same portion of Mr. Leon's litigation history described above. [CP 36-38] The motion then compared Mr. Leon's present case to his prior litigation, setting forth the identity as to (1) the *persons and parties* in the present and past cases, (2) the *causes of action* in the present and past cases, (3) the *subject matter* of the present and past cases, and (4) the *quality of the persons against whom claims were made* in the present and past cases. [CP 38-40] Based on these factors, Defendants argued that Mr. Leon's present claims must be dismissed. [CP 40]

c. *Sua Sponte* Denial of Mr. Leon's Motion to Obtain Discovery

Before responding to Defendants' res judicata motion, Mr. Leon moved to extend the time for him to respond. [CP 80-83] Without citing any particular then-unknown or undiscovered facts which would have implicated the application of res judicata, Mr. Leon generally claimed to need evidentiary development prior to responding. [CP 82] Without receiving a response, the court denied Mr. Leon's motion *sua sponte*. [CP 159-160] The court reasoned that "[g]iven the nature of Defendant's summary judgment motion, no substantive discovery is required to craft a response." [CP 159]

Following the court's order, Mr. Leon filed a response. [CP 182-196]

d. The Court's Dismissal of Mr. Leon's Claim Based on the Doctrine of Res Judicata

The Superior Court heard oral argument on Defendants' res judicata motion on June 26, 2015. [RP 1-27] The court heard lengthy argument from both Defendants [RP 4-10; 21-23] and Mr. Leon. [RP 10-21] Following that argument, the court provided an oral ruling, granting the motion and dismissing Mr. Leon's claims. [RP 23-26] The court set out on the record a lengthy explanation for its decision, finding that the relevant res judicata factors were met.

First, the court found that the parties in Mr. Leon's present suit, Boeing and Mr. Birtel, were the same as those sued previously by Mr. Leon for these same claims. [RP 24] The court stated:

There is an identity of parties between this case that names the Boeing Company and Mr. Birtel, who I might add is a spokesperson as I understand it, for the Boeing Company. . . . [T]he Defendants do cite to several cases . . . and I had reviewed the Arizona courts earlier [in which] the judge had previously made it explicit that his dismissal [of the 226 Case] would apply to Mr. Birtel. . . .

[T]he Western District of Washington case [the 095 Case] that was dismissed by Judge Jones, also named Mr. Birtel. . . . [T]here is an identity of -- a similarity of identity between the defendants in this case and the other cases, several of the other cases anyway, that Mr. Leon has brought.

[RP 24]

Second, the court found that Mr. Leon's claims in this case and the prior cases arise out of the same subject matter: "the use of the battery and the subsequent article that appeared on nextgov.com." [RP 24-25]

Third, the court determined that Mr. Leon asserted the same causes of action in the present case as he had before. [RP 25-] The court stated:

Those earlier lawsuits were litigated to judgment even though the judgment was not based on a resolution of the disputed issues but [] on legal grounds, they were fully and finally resolved by judgment. And the fact that [] interference with business expectancy was not a claim that was explicitly raised before doesn't preclude that finding.

There is a close relationship and a logical connection between that particular cause of action and other claims for

defamation that have previously been brought. . . . [U]nder Washington law it is not required that there be a precise identity between the claims if in fact they are arising from the same circumstances and nucleus effects.

[RP 25] After making these findings, the court held that Mr. Leon's claims are barred by res judicata.⁸ [RP 26]

IV. Standard of Review

This Court reviews the Superior Court's order granting summary judgment de novo by "performing the same inquiry as the trial court." *Martin v. Wilbert*, 162 Wn. App. 90, 94, 253 P.3d 108, 110 (2011) (citation omitted). Similarly, "[w]hether an action is barred by res judicata is a question of law that the court reviews de novo." *Id.* (citation omitted). The Superior Court's order declining to continue Defendants' motion for summary judgment to permit discovery under CR 56(f) is reviewed for an abuse of discretion. *See Mut. of Enumclaw Ins. Co. v. Patrick Archer Constr., Inc.*, 123 Wn. App. 728, 743, 97 P.3d 751, 760 (2004).

⁸ Although not required to affirm the Superior Court's application of the doctrine of res judicata, the trial court further held that another basis on which to grant the Defendant's res judicata motion is the Arizona District Court vexatious litigant order, which "create[s] an explicit injunction against further litigation arising out of these facts." [RP 26] The court reasoned that although that vexatious litigant order was appealed, it was still operative to enjoin Mr. Leon from filing suit in the Superior Court. [RP 26] The vexatious litigant order entered against Mr. Leon in the District of Arizona is still on appeal to the Ninth Circuit (but the vexatious litigant order has not been stayed pending that appeal) as of the date of filing this brief.

V. Argument

Mr. Leon makes two arguments to this Court for why the Superior Court's order should be reversed. First, he argues that the doctrine of res judicata was improperly applied. Second, he argues that the Superior Court should have given him the opportunity to take discovery prior to resolving Defendants' res judicata motion. These arguments are addressed here in turn. Neither has merit, and the Superior Court's orders should be affirmed in all respects.

A. The Superior Court correctly applied the doctrine of res judicata in dismissing Mr. Leon's claims

"[R]es judicata prohibits the relitigation of claims and issues that were litigated, or could have been litigated, in a prior action." *Karlberg v. Otten*, 167 Wn. App. 522, 535, 280 P.3d 1123, 1130 (2012) (citations omitted). Res judicata applies upon a showing of four factors: "identity between a prior judgment and a subsequent action as to (1) persons and parties, (2) causes of action, (3) subject matter, and (4) the quality of persons for or against whom the claim is made. Res judicata also requires a final judgment on the merits." *Id.* at 536, 280 P.3d at 1130 (citation omitted).

Mr. Leon's claims have been found meritless, dismissed with prejudice, and adjudicated to judgment numerous times. As demonstrated

in the Factual Background above, Mr. Leon's present and prior cases share the following key similarities:

<u>Case</u>	<u>Named Defendants</u>	<u>Claims</u>	<u>Subject Matter</u>
<i>The 286 Cases</i>	<ul style="list-style-type: none"> Boeing others [CP 50] 	<ul style="list-style-type: none"> Defamation other torts [CP 49-50] 	Statements allegedly made by Boeing and others, published in the 2013 www.nextgov.com article. [CP 49-50]
<i>The 226 Case</i>	<ul style="list-style-type: none"> Boeing Mr. Birtel others [CP 46] 	<ul style="list-style-type: none"> Defamation other torts [CP 52] 	Statements allegedly made by Boeing and others, published in the 2013 www.nextgov.com article. [CP 52]
<i>The 095 Case</i>	<ul style="list-style-type: none"> Boeing Mr. Birtel others [CP 75] 	<ul style="list-style-type: none"> Defamation other torts [CP 75] 	Statements allegedly made by Boeing and others, published in the 2013 www.nextgov.com article. [CP 75]
<i>Current Case</i>	<ul style="list-style-type: none"> Boeing Mr. Birtel [CP 3] 	<ul style="list-style-type: none"> Defamation Interference with business expectancy [CP 6-7] 	Statements allegedly made by Boeing and others, published in the 2013 www.nextgov.com article. [CP 5-7]

- a. **Factor One: The court correctly found that Mr. Leon sued Boeing and Mr. Birtel in prior cases.**

For res judicata to apply, it must first be shown that the current and prior suits involved the same parties. *See Karlberg*, 167 Wn. App. at 536, 280 P.3d at 1130. Below, the Superior Court found that the defendants in

Mr. Leon's present suit, Boeing and Mr. Birtel, had been sued by Mr. Leon in his prior cases. [RP 24] Mr. Leon has not shown that this decision was made in error. Indeed, in all of the prior cases reviewed by the Superior Court, Mr. Leon named Boeing as a defendant. [CP 46; 50; 75] And, in two of those cases, Mr. Leon named Mr. Birtel.

In this appeal, Mr. Leon argues that Mr. Birtel in fact was *not* sued in the prior cases, and therefore the trial court erred in finding this element satisfied.⁹ But as a factual matter Mr. Leon is simply incorrect. In the 095 Case Mr. Leon filed in the Western District of Washington, Mr. Birtel was named as a Defendant.¹⁰ [CP 75] And that case was dismissed upon a finding that Mr. Leon failed to state a claim [CP 76], an order that "operates as an adjudication on the merits." Fed. R. Civ. P. 41(b).

Mr. Birtel was also named as a defendant in the 226 Case, which was dismissed with prejudice in the District of Arizona. By the time of dismissal in that case, Mr. Leon moved to amend his complaint to add Mr. Birtel as a defendant. [CP 52] And, when dismissing that case, the

⁹ At various points, Mr. Leon also suggests that Boeing was not named in prior cases because the complaints in those cases named the "Boeing Corporation" as opposed to the "Boeing Company." But, Boeing appeared in those prior cases to defend them, so any mistake Mr. Leon made in naming Boeing correctly were rendered moot. In any event, Mr. Leon cannot capitalize on his own pleading errors, when beyond question he intended to sue, and did sue, Boeing in those prior cases.

¹⁰ *Leon v. Exponent et al.*, 14-cv-0095 (W.D. Wash. Jan. 27, 2014), Doc. 4. See *supra* Note 6.

District of Arizona held that its “findings in respect to the lack of merit of Plaintiff’s tort claims . . . apply equally to . . . the new defendants Plaintiff proposes to add here,” which, by Mr. Leon’s motion to amend, included Mr. Birtel. [*Id.*]

b. Factor Two: The court correctly found that Mr. Leon asserted the same causes of action in the prior cases.

For res judicata to apply, it must next be shown that the same causes of action were asserted in the current and prior suits. *See Karlberg*, 167 Wn. App. at 536, 280 P.3d at 1130. Below, the Superior Court determined that Mr. Leon asserted the same causes of action in the current and prior suits. [RP 25] Mr. Leon has not shown that this decision was made in error.

Mr. Leon suggests in this appeal that this element is not met because he has not previously raised his interference with business expectancy claim.¹¹ But application of res judicata does not depend on the

¹¹ Mr. Leon argues that he had to recast this claim as one for interference with business expectancy because he has suffered new damages as a result of Defendants’ conduct. But as a matter of law this does not change the analysis—the prior courts’ adjudication of Mr. Leon’s claims applied to *all* potential damages. *See Karlberg*, 167 Wash. App. at 535, 280 P.3d at 1130 (“[I]f an action is brought for part of a claim, a judgment obtained in the action precludes the plaintiff from bringing a second action for the residue of the claim.”) (citation and quotation marks omitted). Further, no prior court to have considered Mr. Leon’s claims dismissed those claims for his failure to assert damages. Instead, those cases were dismissed as frivolous because he failed to state a claim. Mr. Leon does not explain how his supposed discovery of new categories of *damages*

causes of action being identical. A contrary rule would allow relitigation of the same suits based on minor changes to the precise claim alleged. Instead, the test for res judicata requires the court to look at the *substance* of the claim. The Superior Court did just this below, stating:

[T]he fact that an interference with business expectancy was not a claim that was explicitly raised before doesn't preclude that finding [of res judicata].

There is a close relationship and a logical connection between that particular cause of action and other claims for defamation that have previously been brought. And as [counsel for Defendants] noted, under Washington law it is not required that there be a precise identity between the claims if in fact they are arising from the same circumstances and nucleus effects.

[RP 25]

This decision was not erroneous. In setting out this analysis in detail, courts are to consider: “(1) whether the rights or interests established in the prior judgment would be destroyed or impaired by prosecution of the second action; (2) whether substantially the same evidence is presented in the two actions; (3) whether the suits involved infringement of the same right; and (4) whether the two suits arise out of the same transactional nucleus of facts.” *Pederson v. Potter*, 103 Wn. App. 62, 72, 11 P.3d 833, 838 (2000) (citation omitted).

should disrupt those judgments resolving whether he stated a claim in the first place.

Upon consideration of these factors, it is clear the Superior Court's decision that "[t]here is a close relationship and a logical connection between that particular cause of action and other claims for defamation that have previously been brought" was correct. [RP 25] *First*, Defendants' rights would be destroyed by relitigation (even as restated as a business expectancy claim), as courts have already established that Mr. Leon's claims are frivolous and that Defendants shall be free from relitigating future claims on these issues. *Second*, Mr. Leon relies on the same evidence for all of his claims: the alleged defamatory statements from the 2013 *www.nextgov.com* article. *Third*, the suits all involve the alleged infringement of the same right—Mr. Leon's right to not have defamatory statements made against him. *Fourth*, all of the suits arise out of the same nucleus of facts—statements made to the media surrounding the use of a lithium battery, specifically the statements published in the 2013 *www.nextgov.com* article.

As a consequence, the Superior Court did not err in finding the "close relationship" between the defamation claims Mr. Leon brought before, and his restatement of those claims as one for interference with business expectancy here.

c. Factor Three: The court correctly found that Mr. Leon sued Boeing and Mr. Birtel about the same subject matter in the prior cases.

For res judicata to apply, it must next be shown that the same subject matter was at issue in the current and prior suits. *See Karlberg*, 167 Wn. App. at 536, 280 P.3d at 1130. Here, the Superior Court found this element met because the current and prior suits all related to “the use of the battery and the subsequent article that appeared in nextgov.com.” [RP 24-25] And Mr. Leon cannot show that this decision was made in error: the subject matter of this suit and prior suits detailed above is precisely the same—the allegedly-defamatory statements made by Boeing through Mr. Birtel that were reprinted in the 2013 *www.nextgov.com* article. [CP 49-50; 52; 75]

d. Factor Four: Because Mr. Leon’s claims were against Boeing and Mr. Birtel in the prior and current cases, the same “quality of persons” defended these suits.

For res judicata to apply, it finally must be shown that the same “quality of persons” defended the current and prior suits. *See Karlberg*, 167 Wn. App. at 536, 280 P.3d at 1130. While the Superior Court made no specific findings as to this fact, it did not need to. Indeed, when “parties are identical, the quality of persons is also identical.” *Pederson*, 103 Wn. App. at 73, 11 P.3d at 838. That is the case here: Mr. Leon’s prior lawsuits have been brought with identical plaintiff and defendants

(specifically, Mr. Leon against Boeing and Mr. Birtel), so the quality of persons is the same in this case and the prior suits relied on by the court.

In sum, Mr. Leon has not shown that the Superior Court's order dismissing his claims under the doctrine of res judicata was made in error. That order should be affirmed.

B. The Superior Court did not err in denying Mr. Leon's motion to take discovery prior to considering Defendants' res judicata motion.

Mr. Leon also argues that he should have been allowed to take discovery prior to the Superior Court ruling on Defendants' res judicata motion. As noted above, the Superior Court denied Mr. Leon's request, concluding that "[g]iven the nature of Defendant's summary judgment motion, no substantive discovery is required to craft a response." [CP 159] Mr. Leon has not shown that this decision was an abuse of discretion. *See Mut. of Enumclaw Ins. Co.*, 123 Wn. App. at 743, 97 P.3d at 760 (reviewing order denying CR 56(f) motion for abuse of discretion).

As an initial matter, bare assertions under CR 56(f) that discovery is required, without *specific facts* which (if shown) would rebut the Motion for Summary Judgment, are simply not enough. *See Becker v. Wash. State Univ.*, 165 Wn. App. 235, 245-46, 266 P.3d 893, 899 (2011) ("[T]he nonmoving party [for summary judgment] must set forth specific

facts that sufficiently rebut the moving party's contentions.") (citation and quotation marks omitted). Below, Mr. Leon claimed to need discovery but provided no detail about what that discovery should show or, more importantly, how that discovery would relate to the summary judgment motion at issue. Instead, he only said that he "believe[d] through discovery facts and evidence gathered will influence outcome of pending summary judgment motion" and that "[d]iscovery . . . is critical to the adjudication process and . . . demonstrating justifiable controversy exists." [CR 81-82] The law clearly provides that these vague claims for discovery are insufficient. *See Becker*, 165 Wash. App. at 245-46, 266 P.3d at 899. On this basis alone, the Superior Court did not abuse its discretion when denying Mr. Leon's motion.

Moreover, Defendants' motion for summary judgment relied *solely* on the fact that Mr. Leon's claims are barred by res judicata. Thus, the res judicata motion *only* depended upon comparing Mr. Leon's current case against what he litigated previously. [CP 36] As a consequence, resolution of the res judicata motion *did not* depend *in any way* on consideration of the underlying merits of Mr. Leon's claims. Below, Mr. Leon entered his contemplated discovery requests into the record.¹² [CP

¹² Although Mr. Leon submitted his discovery requests into the record, those requests (and Mr. Leon's motion to continue summary judgment briefing to

100-110] Those requests all related to the *underlying case*, and not the issues relevant to the res judicata motion. As a result, Mr. Leon did not show (nor could he show) that his discovery requests would affect the Court's analysis of whether his claims have been litigated before. Accordingly, the trial court did not abuse its discretion in denying Mr. Leon's motion to continue and rightly concluded that "no substantive discovery is required to craft a response" [CP 159]. See *Van Dinter v. City of Kennewick*, 64 Wn. App. 930, 937, 827 P.2d 329, 333 (1992), aff'd, 121 Wn. 2d 38, 846 P.2d 522 (1993) (en banc) ("[W]here the discovery sought would not meet the issue that the moving party contends contains no genuine issue of fact, it is not an abuse of discretion to decide the motion for summary judgment without granting discovery.") (citation and quotation marks omitted).

The Superior Court's order denying Mr. Leon's motion to continue summary judgment briefing to take discovery was not an abuse of discretion. That order should be affirmed.

obtain discovery), still omitted those *facts* that would affect the disposition of the res judicata motion. See *Becker*, 165 Wash. App. at 245-46, 266 P.3d at 899.

VI. Conclusion

For the foregoing reasons, Defendants respectfully request that this Court affirm the Superior Court's order dismissing Mr. Leon's claims as barred by the doctrine of res judicata.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I, the undersigned, certify under penalty of perjury under the laws of the State of Washington that today I caused the foregoing document to be served via e-mail, pursuant to the parties' e-service agreement, on the following persons:

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