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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS

QUINTIN BROWN,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No.: 20-cv-02013-CSB-EIL
	)	
CITY OF URBANA and URBANA POLICE OFFICERS LT. RICHARD SURLES, SGT. MATT BAIN, MICHAEL CERVANTES, MICHAEL HEDIGER, ANTHONY MEENELY, and DAVID ROESCH,	)	
	)	
Defendants.	)	

DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S COMPLAINT AND MEMORANDUM OF LAW IN SUPPORT THEREOF

NOW COME the Defendants, CITY OF URBANA, RICHARD SURLES, MATT BAIN, MICHAEL CERVANTES, MICHAEL HEDIGER, ANTHONY MEENELY and DAVID ROESCH, by Keith E. Fruehling of Heyl, Royster, Voelker & Allen, their attorneys, and for their Motion to Dismiss the Complaint of the Plaintiff, QUINTIN BROWN, pursuant to Federal Rule of Civil Procedure 12(b)(6), state as follows:

INTRODUCTION

On January 22, 2020, Plaintiff, Quintin Brown, filed this suit for money damages pursuant to 42 U.S.C. § 1983. Plaintiff alleges that Defendants, CITY OF URBANA, RICHARD SURLES, MATT BAIN, MICHAEL CERVANTES, MICHAEL HEDIGER, ANTHONY MEENELY and DAVID ROESCH, violated Plaintiff's federal Constitutional rights and various State law torts. (d/e #1, Pl.'s Compl.). Counts I (False Imprisonment/Arrest) and II (Unlawful Pretrial Detention) of the Complaint presently allege violations of the Plaintiff's rights under the Fourth Amendment against all Defendants. Counts III and IV both attempt to allege supervisory liability against Defendants Surles

and Bain and Unlawful Conspiracy against all Defendants, respectively. Count V asserts a claim for indemnification against the City of Urbana under Illinois State law. Finally, Counts VI and VII, respectively allege state law claims for intentional infliction of emotional distress and malicious prosecution.

Plaintiff's § 1983 claims under Counts III and IV should be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(6) because they fail to state a claim by failing to provide sufficient facts under *Twombly* and *Iqbal*. Moreover, Counts VI and VII should be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(6) because they are untimely. The statute of limitations for bringing an Illinois State tort claim against local governmental entities and their employees is one year, and the claim accrues when the Plaintiff knew or should have known of his injury. *See* 745 ILCS 10/8-101 (West 2016). The criminal proceeding Plaintiff references in his Complaint was dismissed by the Champaign County Circuit Court in or about January 11, 2019. Thus, Plaintiff was required to file the claims set forth in Counts VI and VII no later than January 11, 2020. Since he did not bring the instant suit until January 22, 2020, his claim in Counts VI and VII are time-barred. Alternatively, his state law claims should be dismissed for failure to state a claim upon which relief could be granted.

ARGUMENT

I. COUNTS III, AND IV OF PLAINTIFF'S COMPLAINT FAIL TO STATE A CAUSE OF ACTION

A. Count III Must Be Dismissed Because it Fails to Provide the Necessary Factual Basis Establishing The Basis For a Claim of Supervisory Liability

Under the Federal Rules, a plaintiff must plead sufficient factual matter to state a claim for relief that is "plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 127 S. Ct. 1955, 167 L. Ed.

2d 929 (2007)). To meet this plausibility standard, a plaintiff must put forth enough "facts to raise a reasonable expectation that discovery will reveal evidence" supporting the plaintiff's allegations. *Brooks v. Ross*, 578 F.3d 574, 581 (7th Cir. 2009) (quoting *Twombly*, 550 U.S. at 556). Additionally, "a plaintiff must plead facts that suggest a right to relief beyond the speculative level." *Estate of Miller, ex rel. Bertram v. Tobiasz*, 680 F.3d 984, 988 (7th Cir. 2012) (citing *Twombly*, 550 U.S. at 555).

Section 1983 establishes personal liability on the part of any person who causes the "deprivation of any rights, privileges, or immunities secured by the Constitution and laws." 42 U.S.C. § 1983. "The doctrine of *respondeat superior* does not apply to § 1983 actions . . . ." *Sanville v. McCaughtry*, 266 F.3d 724, 740 (7th Cir. 2001). Therefore, for a supervisor to be liable under Section 1983, the supervisor "must be personally responsible for the deprivation of the constitutional right." *Matthews v. City of East St. Louis*, 675 F.3d 703, 708 (7th Cir. 2012). To establish this type of personal involvement, the supervisor must "know about the conduct and facilitate it, approve it, condone it, or turn a blind eye for fear of what they might see". Id. (quoting *Jones v. City of Chicago*, 856 F.2d 985, 992-93 (7th Cir. 1988)).

Count III of Plaintiff's Complaint contains nothing but the type of boilerplate allegations against Defendants Surles and Bain that federal law prohibits. If you were to remove the names of Defendants Surles and Bain from the Complaint you could literally place any two names in the Complaint and the allegations would fit the legal prima facie conclusions of the cause of action but not the type of specificity that the federal law requires to support a supervisory claim given that there is no *respondeat superior* liability.

Count III of Plaintiff's Complaint should be dismissed. If Plaintiff is given an opportunity to remedy these insufficiencies, then Plaintiff should allege facts establishing the fundamental "who,

what, why, where, when and how" regarding how Defendant Surles and Bain each allegedly, individually actively knew about or participated in allowing the alleged violations and/or had notice of the alleged improper conduct and allowed it to continue or otherwise "directed, tolerated, condoned, and/or ratified the misconduct and failed to take prompt remedial action.

To the extent that Count III alleges that Defendants Surles and/or Bain personally were individually and primarily engaged in the alleged falsification of evidence and/or the condoning of the same (see ¶¶ 28 and 29), said allegations are duplicative or Counts I and II. If Plaintiff is given an opportunity to attempt to remedy the above deficiencies, Plaintiff should not be allowed to introduce duplicative grounds in separate counts.

B. Count IV Must Be Dismissed Because it Fails to Provide the Requisite Minimum Factual Notice For These Defendants For a Claim for Section 1983 Conspiracy under Federal Law.

Similarly, Count IV of the Plaintiff's Complaint fails to provide the requisite fundamental factual specificity to state a cause of action. Under the same legal requisites set forth above in Section A above, Plaintiff utilizes legal conclusions for his prima facie case and said conclusions lack the requisite facts. However, federal law requires an even more stringent pleading requirement when a Plaintiff seeks to assert a claim for Section 1983 conspiracy.

In order to state a conspiracy claim under section 1983, the plaintiff must allege: (1) an express or implied agreement among the defendants to deprive the plaintiff of a constitutional right; and (2) actual deprivation of those rights via overt acts in furtherance of the agreement. *Scherer v. Balkema*, 840 F.2d 437, 442 (7th Cir. 1988). Under Section 1983, conclusory allegations of a conspiracy are insufficient to withstand a motion to dismiss. *Goldschmidt v. Patchett*, 686 F.2d

582, 585 (7th Cir. 1982). "[A] conspiracy requires factual allegations showing a meeting of minds." *Id*. See also, *Baker v. Chicago Police Dep't*, 2000 U.S. Dist. LEXIS 6087

In this case, beyond Brown's conclusory assertions against all six Defendants, he fails to allege any facts to support the conclusion of an alleged agreement between any of the Defendants to deprive him of his liberty in violation of the Fourth Amendment. Again, similar to the foregoing section/argument, any name could be inserted into the boiler-plate allegations of Count IV. That cannot stand as sufficient notice to the Defendants as to the nature of the conspiracy claim against them. Therefore, the Court must dismiss Plaintiff's conspiracy claim because Plaintiff has failed to allege the prerequisite facts establishing a "meeting of minds." If the Plaintiff is given an opportunity to remedy these deficiencies in the form of an Amended Complaint, those allegations ought to set forth additional facts serving as the alleged factual basis for the meeting of the minds of each of the individual Defendants to their alleged participation in the agreement to deprive Plaintiff of his Constitutional right(s).

II. PLAINTIFF'S STATE LAW CLAIMS ARE TIME-BARRED PURSUANT TO THE ONE-YEAR STATUTE OF LIMITATIONS UNDER THE ILLINOIS TORT IMMUNITY ACT

A. Malicious Prosecution

An Illinois malicious prosecution claim is subject to a one-year statute of limitations. *See Parish v. City of Elkhart, 614 F.3d 677, 679 (7th Cir. 2010)* (for state law claims, courts apply the relevant state's law regarding the statute of limitations); *Williams v. Lampe*, 399 F.3d 867, 870 (7th Cir. 2005) (under the Local Government and Local Governmental Employees Tort Immunity Act, the applicable statute of limitations is one year) (citing 745 Ill. Comp. Stat. 10/8-101). An Illinois malicious prosecution claim accrues when proceedings against an individual are terminated in his

favor. *Ferguson v. City of Chicago*, 213 Ill. 2d 94 (2004). See also, *Stapinski v. Masterson*, 2017 U.S. Dist. LEXIS 16646 (2017).

In the instant case, the Champaign County Circuit Court dismissed the subject indictment/case (case number - 18 CF 107) on January 11, 2019. (See Exhibit A). Therefore, the statute of limitations expired on January, 11, 2020. Since he did not bring the instant suit until January 22, 2020, his state law claim for malicious prosecution is time-barred.

Since Plaintiff filed his suit for malicious prosecution beyond the one-year statute of limitations, it is time-barred and should be dismissed with prejudice.

B. Intentional Infliction of Emotional Distress

Similar to Plaintiff's malicious prosecution claim, Plaintiff's state law intentional infliction of emotional distress ("IIED") claim is also barred by the one-year statute of limitations. See *Henry v. Ramos*, No. 97 C 4025, 1997 U.S. Dist. LEXIS 15205, *9 (N.D. Ill. Sep. 25, 1997). The Seventh Circuit has held that a claim for intentional infliction of emotional distress stemming from an arrest and prosecution accrues on the date of the arrest. *Bridewell v. Eberle*, 730 F.3d 672, 678 (7th Cir. 2013) (citing *Evans v. Chicago*, 434 F.3d 916, 934 (7th Cir. 2006)). See also, *Stapinski v. Masterson*, 2017 U.S. Dist. LEXIS 16646 (2017).

The alleged actions by any of the Defendants that Plaintiff relies on for his IIED claim incorporate only the following as bases for the claim: false arrest/imprisonment, unlawful pretrial detention and conspiracy to commit the foregoing. Plaintiff alleges that he was arrested on or about 2/2/18. (See d/e #1, ¶ 11). As set forth above, the criminal proceedings against him ended on or about January 11, 2019, including any basis for any detention on said criminal proceedings.

Plaintiff did not file his suit for intentional infliction of emotional distress until January 22, 2020, which is more than one year from either of the dates set forth above, namely: the acts giving rise to the alleged claim. Thus, Plaintiff's IIED claim is clearly time-barred. "Although a tortious act may have consequences that reach beyond the day on which the cause of action accrued, the law does not acknowledge this as an exemption to the applicable statute of limitations." Henry, 1997 U.S. Dist. LEXIS 15205 at *9. Accordingly, Plaintiff's IIED claim should be dismissed with prejudice.

III. PLAINTIFF'S STATE LAW CLAIMS FAIL TO STATE A CAUSE OF ACTION UPON WHICH RELIEF MAY BE GRANTED

An Illinois malicious prosecution claim requires: "(1) the commencement ... 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." *Swick v. Liautaud*, 169 Ill. 2d 504, 512 (1996). The element of favorable termination in a criminal proceeding requires the termination to be indicative of the innocence of the accused. Id. (citing *Joiner v. Benton Community Bank*, 82 Ill. 2d 40, 45 (1980)). In *Swick*, the Illinois Supreme Court adopted the Restatement (Second) of Torts approach to malicious prosecution, stating, "[t]he abandonment of the proceedings is not indicative of the innocence of the accused when the [termination] is the result of an agreement or compromise with the accused." See *Swick*, 169 Ill. 2d, at 513; Restatement (2d) Torts § 660(a). "[O]ne who procures or agrees to a disposition of the charges against him in a manner which leaves the question of his innocence unresolved may not bring a malicious prosecution action based upon such charges." *Joiner*, 82 Ill. 2d at 45.

In *Joiner*, a plaintiff was indicted for defrauding a bank by discarding collateral after obtaining financing for used cars. *Id*. at 42. Plaintiff's indictment was dismissed after he repaid the

bank for the fraudulent transactions. *Id*. The Illinois Supreme Court found that the plaintiff procured the dismissal through an agreement with the authorities. *Id*. at 46-47. When determining favorable determination, "[t]he crucial question is: Was there a compromise or agreement procured or consented to by plaintiff?" *Id*. at 46. If such an agreement is struck, there is no favorable termination because it leaves the question of his innocence unresolved. *Id*. at 45. See also *Ghosh v. Roy*, 208 Ill. App. 3d 30, 32 (5th Dist. 1991) (no malicious prosecution claim where criminal case dismissed in exchange for covenant not to sue); *Rich v. Baldwin*, 133 Ill. App. 3d 712, 718 (5th Dist. 1985) (collecting cases in which completion of a pre-trial diversion program does not constitute favorable termination). When dismissal of criminal charges is the result of a "compromise to benefit the accused, the proceedings are not deemed to be terminated in favor of the accused for the purposes of malicious prosecution claims." *Conterras v. Village of Woodridge*, No. 93 C 7727, 1994 U.S. Dist. LEXIS 5658, at *8 (N.D. Ill. Apr. 28, 1994). *See also Washington v. Summerville*, No. 94 C 203, 1996 U.S. Dist. LEXIS 4357, at *18 (N.D. Ill. Apr. 3, 1996) (where dismissal was preceded by suppression of inculpatory statements on "technical grounds" rather than coercion, termination was not "favorable").

Pursuant to the records of the Champaign County Circuit Clerk, Plaintiff struck an agreement with the Champaign County State's Attorneys' office / the prosecutors wherein in exchange for agreement to plead guilty to a separate criminal charge, the State would dismiss the case in issue here, namely 18 CF 107. Specifically, the Champaign County Circuit Court dismissed the criminal case against the Plaintiff in 18 CF 107 in exchange for his agreement to plead guilty to criminal case 17 CF 772). (See Exhibit A). Indeed, the Champaign County Circuit Clerk's records establish that on the day Plaintiff plead guilty in separate case 17-CF-772 on January 11, 2019, the

Court simultaneously dismissed case 18-CF-107 and referenced the fact that it was dismissing 18 CF 107 in exchange for the plea. (See Exhibit B). Given Illinois law and these facts, Plaintiff cannot establish a prima facie case of malicious prosecution because he cannot establish the second element of the case set forth above, namely: "2) the termination of the proceeding in favor of the plaintiff". Thus, his state law malicious prosecution claim should be dismissed.

Finally, Plaintiff's IIED claim alleged in Count III should also be dismissed for failure to state a claim. The IIED claim is based on the alleged malicious prosecution. If there is no viable malicious prosecution charge, the IIED claim necessarily fails.

CONCLUSION

For the reasons set forth above, the Defendants, CITY OF URBANA, RICHARD SURLES, MATT BAIN, MICHAEL CERVANTES, MICHAEL HEDIGER, ANTHONY MEENELY and DAVID ROESCH, respectfully move this Court for an order dismissing Plaintiff's Complaint with prejudice.

Respectfully submitted,

CITY OF URBANA, RICHARD SURLES, MATT BAIN, MICHAEL CERVANTES, MICHAEL HEDIGER, ANTHONY MEENELY and DAVID ROESCH, Defendants

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CERTIFICATE OF SERVICE

I hereby certify that on February 27, 2020, I electronically filed the foregoing DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S COMPLAINT AND MEMORANDUM OF LAW IN SUPPORT THEREOF with the Clerk of the Court using the CM/ECF system, which will send notification to:

Brendan Shiller, Esq. – brendan@shillerpreyar.com
Shiller*Preyar Law Office
601 S. California Ave.
Chicago, IL 60612

I also hereby certify that I mailed by United States Postal Service the foregoing to the following non-CM/ECF participant: None.

s/ Keith E. Fruehling
Heyl, Royster, Voelker & Allen

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