

APPENDIX A

A-1.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

AUG 21 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

BRETT EMMETT LLOYD,

Plaintiff-Appellant,

v.

JOHN GERHARD; et al.,

Defendants-Appellees,

and

ANDREW PULVER; et al.,

Defendants.

No. 19-35312

D.C. No. 3:17-cv-00582-MK
District of Oregon,
Portland

ORDER

Before: TASHIMA, BYBEE, and WATFORD, Circuit Judges.

Lloyd's motion to recall the mandate (Docket Entry No. 26) is granted. The mandate is recalled for the limited purpose of considering the petition for rehearing en banc.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 35.

Lloyd's petition for rehearing en banc (Docket Entry Nos. 24 and 27) is denied.

Lloyd's motion to publish the court's memorandum (Docket Entry No. 24)

APPENDIX B

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

APR 21 2020

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

BRETT EMMETT LLOYD,

No. 19-35312

Plaintiff-Appellant,

D.C. No. 3:17-cv-00582-MK

v.

MEMORANDUM*

JOHN GERHARD; et al.,

Defendants-Appellees,

and

ANDREW PULVER; et al.,

Defendants.

Appeal from the United States District Court

for the District of Oregon

Ann L. Aiken, District Judge, Presiding

Submitted April 7, 2020**

Before: TASHIMA, BYBEE, and WATFORD, Circuit Judges.

Oregon state prisoner Brett Emmett Lloyd appeals pro se from the district

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

court's judgment dismissing his 42 U.S.C. § 1983 action alleging malicious prosecution claims. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Dougherty v. City of Covina*, 654 F.3d 892, 897 (9th Cir. 2011) (motion to dismiss); *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1102 (9th Cir. 2003) (special motion to strike under anti-SLAPP statute). We may affirm on any basis supported by the record, *Thompson v. Paul*, 547 F.3d 1055, 1058-59 (9th Cir. 2008), and we affirm.

The district court properly dismissed Lloyd's malicious prosecution claims against defendants Warner and the City of Beaverton because Lloyd failed to allege facts sufficient to show that the criminal fraud charges were terminated in Lloyd's favor. *See Awabdy v. City of Adelanto*, 368 F.3d 1062, 1066-68 (9th Cir. 2004) (setting forth the elements of a § 1983 malicious prosecution claim; a dismissal in the interest of justice is a termination in the plaintiff's favor only if it "reflects the opinion of the prosecuting party or the court that the action lacked merit or would result in a decision in favor of the defendant"); *Perry v. Rein*, 168 P.3d 1163, 1170-71 (Or. App. 2007) (setting forth the elements of the state tort of malicious prosecution; a dismissal is favorable if it "it reflects adversely on the merits of the underlying action" (citation and internal quotation marks omitted)).

For the same reasons, dismissal of Lloyd's malicious prosecution claims against defendant Gerhard was proper.

The district court properly granted defendant Ball's special motion to strike Lloyd's second amended complaint under Oregon's anti-SLAPP statute because Lloyd failed to show a probability of prevailing on the merits. *See Schwern v. Plunkett*, 845 F.3d 1241, 1245 (9th Cir. 2017) (setting forth required analysis under Oregon's anti-SLAPP statute); *see also* Or. Rev. Stat. § 31.150(3); *Awabdy*, 368 F.3d at 1066-68; *Perry*, 168 P.3d at 1170-71.

The district court did not abuse its discretion in denying Lloyd's motion to enter default judgment. *See Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986) (setting forth standard of review and factors for determining whether to enter default judgment).

Lloyd forfeited his opportunity to appeal the magistrate judge's denial of his motion for leave to amend his complaint a third time because Lloyd failed to file timely objections with the district judge. *See Simpson v. Lear Astronics Corp.*, 77 F.3d 1170, 1174 (9th Cir. 1996) ("[A] party who fails to file timely objections to a magistrate judge's nondispositive order with the district judge to whom the case is assigned forfeits its right to appellate review of that order.").

All pending motions are denied.

AFFIRMED.

APPENDIX C

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

BRETT EMMETT LLOYD,

Plaintiff,

v.

JOHN GERHARD, JEFFREY WARNER,
ANNALISA BALL, CITY OF BEAVERTON,
a municipal Corporation of the State of Oregon,

Defendants.

Case No. 3:17-cv-00582-MK

FINDINGS AND
RECOMMENATION

KASUBHAI, Magistrate Judge:

Plaintiff, an inmate at Eastern Oregon Correctional Institution appearing pro se, alleges claims of malicious prosecution against defendants under 42 U.S.C. § 1983 and Oregon law. The

City of Beaverton and Officer Jeffrey Warner (collectively referred to as the Beaverton

defendants) move for dismissal under Federal Rule of Civil Procedure 12(b)(6), and Annalisa

Ball moves to strike plaintiff's claims under Oregon's anti-Strategic Lawsuit Against Public

Participation (anti-SLAPP) statute. I recommend that defendants' motions be granted and

plaintiff's claims be dismissed with prejudice.

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BACKGROUND

According to the allegations in plaintiff's Second Amended Complaint, Annalisa Ball, plaintiff's former wife, initiated divorce proceedings in late 2014 after the State of Oregon brought criminal charges against plaintiff arising from the sexual exploitation and abuse of his step-daughter. Sec. Am. Compl. ¶¶ 12, 14-15(a) (ECF No. 13). Plaintiff alleges that during the divorce proceedings, Ball's attorney made an offer of settlement and warned plaintiff that if he did not accept the offer, Ball would inform law enforcement officials that plaintiff had forged Ball's name on a 2012 auto loan. *Id.* ¶ 15(b).

Plaintiff did not accept the offer. Ball allegedly met with City of Beaverton police officer Jeffrey Warner and claimed that plaintiff had forged her signature on 2012 auto loan documents. *Id.* ¶¶ 18-19. In her complaint to the police, Ball apparently stated that she and plaintiff were still married and that she did not know that her name was on the auto loan. *Id.* ¶ 19. Plaintiff alleges that Ball's allegations of forgery were false and that she approved the loan via an electronic signature. *Id.* ¶¶ 16-17.

Ofc. Warner allegedly forwarded the police report with the false information to the Washington County District Attorney's (DA) office. Sec. Am. Compl. ¶ 20. Ofc. Warner also sent the DA's office supplemental reports stating that he had "confirmed Brett Lloyd used Annalisa Ball's personal information (without her knowledge or consent) to include her social security number and signature to complete a loan application." Plaintiff maintains that those statements were also false. *Id.* ¶¶ 20, 22-24.

On February 20, 2015, a grand jury indicted plaintiff on charges of Aggravated Theft, Forgery in the First Degree and a computer crime arising from the alleged forgery of the auto loan documents. Ball apparently testified before the grand jury. *Id.* ¶ 25.

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On May 15, 2015, the State moved to dismiss the forgery charges against plaintiff “in the best interest of justice” because plaintiff was facing a presumptive 300-month term of imprisonment after he was convicted of the charges related to the sexual exploitation and abuse of his step-daughter. *Id.* ¶ 26; Lewis Decl. Ex. 1 (ECF No. 45-1).

In April 2017, plaintiff filed a pro se lawsuit in this Court alleging various claims against numerous defendants. After plaintiff was ordered to amend his claims, he retained counsel and filed a Second Amended Complaint alleging claims of malicious prosecution against the current defendants. Shortly after the Second Amended Complaint was filed, plaintiff’s counsel moved to dismiss plaintiff’s claims with prejudice. Plaintiff opposed the dismissal and plaintiff was allowed to proceed pro se.

DISCUSSION

Plaintiff maintains that the theft and forgery charges against him were based on false information provided by Ball and Ofc. Warner and lacked probable cause, and that deputy district attorney (DDA) Gerhard “sought to use the ‘forgery’ prosecution to assist Ms. Ball – an alleged victim – in the divorce proceeding.” Sec. Am. Compl. ¶ 27. The Beaverton defendants move to dismiss for failure to state a claim, and Ball moves to strike plaintiff’s claims on grounds that her conduct is privileged under Oregon’s anti-SLAPP statute. Plaintiff opposes the motions and seeks default judgment against DDA Gerhard and the opportunity to obtain discovery.

Initially, I address plaintiff’s pending motion for default judgment against DDA Gerhard (filed as a motion for summary judgment) and his motion for a stay of the proceedings pending discovery by plaintiff.

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In support of his motion for default, plaintiff presents an Affidavit of Service indicating that a process server attempted to serve DDA Gerhard on June 26, 2018 by leaving a copy of the summons and Second Amended Complaint with a receptionist at the Washington County DA's Office. Lloyd Decl. Ex. A (ECF No. 60). However, plaintiff presents no evidence that DDA Gerhard was *properly* served to support entry of default or default judgment. Fed. R. Civ. P. 55. First, plaintiff did not attempt to serve DDA Gerhard until June 2018, well past the time limit set forth in Federal Rule of Civil Procedure 4 and almost one year after he filed the Second Amended Complaint. Fed. R. Civ. P. 4(m). Second, plaintiff named DDA Gerhard as a defendant in his individual capacity, and plaintiff presents no evidence that the receptionist who allegedly accepted service at the DA's office was authorized to do so on DDA Gerhard's behalf as an individual rather than in his capacity as a deputy district attorney. *See* Or. R. Civ. P. 7D(2),(3)(a).

Moreover, as noted in a previous Order, prosecutors generally enjoy absolute immunity for actions related to the initiation of criminal proceedings, and, for the reasons explained below, plaintiff does not state a claim for malicious prosecution in any event. *Van de Kamp v. Goldstein*, 555 U.S. 335, 343 (2009) (prosecutors are absolutely immune for conduct "intimately associated with the judicial phase of the criminal process"); *Milstein v. Cooley*, 257 F.3d 1004, 1008 (9th Cir. 2001) (absolute prosecutorial immunity "covers the knowing use of false testimony at trial, the suppression of exculpatory evidence, and malicious prosecution"). Accordingly, default judgment is not appropriate, and the motion for default should be denied.

I further find that discovery is not necessary to resolve the pending motions to dismiss and to strike. The Oregon anti-SLAPP statute generally requires a stay of discovery pending resolution of a special motion to strike. Or. Rev. State. § 31.152(2). Here, defendants' motions

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are based on the pleadings and documents subject to judicial notice, and discovery would not aid in their resolution. Defendant's Motion for Stay is therefore denied.

A. Beaverton Defendants' Motion to Dismiss

The Beaverton defendants move for dismissal on grounds that plaintiff fails to state a cognizable claim for malicious prosecution under federal or state law, because plaintiff does not and cannot allege that the forgery proceedings terminated in his favor. Alternatively, the Beaverton defendants argue that probable cause is a complete defense to malicious prosecution, no malice is alleged on the part of Ofc. Warner, no municipal policy practice or custom is alleged to support § 1983 liability against the City, and plaintiff's state law claim is barred for failure to file a timely tort claim. Although I find all arguments persuasive for the reasons set forth in the Beaverton defendants' motion, plaintiff's failure to establish the favorable termination of the forgery proceedings is dispositive and requires dismissal of his claims.

Under Rule 12(b)(6), a complaint is construed in favor of the plaintiff, and its factual allegations are taken as true. *Daniels-Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992, 998 (9th Cir. 2010). The court need not accept as true "conclusory" allegations, unwarranted deductions of fact, or unreasonable inferences. *Id.* Instead, "for a complaint to survive a motion to dismiss, the non-conclusory 'factual content,' and reasonable inferences from that content, must be plausibly suggestive of a claim entitling the plaintiff to relief." *Moss v. United States Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009). In pro se cases particularly, the court must construe the complaint liberally and afford the plaintiff "the benefit of any doubt." *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010) (citation omitted). "Unless it is absolutely clear that no amendment can cure" defects in the complaint, "a pro se litigant is entitled to notice of the complaint's deficiencies and

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an opportunity to amend prior to dismissal of the action.” *Lucas v. Dep’t of Corr.*, 66 F.3d 245, 248 (9th Cir. 1995) (per curiam).

To sustain a § 1983 claim for malicious prosecution, plaintiff must establish the state law elements of malicious prosecution and show that defendants, while acting under “color of law” intended to deprive plaintiff of a constitutional right. 42 U.S.C. § 1983; *Lacey v. Maricopa Cty.*, 693 F.3d 896, 919 (9th Cir. 2012). Under Oregon law, malicious prosecution requires a plaintiff to show: 1) the defendant initiated or prosecuted a judicial proceeding against the plaintiff; 2) the proceeding terminated in the plaintiff’s favor; 3) the defendant lacked probable cause to prosecute the action; 4) the defendant acted with malice or with the “primary purpose other than that of securing an adjudication of the claim”; and 5) the plaintiff suffered damages. *Perry v. Rein*, 215 Or. App. 113, 125, 168 P.3d 1163 (2007); *see also Mantia v. Hanson*, 190 Or. App. 412, 419-20, 79 P.3d 404 (2003). In the circumstances of this case, favorable termination generally means that the charges were dismissed against plaintiff “in such a manner as to indicate his innocence.” *Awabdy v. City of Adelanto*, 368 F.3d 1062, 1068 (9th Cir. 2004). “[A]

dismissal in the interests of justice satisfies this requirement if it reflects the opinion of the prosecuting party or the court that the action lacked merit[.]” *Id.*; *see also Perry*, 215 Or. App. at 130, 168 P.3d 1163 (explaining that the dismissal of claims must “reflect adversely on the merits of the action” to meet the favorable termination element).

Plaintiff cannot show that the theft and forgery proceedings terminated in his favor. Although plaintiff alleged that the charges against him were dismissed with prejudice, he failed to explain the reason why they were dismissed. According to a Motion for Judgment of Dismissal filed in Case No. C150439CR in Washington County, the State “elect[ed] not to proceed based upon the defendant’s anticipated sentences in C142407CR and C141194CR (300

month presumptive sentence); and therefore such dismissal is in the best interest of justice.” Lewis Decl. Ex. 1.¹ In other words, the State dismissed the forgery charges because plaintiff already faced a lengthy criminal sentence; the State’s dismissal of the charges in no way reflected adversely on the merits of the prosecution’s case or otherwise implied plaintiff’s innocence.

Based on the undisputable facts of record, the forgery proceedings were not terminated in plaintiff’s favor, and he does not state a claim for malicious prosecution under either § 1983 or state law. Plaintiff cannot cure this deficiency, and the opportunity for further amendment would be futile. Accordingly, the Beaverton defendants’ motion to dismiss should be granted.

B. Defendant Ball’s Motion to Strike

Ball moves to strike plaintiff’s claims on grounds that her alleged conduct is protected from suit under Oregon’s anti-SLAPP statute. Alternatively, Ball moves to dismiss for insufficiency of service and failure to state a claim under Federal Rules of Civil Procedure 12(b)(5) and (6).

Oregon’s anti-SLAPP provisions “permit a defendant who is sued over certain actions taken in the public arena to have a questionable case dismissed at an early stage.” *Staten v. Steel*, 222 Or. App. 17, 27, 191 P.3d 778 (2008); *see generally* Or. Rev. Stat. §§ 31.150-.155. Under

¹ This Court takes judicial notice of the Motion for Judgment of Dismissal and emphasizes that consideration of it does not convert defendants’ Motion to Dismiss into a motion for summary judgment, particularly when plaintiff referenced the dismissal in his Second Amended Complaint. *See* Fed. R. Evid. 201(b)(2) (providing that a district court may take judicial notice of adjudicative facts that “can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned”); *In re Heritage Bond Litig.*, 546 F.3d 667, 670 n.1 (9th Cir. 2008) (noting that a court may take notice of relevant court documents filed in other proceedings); *see also United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003) (a court may consider “documents attached to the complaint, documents incorporated by reference in the complaint, or matters of judicial notice - without converting the motion to dismiss into a motion for summary judgment”).

the statute, a defendant may bring a special motion to strike any claim in a civil action arising from any "oral statement" made "in a judicial proceeding" or "in a place open to the public or a public forum in connection with an issue of public interest"; or from any "other conduct in furtherance of the exercise of the constitutional right of petition...in connection with a public issue or an issue of public interest." Or. Rev. Stat. § 31.150(2)(a),(c),(d). Under Oregon law, an anti-SLAPP motion to strike is treated as a motion to dismiss, and "the moving party may not need to present any evidence of its own." *Staten*, 222 Or. App. at 31, 191 P.3d 778; Or. Rev. Stat. § 31.150(1); *Gardner v. Martino*, 563 F.3d 981, 986 (9th Cir. 2009) (discussing Oregon anti-SLAPP statute).

"The court's consideration of a special motion to strike is a two-step process." *Gardner*, 563 F.3d at 986. The defendant has the "initial burden to show that the challenged statement is within one of the categories of civil actions described" in the statute. *Id.*; Or. Rev. Stat. § 31.150(3). "If the defendant meets this burden, the burden shifts to the plaintiff in the action to establish that there is a probability that the plaintiff will prevail on the claim by presenting substantial evidence to support a prima facie case." Or. Rev. Stat. § 31.150(3). If the plaintiff fails to meet this burden, the court must grant the special motion and dismiss the claims "before the defendant is subject to substantial expenses in defending against them." *Staten*, 222 Or. App. at 29, 191 P.3d 778. Further, a defendant who prevails on an anti-SLAPP motion must be awarded reasonable attorney fees and costs. Or. Rev. Stat. § 31.152(3) ("A defendant who prevails on a special motion to strike made under ORS 31.150 *shall* be awarded reasonable attorney fees and costs.") (emphasis added).

Here, Ball's conduct is clearly protected by the anti-SLAPP statute; she filed a complaint with a law enforcement officer and testified before a grand jury about plaintiff's alleged forgery.

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“There can be no dispute that O.R.S. 31.150(2)(a) encompasses statements reporting wrongdoing to police.” *Zweizig v. Nw. Direct Teleservices, Inc.*, 2016 WL 5402935, at *3 (D. Or. Sept. 24, 2016) (citing cases).² Plaintiff nonetheless argues that Ball’s statements are not protected because they were false reports. While “[u]nlawful or criminal activities do not qualify as protected speech or petition activities,” plaintiff’s “mere allegation” that Ball made false statements to Ofc. Warner is “insufficient to render her alleged actions unlawful as a matter of law and outside the protection” of the anti-SLAPP statute. *Dwight R. v. Christy B.*, 212 Cal. App. 4th 697, 711-12, 151 Cal. Rptr. 3d 406, 416 (2013); *see also Zweizig*, 2016 WL 5402935, at *2 (“Oregon courts look to California case law in construing Oregon’s anti-SLAPP statute because Oregon’s law was modeled on California statutes”) (citation omitted). Thus, Ball has met her burden under the statute, and the burden shifts to plaintiff to establish prima facie claims of malicious prosecution against Ball. As a matter of law, he cannot.

First, plaintiff fails to allege facts suggesting that Ball and Ofc. Warner had a “meeting of the minds” to deprive plaintiff of his constitutional rights to sustain a § 1983 malicious prosecution claim. *See Franklin v. Fox*, 312 F.3d 423, 441 (9th Cir. 2002). Plaintiff’s conclusory allegations do not imply the type of “conspiracy” or “joint action” that would render Ball’s actions under “color of law” for purposes of § 1983 liability. *Price v. Hawaii*, 939 F.2d 702, 708-09 (9th Cir. 1991) (conclusory allegations of conspiracy are insufficient).

Second and more importantly, plaintiff cannot establish a necessary element of malicious prosecution - that the criminal proceedings initiated by Ball were terminated in his favor. *See Mantia*, 190 Or. App. at 419-20, 79 P.3d 404 (a claim of malicious prosecution requires the plaintiff to establish that the underlying prosecution terminated in his or her favor). As explained

² Moreover, Ball has absolute immunity from any § 1983 claim based on her grand jury testimony. *Rehberg v. Paulk*, 566 U.S. 356, 369 (2012).

above, the State elected not to pursue the theft and forgery charges against plaintiff because he faced a presumptive 300-month sentence in other criminal proceedings. Thus, the State's dismissal of the theft and forgery charges did not indicate plaintiff's innocence or reflect adversely on the merits of the charges. Consequently, plaintiff fails to meet his burden and this Court must grant Ball's motion to strike and award Ball her reasonable attorney fees. Or. Rev. Stat. § 31.150(1) ("The court *shall* grant the motion unless the plaintiff establishes...that there is a probability that the plaintiff will prevail on the claim.") (emphasis added); *see also id.* § 31.152(3).

Generally, claims are dismissed without prejudice if a special motion to strike is granted. *Id.* § 31.150(1). In this case, dismissal of plaintiff's claims with prejudice is appropriate. Plaintiff's Second Amended Complaint fails to state a claim for malicious prosecution, and no further amendment or discovery can change the fact that the criminal theft and forgery proceedings did not terminate in plaintiff's favor.

ORDER

Plaintiff's Motion for Stay (ECF No. 64) is DENIED. Plaintiff's Motions to Clarify and Amend Summons, to Preserve Evidence, and for Clarification (ECF Nos. 56, 62, 78) are DENIED AS MOOT.

RECOMMENDATION

Plaintiff's Motion for Default Judgment (filed as a Motion for Summary Judgment) (ECF No. 59) should be DENIED.

The City of Beaverton and Officer Warner's Motion to Dismiss (ECF No. 44) should be GRANTED, and plaintiff's claims against them should be DISMISSED WITH PREJUDICE.

Annalisa Ball's Special Motion to Strike (ECF No. 53) should be GRANTED, plaintiff's claims

against Ball should be DISMISSED WITH PREJUDICE, and Ball should be awarded her reasonable attorney fees.

This recommendation is not an order that is immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Federal Rule of Appellate Procedure 4(a)(1) should not be filed until entry of the district court's judgment or appealable order. The parties shall have fourteen (14) days from the date of service of a copy of this recommendation within which to file specific written objections with the court. If an objection is filed, any response to the objection is due within fourteen (14) days from the date of the objection. *See* Fed. R. Civ. P. 72, 6. Parties are advised that the failure to file objections within the specified time may waive the right to appeal the District Court's order. *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

DATED this 2nd day of January 2019.

s/ Mustafa T. Kasubhai
MUSTAFA T. KASUBHAI
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

BRETT EMMETT LLOYD,

Case No. 3:17-cv-00582-MK
ORDER

Plaintiff,

v.

JOHN GERHARD, JEFFREY WARNER,
ANNALISA BALL, CITY OF BEAVERTON,
a municipal Corporation of the State of Oregon,

Defendants.

AIKEN, District Judge:

Magistrate Judge Mustafa Kasubhai filed his Findings and Recommendation ("F&R") (doc. 79) recommending that (i) Plaintiff's Motion for Default Judgment (filed as a Motion for Summary Judgment) (doc. 59) be denied; (ii) the City of Beaverton and Officer Warner's Motion to Dismiss (doc. 44) be granted and Plaintiff's claims against them be dismissed with prejudice; and (iii) Annalisa Ball's Special Motion to Strike (doc. 53) be granted and Plaintiff's claims against her be dismissed with prejudice, with Ball being awarded her reasonable attorney fees. Plaintiff then timely

filed objections to the F&R (doc. 82). The matter is now before me. *See* 28 U.S.C. § 636(b)(1)(B) and Fed. R. Civ. P. 72(b). When either party objects to any portion of a magistrate judge's F&R, the district court must make a de novo determination of that portion of the magistrate judge's report. *See* 28 U.S.C. § 636(b)(1); *McDonnell Douglas Corp. v. Commodore Business Machines, Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981), cert denied, 455 U.S. 920 (1982). Based on my review of the F&R and the documents in the case, I find no error in Judge Kasubhai's F&R and Plaintiff's objections do not undermine Judge Kasubhai's analysis. Thus, I adopt the F&R (doc. 79) in its entirety. Accordingly, (i) Plaintiff's Motion for Default Judgment (filed as a Motion for Summary Judgment) (doc. 59) is DENIED; (ii) the City of Beaverton and Officer Warner's Motion to Dismiss (doc. 44) is GRANTED and Plaintiff's claims against them are DISMISSED WITH PREJUDICE; and (iii) Annalisa Ball's Special Motion to Strike (doc. 53) is GRANTED and Plaintiff's claims against her are DISMISSED WITH PREJUDICE, and Ball is awarded her reasonable attorney fees.

IT IS SO ORDERED.

Dated this 31st day of March, 2019.



Ann Aiken
United States District Judge

**Additional material
from this filing is
available in the
Clerk's Office.**