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| DISTRICT COURT, DENVER COUNTY, COLORADOCourt Address:Denver District Court1437 Bannock St., Room 256 DATE FILEDenver, CO 80202 FILING ID:CASE NUM**In The Matter of:****ROBERT ABRAMS and ABRAMS & ASSOCIATES, LLC, a****Colorado limited liability company, Plaintiff****Vs.****SHAWN BEESON,****Defendant** | D: March 21, 2016 5:41 PM 19BBF2C44F61FBER: 2015CV31709**COURT USE ONLY** |
| Law Office of Michael P. Boyce, PC Michael Boyce3773 Cherry Creek Drive North, Suite 575 Denver, CO 80209Phone Number: 303.565.0360 E-mail: mike@boycelawoffice.com FAX Number: 303.648.4849 Atty. Reg. #: 35729 | Case Number: 15CV31709Division 409 |
| **MOTION TO DISMISS PLAINTIFF’S CLAIM OF BATTERY AGAINST DEFENDANT BEESON AS PRECLUDED BY COLLATERAL ESTOPPEL AND, IF GRANTED, DISMISS THE PLAINTIFF’S CLAIM OF EXTREME AND OUTRAGEOUS CONDUCT** |

Shawn Beeson, through counsel, respectfully requests this Court dismiss Plaintiff’s claim of battery against Mr. Beeson and states the following:

C.R.C.P. 121 section 1-15(8) Certification: Counsel for Mr. Beeson conferred in good faith with Plaintiff about this Motion. Plaintiff opposes the relief requested herein.

# BACKGROUND

1. On May 14, 2015, Plaintiff filed his Verified Complaint and Motion for a Civil Protection Order against the Defendant. In the complaint, the Plaintiff set forth the reasons for his request for a permanent protection order. (See Exhibit A, Section 4a, Paragraphs 1 through 7).
2. On October 6, 2015, Plaintiff filed his Third Amended Complaint and Jury Demand. One of the claims made by the Plaintiff against Defendant is battery. The Plaintiff’s allegations for the claim of battery are exactly the same allegations set forth by the Plaintiff in his Verified Complaint and Motion for a Civil Protection Order. (See Exhibit B, Plaintiff’s Third Amended Complaint and Jury Demand, Paragraphs 14 through 21).
3. On September 11, 2015, the hearing on the Verified Complaint and Motion for a Civil Protection Order was concluded. The Court found there was not enough evidence to conclude the events alleged by the Plaintiff occurred by a preponderance of the evidence and the Court denied the Plaintiff’s request for a permanent protection order. (See Exhibit C, Transcript of *Abrams v. Beeson*, September 11, 2015. Pg 192 ln. 7 – Pg 193, ln 25).

# LAW

1. The doctrine of issue preclusion bars re-litigation of an issue that was already litigated and decided in a previous proceeding. *Bebo Constr. Co. v. Mattox & O'Brien, P.C.,* 990 P.2d 78 (Colo.1999). Re- litigation of an issue is precluded if (1) the issue precluded is identical to an issue actually determined in the prior proceeding, (2) the party against whom estoppel is asserted was a party in the prior proceeding, (3) a final judgment on the merits was entered in the prior proceeding, and (4) the party against whom estoppel is asserted had a full and fair opportunity to litigate the issue in the prior proceeding. *A–1 Auto Repair & Detail, Inc., supra.* Negron v. Golder, 111 P.3d 538, 542 (Colo. App. 2004).
2. The doctrine is intended to relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, and, by preventing inconsistent decisions, encourage reliance on adjudication. Bebo Const. Co. v. Mattox & O'Brien, P.C., 990 P.2d 78, 84 (Colo. 1999)

# ARGUMENT TO DISMISS BATTERY CLAIM

1. The battery claim the Plaintiff seeks to litigate is identical to the issue litigated in the Plaintiff’s request for a permanent protection order. The allegations Plaintiff submits to the Court as the basis for the battery allegation are exactly the same basis the Plaintiff submitted to the Court for his request for a permanent protection order.
2. The Plaintiff initiated the prior proceeding and was a party thereto.
3. The Court entered a final judgment on the merits in the prior protection order hearing and found that the Plaintiff had not proved by a preponderance of the evidence that the acts claimed in the request for a permanent protection order occurred as alleged by the Plaintiff. The Court found credible an independent witness who testified at the hearing and stated it was actually the Plaintiff who initiated the battery against the Defendant.
4. The Plaintiff had a full and fair opportunity to litigate the issue of battery allegations in the prior proceeding. The Plaintiff’s entire case was an effort to convince the Court that the allegations in the

request for a protection order occurred by a preponderance of the evidence. Again, these are the exact same allegations that form the basis of the battery claim which the Court already determined were not proven by a preponderance of the evidence.

1. The Plaintiff vigorously litigated his case before this Court in the permanent protection order hearing. The Plaintiff repeatedly attempted to submit irrelevant and impermissible evidence in order to support his allegations. It is ultimately immaterial whether the Plaintiff would attempt to prove his case by different evidence or testimony. For the doctrine of collateral estoppel, the test is whether the Plaintiff had a full and fair opportunity to litigate the issue in a prior proceeding. Here, it is evident the Plaintiff had a full and fair opportunity to litigate the exact issue of whether a battery occurred during the permanent protection order hearing.
2. It is appropriate to mention Plaintiff recently withdrew his request for a jury trial. Plaintiff seeks to re-litigate the exact same factual issues before the same Court that already ruled the Plaintiff had not met his burden to show the acts occurred as alleged by the Plaintiff by a preponderance of the evidence. This is exactly the type of litigation the doctrine of collateral estoppel is intended to guard against.
3. The allegations the Plaintiff relies on to support his claim of battery are the exact same allegations this Court found were not shown by a preponderance of the evidence in its ruling on September 11, 2015. Therefore, the doctrine of collateral estoppel applies, the Plaintiff should be barred from re- litigating the issues, and the claim should be dismissed.

# ARGUMENT TO DISMISS EXTREME AND OUTRAGEOUS CONDUCT CLAIM

1. In Plaintiff’s Third Amended Complaint and Jury Demand, the Plaintiff alleges the Defendant engaged in extreme and outrageous conduct. (See Exhibit B, Pg. 5, Paragraph 47 – 51). This claim is predicated on the same facts alleged in Plaintiff’s battery claim which, as stated above, have previously been litigated.
2. If the Court agrees that collateral estoppel applies to the battery claim, the extreme and outrageous conduct claim must be dismissed. The Plaintiff’s allegation is that, based on the battery, the Defendant engaged in extreme and outrageous conduct.
3. If the battery charge is dismissed as requested, the basis for the extreme and outrageous conduct cannot be shown because the Court has already ruled that the allegations constituting the battery claim were not proven by a preponderance of the evidence. Therefore, the extreme and outrageous conduct cannot be proven by a preponderance of the evidence as a matter of law.

# CONCLUSION

1. The defendant requests this Court dismiss Plaintiff’s claim of battery because the doctrine of collateral estoppel applies to the claim and dismiss Plaintiff’s claim of extreme and outrageous conduct because the claim is based wholly on the previously adjudicated, unsubstantiated, battery claim.

WHEREFORE, Shawn Beeson, through counsel, respectfully requests this Court grant the relief requested in Motion to Dismiss Plaintiff’s Claim of Battery Against Defendant Beeson as Precluded by Collateral Estoppel and, if granted, Dismiss the Plaintiff’s Claim of Extreme and Outrageous Conduct.

Dated: March 21, 2016 Respectfully submitted,

THE LAW OFFICE OF MICHAEL P. BOYCE, PC.

/s/ Michael Boyce #35729

Attorney for Defendant

*(Original signature on file at The Law Office of Michael P. Boyce, P.C.)*

# CERTIFICATE OF SERVICE

I hereby certify that i have delivered a true and correct copy of the Motion to Dismiss Plaintiff’s Claim of Battery Against Defendant Beeson as Precluded by Collateral Estoppel and, if granted, Dismiss the Plaintiff’s Claim of Extreme and Outrageous Conduct to the following on March 21, 2016:

*Email/Electronic Filing* Abrams & Associates, LLC Robert Abrams

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Denver, CO 80202 Robert@AbramsLaw.net

 /s/ Michael Boyce #35729 *(Original signature on file at The Law Office of Michael P. Boyce, P.C.)*