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2 Hearing Date: June 22, 1:30pm
3 Presiding: Honorable John O. Cooney
4 Place: Department 9
5 Address: Spokane County Court House
6 1116 W. Broadway Avenue
7 Spokane, WA 99260

8 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
9 IN AND FOR THE COUNTY OF SPOKANE

10 EUGSTER, STEPHEN KERR,

11
12 Plaintiff,

13 v.

14 WASHINGTON STATE BAR
15 ASSOCIATION *et al.*,

16 Defendants.

No. 18-02-00542-1

DEFENDANTS' JOINT REPLY IN
SUPPORT OF MOTION TO
DISMISS

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18 **I. INTRODUCTION**

19 Unhappy with the outcome in a prior federal case, Plaintiff Stephen K. Eugster
20 ("Eugster") filed this Complaint in an effort to undermine the result, which included a nearly
21 \$30,000 sanction against him. Eugster's theory in this case is that the previous federal district
22 court was defrauded by defamatory statements contained in the briefing of Defendant the
23 Washington State Bar Association ("WSBA"). As Defendants have explained in support of their
24 joint motion to dismiss, this collateral attack is improper and should be dismissed on multiple
25 grounds, including absolute privilege, collateral estoppel, failure to state a claim, and immunity.
26 Rather than addressing these deficiencies in substance, Eugster devotes his response to rehashing
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DEFENDANTS' REPLY IN SUPPORT OF MOTION TO
DISMISS - 1

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PACIFICA LAW GROUP LLP
1191 SECOND AVENUE
SUITE 2000
SEATTLE, WASHINGTON 98101-3404
TELEPHONE (206) 245-1700
FACSIMILE (206) 245-1750

1 his bar disciplinary history and questioning the soundness of prior final judgments issued against
2 him. Defendants respectfully request that the Court dismiss this case with prejudice.

3 II. ARGUMENT

4 A. Eugster's claims are based exclusively on the WSBA's briefing in *Caruso*.

5 As Defendants have explained, Eugster's claims—for defamation, false light invasion of
6 privacy, intentional abuse of process by false statements, civil conspiracy, and civil rights
7 damages—are based exclusively on his allegation that the WSBA's briefing in *Caruso v. Wash.*
8 *State Bar Ass'n*, No. C17-003 RSM (W.D. Wash.) defamed him and defrauded the court. *See*
9 *Mem. of Auths. In Supp. Jt. Mot. to Dismiss* ("Mem.") at 6, 9. The Complaint asserts only two
10 types of facts: those relating to allegedly defamatory statements made in the *Caruso* briefing,
11 Compl. ¶¶ 23-24, 32-42, and pro forma background details about the *Caruso* matter, such as
12 those describing the nature of the claims that were at issue and identifying the parties and
13 counsel, Compl. ¶¶ 10-22, 25-31. Thus, the only allegations in the Complaint that could support
14 Eugster's claims are those regarding the allegedly defamatory statements made within the
15 WSBA's briefing in *Caruso*.

16 Eugster summarily argues that other facts are asserted in the Complaint, but he fails to
17 identify a single one. *See Resp. to Mem.* ("Resp.") at 4-6. He suggests that his claims involve a
18 broader set of "Common Facts" and "additional facts set forth in the cause of action parts."
19 *Resp.* at 6 (citing Compl. ¶¶ 32-36, 43-76). Yet the allegations he cites either concern the
20 briefing in *Caruso*, *see* Compl. ¶¶ 32-36, 43, 45-49, 52, 57-59, 64, 70, or are mere recitations of
21 the legal elements of each cause of action he asserts, *see id.* ¶¶ 44, 50-51, 53-56, 60-63, 65-69,
22 71-76. The latter are mere legal conclusions that need not be accepted as true. *See Rodriguez v.*
23 *Loudeye Corp.*, 144 Wn. App. 709, 717-18, 189 P.3d 168 (2008).

1 Eugster also devotes much of his response to issues not relevant to his claims in this
2 case, such as his suggestion that the WSBA reinstated a grievance investigation against him in
3 retaliation for one of his prior suits, or that recent bylaw amendments designating limited-
4 license practitioners as bar members transformed the WSBA into a new kind of entity. *See*
5 *Resp.* at 2-3. In addition to being irrelevant, these assertions are meritless. Eugster already
6 raised his retaliation claim in a prior suit and it was dismissed with prejudice. *See Eugster v.*
7 *Wash. State Bar Ass'n*, 198 Wn. App. 758, 763, 772, 397 P.3d 131 (2017). If anything, the
8 litigation history between the parties shows Eugster has repeatedly filed suit in response to
9 grievance investigations, not the other way around. *See, e.g., Eugster v. Littlewood*, No. 2:15-
10 CV-0352, 2016 WL 3632711, at *1-2 (E.D. Wash. June 29, 2016). As to the WSBA's recent
11 bylaw amendments, multiple courts have already rejected the notion that this distinguishes
12 Eugster's repetitive, meritless suits against the WSBA. *See Eugster v. Littlewood*, No. 2:17-
13 CV-0392, 2018 WL 2187054, at *4-5 (E.D. Wash. May 11, 2018); *Caruso v. Wash. State Bar*
14 *Ass'n*, No. C17-003, 2017 WL 1957077, at *2-3 (W.D. Wash. May 11, 2017).

17 In sum, the claims Eugster has asserted in this lawsuit are based exclusively on the
18 WSBA's briefing in *Caruso*, and his claims are subject to dismissal on numerous grounds as set
19 forth below.

20 **B. The statements at issue are absolutely privileged.**

21 The WSBA's statements in legal briefing are privileged, which bars Eugster's claims in
22 this case as a matter of law. *Mem.* at 6-7. As set forth in Defendants' Memorandum of
23 Authorities, pertinent statements in briefing cannot form the basis of a subsequent, separate
24 action. *Id.* at 6. In response, Eugster incorrectly asserts that the WSBA's statements are not
25 privileged because there were "no safeguards against abuse." *Resp.* at 8-9. But the authority on
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1 which Eugster relies specifically recognizes that such safeguards exist in court proceedings
2 because, “[f]or example, the judiciary has the sanctions of perjury and contempt to deter wanton
3 defamation in judicial proceedings.” *Herron v. Tribune Pub’g Co.*, 108 Wn.2d 162, 177-78, 736
4 P.2d 249 (1987). The Washington Supreme Court repeatedly and definitively has determined
5 that adequate safeguards exist in court proceedings and, thus, that the absolute privilege applies
6 to statements made in those proceedings. *See id.*; *McNeal v. Allen*, 95 Wn.2d 265, 267, 621 P.2d
7 1285 (1980). In fact, Eugster already challenged the WSBA’s statements in *Caruso* before the
8 federal district court and the Ninth Circuit in that case. The district court disregarded the issue as
9 “tangential,” 2017 WL 1957077 at *2, and the Ninth Circuit rejected Eugster’s allegations as
10 “without merit” and “unsupported,” 716 F. App’x 645, 646 (9th Cir. 2018). The statements are
11 now privileged, and Eugster cannot collaterally attack them in this proceeding.
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14 Eugster also argues without explanation that the WSBA’s statements were not pertinent
15 to the *Caruso* lawsuit. Resp. at 9. Contrary to Eugster’s assertion, however, the WSBA’s
16 statements in the *Caruso* briefing easily satisfy the standard of having “some relation” to that
17 suit. *Johnston v. Schlarb*, 7 Wn.2d 528, 540, 110 P.2d 190 (1941); Mem. at 6-7. Eugster already
18 had filed several suits against the WSBA that had been dismissed with prejudice at the pleadings
19 stage, and the *Caruso* complaint reasserted claims, many verbatim, that had already been rejected
20 in those prior suits. *See* Mem. at 7. The WSBA’s description and characterization of the prior
21 lawsuits therefore had, without question, at least “some relation” to the *Caruso* lawsuit. Thus,
22 the statements are absolutely immune from any claims of liability, and the proper remedy is
23 dismissal of this case in its entirety. *See Id.*
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1 **C. Collateral estoppel also bars Eugster’s claims.**

2 This Court should dismiss Eugster’s claims also because he is collaterally estopped from
3 raising them here. See Mem. at 7-9. The Ninth Circuit already rejected Eugster’s central,
4 underlying allegation that the court in *Caruso* was defrauded with defamatory statements. See
5 Mem. at 7-8. In response, Eugster contends that collateral estoppel does not apply because the
6 Ninth Circuit made no “findings of fact” and “had been defrauded.” Resp. at 9. Eugster
7 provides no authority for the notion that a court must specifically make findings of fact for
8 collateral estoppel to apply. Rather, collateral estoppel requires only that the prior court decided
9 an issue that a party is subsequently attempting to re-litigate. See, e.g., *Hydranautics v. FilmTec*
10 *Corp.*, 204 F.3d 880, 885 (9th Cir. 2000). Here, the Ninth Circuit already rejected Eugster’s
11 allegations of fraud on the court in *Caruso* as meritless and unsupported. See Mem. at 8-
12 9. Moreover, Eugster does not explain how the court could have been defrauded on this issue,
13 given that he specifically raised it at the time.
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16 In sum, Eugster is collaterally estopped from arguing that the court in *Caruso* was
17 defrauded with defamatory statements, and his claims—all of which are based on that faulty
18 premise—should be dismissed on this additional basis.

19 **D. Eugster has failed to state a valid claim for relief.**

20 Eugster also has failed to state a valid claim for relief in this case. Each claim he asserts
21 requires that he demonstrate a false statement, but as a matter of law, Eugster cannot establish
22 the statements at issue here were false. See Mem. at 9-10; see also *Clapp v. Olympic View Pub.*
23 *Co., LLC*, 137 Wn. App. 470, 473-75, 154 P.3d 230 (2007) (affirming CR 12(b)(6) dismissal
24 because allegedly defamatory article was “accurate and fair” as a matter of law). The WSBA’s
25 characterizations of Eugster’s conduct were fair and accurate in light of his long history of
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1 numerous unsuccessful suits against the WSBA. Mem. at 1-2, 9-10. It was appropriate for the
2 WSBA to urge the court in *Caruso* to take judicial notice of these prior filings and decisions.
3 *See, e.g., MGIC Indem. Corp. v. Weisman*, 803 F.2d 500, 504 (9th Cir. 1986).

4 In response, Eugster offers several one-sentence rebuttals, but none are responsive to the
5 WSBA's explanations or sufficient to demonstrate a false statement. *Compare* Mem. at 9-10,
6 *with* Resp. at 9-11. Eugster insists that the district court in *Caruso* never determined that his
7 conduct was meritless and frivolous, Resp. at 10, but that court sanctioned Eugster specifically
8 because the lawsuit he filed was "baseless," "made without a reasonable and competent inquiry,"
9 and "frivolous," *Caruso*, 2017 WL 2256782, at *4 (W.D. Wash. May 23, 2017). Eugster also
10 insists that *Caruso* was the "first case" he filed after the WSBA's bylaw amendments, Resp. at
11 10, but again, that distinction was and is irrelevant, *see supra*, at 3. Eugster also denies that he
12 claimed the WSBA had been transformed into a new entity, Resp. at 10-11, but that is exactly
13 what he argued, *Caruso*, 2017 WL 1957077, at *2-3.

14 In sum, the WSBA's characterizations were appropriate and reasonable, as a matter of
15 law. Eugster has thus failed to state a claim, and the Complaint should be dismissed in its
16 entirety for this additional reason.

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19 **E. The WSBA and Littlewood are immune.**

20 The WSBA and Paula Littlewood, sued here in her official capacity as Executive Director
21 of the WSBA, are entitled to immunity because they do not qualify as "persons" subject to
22 liability under 42 U.S.C. § 1983. *See Will v. Michigan Dep't of State Police*, 491 U.S. 58, 71,
23 109 S. Ct. 2304 (1989) ("[N]either a State nor its officials acting in their official capacities are
24 'persons' under § 1983."). Eugster provides no contrary authority, instead simply stating his
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1 belief that his civil rights claim is "proper." Resp. at 11. Eugster's civil rights claim against the
2 WSBA and Littlewood should be dismissed on this additional ground.

3 **F. Eugster's Complaint should be dismissed with prejudice.**

4 Eugster does not address whether dismissal of his claims should be with prejudice. For
5 all the above reasons, dismissal with prejudice is appropriate, given that Eugster cannot remedy
6 the Complaint's deficiencies through amendment. See Mem. at 10-11.
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8 **III. CONCLUSION**

9 Eugster has failed to provide meaningful argument or authority contesting the serious
10 deficiencies of his Complaint. The attorney statements at issue are absolutely privileged,
11 collateral estoppel bars re-litigation of the fundamental issue Eugster raises, he has failed to state
12 a valid claim for relief, and the WSBA and Littlewood are immune. For each and all of these
13 reasons, Defendants respectfully request that this lawsuit be dismissed with prejudice.
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15 DATED this 15th day of June, 2018.

16
17 PACIFICA LAW GROUP LLP

EVANS, CRAVEN & LACKIE, P.S.

18
19
20 By 

21 Jessica A. Skelton, WSBA #36748
22 Taki V. Flevaris, WSBA #42555
23 Pacifica Law Group LLP
24 1191 2nd Ave, Ste. 2000
25 Seattle, WA 98101

26 Attorneys for Defendants Washington State
27 Bar Association and Paula Littlewood

By 

Christopher J. Kerley, WSBA #36748
Evans, Craven, & Lackie, P.S.
818 W. Riverside, Suite 250
Spokane, WA 99201

Attorneys for Defendants Pacifica Law Group
LLP, Paul Lawrence, Jessica Skelton, and Taki
Flevaris

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CERTIFICATE OF SERVICE

I am and at all times hereinafter mentioned was a citizen of the United States, a resident of the State of Washington, over the age of 21 years and not a party to this action. On the 15th day of June, 2018, I caused to be served a true copy of the foregoing document upon:

Stephen Eugster, WSBA # 2003
Eugster Law PSC
2418 West Pacific Avenue
Spokane, Washington 99201
(509) 624-5566
eugster@eugsterlaw.com

- via facsimile
- via overnight courier
- via first-class U.S. mail
- via email
- via electronic court filing
- via hand delivery

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 15th day of June, 2018.



Tricia O'Konek