**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS**
**COUNTY DEPARTMENT, LAW DIVISION**

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| Mary Sim, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| v. | ) | |
| | ) | |
| Osaka Sushi & Bento, Inc., an Illinois corporation, Dae Hee Yoo, an individual, Seung Ok Yoo, an individual, Sayaka Fukuyama, an individual, Stella Ryou, an individual, Peter Hwang, an individual, City of Des Plaines, a municipal corporation, Detective Paul Badofsky, an individual, Commander Scott Moreth, an individual, and Commander Christopher Mierzwa, an individual, | ) | No. 19 L 4210 |
| | ) | |
| Defendants. | ) | |

**MEMORANDUM OPINION AND ORDER**

A motion on the pleadings may be granted based on a complaint's well-pleaded allegations. In this case, the second amended complaint is not well pleaded because there exist significant gaps in the factual allegations supporting the plaintiff's potential causes of action. Given those omissions, the defendants' motions to dismiss are granted, without prejudice.

**Facts**

Mary Sim met Dae Hee Yoo and Seung Ok Yoo, a married couple, in early 2009. On May 28, 2009, Dae incorporated Osaka Sushi & Bento, Inc., which subsequently conducted business as Dotombori Restaurant, located in Des Plaines. At some point, Dae and Seung approached Sim to invest in the restaurant and work there as an owner. Sim agreed and, in October 2009, invested

$30,000 in the restaurant. In December 2009, the restaurant opened to the public.

In December 2010, Sim began working at the restaurant as a server. She also did cleaning chores and drove other employees to and from work. Despite Sim's ownership interest, Dae and Seung did not give Sim access to the restaurant's financial books and records. Without Sim's approval, Dae and Seung ran the restaurant financially as their own cash cow by comingling personal and corporate funds, using corporate funds to play golf, purchase a personal vehicle, and pay off personal credit cards, withdrawing large sums of cash and writing checks to themselves from the corporate account, and making financial gifts to members of their church.

On February 4, 2017, Dae and Seung told Sim to bring $100,000 and leave the restaurant because she had been stealing. In fact, Dae and Seung were attempting to sell the restaurant without telling Sim, and had conspired with Sayaka Fukuyama to ensure that Sim would not be paid her share from the sale. To achieve this goal, on February 16, 2017, Dae filed a report with the Des Plaines police department, falsely claiming that between June 2014 and December 2016 Sim had stolen more than $250,000 from the restaurant.

Detective Paul Badofsky investigated the claim. On February 28, 2017, Badofsky interviewed Dae, who is not fluent in English. Dae had asked Peter Hwang to attend the meeting to provide Korean-English translation. Hwang was a former law enforcement official and the potential buyer of the restaurant. Also present at the meeting was a Caucasian male who was or is a law enforcement official.

Badofsky agreed to aid and abet the conspiracy by seeking to charge Sim with felony theft. On August 28, 2017, Badofsky authored a report describing his investigation of Sim. Badofsky intentionally omitted the fact that Hwang and another person were at the February 28, 2017 meeting. Badofsky's report

fabricated various statements that he attributed to Dae that Dae later repudiated in a deposition. Commanders Scott Moreth and Christopher Mierzwa reviewed Badofsky's report.

As part of the conspiracy, Badofsky twice contacted the Cook County State's Attorney's office, seeking approval of felony theft charges against Sim. The office rejected the request because there existed a question as to Sim's ownership status. Despite that denial, Badofsky unilaterally charged Sim with one count of misdemeanor theft of less than $500. On November 7, 2017, Sim first appeared in court on the misdemeanor charge. On October 29, 2018, the state's attorney amended the charge to misdemeanor disorderly conduct, to which Sim pleaded guilty.

On May 19, 2017, Sim filed suit against Dae, Seung, and the restaurant corporation, alleging state and federal wage claims, breach of fiduciary duty, fraud, promissory estoppel, civil theft, and partnership dissolution. The defendants filed a counterclaim against Sim for conversion and unjust enrichment. On September 6, 2019, following a June bench trial, Judge Thomas R. Mulroy found Dae and Seung personally liable to Sim for more than $600,000. Judge Mulroy also imposed punitive damages in the amount of $100,000 and denied the defendants' counterclaims. Sim alleges that Judge Mulroy's findings:

> support the inexorable inference that defendants DAO, SEUNG, RYOU and FUKUYAMA conspired to fabricate evidence against the plaintiff and defendant Badofsky joined that conspiracy by falsifying his police reports. . . knowing that the evidence was fabricated and thus lacking in probable cause, and otherwise encouraged and pressured the prosecutors to prosecute the plaintiff criminally.

Second Amd. Cmplt. at ¶ 101.

Sim's second amended complaint brings eight counts. Count one is for malicious prosecution and is directed against Badofsky

for intentionally and with malice: fabricating facts as to Sim's alleged theft; fabricating his description of how he interviewed Dae; and omitting from his report that Hwang and another person had attended the interview. Badofsky is claimed to have acceded to the pressure asserted by Hwang and the other person to seek felony charges against Sim and, after the state's attorney refused to bring those charges, Badofsky intentionally and with malice instituted misdemeanor charges against Sim. Badofsky is alleged to have conspired with Dae, Seung, Ryou, Fukuyama, and Hwang to prosecute Sim without probable cause based on evidence of Sim's alleged theft that Badofsky knew had been fabricated. Sim claims that the prosecution terminated in Sim's favor in a manner indicative of innocence.

Count two is a cause of action for intentional infliction of emotional distress (IIED). Badofsky is claimed to have acted with intent to cause harm or acted with reckless disregard of the probability that his conduct would cause severe emotional distress. As a result, Sim alleges that she has suffered physical and psychological pain, emotional distress, humiliation, constant fear of law enforcement and imprisonment, anxiety, deep depression, insomnia, despair, and rage.

Count three raises a claim of civil conspiracy against Badofsky and the other individual defendants based on their agreement to prosecute Sim absent any probable cause. Such action is alleged to have been undertaken intentionally and with malice, willfulness, and reckless indifference to Sim's rights. Count four is for *respondeat superior* against Osaka Sushi. The claim is that Dae, Seung, Ryou and Fukuyama were either employees or alleged agents of the restaurant and, therefore, the corporate entity is liable for their nefarious conduct. Count five is another *respondeat superior* claim, this time against the City of Des Plaines based on Badofsky's conduct. Count six is an indemnification claim against the city based on its employment of Badofsky.

Count seven is a claim brought pursuant to 42 U.S.C. § 1983, for a violation of Sim's due process rights under the Fourth and Fourteenth Amendments to the United States Constitution. The count does not identify against whom it is brought. The claim is based on Badofsky's lack of probable cause to arrest and prosecute Sim, his conspiracy with the other defendants, and his fabrication of evidence and omissions as presented in count one. Count eight is a second § 1983 claim, this one directed against Moreth and Mierzwa for failing to intervene to prevent Badofsky's fabrication and falsehoods. The claim is based on the fact that Moreth and Mierzwa were Badofsky's supervisors and had a reasonable opportunity to prevent the violation of Sim's constitutional rights. These failures constituted either malfeasance or were done intentionally.

**Analysis**

The defendants seek to dismiss the second amended complaint based on Code of Civil Procedure subsections 2-615(b) and (e). *See* 735 ILCS 5/2-615(b) & (e). A motion may be granted under subsection (b) if the complaint is "substantially insufficient in law," *id.*, and the moving party identifies the insufficiencies. *See BMO Harris Bank N.A. v. Towers*, 2015 IL App (1st) 133351, ¶ 40. Subsection (e) authorizes a judgment on the pleadings.

A motion for judgment on the pleadings is essentially a motion for summary judgment limited to the pleadings. *See Hess v. Estate of Estate of Klamm*, 2020 IL 124649, ¶ 14; *Better Gov't Ass'n v. Office of the Special Prosecutor (In re Appointment of Special Prosecutor)*, 2019 IL 122949, ¶ 52. To rule on such a motion, a court is to consider only "those facts apparent from the face of the pleadings, matters subject to judicial notice, and judicial admissions in the record." *Id.* All well-pleaded facts and reasonable inferences are taken as true. *See Gillen v. State Farm Mut. Auto. Ins. Co.*, 215 Ill. 2d 381, 385 (2005). Judgment on the pleadings is proper if the pleadings disclose no genuine issue of material fact and the moving party is entitled to judgment as a

matter of law. *See Hooker v. Illinois State Bd. of Elections*, 2016 IL 121077, ¶ 21.

I. Motion of Des Plaines, Badofsky, Moreth & Mierzwa

Count One – Malicious Prosecution

A claim for malicious prosecution seeks recovery for damages resulting from a prior unsuccessful civil or criminal case that proceeded without probable cause and with malice. *See Beaman v. Freesmeyer*, 2019 IL 122654, ¶ 23 (quoting *Freides v. Sani-Mode Mfg. Co.*, 33 Ill. 2d 291, 295 (1965)). Suits for malicious prosecution are highly disfavored, *see id.* (quoting cases), because "[p]ublic policy favors the exposure of crime, and the cooperation of citizens possessing knowledge thereof is essential to effective implementation of that policy." *Joiner v. Benton Comm. Bk.*, 82 Ill. 2d 40, 44 (1980). To state a cause of action for malicious prosecution, a plaintiff must prove five elements: "(1) the commencement or continuance of an original criminal or civil judicial proceeding by the defendant; (2) the termination of the proceeding in favor of the plaintiff; (3) the absence of probable cause for such proceeding; (4) the presence of malice; and (5) damages resulting to the plaintiff." *Beaman*, 2019 IL 122654, ¶ 26 (internal quotation marks omitted) (quoting *Swick v. Liautaud*, 169 Ill. 2d 504, 513 (1996) and citing other cases). The absence of any of these elements bars a plaintiff's malicious prosecution claim. *See id.*

Sim has sufficiently pleaded the first element because the defendants initiated a criminal proceeding against her. Sim's pleading of the second element is far more problematic. To plead this element successfully, the underlying proceedings need not have been determined on the merits, but must have terminated favorably for the plaintiff. *See Cult Awareness Network v. Church of Scientology, Int'l*, 177 Ill. 2d 267, 276 (1997). "Under this approach, whether or not the requirement is met is to be determined not by the *form* or *title* given to the disposition of the prior proceeding, but by the *circumstances* under which that

disposition is obtained." *Id.* (emphasis in original). The facts in *Swick* help explain the distinction.

In *Swick*, the Illinois Supreme Court considered whether a criminal case that had terminated with a *nolle prosequi* had ended, as a matter of fact and law, favorably for the accused. *See* 169 Ill. 2d at 512. The court stated that:

> [t]he abandonment of the proceedings is not indicative of the innocence of the accused when the *nolle prosequi* is the result of an agreement or compromise with the accused, misconduct on the part of the accused for the purpose of preventing trial, mercy requested or accepted by the accused, the institution of new criminal proceedings, or the impossibility or impracticability of bringing the accused to trial.

*Id.* at 513. In other words, a *nolle prosequi* may or may not be indicative of innocence, but a plaintiff bears the burden of establishing that the prior termination ended favorably. *See id.*

A recent decision from the Northern District of Illinois is also illuminating. In *Danyus v. Derosa*, a grand jury indicted the defendant on two felony charges for obstruction of justice and filing a false police report, as well as a domestic battery charge, but the defendant ultimately pleaded guilty only to a misdemeanor disorderly conduct charge. *See* 2020 U.S. Dist. LEXIS 40973, *37. The defendant's subsequent malicious prosecution claim alleged that the plea to the lesser charge was in exchange for dropping the felony charge of filing a false report. *See id.* And since the felony charge for obstruction of justice ended with a *nolle prosequi*, the domestic battery charge had to be dropped. *See id.* The former criminal defendant, now civil plaintiff, claimed the prosecution did not pursue the remaining charges because it did not have any evidence to support them after the court suppressed the defendant's confession. *See id.*

Even with these facts, the court found that they did not constitute a favorable resolution. *See id.* at *37-38. The plaintiff previously pleaded guilty to a charge and was sentenced to six months of court supervision and four days in jail. *See id.* at *38. In other words: "[s]he was not able to completely walk away without some penalty." *Id.* Since the plaintiff had not established the second element of a malicious prosecution claim, the court dismissed the cause of action without prejudice and gave her time to replead, "if [she] can do so in good faith." *Id.*

In this case, Sim admits that she similarly pleaded guilty to a lesser charge of misdemeanor disorderly conduct but, based on the cases cited above, such a plea, by itself, is not equivalent to a favorable termination indicative of innocence; rather, she must allege additional facts. For example, perhaps something was said in court about her plea or, in contrast to *Danyus*, she was able to walk away without some penalty. Without such facts, the current second amended complaint provides this court with nothing with which to judge the termination of her criminal case. In short, this court takes the same position as did the court in *Danyus* – the motion is granted without prejudice to replead, *if she can do so in good faith.*

The third element – a lack of probable cause – is also poorly pleaded. The absence of probable cause to commence the original proceedings is essential to plead properly a subsequent cause of action for malicious prosecution. *See Freides*, 33 Ill. 2d at 295. In this context, "probable cause" is defined as "such a state of facts, in the mind of the prosecutor, as would lead a man of ordinary caution and prudence to believe, or entertain an honest and strong suspicion that the person arrested is guilty." *Id.* (quoting *Harpham v. Whitney*, 77 Ill. 32, 42 (1875), citing in turn *Bacon v. Towne*, 4 Cush. 217, 242 (Mass. 1849)).

Neither the particular facts of a case nor the accused's guilt or innocence is a factor in determining probable cause; rather "it is the state of mind of the one commencing the prosecution." *See Burrell v. Village of Sauk Village*, 2017 IL App (1st) 163392, ¶ 16

(quoting *Johnson v. Target Stores, Inc.*, 341 Ill. App. 3d 56, 72 (1st Dist. 2003) (internal quotation marks omitted)). In other words, simple negligence is insufficient to establish a malicious prosecution claim, *see id.*, and if the complainant honestly believes that the accused is probably guilty, a mistake or error that does not amount to gross negligence will not affect the existence of probable cause. *See Turner v. City of Chicago*, 91 Ill. App. 3d 931, 935 (1st Dist. 1980). In the context of an investigation, simple negligence is equated with "inadvertence, mistake and other errors of the like. . . ." *Loitz v. Remington Arms Co. Inc.*, 138 Ill. 2d 404, 415 (1990) (quoting in turn Restatement (Second) of Torts § 908, comment *b*, at 465 (1979)). "It is not necessary for the party pressing criminal charges to verify the correctness of all the information upon which he bases his belief that the person accused is guilty." *Mack v. First Sec. Bk.*, 158 Ill. App. 3d 497, 503 (1st Dist. 1987) (citing *Ely v. National Super Markets, Inc.*, 149 Ill. App. 3d 752, 758 (4th Dist. 1986)). Rather, only a complete failure to verify any of the facts will establish a lack of good faith sufficient to support a claim of no probable cause. *See id.*

The second amended complaint fails to allege that Badofsky lacked probable cause to bring charges against Sim. It is evident that he did not verify facts with her, but she would have simply denied her criminality, so such an omission is not fatal. Sim alleges that Badofsky failed to indicate in his report that other persons were present when he met to discuss the Sim's potential criminal activity and that he omitted various facts. Yet it is unexplained how identifying additional people or listing additional facts would have altered Badofsky's conclusion that Sim had committed a crime. Additionally, Badofsky is alleged to have fabricated various statements that he attributed to Dae and that Dae later repudiated in a deposition. Yet Dae's subsequent denials of statements Badofsky included in his report do not establish that Dae did not make them to Badofsky or that it was unreasonable for Badofsky to rely on them. Without something more, the current allegations simply read that Badofsky was a sloppy investigator, but that only constitutes simple negligence. In other words, Sim's present allegations that Badofsky lacked

probable cause is merely a legal conclusion without factual support and, therefore, must be disregarded.

The defendants do not present arguments as to the fourth and fifth elements – malice and special damages. Given the current failings of the second amended complaint, such arguments are unnecessary. It is plain on the face of the pleadings that Sim has failed to state a cause of action for malicious prosecution; consequently, the defendants' motion must be granted. The dismissal is, however, without prejudice for Sim to present additional supporting allegations to establish her claim.

Count Two – Intentional Infliction of Emotional Distress

Illinois law is plain that deliberately initiating a false legal proceeding amounting to malicious prosecution may also support a cause of action for intentional infliction of emotional distress. *See Bianchi v. McQueen*, 2016 IL App (2d) 150646, ¶ 84. To establish such a claim, however, a plaintiff must plead that: (1) the defendant's conduct was extreme and outrageous; (2) the defendant either intended to inflict severe emotional distress or knew that there was a high probability that the conduct would cause severe emotional distress; and (3) the defendant's conduct actually caused severe emotional distress. *See Feltmeier v. Feltmeier*, 207 Ill. 2d 263 (2003); *McGrath v. Fahey*, 126 Ill. 2d 78 (1988). The standard of proof is so stringent that a plaintiff must establish that a defendant's conduct is outrageous and extreme to the point that it goes beyond all possible bounds of decency and is considered intolerable in a civilized community. *See Public Finance Corp. v. Davis*, 66 Ill. 2d 85 (1976); *Kolegas v. Heftel Broadcasting Corp.* 154 Ill. 2d 1 (1992). *See also* Restatement (Second) of Torts § 46, comment *d* at 73 (1965) ("atrocious, and utterly intolerable in a civilized community").

The standard of pleading an IIED claim is also no simple task. "A complaint alleging the infliction of intentional infliction of emotional distress 'must be "specific, and detailed beyond what is normally considered permissible in pleading a tort action.""

*Schroeder v. RGIS, Inc.*, 2013 IL App (1st) 122483, ¶ 27, (quoting *Welsh v. Commonwealth Edison Co.*, 306 Ill. App. 3d 148, 155 (1st Dist. 1999), quoting in turn *McCaskill v. Barr*, 92 Ill. App. 3d 157, 158 (4th Dist. 1980)). For IIED claims arising in employer-employee scenarios, courts are hesitant to find that an employer's retaliatory conduct is sufficient to state a claim for fear that, "if the anxiety and stress resulting from discipline, job transfers, or even terminations could form the basis of an action for emotional distress, virtually every employee would have a cause of action." *Id.* (quoting *Welsh* and citing *Miller v. Equitable Life Assurance Society*, 181 Ill. App. 3d 954, 957 (1st Dist. 1989)).

The same is true here. Sim's allegations in the second amended complaint rise only the level of Badofsky's incompetence as an investigator. That may be true, but if it is, then all police officers, their superiors, and municipal governmental employers could be sued multiple times on a daily basis for similarly incomplete investigations. As the IIED claim is linked closely with the malicious prosecution claim, this court is reluctant to dismiss count two without seeing the amended pleading as to count one. Again, Sim is on notice that she has an extremely high standard of pleading to meet in her next amended complaint.

Count Three – Civil Conspiracy

As with count two, count three rises or falls on the success of Sim sufficiently pleading a predicate claim for malicious prosecution. (The second amended complaint does not base count three on a deprivation of constitutional rights.) The reason is found in the elements of a civil conspiracy claim. To establish a civil conspiracy, a plaintiff must plead: "(1) a combination of two or more persons, (2) for the purpose of accomplishing by some concerted action either an unlawful purpose or a lawful purpose by unlawful means, (3) in the furtherance of which one of the conspirators committed an overt tortious or unlawful act." *Fritz v. Johnston*, 209 Ill. 2d 302, 317 (2004) (citing *Adcock v. Brakegate, Ltd.*, 164 Ill. 2d 54, 62-63 (1994)). Yet, a conspiracy to commit a wrongful act is, by itself, not a tort, even if it is a crime. *See*

*Adcock*, 164 Ill. 2d at 63 (citing W. Prosser, Torts § 46, at 293 (4th ed. 1971)). As the court explained:

> A cause of action for civil conspiracy exists only if one of the parties to the agreement commits some act in furtherance of the agreement, which is itself a tort. Thus, the gist of a conspiracy claim is not the agreement itself, but the tortious acts performed in furtherance of the agreement. It is only where means are employed, or purposes are accomplished, which are themselves tortious, that the conspirators who have not acted but have promoted the act will be held liable.

*Id.* (internal citations and quotations omitted).

Sim's only allegations against these defendants that could support a civil conspiracy are that they: (1) initiated a prosecution without probable cause; and (2) inflicted severe emotional distress. The allegation that these defendants committed perjury is an unsupported conclusion that cannot be considered for purposes of this motion. In making these allegations, Sim implicitly acknowledges that her civil conspiracy claim depends on her malicious prosecution and IIED claims. Since those causes of action are presently insufficiently pleaded, this cause of action, too, must await additional allegations as to the other claims.

Counts Five & Six – *Respondeat Superior* & Indemnification

It is self evident that in any tort action, "both the employer and the employee whose negligence while in the line of his employment caused the damage, may be sued and held liable." *Citizens Sav. & Loan Assoc. v. Fischer*, 67 Ill. App. 2d 315, 326 (5th Dist. 1966) (quoting *B. F. Hirsch, Inc. v. C. T. Gustafson Co.*, 315 Ill. App. 56, 59 (1st Dist. 1942)). It follows then that if Sim successfully pleads her predicate claims, these two counts will also survive. These claims cannot be ruled on at this time are dependent on the allegations in a further amended complaint.

Count Seven – Fourth & Fourteenth Amendments

The law is plain that, at the pretrial stage, "the Fourth Amendment, not the Due Process Clause, governs a claim for wrongful pretrial detention." *Levy v. Marion Cty. Sheriff*, 940 F.3d 1002, 1008 (7th Cir. 2019), (quoting *Lewis v. City of Chicago*, 914 F.3d 472, 475 (7th Cir. 2019), first citing *Manuel v. City of Joliet*, 137 S. Ct. 911, 920 (2017), then citing *Manuel v. City of Joliet*, 903 F.3d 667, 670 (7th Cir. 2018)). "Wrongful arrest or detention creates a wrongful-seizure claim, plain and simple, and the constitutional objection is to wrongful custody rather than to a criminal prosecution." *Stone v. Wright*, 734 F. App'x 989 (7th Cir. 2018) (citing *Manuel*, 137 S. Ct. at 917-20). In other words, "the wrong is the detention rather than the existence of criminal charges." *Manuel*, 903 F.3d at 670.

It is equally plain that a claim for a subsequent unlawful deprivation of liberty based on fabricated evidence may state a colorable due process claim under the Fourteenth Amendment. *See Bianchi v. McQueen*, 818 F.3d 309, 319 (7th Cir. 2016); *Zahrey v. Coffey*, 221 F.3d 342, 349 (2d Cir. 2000) (there exists "the right not to be deprived of liberty as a result of the fabrication of evidence by a government officer acting in an investigating capacity"). As the Seventh Circuit has written: "a police officer who manufactures false evidence against the criminal defendant violates due process if that evidence is later used to deprive the defendant of her liberty in some way." *Whitlock v. Brueggemann*, 682 F.3d 567, 580 (7th Cir. 2012); *see also Hurt v. Wise*, 880 F.3d 831, 844 (7th Cir. 2018) (due process claim can be based on false police reports).

~~The overarching problem with count 7 is that Sim has failed~~ to account temporally for her alleged deprivations as required by the Fourth and Fourteenth Amendment precedent. This error is explained in *Smith v. City of Chicago*:

> A plaintiff who claims that the government has unconstitutionally imprisoned him has at least two

> potential claims. As established in *Manuel v. City of Joliet*, 137 S. Ct. 911, 197 L. Ed. 2d 312 (2017), a person has a Fourth Amendment right not to be detained based solely on false evidence rather than probable cause. That right extends not just to the time a person spends detained prior to the commencement of legal process (*i.e.*, arraignment) but also to his post-legal-process pretrial detention – "when, for example, a judge's probable-cause determination is predicated solely on a police officer's false statements." *Id.* at 918-20. At some point after arrest and certainly by the time of trial, "the Fourth Amendment drops out: A person challenging the sufficiency of the evidence to support both a conviction and any ensuing incarceration does so under the Due Process Clause of the Fourteenth Amendment." *Id.* at 920 n.8

2019 U.S. Dist. LEXIS 601, *5-6. Sim's failures to delineate her deprivations and when they occurred have led, in part, to this round of motions.

Sim alleges that the state's attorney amended the theft charge to disorderly conduct "a little over one year after plaintiff was arrested and charged," Second Amd. Cmplt. ¶ 11. There is, however, no allegation about the arrest. Perhaps the Des Plaines police went to Sim's home, put her in handcuffs, and hauled her to the police station. Perhaps the state's attorney issued a warrant and Sim voluntarily turned herself in. It is also not explained whether Sim was jailed at any point in the pretrial process. Regardless of the procedure, the second amended complaint suggests that an arrest occurred but provides no context or explanation of how it deprived Sim of her constitutional rights to be free from detention in the pretrial stage. Without some linkage between the fabricated evidence and the arrest, Sim has no Fourth Amendment claim.

As to Sim's Fourteenth Amendment claims, there is, once again, nothing in the second amended complaint indicating that

the State later prosecuted Sim and deprived of her liberty based on the fabricated evidence. Indeed, Sim alleges that the State's Attorney ultimately dropped the theft charge to disorderly conduct to which Sim pleaded guilty. There is no allegation that the State ever imprisoned Sim based on fabricated evidence or her guilty plea. Unless there is more to Sim's story than what she has already pleaded, it appears unlikely that she will ever be able to establish a deprivation of rights within the confines of the Fourteenth Amendment, but given the state of the second amended complaint, it is hard to tell.

Based on the poor drafting of the second amended complaint, the defendants' motion is granted, but without prejudice. This court makes plain that Sim has only one more opportunity to properly plead any potential Fourth or Fourteenth Amendment claim, otherwise they will be dismissed with prejudice in the next round of motions, assuming there will be another.

Count Eight – Fourth and Fourteenth Amendments

Sim's failure-to-intervene claim against commanders Moreth and Mierzwa is substantially flawed. Sim alleges that Moreth and Mierzwa "knew of should have known of BADOFSKY's fabrication and falsification of his police report" and that their failures to stop Badofsky's malfeasance "were objectively unreasonable." Second Amd. Cmplt. ¶¶ 166 & 168. Yet Sim fails to allege on what basis Moreth and Mierzwa would have had the ability to know of Badofsky's bad acts or how their failure to intervene deprived her of her constitutional rights. Such obvious factual gaps strongly suggest that Sim is concocting this claim. As to count eight, the defendants' motion is granted without prejudice. This court will expect dramatically altered allegations if Sim hopes to survive a motion to dismiss with prejudice in the inevitable next round of motions.

Counts 1-3 – *Ad Damnum* Clauses

The defendants' motion to strike Sim's request for attorney's fees in counts one, two, and three is granted because Sim failed to respond to the defendants' citation to the controlling law.

II. Motion of Dae, Seung, Osaka Sushi, Fukuyama & Ryou

These defendants' motions on behalf of Fukuyama and Ryou present many of the same arguments as do the Des Plaines defendants. For the same reasons, the motion for Fukuyama and Ryou is granted, but also without prejudice. Sim will be expected to present additional facts in her next amended complaint to explain how Fukuyama and Ryou participated in the scheme that forms the basis of Sim's claims.

As to Dae, Seung, and Osaka Sushi, the defendants' motion is entirely misdirected. After the filing of Sim's next amended complaint, this court will expect to see from these three defendants a motion to dismiss based on *res judicata*, as that doctrine would appear to apply in this instance based on Judge Mulroy's prior decision.

Conclusion

Based on the foregoing, it is ordered that:

1. The defendants' motion to strike the *ad damnum* clauses in counts 1-3 is granted with prejudice;
2. The defendants' motions to dismiss in all other respects are granted without prejudice;
3. Sim is granted until May 26, 2020 to file an amended complaint consistent with this opinion; and
4. Presentation of the amended complaint shall take place at a case management conference on a date to be scheduled by notification to the parties.

John H. Ehrlich, Circuit Court Judge

Judge John H. Ehrlich

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Circuit Court 2075