APPENDIX

APPENDIX A

In the United States Court of Appeals For the Seventh Circuit

GERALD DIX,
Plaintiff-Appellant,
v.
EDELMAN FINANCIAL SERVICES, LLC*, *et al.*,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 17-cv-6561 — **Charles R. Norgle**, *Judge.*

ARGUED SEPTEMBER 17, 2020
DECIDED OCTOBER 19, 2020

Before Kanne and Hamilton, *Circuit Judges.***

* Despite being the first-named defendant, Edelman is virtually irrelevant to this appeal for reasons made apparent in this opinion.

** Circuit Judge Barrett was a member of the panel when this case was submitted but did not participate in the decision and judgment. The appeal is resolved by a quorum of the panel pursuant to 28 U.S.C. § 46(d).

PER CURIAM. Gerald Dix alleges that he was unlawfully evicted. But unlike most wrongful-eviction plaintiffs, Dix filed a sprawling pro se complaint in federal court asserting nineteen claims against almost as many defendants. The claims included a hodgepodge of state and federal causes of action. The defendants included Dix's alleged romantic-interest-turned-landlady Theresa Miller, Miller's real estate broker and financial advisor, a handful of police officers, two municipalities, the local car-towing company, and a few John and Jane Does for good measure.

The experienced district judge dismissed Dix's complaint for failure to state a claim. On appeal, we have focused on just one cause of action—Dix's Fourth Amendment claim against a subset of the defendants— because the others are wholly frivolous. We conclude that Dix's allegations as to that claim, like the rest, do not state a claim for relief, so we affirm the district court.

I. BACKGROUND

These facts are drawn from Dix's amended complaint and—with notable exceptions explained in this opinion—are assumed to be true for purposes of this appeal. *Gomez v. Randle*, 680 F.3d 859, 861 (7th Cir. 2012). We have weeded out the bulk of Dix's allegations and concentrate only on those pertinent to his Fourth Amendment claim.

Gerald Dix lived with Theresa Miller in her home in Lisle, Illinois, for nearly six years. Their relationship had once been romantic, but somewhere along the way it morphed into what Dix describes as a platonic "landlord-tenant" arrangement, albeit without a term or payment of rent. Dix would share

living expenses with Miller and perform household chores. For her part, Miller would provide Dix with living space in her basement. But she also did all the things that no good landlady would do—"badger and harass" Dix for more money; force him to make repairs and do onerous tasks, such as serving her meals in bed; rummage through his mail and possessions; use his credit cards; clutter up every corner of the house; and keep the home in a "barely habitable" condition.

In 2017, Miller decided to sell her house and was advised by her realtor, Cheryl Shurtz, to "stage" it for prospective buyers. Miller told Dix to move out so she could prepare the house to be staged. He refused, so Miller called the police. Four or five officers responded and told Miller that she could not evict Dix without an order of the court. Undeterred, she called the police again the next day. This time, Officers Rob Sommer and Sean McKay arrived.

Officers Sommer and McKay allegedly knew that there had been no domestic disturbance and that Miller had been told she couldn't remove Dix from her house without a court order. But they agreed to help Miller evict Dix anyway. The officers prevented Dix from entering the house while Miller and an unknown associate ("a lazy elderly woman") hauled Dix's things outside and deposited them on the driveway. Dix protested, suspecting that Miller was stealing or destroying his property. And as he watched Miller and her helper carelessly handling his possessions, Dix started hurling insults and called Miller's associate "stupid." Officer Sommer warned Dix not to call anyone "stupid" (or "a dingbat, ding-a-ling, idiot or 'stupid b—'") and threatened to arrest him for disorderly conduct. Dix held his tongue, but not before

asserting his right to call anybody "any proper or slang term that he deemed necessary."

Eventually, and in part because Miller and her "lazy" associate couldn't finish the job themselves, Dix relented and agreed to vacate the house. He left to get a moving van, and when he returned, the officers allowed him into the home to retrieve his property but physically refused him access to certain rooms. After Dix gathered his things, Officer Sommer ordered him to hand over his keys to the house. Dix complied, and the officers told Dix not to return except to fetch his Dodge truck that still sat in the driveway.

In short order, Dix filed his initial complaint, *pro se*, in federal court. He asserted twelve causes of action against nine defendants. The district court struck the pleading as "replete with redundant, impertinent, and scandalous allegations." The court permitted Dix to amend his complaint but warned that "frivolity may result in sanctions."

Dix took up the offer to amend his complaint —but instead of improving it, he added seven causes of action, five defendants, and sixty-nine paragraphs of allegations. Among his nineteen claims was a federal cause of action under 42 U.S.C. § 1983 against Miller, Shurtz, and Officers Sommer and McKay for violating, and conspiring to violate, Dix's Fourth Amendment rights. He sought not less than $1,095,000 in compensatory and punitive damages, plus costs, attorney fees, and preliminary and permanent injunctive relief.

The district court dismissed all of Dix's claims with prejudice. Among other things, the court concluded that Dix did not adequately allege a Fourth Amendment violation because he was free to leave at

any time and a potentially unlawful eviction under state law does not implicate the Fourth Amendment.

Dix appealed, again acting *pro se*. After reviewing Dix's opening brief, we decided that he would benefit from appointed counsel on appeal. Dix refused counsel, so we appointed an *amicus curiae* instead. We instructed the *amicus* to focus on the only one of Dix's nineteen claims that we felt was not completely frivolous—the Fourth Amendment claim.[1]

II. ANALYSIS

"We review a 12(b)(6) dismissal *de novo* and construe all allegations and any reasonable inferences in the light most favorable to the plaintiff. And while a complaint does not need 'detailed factual allegations' to survive a 12(b)(6) motion to dismiss, it must allege sufficient facts 'to state a claim to relief that is plausible on its face.'" *League of Women Voters of Chicago v. City of Chicago*, 757 F.3d 722, 724 (7th Cir. 2014) (citation omitted) (*quoting Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007)) (citing *Killingsworth v. HSBC Bank Nev., N.A.*, 507 F.3d 614, 618 (7th Cir. 2007)). Although "we accept the well-pleaded facts in the

---

[1] In our June 19, 2019 order, we stated: "After reviewing the wide range of claims alleged and argued by Dix, the court encourages counsel to focus attention on the Fourth Amendment claims against Officers Sommer and McKay, and against Miller and Edelman Financial Services." Miller rightly pointed out that Dix's Fourth Amendment claim was asserted against Officers Sommer and McKay, Miller, and Shurtz (not Edelman). In any event, the amicus appropriately opted to tailor his argument to focus only on Miller and Officers Sommer and McKay.

complaint as true, legal conclusions and conclusory allegations...are not entitled to this presumption of truth." *McCauley v. City of Chicago*, 671 F.3d 611, 616 (7th Cir. 2011) (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 681, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009)). And "we may affirm a dismissal on any ground supported by the record." *Kowalski v. Boliker*, 893 F.3d 987, 994 (7th Cir. 2018) (citing *Sykes v. Cook Cnty. Cir. Ct. Prob. Div.*, 837 F.3d 736, 740 (7th Cir. 2016); *Giffin v. Summerlin*, 78 F.3d 1227, 1230 (7th Cir. 1995)).

The Fourth Amendment states, in pertinent part, that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches or seizures, shall not be violated." U.S. Const., amend. IX.

Dix contends on appeal that the district court should not have dismissed his Fourth Amendment claim brought under 42 U.S.C. § 1983 because (1) he alleged that his removal from Miller's home was a Fourth Amendment seizure; (2) he alleged that that seizure was unreasonable; (3) he alleged a conspiracy between the officers and Miller to violate his Fourth Amendment rights; and (4) the officers are not entitled to qualified immunity. We take these in turn.

A. Dix Did Not Allege a Fourth Amendment Seizure.

"A 'seizure' of property occurs when there is some meaningful interference with an individual's possessory interests in that property." *United States v. Jacobsen*, 466 U.S. 109, 113, 104 S.Ct. 1652, 80 L.Ed.2d 85 (1984); *accord Segura v. United States*, 468 U.S. 796, 806, 104 S.Ct. 3380, 82 L.Ed.2d 599 (1984) ("A seizure affects only the person's possessory interests; a search affects a person's privacy

interests."); *United States v. Burgard,* 675 F.3d 1029, 1033 (7th Cir. 2012) ("[T]he critical question relates to any possessory interest in the seized object, not to privacy or liberty interests."). So the first issue—whether Dix alleged that he suffered a "seizure" within the meaning of the Fourth Amendment—turns on whether he alleged facts sufficient to support the inference that he had some possessory interest in Miller's home.[2]

Dix argues that he adequately alleged a possessory interest in Miller's home because he refers to himself as Miller's "tenant" and alleges that they "had an oral contract for their landlord-tenant relationship." If that were true, then Dix may have alleged a protected interest in the property, and the officers may have infringed on his right "to retreat into his own home," which stands "[a]t the very core" of the Fourth Amendment. *Silverman v. United States,* 365 U.S. 505, 511, 81 S.Ct. 679, 5 L.Ed.2d 734 (1961). Indeed,

---

[2] The district court dismissed Dix's Fourth Amendment claim on a different basis. The court concluded that Dix premised the claim entirely on his contention "that he was 'wrongfully' evicted in violation of the Illinois Forcible Entry and Detainer Act, 735 Ill. Comp. Stat. 5/9-101, *et seq.*," and because the "mere violation of a state statute does not infringe the federal Constitution," the claim must fail. *Snowden v. Hughes,* 321 U.S. 1, 11, 64 S.Ct. 397, 88 L.Ed. 497 (1944); see also *Gordon v. Degelmann,* 29 F.3d 295, 301 (7th Cir. 1994) (holding that an officer's failure to comply with the Illinois Forcible Entry and Detainer Act "does not matter" for purposes of a Fourth Amendment claim). We do not opine on this holding and instead exercise our authority to affirm the district court on alternative grounds that are apparent in the record and argued on appeal. *Kowalski,* 893 F.3d at 994.

the Supreme Court has explained that under the Fourth Amendment, "the right against unreasonable seizures would be no less transgressed if the seizure of [a] house was undertaken to collect evidence, verify compliance with a housing regulation, *effect an eviction by the police*, or on a whim, for no reason at all." *Soldal v. Cook Cnty.*, 506 U.S. 56, 69, 113 S.Ct. 538, 121 L.Ed.2d 450 (1992) (emphasis added). Succinctly stated by another court, the "[f]orcible eviction of tenants ... is by its very nature a meaningful interference with their possessory interests." Thomas v. Cohen, 304 F.3d 563, 573 (6th Cir. 2002).

But Dix's argument runs into a couple of problems. The first is that the existence of a landlord-tenant relationship is a legal conclusion that we can reject at the motion to dismiss stage. *See Iqbal*, 556 U.S. at 678, 129 S.Ct. 1937 ("[T]he tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions."); *Grange Mut. Cas. Co. v. Slaughter*, 958 F.3d 1050, 1055 (11th Cir. 2020) (holding that an affirmation that "an enforceable lease existed" is "only a legal conclusion"); *In re United Cigar Stores Co. of Am.*, 89 F.2d 3, 5 (2d Cir. 1937) ("[T]he facts do not justify the legal conclusion that ... the relations of the parties were those of landlord and tenant."). So Dix's naked allegation that he "enjoyed the legal status and interest of a full-fledged tenant ... is a self-generated legal conclusion to which this Court owes no deference." *Snyder v. Daugherty*, 899 F. Supp. 2d 391, 407 (W.D. Pa. 2012).

The second problem for Dix is that the rest of his allegations actively undermine his conclusory assertion that he was a tenant and therefore had a

possessory right to Miller's home protected under the Fourth Amendment. *Jacobsen*, 466 U.S. at 113, 104 S.Ct. 1652.

Under Illinois law, there are leases and there are licenses. A lease creates in the tenant a legal "interest ... in the premises" and "right to possession." *Jones v. Kilfether*, 12 Ill.App.2d 390, 139 N.E.2d 801, 803 (1956). "[T]he essential elements of a lease include: (1) the extent and bounds of the property; (2) the term of the lease; (3) the amount of rent; and (4) the time and manner of payment. If any of these elements are missing, a lease has not been created...." *Millennium Park Joint Venture, LLC v. Houlihan*, 241 Ill.2d 281, 349 Ill.Dec. 898, 948 N.E.2d 1, 19 (2010) (citing *Lannon v. Lamps*, 53 Ill. App.3d 145, 10 Ill.Dec. 710, 368 N.E.2d 196, 199 (1977)). The ultimate hallmark of a lease is the tenant's "exclusive possession of the premises against all the world, including the owner." *Id.*, 349 Ill.Dec. 898, 948 N.E.2d at 18 (quoting 53 C.J.S. Licenses § 133 (2005)).

A license, on the other hand, "merely confers a privilege to occupy the premises under the owner." *Id.* (quoting 53 C.J.S. Licenses § 133 (2005)). Unlike a lease, a license is "ordinarily revocable at the will of the grantor," *id.*, 349 Ill.Dec. 898, 948 N.E.2d at 19 (citing *Jackson Park Yacht Club v. Ill. Dep't of Local Gov't Affairs*, 93 Ill.App.3d 542, 49 Ill.Dec. 212, 417 N.E.2d 1039, 1043 (1981)), and "is not an interest in land," *Martin v. See*, 232 Ill.App.3d 968, 174 Ill.Dec. 124, 598 N.E.2d 321, 330 (1992) (citing *Keck v. Scharf*, 80 Ill.App.3d 832, 36 Ill.Dec. 83, 400 N.E.2d 503, 505 (1980)); see also *Robinson v. Robinson*, 100 Ill.App.3d 437, 57 Ill.Dec. 532, 429 N.E.2d 183, 189 (1981) ("[A] possessory interest ... precludes application of a license theory."); *Application of Rosewell*, 69

Ill.App.3d 996, 26 Ill.Dec. 36, 387 N.E.2d 866, 870 (1979) (a license does not "transfer[] a possessory interest"). Moreover, a license "cannot ripen into a prescriptive right, regardless of the time such permissive use is enjoyed." *Keck*, 36 Ill. Dec. 83, 400 N.E.2d at 505. Licensees can include anyone from a casual social guest, *Pashinian v. Haritonoff*, 81 Ill.2d 377, 43 Ill.Dec. 21, 410 N.E.2d 21, 21 (1980), to a teenager living with her parents, *Meyn v. Seidel*, No. 2-09-1293, 2011 WL 10108515, at *5 (Ill. App. Mar. 22, 2011), to a homeowner's spouse, *Jones*, 139 N.E.2d at 804.

Turning to Dix's amended complaint, we find none of the characteristics of a lease or tenancy under Illinois law. Dix alleges in excruciating detail how he had virtually no possession or control over any part of the home—he had no ability to prevent Miller from going through his things, opening his mail, mingling her property with his, or storing her personal items in every corner of the house ("with the exception of one drawer in a small nightstand"). He kept his own stuff in "banker boxes, plastic tubs and overnight bags" and had so little privacy in the home that he resorted to locking his possessions in his truck. And he never mentions the word "rent." Only one reasonable inference can be drawn from these allegations: that Miller maintained complete possession and control over her home but granted Dix a revocable license to stay there.[3]

---

[3] Compare Dix's allegations to *Gustin v. Barney*, 250 Ill. App. 209, 213 (1928), in which the court found that an agreement was a lease where "[i]t provide[d] for the payment of a certain fixed rent at definite periods. The use granted was for a definite term with privilege of renewal.

What's more, as Dix's amended complaint makes abundantly clear, Miller revoked Dix's license. "A verbal license, such as the one in the present case, may be revoked by express notice, by acts which are entirely inconsistent with enjoyment of the use, or by appropriating the land in question to any use contrary to its enjoyment by the licensee." *Keck*, 36 Ill. Dec. 83, 400 N.E.2d at 506. Miller demanded that Dix leave—about as clear a revocation as one could expect.[4]

And when a license is revoked, the licensee becomes a trespasser. *See JCRE Holdings, LLC v. GLK Land Tr.*, 434 Ill.Dec. 454, 136 N.E.3d 202, 205 (Ill. App. 2019) ("[U]pon termination of a license, the licensee's failure to remove its property from the licensor's land constitutes a trespass."); cf. *People v. Brown*, 150 Ill.App.3d 535, 103 Ill.Dec. 809, 501 N.E.2d 1347 (1986) (affirming trespass conviction of live-in boyfriend who entered home after his license was revoked). "[A] trespasser's wrongful presence forestalls a Fourth Amendment challenge." *United States v. Sawyer*, 929 F.3d 497, 500 (7th Cir. 2019) (citing *United States v. Battle*, 637 F.3d 44, 49 (1st Cir. 2011) (defendant who overstayed his visit became a trespasser with no "legally sufficient interest in the apartment to mount a Fourth Amendment challenge"); *United States v. Struckman*, 603 F.3d 731, 747 (9th Cir. 2010) ("[H]ad Struckman been an

---

It was exclusive as to that use and did not merely confer a privilege under the owner."

[4] The *amicus* suggests that if Dix had a license, it may have been irrevocable. This argument has been underdeveloped, so we will not consider it—and it's probably meritless, anyway. *See Keck*, 36 Ill.Dec. 83, 400 N.E.2d at 506 (explaining the narrow circumstances under which a license becomes irrevocable).

actual trespasser, he would not be able to claim the protections of the Fourth Amendment."); *United States v. Hunyady*, 409 F.3d 297, 303 (6th Cir. 2005)).[5]

In short, by the time Officers Sommer and McKay arrived, Dix had no right or privilege to be in Miller's home whatsoever. He therefore could not have had a "possessory interest" in it. "A seizure of property occurs when there is 'some meaningful interference with an individual's possessory interests in that property,' and here there was none." *United States v. Jones*, 565 U.S. 400, 419, 132 S.Ct. 945, 181 L.Ed.2d 911 (2012) (Alito, J., concurring) (quoting *Jacobsen*, 466 U.S. at 113, 104 S.Ct. 1652). So Dix does not sufficiently allege a seizure within the meaning of the Fourth Amendment.[6]

---

[5] These cases concerned searches, not seizures, but their conclusions carry over to this case. Just as a trespasser has no reasonable expectation of privacy in the property, a trespasser also lacks a possessory interest in the property. The very definition of "trespass," after all, is the interference of *another's* possessory interest. *See Skinner v. Mahomet Seymour Sch. Dist. No. 3*, 90 Ill.App.3d 655, 46 Ill.Dec. 67, 413 N.E.2d 507, 510 (1980) ("[T]respass requires a wrongful interference with the actual possessory interest in property.").

[6] We recognize that, in some circumstances, a houseguest (undoubtedly a licensee) may have a reasonable expectation of privacy in his host's home "rooted in 'understandings that are recognized and permitted by society.'" *Minnesota v. Olson*, 495 U.S. 91, 100, 110 S.Ct. 1684, 109 L.Ed.2d 85 (1990) (quoting *Rakas v. Illinois*, 439 U.S. 128, 143 n.12, 99 S.Ct. 421, 58 L.Ed.2d 387 (1978)). But this is a seizure case, not a search case, so "the critical question relates to any possessory interest in the seized object, not to privacy or liberty interests." *Burgard*, 675

B. Dix Did Not Allege that Any Seizure Was Unreasonable.

Even if Dix alleged that there was a Fourth Amendment "seizure," to "state a constitutional violation," he must also allege that "the seizure ... was 'unreasonable.'" *White v. City of Markham*, 310 F.3d 989, 993 (7th Cir. 2002). Case law compels our next conclusion: that even if a seizure occurred here, it was reasonable.

In *White*, a police officer was called to a home in response to an apparent domestic dispute. *Id.* at 991. When he arrived, heated words as well as objects were flying between the nonresident homeowner, Witcher, and her nephew, White, who lived in Witcher's home. *Id.* at 991-92. Witcher had ignited the dispute when she told White that she wanted him out. *Id.* So the officer "was forced to ask either Witcher, the admitted nonresident homeowner, or White, her relative and resident guest, to leave the premises." *Id.* at 996. We held that "White's allegations of a right to remain on Witcher's property, in the face of her demand that he leave, [were] tenuous at best," and "[b]ased on this

---

F.3d at 1033. Besides, this is not one of those circumstances contemplated in Olson. A houseguest "is there with the permission of his host, who is willing to share his house and his privacy with his guest." 495 U.S. at 99, 110 S.Ct. 1684. In that instance, "[i]t is unlikely that the guest will be confined to a restricted area of the house[, and] hosts will more likely than not respect the privacy interests of their guests, who are entitled to a legitimate expectation of privacy despite the fact that they have no legal interest in the premises." *Id.* But a trespasser is no houseguest, and any reasonable person would recoil at the notion that a trespasser has a protected privacy interest—let alone a possessory interest—in another person's home.

unique situation, it could not have been unreasonable for [the officer] to request White, the family member with the apparently inferior property interest in remaining on the premises, to vacate the explosive situation." *Id.*

Dix contends that this case is nothing like *White* because here, there was no domestic disturbance and, as a tenant, he had more than a "tenuous" right to be in the home. We have already rejected his claimed tenancy, so his "right to remain on [Miller's] property, in the face of her demand that he leave," was truly "tenuous at best." *Id.*

We likewise reject Dix's conclusory allegation that there was no domestic disturbance. Miller had to call the police—not once, but twice—to remove a man from her home whom she had previously let live there but who now refused to leave. When Officers Sommer and McKay arrived, Dix was upset enough with Miller and her "lazy" accomplice for how they were removing his property from the home to begin hurling epithets at them in the officers' presence. In the apt words of Dix's amended complaint, "the situation became deranged." His allegation that there was no domestic disturbance, then, is not only an "unsupported conclusion[] of fact" but implausible on its face. *Hickey v. O'Bannon*, 287 F.3d 656, 658 (7th Cir. 2002).

In some ways, this case is even clearer than *White*. Unlike the defendant there—a "nonresident homeowner" and family member of the plaintiff—the defendant here was the *resident* homeowner who lived under the same roof as the (unrelated) man she wanted removed. It was entirely reasonable for the officers to separate two quarreling cohabitants by removing, at the homeowner's request, the one with the obviously inferior—indeed, non-existent—

property interest. *White*, 310 F.3d at 996. This comfortably qualifies as one of those instances in which "police officers may, as part of their community caretaking function, separate parties to a domestic disturbance by ordering one party to leave the premises," and "the officers' decision to order [Dix] to leave the house was reasonable since he appeared to have the inferior possessory interest in the property." *Lunini v. Grayeb*, 184 F. App'x 559, 562 (7th Cir. 2006) (following White, 310 F.3d at 996). What, we wonder, was the more reasonable thing for these officers to have done? Leave the scene and let Miller and Dix duke it out between themselves? No case supports such an argument.[7]

In addition, the (apparently erroneous) legal advice that Miller received from other officers the day prior—that she needed a court order to evict Dix—does not make the conduct of Officers Sommer and McKay any less reasonable considering the acrimonious circumstances alleged. To be sure, Dix does allege that Officers Sommer and McKay knew of that previous conversation. But an officer's "decision [i]s not unreasonable even if it [i]s shown at a later time that the officer reached an incorrect conclusion." *Id.* Even if Officers Sommer and McKay were "incorrect" in their decision to remove Dix "when all of the facts were clear, ... a police officer cannot be

---

[7] It's worth noting that Dix also alleges, albeit in a later portion of his forty-four-page amended complaint, that Miller threatened to kill him and that he reasonably feared for his safety. This allegation only sheds more light on their apparently caustic relationship and makes it even easier for us to conclude that the relevant portions of Dix's amended complaint paint the picture of a domestic disturbance.

expected to make that determination when [two cohabitants] are shouting at each other. Nor was it unreasonable to use the threat of arrest to accomplish this goal." *White*, 310 F.3d at 996. To the contrary, it was well within "the scope of [the officers'] community caretaking function" given the fracas unfolding around them. *Lunini*, 184 F. App'x at 562.

We conclude that if there were a seizure, it was reasonable.

C. Dix Did Not Allege a Conspiracy Under 42 U.S.C. § 1983.

The above discussion compels us to reject Dix's third argument that he adequately alleged a conspiracy between the officers and Miller to deprive him of his Fourth Amendment rights.

"To establish Section 1983 liability through a conspiracy theory, a plaintiff must demonstrate that: (1) a state official and private individual(s) reached an understanding to deprive the plaintiff of his constitutional rights, and (2) those individual(s) were willful participants in joint activity with the State or its agents." *Brokaw v. Mercer Cnty.*, 235 F.3d 1000, 1016 (7th Cir. 2000) (quoting *Fries v. Helsper*, 146 F.3d 452, 457 (7th Cir. 1998)). Moreover, "a plaintiff must allege and prove both a conspiracy and an actual deprivation of rights; mere proof of a conspiracy is insufficient to establish a section 1983 claim." *Hampton v. Hanrahan,* 600 F.2d 600, 622 (7th Cir. 1979), *cert. granted in part, judgment rev'd in part on other grounds*, 446 U.S. 754, 100 S.Ct. 1987, 64 L.Ed.2d 670 (1980).

As we have seen, Dix did not allege an actual deprivation of rights because there was no Fourth Amendment seizure. And Dix "cannot establish that

defendants conspired to violate his Fourth Amendment right because, even if the officers 'seized' [Dix's property] when they ordered him to leave [Miller's home], they did so lawfully. 'A person may not be prosecuted for conspiring to commit an act that he may perform with impunity.'" *Lunini*, 184 F. App'x at 563 (quoting *House v. Belford*, 956 F.2d 711, 720 (7th Cir. 1992)).

D. The Officers Are Entitled to Qualified Immunity.

And so we come to the final issue of qualified immunity. "Public officials are immune from suit under 42 U.S.C. § 1983 unless they have 'violated a statutory or constitutional right that was clearly established at the time of the challenged conduct.'" *City & Cnty. of San Francisco v. Sheehan*, 575 U.S. 600, 135 S. Ct. 1765, 1774, 191 L.Ed.2d 856 (2015) (quoting *Plumhoff v. Rickard*, 572 U.S. 765, 778, 134 S.Ct. 2012, 188 L.Ed.2d 1056 (2014)). "An officer 'cannot be said to have violated a clearly established right unless the right's contours were sufficiently definite that any reasonable official in his shoes would have understood that he was violating it,' meaning that 'existing precedent placed the statutory or constitutional question beyond debate.'" *Id.* (alterations and citations omitted) (first quoting *Plumhoff*, 572 U.S. at 778, 134 S.Ct. 2012; then quoting *Ashcroft v. al-Kidd*, 563 U.S. 731, 741, 131 S.Ct. 2074, 179 L.Ed.2d 1149 (2011)). "Put simply, qualified immunity protects 'all but the plainly incompetent or those who knowingly violate the law.'" *Allin v. City of Springfield*, 845 F.3d 858, 862 (7th Cir. 2017) (quoting *Mullenix v. Luna*, 577 U.S. 7, 12, 136 S.Ct. 305, 193 L.Ed.2d 255 (2015)).

Though it matters little now, even if the officers' actions were unlawful, they would be entitled to qualified immunity. Our most analogous case makes that clear enough. *White*, 310 F.3d at 997 ("[B]ecause the eviction was not unreasonable under these circumstances, the district court correctly granted [the officers] qualified immunity."); *see also Spiegel v. City of Chicago*, 106 F.3d 209, 210 (7th Cir. 1997) (holding that a former resident's "right not to have the police prevent him from entering an apartment that was in the possession of the landlord was not clearly established at the time the police blocked his attempt to enter").

One other case, *Higgins v. Penobscot Cnty. Sheriff's Dep't*, is worth discussion. 446 F.3d 11 (1st Cir. 2006). The plaintiff there, Higgins, awoke one morning, donned his robe, and poured himself a cup of coffee. *Id.* at 12. Peaceful though it sounds, he happened to be in an apartment that was the subject of a hotly contested familial squabble—so when Higgins's sister came upon Higgins and his coffee, she called the police. *Id.* By the time the officer arrived, the whole family had converged in a "screaming contest." *Id.* Higgins insisted to the officer that he had a right to reside there. *Id.* The officer didn't buy it, issued Higgins a trespass citation, gave him a few minutes to gather his things, and threatened him with arrest "if he did not leave or returned to the property." *Id.* at 13.

Higgins sued the officer, but the court held that the officer was entitled to qualified immunity. *Id.* at 14-15. Among the facts supporting this conclusion were that the officer "encountered a volatile and potentially dangerous situation—described by Higgins himself as a 'screaming contest' —when he arrived"; "[t]he

subject of the dispute was a man who ... claimed a right to occupy a building," but the man "provided no written lease or other documentation to support his claimed occupancy right[and] only made a conclusory verbal claim of entitlement"; and "[o]pposing this man were several members of his own family, all of whom disputed his claimed entitlement." *Id.* at 14.

Add that case to our own, and it's clear that, to the extent existing case law put the officers on notice of anything, it was that they were *not* violating the Constitution by removing a quarreling cohabitant at the request of the homeowner in these circumstances.

The cases that Dix relies on, on the other hand, are simply too different in too many ways to have clearly established that these officers' conduct, in these circumstances, was unlawful. Dix primarily relies on *Soldal*, 506 U.S. 56, 113 S.Ct. 538. But there, the evicted persons were not mere licensees (let alone trespassers) and the Court did not determine whether the seizure was reasonable under the circumstances. *See Hurem v. Tavares*, 793 F.3d 742, 747 (7th Cir. 2015) ("In *Soldal*, the Supreme Court did not reach the question whether the removal of the mobile home was unreasonable."). Perhaps most important, the officers "assisted in a forcible eviction that was patently unlawful." *Cofield v. Randolph Cnty. Comm'n*, 90 F.3d 468, 471 (11th Cir. 1996) (emphasis added) (citing *Soldal*, 506 U.S. at 56-60, 113 S.Ct. 538).

And in Dix's other case, *Thomas*, the plaintiff (a tenant) had a clear possessory interest in the property and did not live with the homeowner, there were no exigent circumstances warranting removal, and the court found that the officers *were* entitled to qualified immunity. 304 F.3d at 566, 567; *id.* at 583 (Gilman.,

J. concurring) ("[A] reasonable person in the officers' position would not have known that the eviction in question violated the plaintiffs' Fourth Amendment right[s].").

Neither *Soldal* nor *Thomas* clearly established that the officers' conduct here violated Dix's constitutional rights. Dix's "argument essentially invites us to hold, as a matter of constitutional law, that a police officer, summoned to mediate a volatile dispute involving an alleged trespasser, is obliged to leave the situation unresolved simply because the trespasser represents himself to be entitled to be there. To state the proposition is to expose its foolishness." *Higgins*, 446 F.3d at 15.

* * *

For all the above reasons, we conclude that Dix's Fourth Amendment claim against Miller and Officers Sommer and McKay was properly dismissed. We do not need to address Dix's many other claims against the many other defendants because they are entirely without merit.[8]

---

[8] If any of Dix's other claims are worth mentioning, it's his claim that Officer Sommer and the Village of Lisle infringed his First Amendment right to free speech when Officer Sommer threatened to arrest Dix if he did not stop cursing at Miller and her associate. Dix relies primarily on *Purtell v. Mason*, 527 F.3d 615 (7th Cir. 2008), which rejected application of the fighting-words doctrine where the plaintiff erected mock tombstones in his yard that insulted the neighbors. But that case is easily distinguishable, as the protected speech there occurred on the plaintiff's own property, whereas Dix cast his insults from *Miller's* property, where he was not entitled to be. So we agree with the district court's conclusion that

But there is another matter that we must address. Gerald Dix is no stranger to this court or any other level of the federal judiciary. He has a twenty-year history of filing patently frivolous lawsuits and appeals—and being admonished for doing so. *E.g., Dix v. Unknown TSA Agent No. 1*, 588 F. App'x 499, 499 (7th Cir. 2015) ("Because Dix has filed two frivolous appeals within the last few months, we warn him that further frivolous appeals may result in sanctions."), cert. denied, 576 U.S. 1057, 135 S.Ct. 2902, 192 L.Ed.2d 928 (2015); *Dix v. Illinois*, 202 F.3d 272, 1999 WL 955738 at *2 (7th Cir. 1999) (unpublished disposition) (noting that Dix's case had "absolutely no foundation"); *Dix v. United States*, No. 09-CV-6349, 2010 WL 2607262, *14 (N.D. Ill. June 24, 2010) (warning Dix of "potential sanctions"); see also *Dix v. Clancy*, 577 U.S. 817, 136 S. Ct. 45, 193 L.Ed.2d 27 (2015) (denying petition for writ of certiorari), *rehearing denied*, 577 U.S. 817, 136 S. Ct. 45, 193 L.Ed.2d 27 (2015).

Apparently, Dix long ago decided that his every perceived grievance, no matter how "paranoid and delusional," should be aired in the federal courts. *Unknown TSA Agent No. 1*, 588 F. App'x at 499. In this case, Dix got lucky enough to include one claim

---

"Sommer's warning to Plaintiff that he would be arrested should he continue his course of conduct did not violate Plaintiff's First Amendment right to free speech, because Plaintiff had no right to hurl abusive insults at Miller and Doe #2 during an ongoing domestic dispute at Miller's home." *See Frisby v. Schultz*, 487 U.S. 474, 485, 108 S.Ct. 2495, 101 L.Ed.2d 420 (1988) ("[W]e have repeatedly held that individuals are not required to welcome unwanted speech into their own homes and that the government may protect this freedom.").

that was not completely absurd; throw nineteen claims at the wall, and one of them just might stick. But the common thread running through all of Dix's litigations is that they are stunningly devoid of merit. Not only that, but his court filings— in this case and others—are replete with intemperate, inflammatory, and downright offensive language.

Notably, the day after Dix filed this appeal, the Northern District of Illinois explained in an executive committee order that "[s]ince July 28, 2008, *pro se* litigant Gerald Dix has filed six cases in this court. The cases have all been dismissed for reasons such as remand denied, failure to state a federal claim, and filing a frivolous complaint." Executive Committee Order at 1, *In re: Gerald Dix*, 1:18-cv-06252 (N.D. Ill. Sept. 13, 2018), ECF No. 1. Worse yet, "Dix caused a disturbance in a courtroom of the Dirksen U.S. Courthouse ..., becoming verbally and physically combative and disrupting the judge's court." *Id.* Unsurprisingly, "Dix's inappropriate conduct has raised concerns among the Court, the Clerk's Office, and the United States Marshals Service." *Id.* The district court determined that "reasonable and necessary restraints must be imposed upon Mr. Dix's ability to file new civil cases in this district *pro se*." *Id.* The court enjoined Dix's ability to file any new civil cases in that district unless he follows procedures to obtain leave of court and entered several other restrictions on Dix's capacity to abuse the legal process. *Id.* at 1-3.

Rightly so, but we find we must go further. Without a doubt, Dix "has abused the judicial process with frivolous litigation. The result has been the harassment of opposing parties, insult to judicial officers, and waste of limited and valuable judicial

resources.... When dealing with a frivolous litigator who, despite due warning or the imposition of sanctions, continues to waste judicial resources, we impose a filing bar preventing the litigant from filing in this court or any federal court in this circuit." *McCready v. eBay, Inc.*, 453 F.3d 882, 892 (7th Cir. 2006).

Dix has had ample warning. We therefore "direct the clerks of all federal courts in the circuit to return unfiled any papers that [Dix] attempts to file" for two years from the date of this opinion. *Support Sys. Int'l, Inc. v. Mack*, 45 F.3d 185, 186 (7th Cir. 1995). "We make an exception for any criminal case in which [Dix] is a defendant and for any application for habeas corpus that he may wish to file. That is, we will not impede him from making any filings necessary to protect him from imprisonment or other confinement, but we will not let him file any paper in any other suit in the federal courts of this circuit...." *Id.*

We spare Dix from financial penalties today, but we once again warn him that pro se litigants are not excused from the monetary sanctions available under Federal Rule of Civil Procedure 11 and Federal Rule of Appellate Procedure 38. *See Vukadinovich v. McCarthy*, 901 F.2d 1439, 1445 (7th Cir. 1990); *Reis v. Morrison*, 807 F.2d 112, 113 (7th Cir. 1986). We urge our constituent courts to take notice that they may, and should, greet any attempt by Dix to file papers in contravention of this opinion with financial sanctions.[9]

---

[9] As the district court mentioned, it is also evident from Dix's amended complaint that he routinely engages in the unauthorized practice of law (because he feels "it is common for licensed attorneys to commit fraud on the

One last remark. We sometimes enlist *amici curiae* in difficult and thankless tasks. We extend our utmost gratitude to the amicus recruited here for assuming this burden, properly distilling the facts in this case, and presenting a fine legal argument worthy of being considered by this court.

III. CONCLUSION

The judgment of the district court is AFFIRMED. The clerks of the federal courts of this circuit are hereby ORDERED to return unfiled any papers submitted to these courts either directly or indirectly (as by mail to individual judges) by or on behalf of Gerald Dix, with the exceptions noted in the opinion.

---

courts"). For example, he alleges that he wrote "a Petition for Rehearing to the Second District of the Illinois Appellate Court on behalf of his brother" (though it fell short of "address[ing] every legal issue to protect that plaintiff"); he has "often been called upon to commence and maintain legal action on behalf of ... others against malefactors"; and he even repeatedly refers to his "billable hours" for performing such "consulting"— i.e., legal—work. We, too, note this for the benefit of state authorities. See 705 Ill. Comp. Stat. 205/1.

APPENDIX B

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois

November 17, 2020

Before

MICHAEL S. KANNE, *Circuit Judge*

DAVID F. HAMILTON, *Circuit Judge*

No. 18-2970

GERALD DIX,
Plaintiff-Appellant,

v.

EDELMAN FINANCIAL SERVICES, LLC, *et al.*,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division

No. 17-cv-6561

Charles R. Norgle, *Judge*

ORDER

On consideration of the petition for rehearing and rehearing *en banc* filed in the above entitled cause by *pro se* appellant, Gerald Dix on November 2, 2020, no judge in active service has requested a vote on the petition for rehearing *en banc* and all members of the original panel have voted to deny rehearing. It is,

therefore, ORDERED that rehearing and rehearing *en banc* are **DENIED**

APPENDIX C

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

ORDER

September 15, 2020

By the Court:

No. 18-2970	GERALD DIX, Plaintiff - Appellant v. EDELMAN FINANCIAL SERVICES, LLC, et al., Defendants - Appellees
Originating Case Information:	
District Court No: 1:17-cv-06561 Northern District of Illinois, Eastern Division District Judge Charles R. Norgle	

Upon consideration of the **MOTION FOR EQUAL TIME IN ORAL ARGUMENTS AND TO PREVENT INTERFERENCE WITH APPELLANT'S STATE COURT ACTIONS**, filed on September 14, 2020, by the pro se appellant,

IT IS ORDERED that the motion is **DENIED** to the extent pro se appellant Gerald Dix seeks leave to participate in oral argument.

IT IS FURTHER ORDERED that to the extent the motion seeks further relief related to appellant's

state law claims, the motion will be **TAKEN WITH THE CASE** for resolution by the assigned merits panel. The clerk shall distribute a copy of the motion and this order to the panel.

APPENDIX D

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

GERALD DIX, Plaintiff,	)	
	)	No. 17 CV 6561
v.	)	
	)	Hon. Charles R. Norgle
EDELMAN FINANCIAL SERVICES, LLC et al.,	)	
Defendants.	)	

OPINION AND ORDER

Plaintiff Gerald Dix ("Plaintiff") brings this action against Defendants Edelman Financial Services, LLC ("Edelman Financial"), Theresa Miller ("Miller"), the Village of Lisle, Lisle Police Officer Rob Sommer ("Sommer"). Village of Lisle Police Officer Sean McKay ("McKay"), Village of Lisle Police Officer Dean Anders ("Anders"), Village of Lisle Police Officer John Doe #3 ("Doe #3"), MJ Suburban, Inc., d/b/a RE/MAX Suburban ("RE/MAX"), the City of Wheaton, City of Wheaton Police Officer Vetaliy Lord ("Lord"), Cheryl L Shurtz ("Shurtz"). Jane Doe #1 ("Doe #1"), Jane Doe #2 ("Doe #2"), and Fire Towing, Inc. ("Fire Towing") (collectively, "Defendants"). Plaintiff's First Amended

Complaint ("FAC") sets forth nineteen separate claims, including six federal causes of action under 42 U.S.C. § 1983 and various state law claims. In its February 28, 2018 Order, the Court dismissed Counts V, VI, VIII, X, XVII, and XVIII of Plaintiffs FAC *with prejudice*, to the extent that these Counts set forth claims against Edelman Financial. Doe #1, and Doe #2. Now, all remaining Defendants[1] have filed motions to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). For the following reasons, Defendants motions to dismiss are granted. Plaintiff's § 1983 claims (Counts I, IV, XI. XIII, XIV, and XVI) are dismissed with prejudice and the Court relinquishes jurisdiction over Plaintiffs remaining state law claims.

I. BACKGROUND

Plaintiffs FAC revolves around what he views as a "wrongful eviction" from Miller's home in Lisle, Illinois. Plaintiff and Miller were at some point engaged in a romantic relationship. As part of their relationship, Miller permitted Plaintiff to live in her home in Lisle. However, Plaintiff claims that their relationship turned strictly "platonic" in 2013 as the result of a "botched elective cosmetic surgical procedure" that left Miller in poor health. FAC ¶ 27, Plaintiff also claims that Miller was his landlord, but he provides no allegations regarding a written lease agreement or rent payments. Id. ¶ 21. Rather, he vaguely mentions that he shared living expenses with Miller and that he performed some household chores.

---

[1] Fire Towing did not file a motion to dismiss; however, Fire Towing was never served in accordance with Fed. R. Civ. P. 4.

Plaintiff alleges Miller began asking him to make greater financial contributions after she lost her job as a pharmacist in May of 2017. According to Plaintiff. not only did Miller harass him for money, but she also repeatedly attempted to steal his paychecks and made several unauthorized purchases on his credit card. Plaintiff claims that Miller's actions were the result of advice she received from her financial advisor, Doe #1, an unknown agent of Edelman Financial. Doe #1 allegedly refused to release any of Miller's funds, and instead instructed her to "steal financial funds from the Plaintiff" and "convince the Plaintiff that he should obtain full-time employment" in order to replace her lost income. Id. ¶¶ 36, 45.

By way of background, Plaintiff states that at all time relevant most of his income was derived from his work as a software engineer. However, in addition, he brazenly admits that he has routinely engaged in the unauthorized practice of law.[2] Id. ¶¶ 119, 120 n. 4, 121. Specifically, he states that he lost "billable hours" as the result of his "wrongful eviction" because he was

---

[2] The Illinois Attorney Act provides that: "[n]o person shall be permitted to practice as an attorney or counselor at law within this State without having previously obtained a license for that purpose from the Supreme Court of this State."; and "[n]o person shall receive any compensation directly or indirectly for any legal services other than a regularly licensed attorney, nor may an unlicensed person advertise or hold himself or herself out to provide legal services." 705 ILCS 205/1. "In Illinois, the practice of law includes, at a minimum, representation provided in court proceedings along with any services rendered incident thereto, even if rendered out of court." U.S. v. Johnson, 327 F.3d 554, 561 (7th Cir. 2003) (citing People v. Peters, 10 Ill.2d 577 (1957)).

unable to complete a rehearing petition "*on behalf of his brother*" that was to be filed by August 30, 2017. in the Illinois Appellate Court. Second District.[3] Id. ¶¶ 119-121 (emphasis added). According to Plaintiff, "because it is common for licensed attorneys to commit fraud on the courts. [he] has too often been called upon to commence and maintain legal action on behalf of himself and others against malefactors." Id. 120 n. 4.

In August of 2017, Miller decided to sell her home in Lisle and hired Shurtz, as an agent of RE/MAX, to facilitate the sale. Shurtz allegedly offered to sell Miller's home on the condition that Miller agreed to "evict" Plaintiff and have the house staged for listing within a week. Miller allegedly agreed to "evict" Plaintiff, but only after requiring him to do the bulk of the packing and moving necessary to stage Miller's home. Over the course of five pages in the FAC, Plaintiff describes in excruciating detail how Miller's home was allegedly in a state of disrepair and excessively cluttered. Plaintiff makes confusing references to various alleged building code violations and blames the cluttered state of the home on Miller's alleged "compulsive buying disorder." FAC 69.

Plaintiff claims that on August 22, 2017, he was somehow required to help stage Miller's home along with Miller's friend Paula and Doe #2, another unknown agent of Edelman Financial. Plaintiff alleges that he eventually became fed up with the "ineptness" of Paula and Doe #2 and refused to help any further with staging Miller's home. Before he left,

---

[3] Plaintiff has provided case number for his brother's lawsuit in which he admittedly engaged in the unauthorized practice of law— "15 L 495 in Kane County." Pl.'s Resp. to Def. Miller's Mot. to Dismiss at 5 n. 2.

however, Plaintiff claims that he told Miller and Doe #2 to leave his personal property undisturbed while they continued the staging process.

Plaintiff alleges that he returned home from work on August 23, 2017, to find his personal property packed in boxes and comingled with Miller's property. Plaintiff claims that he had no intention of moving out of Miller's home—despite knowing that she was planning on selling her home—so he started to unpack his property. According to Plaintiff Miller grabbed his arm to stop him from unpacking and a heated dispute between Plaintiff and Miller followed. During the dispute, Plaintiff informed Miller that "he wasn't going to help her stage the Lisle home because she and her helpers disturbed [his] possessions in defiance of [his] specific instructions." FAC ¶ 103. Miller allegedly responded by informing Plaintiff of her secret agreement with Shurtz "to have Plaintiff help stage the Lisle home and then evict Plaintiff the upcoming Sunday night, August 27, 2017." Id. ¶ 104.

Plaintiff alleges that following the dispute, Miller called the Lisle police to "evict" Plaintiff because he refused to help stage her home. Shortly thereafter, four or five unknown Lisle police officers arrived at Miller's home in response to her call. The situation was seemingly resolved, as the officers eventually left and Plaintiff reentered Miller's home.

Plaintiff alleges that on August 24, 2017, he attempted to move several more boxes of personal property into Miller's home, which precipitated another dispute with Miller. Miller again called the Lisle Police and three officers responded to her call: Sargent Dempsy, Officer Sommer. and Officer McKay. Plaintiff claims that upon their arrival, Sommer and

McKay spoke with Miller and decided to "evict" Plaintiff.

Sommer and McKay allegedly informed Plaintiff that he was not permitted to enter Miller's home and instructed Miller and Doe #2 to remove Plaintiff's personal property from the home and place it on the driveway. Plaintiff alleges that Sommer prevented him from reentering Miller's home while Miller and Doe #2 began moving his personal property to the driveway. Plaintiff claims he became upset with the manner in which Miller and Doe #2 were moving his possessions and he expressed his frustration by calling Doe #2 "stupid." FAC ¶ 128. Sommer allegedly instructed Plaintiff that "he could not call Doe #2 stupid," and that "if he called anyone else stupid. a dingbat, ding-a-ling, idiot or `stupid bitch' that [he] would arrest Plaintiff for disorderly conduct." Id. 129-130.

While Sommer and McKay were still at Miller's home, Plaintiff left to rent a moving truck to carry away his personal property. Plaintiff claims that Sommer and McKay agreed to protect Plaintiffs personal property while he rented the moving truck. Plaintiff alleges that despite their promise to "guard" his belongings, some of the boxes containing his personal property were missing when he returned with the moving truck. Plaintiff further alleges that he was eventually allowed to reenter Miller's home to gather his personal property, but Sommer and McKay prevented him from entering the dining room, second floor, and third floor, where he believed some of his property had been moved by Miller and Doe #2. Plaintiff also claims that Sommer forced him to turn over his keys to Miller's home under protest and that Sommer and McKay informed him that he would be

arrested if he returned to Miller's home for any reason besides retrieving his personal property or his vehicle. which Plaintiff left parked in Miller's driveway.

Subsequent to what Plaintiff calls his "wrongful eviction," he demanded that Miller and the Village of Lisle ship him his personal property that he claims was left behind at Miller's home. Plaintiff contends that Miller and the Village of Lisle refused to ship him his property and that he was prevented from retrieving his vehicle that he left parked in Miller's driveway. However, Plaintiff fails to plead how he was prevented or who was responsible for stopping him from removing his vehicle from Miller's driveway—e.g. he does not indicate that his keys to his vehicle were taken from him, or that he attempted to retrieve his vehicle, but was stopped by a Lisle police officer. Rather. Plaintiff admits earlier in his FAC that Sommer and McKay informed him that he could return to Miller's home to collect his personal property and his vehicle. It is not disputed that Plaintiff never removed his vehicle from Miller's driveway.

On September 6, 2017, nearly two weeks after Plaintiff left Miller's home, he allegedly spoke with Miller and informed her of his intent file the instant lawsuit. Miller allegedly responded by stating "I am going to kill you if you file that complaint." FAC ¶ 162. Plaintiff claims that this comment caused him to fear for his safety, but that the Lisle Police refused to assist him in retrieving his personal property and his vehicle. Plaintiff further claims that the Village of Lisle initially agreed to protect his property that remained at Miller's home. However, after he filed the original complaint in this case, Miller and the Village of Lisle allegedly retaliated against him by "donating" his vehicle to Fire Towing. Plaintiff fails to address

that he allowed his vehicle to remain on Miller's property for at least several weeks before it was removed by Fire Towing.

Plaintiffs FAC continues with further allegations pertaining to events that occurred after he filed his complaint. Plaintiff claims that on or about August 25, 2017, he received a phone call from Officer Lord of the Wheaton Police Department. wherein Lord falsely accused him of threatening Shurtz for her involvement in Plaintiffs alleged "wrongful eviction." Plaintiff further claims that Lord threatened to provide false testimony to a DuPage County Court for the purpose of obtaining a warrant for Plaintiffs arrest and that Lord and Shurtz conspired to manufacture evidence against him in retaliation for Plaintiff filing the instant lawsuit against the various parties. However, Plaintiff does not allege that he was ever arrested or prosecuted in connection with any false testimony or evidence manufactured by Lord and Shurtz.

Plaintiff alleges another conspiracy against him, this time involving Miller and Doe #3, an unidentified Lisle Police Officer. Plaintiff claims that Doe #3 informed Miller that the Village of Lisle was planning on initiating legal action against her for her role in instigating Plaintiff s "wrongful eviction." but that the Village of Lisle would not pursue any legal action if she filed a criminal complaint against Plaintiff. Plaintiff further contends that Doe #3 successfully coerced Miller into filing a criminal complaint against him that contained false testimony—although, he again does not allege that he was ever arrested or prosecuted in connection with Miller's criminal complaint. Plaintiff also claims that Miller informed him that she would not pursue the criminal complaint

against him which she had allegedly already filed—if he voluntarily dismissed the instant lawsuit and gave *her all of his* money. He did not give Miller all of his money.

Plaintiff alleges yet a third conspiracy against him after he filed his complaint. This conspiracy allegedly involved Officer Anders of the Lisle Police Department and Miller. Plaintiff claims he received a phone call from Anders on September 28, 2017, during which Anders informed him that Miller had recently contacted the Lisle Police Department to report that Plaintiff had reentered her home without her permission for the purpose of delivering a motion in this case. Plaintiff claims that he told Anders he did not enter Miller's home, but Anders allegedly did not believe him and threatened that Ander's would: provide false testimony in a DuPage County Court that Plaintiff had entered Miller's home; obtain an arrest warrant for Plaintiff; and convince the State's Attorney's Office to prosecute Plaintiff for criminal home invasion. Thus, like his allegations against Lord. Plaintiff imputes to Anders the commission of perjury. Plaintiff further claims that Anders' alleged threats of arrest and prosecution were made for the purpose of intimidating Plaintiff into dismissing the instant lawsuit, and for the purpose of aiding and abetting Miller's extortion of money from Plaintiff. However, identical to his other conspiracy claims, he does not allege that he was ever arrested, let alone prosecuted, based on any false testimony or evidence manufactured by Anders and Miller.

II. DISCUSSION

A. Standard of Review

A motion under Rule 12(b)(6) tests the sufficiency of the complaint under the plausibility standard. Bell Atlantic Corporation v. Twombly, 550 U.S. 544, 570 (2007), not the merits of the suit. Gibson v. City of Chicago. 910 F.2d 1510, 1520 (7th Cir. 1990) (citation omitted). "[A] plaintiff's claim need not be probable, only plausible: `a well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof of those facts is improbable, and that a recovery is very remote and unlikely.'" Indep. Trust Corp. v. Stewart Info. Servs. Corp. 665 F.3d 930, 935 (7th Cir. 2012) (quoting Twombly, 550 U.S. at 556). "`A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.' To rise above the `speculative level' of plausibility, the complaint must make more than `[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements.'" Oakland Police & Fire Ret. Sys. v. Mayer Brown, LLP, 861 F.3d 644, 649 (7th Cir. 2017) (citing Ashcroft v. Iqbal, 556 U.S. 662. 678 (2009)). In deciding a Rule 12(b)(6) motion, the Court accepts as true all well-pleaded facts in a plaintiff's complaint, and draws all reasonable inferences in his favor. Burke v. 401 N. Wabash Venture, LLC, 714 F.3d 501. 504 (7th Cir. 2013) (citations omitted). "[A] a plaintiff is not required to plead facts in the complaint to anticipate and defeat affirmative defenses. But when a plaintiff's complaint nonetheless sets out all of the elements of an affirmative defense, dismissal under Rule 12(b)(6) is appropriate." Indep. Trust Corp., 665 F.3d at 935.

B. Count I is Dismissed with Prejudice Because Plaintiffs Allegations Show That Anders and

McKay did Not Violate His Constitutional Rights

Count 1 sets forth a § 1983 claim against Sommer, McKay, Miller, and Shurtz, alleging that these defendants conspired to violate Plaintiff's constitutional rights by unlawfully evicting Plaintiff. causing him to remove his property from Miller's home, and stealing and destroying his property. Plaintiff further alleges that defendants violated his rights under the Fourth Amendment to be secure in his person, papers, and effects against unreasonable seizures; violated his rights under the Fourteenth Amendment to substantive due process; and violated his rights under the Fourteenth Amendment to procedural due process.

Sommer, McKay, Miller, and Shurtz argue that Count I must be dismissed because Sommer and McKay are entitled to qualified immunity pursuant to White v. City of Markham, 310 F.3d 989, 995 (7th Cir. 2002). While the Court does not reject this argument, there is no need to fully consider the doctrine of qualified immunity because Plaintiffs allegations show that he suffered no constitutional violation.

"In order to state a claim under § 1983, a plaintiff must sufficiently allege that (1) a person acting under color of state law (2) deprived him of a right, privilege, or immunity secured by the Constitution or laws of the United States." London v. RBS Citizens, N.A., 600 F.3d 742, 745-46 (7th Cir. 2010). "Any Fourth Amendment inquiry necessarily begins with a determination of whether a search or seizure actually occurred." Carlson v. Bukovic, 621 F.3d 610, 618 (7th Cir. 2010) (citing Scott v. Harris, 550 U.S. 372, 381 (2007). With respect to whether there has been a

seizure of a person, the traditional approach is for the Court to determine whether the person believed he was "free to leave." Id. A seizure of property occurs when "there is some meaningful interference with an individual's possessory interests in that property." United States v. Jacobsen, 466 U.S. 109, 113 (1984). The Court's determination of whether a seizure has occurred "is made on the basis of the `totality of the circumstances' surrounding the encounter." Carlson, 621 F.3d at 618 (quoting United States v. Jerez, 108 F.3d 684, 690 (7th Cir. 1997)); Florida v. Bostick, 501 U.S. 429, 437 (1991).

Here, Plaintiffs allegations reveal that: he was free to leave Miller's property at any time; he did in fact leave to rent a moving truck to transport his personal property; Sommer and McKay directed Miller and Doe #2 to turn over Plaintiffs personal property; he was permitted to reenter Miller's home to gather his personal property; and Sommer and McKay informed him that he could return to Miller's home to gather any property that was left behind. Accepting Plaintiffs allegations as true, the Court concludes that there was no seizure of Plaintiff or his property from Miller's home within the meaning of the Fourth Amendment. Rather, Plaintiff was instructed to leave Miller's home, and ended up leaving voluntarily with his personal property in a moving truck that he rented. Moreover, in considering the totality of the circumstances as alleged, Sommer and McKay actually *helped* Plaintiff retrieve his personal property from Miller's home.

Having concluded that no seizure occurred, Plaintiff's claim that his Fourth Amendment rights were violated hangs completely on his assertion that he was "wrongfully evicted," in violation of the Illinois

Forcible Entry and Detainer Act, 735 Ill. Comp. Stat. 5/9-101, *et seq.* However, without determining the applicability of that state statute, it is well settled that the "mere violation of a state statute does not infringe the federal Constitution." Snowden v. Hughes, 321 U.S. 1, 11 (1944); Lennon v. City of Carmel. Indiana, 865 F.3d 503, 509 (7th Cir. 2017); Lennon v. City of Carmel, Indiana, 865 F.3d 503. 509 (7th Cir. 2017). Moreover, the Seventh Circuit has expressly held that an officer's failure to comply with the Illinois Forcible Entry and Detainer Act "does not matter" for the purposes of a claim under the Fourth Amendment. Gordon v. Degelmann, 29 F.3d 295, 301 (7th Cir. 1994). Accordingly, Plaintiff has pled himself out by alleging facts showing that his rights under the Fourth Amendment were not violated. See Tamayo v. Blagojevich, 526 F.3d 1074, 1086 (7th Cir. 2008) ("A plaintiff pleads himself out of court when it would be necessary to contradict the complaint in order to prevail on the merits." (internal quotation marks omitted)).

Plaintiff's substantive due process claim fails for similar reasons. The Due Process Clause of the Fourteenth Amendment provides: "[N]or shall any State deprive any person of life, liberty, or property, without due process of law." In Coniston Corp. v. Vill. of Hoffman Estates, the court considered how a state government's deprivation of property could amount to a violation of substantive due process. 844 F.2d 461 (7th Cir. 1988). The court explained that there may be a violation of substantive due process when a state government deprives an owner of his property for a private purpose. Id. at 467.

Here, Plaintiff pleads himself out again by alleging that: Sommer and McKay directed Miller and Doe #2

to move his personal property outside; he carried away his personal property in a moving truck: and he could return to gather any property that was left behind. Based on these allegations, Plaintiff cannot show that Sommer and McKay deprived him of his property for a private purpose— which would be *taking* his property and *giving* it to Miller and Doe #2. Rather, as noted above, Plaintiff's allegations show that Sommer and McKay actually *helped* him in retaining his personal property. Moreover, Plaintiff does not dispute that Miller wanted his personal property *removed* from her home. Plaintiff is also foreclosed from attempting to turn his "wrongful eviction" claim into a substantive due process violation. Coniston. 844 F.2d at 467 ("A violation of state law is not a denial of due process of law.").

Next, the Court addresses Plaintiffs claim that he has suffered a violation of his right to procedural due process. The Seventh Circuit's decision in Soldal v. Cty. of Cook is instructive on this point. 942 F.2d 1073 (7th Cir. 1991). rev'd sub nom. Soldal v. Cook Cty., Ill., 506 U.S. 56. 113 S. Ct. 538. 121 L. Ed. 2d 450 (1992). In Soldal, the plaintiffs claimed that the owner of a mobile home park and its manager conspired with Illinois deputy sheriffs to seize and remove the plaintiffs' mobile home in violation of their Fourth and Fourteenth Amendment rights. Id. The court held that "no interest protected by the Fourth Amendment [was] involved" in the removal of the plaintiffs' mobile home because there had been no invasion of the plaintiff's privacy. Id. at 1077-80 (emphasis in original). Further, the court stated that a plaintiff claiming a deprivation of procedural due process in connection with an eviction faces "a distinctly uphill fight" because "the Supreme Court has held that the

denial of procedural rights (here the rights that Illinois law grants tenants in eviction proceedings) as a result of the random and unauthorized acts of subordinate public officers (the deputy sheriffs in this case) is not actionable under section 1983 unless the plaintiff lacks adequate judicial remedies under state law." Id. at 1075-76 (citing Parratt v. Taylor, 451 U.S. 527 (1981); Zinermon v. Burch, 494 U.S. 113 (1990); Easter House v. Felder, 910 F.2d 1387, 1396-97 (7th Cir.1990) (en banc)). The court further stated that "Illinois law entitled the [plaintiffs] to sue [the owner and manager of the mobile home park] for the damages caused by the illegal eviction," and therefore the plaintiffs "had an adequate remedy" under state law. Id. at 1076.

The Supreme Court reversed the Seventh Circuit's decision in Soldal, holding that "[t]he seizure and removal of the Soldals' trailer home implicated petitioners' Fourth Amendment rights." Soldal v. Cook Cty., III., 506 U.S. 56 (1992).[4] However, the Court declined to address whether the removal of the Soldals' trailer home was a deprivation of their procedural or substantive due process rights. Id. at 60 n. 5.

---

[4] The Court rejects any attempt by Plaintiff to apply the Supreme Court's holding in Soldal, 506 U.S. 56 to the facts alleged in his FAC. In Soldal, the Supreme Court held that a police officer violates the Fourth Amendment when a private party seizes a person's possessions and the officer enables that seizure despite knowing that it violates the law. Id. at 60 n. 6. 71-72. As explained above, the totality of the circumstances as alleged show that Sommer and McKay *helped* Plaintiff gather his personal property from Miller's home.

Here, Plaintiff makes the conclusory allegation that defendants violated his rights under the Fourteenth Amendment to the United States Constitution to procedural due process. Because Plaintiff's FAC fails to specify what procedure he was allegedly deprived of, the Court presumes he is referring to his alleged "wrongful eviction" in violation of Illinois law. Plaintiff, however, has an adequate remedy for his alleged "wrongful eviction" from Miller's home the Illinois Forcible Entry and Detainer Act. See 735 ILCS 5/9-102. In fact, Count II of Plaintiff's FAC sets forth a claim under this state statute against Miller and other defendants. Therefore, Plaintiff is unable to state a claim for violation of his procedural due process rights based on his alleged "wrongful eviction." Felder, 910 F.2d at 1396 ("[D]eprivations of property resulting from random and unauthorized acts of state actors do not constitute a violation of the procedural requirements of the fourteenth amendment due process clause if a meaningful post-deprivation remedy for the loss is available." (internal quotation marks omitted)). Accordingly, Count I is dismissed with prejudice.

C. Count IV is Dismissed with Prejudice Because Plaintiff's Allegations Show that Sommer Did Not Violate His First Amendment Right to Free Speech

Count IV sets forth a § 1983 claim against Sommer and the Village of Lisle, alleging that Sommer prevented Plaintiff from exercising his First Amendment right to free speech. Plaintiff claims that during the course of his alleged "wrongful eviction" from Miller's home, Sommer threatened to arrest Plaintiff for disorderly conduct "if he called anyone else stupid, a dingbat, ding-a-ling, idiot or `stupid

bitch' FAC ¶ 130. Sommer argues that Count I should be dismissed because he is entitled to qualified immunity. Similar to the Court's analysis above, the Court does not reject Sommer's argument, but concludes that there is no need to fully consider qualified immunity because Plaintiff's allegations show that he suffered no violation of his First Amendment right to free speech.

Central to Plaintiffs claim is that he had a right under the First Amendment to stand on Miller's property and direct a continuous barrage of abusive epithets at Miller and Doe #2, after he was instructed to leave. Moreover, Plaintiff's claim asserts that he had a right to direct profane insults at the two women in close proximity during an ongoing domestic dispute at Miller's home, wherein Sommer and McKay were summoned by Miller to prevent a breach of the peace. The Supreme Court has "repeatedly held that individuals are not required to welcome unwanted speech into their own homes and that the government may protect this freedom." Frisby v. Schultz, 487 U.S. 474, 485 (1988): see also Fla. B. v. Went For It. Inc., 515 U.S. 618, 625 (1995) ("[T]he State's interest in protecting the well-being, tranquility, and privacy of the home is certainly of the highest order in a free and civilized society." (internal quotation marks omitted)). Thus, Sommer's warning to Plaintiff that he would be arrested should he continue his course of conduct did not violate Plaintiff's First Amendment right to free speech, because Plaintiff had no right to hurl abusive insults at Miller and Doe #2 during an ongoing domestic dispute at Miller's home. See Cohen v. California, 403 U.S. 15, 21 (1971) ("[The] government may properly act in many situations to prohibit intrusion into the privacy of the home of unwelcome

views and ideas which cannot be totally banned from the public dialogue."); see also Rowan v. U.S. Post Off. Dept., 397 U.S. 728, 737 (1970) ("The ancient concept that `a man's home is his castle' into which `not even the king may enter' has lost none of its vitality, and none of the recognized exceptions includes any right to communicate offensively with another."); see also Chaplinsky v. State of New Hampshire, 315 U.S. 568, 572 (1942) ("Resort to epithets or personal abuse is not in any proper sense communication of information or opinion safeguarded by the Constitution, and its punishment as a criminal act would raise no question under that instrument." (internal quotation marks omitted)). Accordingly, Count IV is dismissed with prejudice.

D. Count XI is Dismissed with Prejudice Because Plaintiffs Allegations Show that He Was Not Injured by False Testimony or Evidence Allegedly Fabricated by Lord and Shurtz

Count XI sets forth a § 1983 claim against the City of Wheaton. Lord. and Shurtz. Plaintiff claims that Lord and Shurtz conspired to violate his constitutional rights by manufacturing false claims and false evidence against him. Lord and the City of Wheaton argue that Count XI should be dismissed because Plaintiff fails to allege any violation of his constitutional rights.

"In order to state a claim under § 1983, a plaintiff must sufficiently allege that (1) a person acting under color of state law (2) deprived him of a right, privilege, or immunity secured by the Constitution or laws of the United States." London. 600 F.3d at 745-46. In the context of § 1983 claims involving fabrication of evidence by a police officer, a plaintiff must allege that

he was *injured* by the officer's act of fabricating false evidence against him. Whitlock v. Brueggemann, 682 F.3d 567, 582 (7th Cir. 2012). In other words, "if an officer . . . fabricates evidence and puts that fabricated evidence in a drawer, making no further use of it, then the officer has not violated due process." Id.

Here, Plaintiff alleges that Lord called him and falsely accused him of threatening Shurtz. Plaintiff also contends that Lord threatened to provide false testimony to a DuPage County Court for the purpose of obtaining a warrant for Plaintiffs arrest, and that Lord and Shurtz conspired to manufacture evidence against him. However, despite these bald-faced allegations, Plaintiff does not allege that he was ever arrested or prosecuted in connection with any false testimony or evidence allegedly fabricated by Lord or Shurtz. In fact, Plaintiff fails to allege that Lord took any further action other than making the false accusations and threats against him during the phone call. Thus. Plaintiffs allegations show that he incurred no actual injury as the result of false testimony or evidence allegedly fabricated by Lord or Shurtz. Moreover, the false accusations and threats that Lord allegedly made to Plaintiff cannot alone establish a constitutional violation. Patton v. Przybylski, 822 F.2d 697, 700 (7th Cir. 1987) (citing Paul v. Davis, 424 U.S. 693, 711-12 (1976) (stating that derogatory and defamatory remarks made by a police officer do not amount to a violation of due process). Accordingly, Count XI is dismissed with prejudice.

E. Count XIII is Dismissed with Prejudice Because Plaintiff Fails to State a Cognizable Claim and His Allegations Show that He Was Not Injured by any False Evidence or a False

Criminal Complaint Allegedly Fabricated by Doe #3 and Miller

Count XIII sets forth a § 1983 "abuse of process" claim against the Village of Lisle, Doe #3, and Miller. Plaintiff claims that Doe #3 (an unidentified Lisle police officer) and Miller conspired to violate Plaintiff's constitutional rights by manufacturing false evidence and filing a false criminal complaint against him for the purpose of extorting money from Plaintiff and coercing him into voluntarily dismissing the instant lawsuit. The Village of Lisle argues that Count XIII must be dismissed with prejudice as to all named defendants because there is no cognizable § 1983 claim for "abuse of process" available to Plaintiff. The Court agrees.

The Seventh Circuit has held that "abuse of process is not a free-standing constitutional tort if state law provides a remedy for abuse of process." Adams v. Rotkvich, 325 F. App'x. 450, 453 (7th Cir. 2009). Illinois law provides a remedy for abuse of process claims. Podolsky v. Alma Energy Corp.. 143 F.3d 364, 372 (7th Cir. 1998). Therefore, Plaintiff's abuse of process claim is not cognizable under § 1983. Moreover, identical to the Court's analysis above, Plaintiff fails to allege that he suffered an injury in connection with the false evidence and criminal complaint purportedly fabricated by Miller and Doe #3. Whitlock, 682 F.3d at 582. Accordingly, Count XIII is dismissed with prejudice.

F. Count XIV is Dismissed with Prejudice Because Plaintiff's Allegations Show that He Was Not Injured by False Evidence Allegedly Fabricated by Anders and Miller

Count XIV sets forth a claim entitled "Delusion of Home Invasion" under § 1983 against the Village of Lisle, Anders, and Miller. Plaintiff claims that Anders and Miller conspired to violate his rights under the First, Fourth, and Fourteenth Amendments by manufacturing false claims and evidence to support a criminal complaint against him for home invasion. Anders argues that Count XIV should be dismissed with prejudice because Plaintiff fails to allege he suffered any injury resulting from Ander's alleged fabrication of evidence and threats of arrest and prosecution. The Court agrees.

Count XIV merits little attention because it is substantively the same claim as Count XI. Plaintiff alleges that Anders conspired with Miller to manufacture false testimony and evidence against him but fails to allege that he suffered any injury—e.g. that he was arrested as the result of the false testimony or evidence. Whitlock, 682 F.3d at 582 (7th Cir. 2012). Further, Anders' alleged threats and false accusations are insufficient to support Plaintiff's claim. Patton, 822 F.2d at 700. Accordingly, Count XIV is dismissed with prejudice.

G. Count XVI is Dismissed with Prejudice Because Plaintiffs Allegations are Conclusory and He is Unable to Establish Any Constitutional Violation

Count XVI sets forth a § 1983 Monell claim against the Village of Lisle. Plaintiff alleges that the actions of Sommer, McKay, Anders, Doe #3, and other unknown Lisle police officers were performed under the authority of one or more *de facto* policies of the Village of Lisle, its police department, and the Lisle Chief of Police. Plaintiff claims the *de facto* policies included: (1) the failure to hire, train, supervise, discipline, transfer, monitor, counsel and/or otherwise

control police officers who commit unlawful acts including wrongful evictions, extortion, and the manufacture of false evidence and claims; (2) the police code of silence; and (3) the encouragement of wrongful convictions, extortion, and manufacture of false evidence and claims. The Village of Lisle argues that Count XVI should be dismissed because Plaintiffs allegations amount to only a "formulaic recitation of the elements of a" Monell claim. Iqbal, 556 U.S. at 678. The Court agrees.

"In a § 1983 case, a city or other local governmental entity cannot be subject to liability unless the harm was caused in the implementation of `official municipal policy.— Lozman v. City of Riviera Beach, Fla., 138 S. Ct. 1945, 1947 (2018) (quoting Monell v. New York City Dept. of Social Servs., 436 U.S. 658, 691 (1978)). "A municipal body may be liable for constitutional violations `pursuant to a governmental custom even though such a custom has not received formal approval through the body's official decisionmaking channels.'" Gill v. City of Milwaukee, 850 F.3d 335, 344 (7th Cir. 2017) (quoting Monell, 436 U.S. at 690-91)). However, "[t]o succeed on this *de facto* custom theory, the plaintiff must demonstrate that the practice is widespread and that the specific violations complained of were not isolated incidents." Id. "At the pleading stage, then, a plaintiff pursuing this theory must allege facts that permit the reasonable inference that the practice is so widespread so as to constitute a governmental custom." Id.

Here, Plaintiff seeks to attribute the alleged actions of Sommer, McKay. Anders, and Doe #3 to various *de facto* policies of the Lisle police department. However, Plaintiff fails to plausibly

allege that the defendants' actions were anything more than isolated incidents, which are insufficient to support his claim based on the theory of a *de facto* policy. See Id. (citing McCauley v. City of Chicago, 671 F.3d 611, 618 (7th Cir. 2011)) ("The specific actions of the detectives in [plaintiffs] case alone, without more, cannot sustain a Monell claim based on the theory of a *de facto* policy."). In short, Count XVI amounts to nothing more than "[b]oilerplate allegations of a municipal policy," and therefore lacks the necessary factual support. Sivard v. Pulaski County, 17 F.3d 185, 188 (7th Cir. 1994). Moreover as explained above, the Court has concluded that Plaintiff's allegations show that his constitutional rights were *not* violated by the actions of Sommer, McKay, Anders, and Doe #3. Therefore, Plaintiff is unable to prevail on his Monell claim against the Village of Lisle. Accordingly, Count XVI is dismissed with prejudice.

III. CONCLUSION

For the aforementioned reasons. Defendant's motions to dismiss are granted. Counts I, IV, XI, XIII, XIV, and XVI of Plaintiffs FAC are dismissed with prejudice. Having resolved all federal causes of action, the Court relinquishes jurisdiction over Plaintiffs remaining state law claims pursuant to 28 U.S.C. § 1367(c)(3). See City of Chicago v. Int.'l College of Surgeons, 522 U.S. 156, 172-74 (1997); see also Groce v. Eli Lilly & Co., 193 F.3d 496, 500-01 (7th Cir. 1999). Civil case terminated.

IT IS SO ORDERED.

ENTER:

{Charles Norgle signature}

CHARLES RONALD NORGLE, District Judge

United States District Court

DATE: August 14, 2018

APPENDIX E

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

GERALD DIX, Plaintiff,	)	
	)	No. 17 CV 6561
v.	)	
	)	Hon. Charles R. Norgle
EDELMAN FINANCIAL SERVICES, LLC et al.,	)	
Defendants.	)	

OPINION AND ORDER

Pro se Plaintiff Gerald Dix ("Plaintiff") brings this action against thirteen separate defendants, including Edelman Financial Services, LLC ("Edelman") and its alleged agents, Jane Doe #1 ("Doe #1") and Jane Doe #2 ("Doe #2"). The Court, *sua sponte*, struck Plaintiff's original Complaint, finding that it was "replete with redundant, impertinent, and scandalous allegations." October 3, 2017 Order, Dkt. 12. Thereafter, Plaintiff filed his First Amended

Complaint ("FAC"), totaling forty-four pages[1] and alleging nineteen separate claims.

Plaintiff's FAC asserts the following claims against Edelman and its alleged agents: Count V, Conspiracy to Defraud; Count VI, Fraudulent Misrepresentation; Count VIII. Conversion and Trespass to Chattels; Count X, Negligence; Count XVII, Intentional Infliction of Emotional Distress; and Count XVIII. Vicarious Liability. Before the Court is Edelman's motion to dismiss pursuant to Federal Rules of Civil Procedure 9(b) and 12(b)(6). For the reasons that follow, the motion is granted.

I. BACKGROUND

Plaintiff's FAC revolves around what he views as a "wrongful eviction" from a residence in Lisle, Illinois, owned by Defendant Theresa Miller ("Miller"). According to Plaintiff, he was engaged in a "platonic relationship" with Miller. He also claims Miller was his landlord. FAC ¶¶ 21, 26. As previously noted by the Court in its October 3, 2017 Order, Plaintiff's case "smacks of a domestic dispute," given that all of his claims are related in some way to his relationship with Miller.

The FAC asserts that after Miller lost her job in May 2017, she met with an Edelman financial advisor, Doe #1, in order to withdraw funds from her investment portfolio. Plaintiff asserts that Doe #1

---

[1] Plaintiff's original Complaint totaled thirty-three pages. After the Court instructed Plaintiff that his Complaint was replete with redundant, impertinent, and scandalous allegations, he filed his First Amended Complaint, containing an additional eleven pages, exclusive of exhibits.

refused to release funds from Miller's portfolio, and instead advised Miller to "steal financial funds from the Plaintiff' and "convince the Plaintiff that he should obtain full-time employment" in order to replace her lost income. Id. ¶¶ 36, 45. Plaintiff further asserts that Doe #1 advised Miller that she should "sell her Lisle home and go live in the ghetto with her mother and stepfather." Id. ¶ 39. Plaintiff also asserts that after Miller decided to move from her home in Lisle, Doe #1 recommended Doe #2 as a "moving professional," when Doe #2 was actually a "lazy elderly woman who assisted Miller in destroying and stealing Plaintiff's personal property. Id. ¶¶ 87-88, 252

II. DISCUSSION

A. Standard of Review

Under Rule 9(b), a plaintiff alleging fraud "must state with particularity the circumstances constituting fraud." Fed. R. Civ. P. 9(b). The complaint must allege "the `who, what, when, where, and how' of the fraud—`the first paragraph of any newspaper story.'" Pirelli Armstrong Tire Corp. Retiree Med. Benefits Trust v. Walgreen Co., 631 F.3d 436, 441-42 (7th Cir. 2011) (quoting U.S. ex rel. Lusby v. Rolls-Royce Corp., 570 F.3d 849, 854 (7th Cir. 2009)). "Rule 9(b) applies to `averments of fraud.' not [only] claims of fraud, so whether the rule applies will depend on the [plaintiff's] factual allegations." Borsellino v. Goldman Sachs Group. Inc., 477 F.3d 502, 507 (7th Cir. 2007).

"Although a party need not plead `detailed factual allegations' to survive a [Rule 12(b)(6)] motion to dismiss, mere `labels and conclusions' or `a formulaic recitation of the elements of a cause of action will not

do.'" Berger v. Nat'l Collegiate Athletic Ass'n, 843 F.3d 285, 290 (7th Cir. 2016) (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). "Instead, [t]o survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim for relief that is plausible on its face." Id. (citing Ashcroft v. Iqbal. 556 U.S. 662, 678 (2009)) (internal quotation marks omitted). Complaints that fail to state a plausible basis for relief must be dismissed. Moore v. Mahone, 652 F.3d 722, 725 (7th Cir. 2011).

B. Plaintiff's FAC Fails to Comply with the Court's October 3, 2017 Order

Edelman first argues that the FAC should be dismissed because it essentially recites the same allegations as the original Complaint that the Court struck in its October 3, 2017 Order. Under Rule 12(f). "the court may strike from a pleading any redundant, immaterial, impertinent, or scandalous matter." Edelman is correct that Plaintiff has failed to comply with the Court's October 3, 2017 Order. Despite Plaintiff's amendments, the FAC is still replete with redundant, immaterial, impertinent, and scandalous allegations. Perhaps the most egregious example is Plaintiff's use of nearly an entire page of the FAC to dispute the Seventh Circuit Order in Case No. 14-3015, wherein the Seventh Circuit warned Plaintiff that further frivolous appeals may result in sanctions. Plaintiff's blatant refusal to comply with the Court's October 3, 2017 Order is sufficient alone to dismiss his claims against Edelman with prejudice. See Salata v. Weyerhaeuser Co., 757 F.3d 695, 699 (7th Cir. 2014) ("A court may dismiss an action with prejudice `if the plaintiff fails to. . .comply with [the Federal Rules of Civil Procedure] or any court order.' (quoting Fed. R. Civ. P. 41(b)); see also Stanard v. Nygren, 658 F.3d

792, 801 (7th Cir. 2011) ("The principle that leave to amend should be freely granted does not require district judges to repeatedly indulge [litigants] who show little ability or inclination to comply with the rules."). Further, the Court reminds Plaintiff that his pro se status does not shelter him from sanctions pursuant to Rule 11. Vukadinovich v. McCarthy, 901 F.2d 1439, 1445 (7th Cir. 1990).

C. Plaintiff Fails to State a Claim for Conspiracy to Defraud

Next, Edelman argues that Plaintiff's allegations of fraud fail to satisfy the heightened pleading standards under Rule 9(b). In Count V, Plaintiff asserts that Miller, Edelman, and Doe #1 "conspired together to defraud financial funds from. . . Plaintiff." FAC 234. Under Illinois law, "[t]he elements of a cause of action for conspiracy to defraud are: (1) a conspiracy; (2) an overt act of fraud in furtherance of the conspiracy; and (3) damages to the plaintiff as a result of the fraud." Bosak v. McDonough, 549 N.E.2d 643, 646 (Ill. App. 1989).

Here, despite the voluminous nature of the FAC, Plaintiff fails to set forth with *particularity* the facts and circumstances constituting the claimed conspiracy to defraud. Although the FAC claims Plaintiff has in depth knowledge of certain investment advice given to Miller by Doe #1, the FAC fails to provide any significant details regarding the identity of Doe #1. Further, Plaintiff's conclusory allegation that that Miller, Edelman, and Doe #1 conspired together to defraud him is inconsistent with numerous other allegations in the FAC. Most notably, Plaintiff asserts that Doe #1 *instructed* Miller to convince Plaintiff to obtain full-time employment to

replace Miller's lost income and that Doe #1 *advised* Miller to force Plaintiff to finance her while she was unemployed. Put differently, the FAC attempts to contort Doe #1's alleged *advise* to Miller into an agreement to defraud Plaintiff. In short. Plaintiff's sparse, conclusory, and inconsistent allegations are insufficient to support a plausible claim for conspiracy to defraud, let alone state the claim with requisite particularity. Ackerman v. N.W. Mut. Life Ins. Co., 172 F.3d 467, 469 (7th Cir. 1999) (stating that the purpose of Rule 9(b) is to dissuade claims of fraud brought irresponsibly by people who have [allegedly] suffered a loss and want to find someone to blame for it"). Accordingly. Plaintiff's claim against Edelman for conspiracy to defraud is dismissed.

D. Plaintiff Fails to State a Claim for Fraudulent Misrepresentation

In Count VI, Plaintiff attempts to set forth a claim for fraudulent misrepresentation alleging that Doe #1 represented Doe #2 as a professional mover and that Doe #2 represented herself as a professional mover, when it was known that Doe #2 was not a professional mover. Under Illinois law, the elements for a cause of action for fraudulent misrepresentation are: "(1) a false statement of material fact; (2) known or believed to be false by the person making it; (3) an intent to induce the plaintiff to act: (4) action by the plaintiff in justifiable reliance on the truth of the statement; and (5) damage to the plaintiff resulting from such reliance." Doe v. Dilling, 888 N.E.2d 24, 35-36 (Ill. 2008).

Here, similar to the Court's analysis above, Plaintiff fails to allege with particularity the identity of Doe #2. The FAC claims that Plaintiff was present

when Doe #2 came to Miller's home in Lisle on August 22, 2017. However, the FAC contains no details regarding the identity of Doe #2 other than the scandalous allegation that she was a "lazy elderly woman." FAC ¶ 88. Further, the FAC states that Doe #1 recommended Doe #2 as a professional mover to Miller, *not* to Plaintiff. But the FAC is silent as to how Doe #1 intended to induce Plaintiff into hiring Doe #2 or how Plaintiff came to rely on the recommendation made to Miller alone, Rather, the FAC asserts in conclusory fashion that "Plaintiff and Miller relied on Doe #2 as a professional mover." Id. ¶ 241. Miller's reliance is irrelevant however, because she is a defendant in this case. The FAC also emphasizes that Doe #2 was readily identifiable as someone who was not a professional mover. Id. ¶ 88-91. Thus, taking Plaintiff's allegations as true, he could not have justifiably relied on Doe #1's recommendation of Doe #2 to Miller. Accordingly, Plaintiff's claim against Edelman for fraudulent misrepresentation is dismissed.

E. Plaintiff Fails to Allege Doe #2 was Edelman's Agent and Otherwise Fails to State a Claim for Conversion or Trespass to Chattels

Count VII of the FAC asserts claims for conversion and trespass to chattels. Plaintiff contends that Doe #2, along with Miller, destroyed and stole Plaintiff's personal property, while Lisle Police Officers Rob Sommer ("Sommer") and Sean McKay ("McKay") restrained Plaintiff outside of Miller's Lisle home during what he refers to as a "wrongful eviction." Edelman argues that to the extent Plaintiff seeks relief against Edelman in Count VIII—Plaintiff does not specifically refer to Edelman in Count VIII—he

fails to adequately allege that Doe #2 was Edelman's agent. The Court agrees.

The FAC fails to even plausibly suggest Edelman exercised control over Doe #2. Chemtool, Inc. v. Lubrication Techs., Inc., 148 F.3d 742. 745 (7th Cir. 1998) (Under Illinois law, "[title test to determine whether a principal-agent relationship exists is whether the alleged principal has the right to control the agent, and whether the alleged agent can affect the legal relationships of the principal."). Further, the FAC fails to allege that Edelman acted in a manner which would lead a reasonably prudent person to believe Doe #2 was authorized to act on behalf of Edelman. Thus, Plaintiff fails to allege that Doe #2 was an agent of Edelman under the doctrine of apparent authority. Gilbert v. Sycamore Mun. Hosp., 622 N.E.2d 788, 795 (Ill. 1993) (Apparent authority is "the authority which a reasonably prudent person, exercising diligence and discretion, in view of the principal's conduct, would naturally suppose the agent to possess.").

Plaintiff also fails to properly allege the requisite elements for his claims of trespass to chattels and conversion. Under Illinois law, the common law tort of trespass to chattel "provides redress for *unauthorized* use of or intermeddling with another's physical property." Barnes v. N.W. Repossession, LLC, 210 F. Supp. 3d 954, 971 (N.D. Ill. 2016) (emphasis added). Further, to establish a claim of conversion under Illinois law, the plaintiff must prove, *inter alia*, that "he has an absolute and unconditional right to the immediate possession of the property." Zissu v. IH2 Prop. Illinois, L.P., 157 F. Supp. 3d 797, 803 (N.D. Ill. 2016).

Here, the FAC asserts that Doe #2 was *authorized* by officers Sommer and McKay to remove Plaintiff's personal property from Millers home, and that Plaintiff was not permitted to enter the home. FAC ¶ 122. Thus, the FAC concedes that Doe #2's actions were *authorized* and that Plaintiff did *not* have the right to immediate possession of his personal property. Accordingly. Plaintiff's claims against Edelman for trespass to chattels and conversion are dismissed.

F. Plaintiff Fails to State a Claim for Negligence

In Count X, Plaintiff asserts a claim for negligence against Edelman and Doe #1 for their purported breach of an "implied covenant of good faith and fair dealing," arising from Doe #1's advice to Miller that she should take funds from Plaintiff rather than withdraw funds from her investment portfolio. FAC ¶ 269. According to Plaintiff, the implied covenant of good faith and fair dealing was part of an oral contract he formed with Miller governing their landlord-tenant relationship. FAC ¶ 42. Edelman argues that Count X should be dismissed because Plaintiff fails to properly allege that Edelman owed Plaintiff a legal duty. The Court agrees. Under Illinois law, a claim of negligence requires the Plaintiff to allege: "(I) the existence of a duty of care owed to the plaintiff by the defendant; (2) a breach of that duty, and (3) an injury proximately caused by that breach." Guvenoz v. Target Corp., 30 N.E.3d 404, 422 (Ill. App. 2015). "Whether a duty exists in a particular case is a question of law to be determined by the court." Ward v. K Mart Corp., 554 N.E.2d 223, 226 (Ill. 1990).

Here, the FAC claims that the oral contract was between Plaintiff and Miller alone. Thus, even if such

a contract existed, it would not give rise to a duty owed by Edelman to Plaintiff. Racky v. Belfor USA Group, Inc., 83 N.E.3d 440, 468 (Ill. App. 2017) ("a defendant's duty will not be extended beyond the duties described in the contract" (internal quotations marks omitted)). Moreover, "an alleged violation of the implied covenant of good faith cannot form the basis for an independent tort action." Wilson v. Career Educ. Corp., 729 F.3d 665, 673 (7th Cir. 2013). The FAC also concedes that Plaintiff had no relationship with Edelman and that Plaintiff never even communicated directly with Doe #1. Put simply, the FAC offers no facts under which Edelman owed a duty of care to Plaintiff. Accordingly, Plaintiff's claim against Edelman for negligence is dismissed.

G. Plaintiff Fails to State a Claim for Intentional Infliction of Emotional Distress

In Count XVII. Plaintiff asserts a claim for intentional infliction of emotion distress against all Defendants. Under Illinois law, order to state a cause of action for intentional infliction of emotional distress, a party must allege facts which establish that: (1) the defendant's conduct was extreme and outrageous; (2) the defendant either intended that his conduct should inflict severe emotional distress, or knew that there was a high probability that his conduct would cause severe emotional distress; (3) the defendant's conduct in fact caused severe emotional distress." Doe v. Calumet City, 641 N.E.2d 498. 506 (Ill. 1994). Liability for intentional infliction of emotion distress "`does not extend to mere insult, indignities, threats, annoyances, petty oppressions or trivialities' and can attach `only in circumstances where the defendant's conduct is so outrageous in character, and so extreme in degree, as to go beyond

all possible bounds of decency.' Hernandez v. Dart, 635 F. Supp. 2d 798. 813 (N.D. Ill. 2009) (quoting Thomas v. Fuerst, 803 N.E.2d 619, 625 (Ill. App. 2004)).

Here, Plaintiff fails to allege that Edelman engaged in any "extreme and outrageous" conduct. Chisholm v. Foothill Capital Corp., 940 F. Supp. 1273, 1286 (N.D. 1996) (dismissing plaintiff's claim for intentional infliction of emotional distress because plaintiff's allegations, taken as true, did not rise to the level of outrageous conduct). Rather, Edelman's alleged conduct amounts to *de minimis* indignities or trivialities at worst. Accordingly, Plaintiff's claim against Edelman for intentional infliction of emotional distress is dismissed.

H. Vicarious Liability is Not an Independent Cause of Action

In Count XVIII, Plaintiff asserts a claim for vicarious liability against Edelman, based on Doe #1's purported conduct as an agent of Edelman. However, under Illinois law, "vicarious liability is not itself a claim or cause of action." Wilson v. Edward Hosp., 981 N.E.2d 971, 980 (Ill. 2012). Accordingly, Count XVIII is dismissed.

III. CONCLUSION

For the foregoing reasons, Edelman's motion to dismiss is granted. Counts V, VI. VIII, X, XVII, and XVIII of Plaintiff's FAC are dismissed with prejudice to the extent that these counts assert claims against Edelman. Doe #1, and/or Doe #2.

IT IS SO ORDERED.

ENTER:

{Charles R Norgle signature}

CHARLES RONALD NORGLE, District Judge

United States District Court

DATE: February 28, 2018

gdix3@hotmail.com

From: Terrim14 <terrim14@gmail.com>
Sent: Monday, July 24, 2017 7:41 PM
To: Gerry
Subject: Should I ask girl to rent out basement. Pay extras for laundry use diwnstaits bathroom shower . Eventually get another fridge /Snack :food cabinet and youovd your office to third floor get minifridge with Icemaker and closet for your office on third ...

New message | Reply | Delete | Archive | Junk | Move to | Categorize | ...

(No subject)

Flag for follow up. Start by 11/2/2018. Due by 11/2/2018.

Terri
Mon 9/29/2014 10:03 AM
To: You

Cigna denied my MRI request. I have a feeling the podiatrist's office did not prove their case very well. I was practically in tears this morning when I left work. I had to take a vicoprofen while I was driving home. The only thing keeping me functioning is taping my foot and the pain meds, which I have not been taking before or during work. The podiatrist is not in today . I am thinking I might just try going to ER and see if I can get a boot or MRI there. Only problem is I have PT now and have to work and can't afford to lose massive amounts of sleep or call in sick . I am so pissed off at podiatrist's office. I didn't want to be a bitch, too pushy, or tell someone else how to do their job, so I didn't push the issue very hard . I should have . I could have been healed by now instead of being miserable and playing games . My PT is running out so I can't have them nigger rig my foot , so I can work . Ugh!!!!

APPENDIX G