

APPENDIX (BOUND SEPARATELY)

Appendix A — Summary Order of the United States Court of Appeals for the Second Circuit (Feb. 17, 2026)

Appendix B — Order of the United States Court of Appeals for the Second Circuit Denying Rehearing En Banc (Mar. 24, 2026)

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Appendix F — Order on Motion for Summary Judgment, Sakon v. Sakonchick, Superior Court, Judicial District of Hartford (Farley, J., Nov. 7, 2025)

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

JOHN ALAN SAKON,

Petitioner,

v.

JOHN JOHNSON, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

APPENDIX

(Bound Separately Pursuant to Supreme Court Rule 33.2)

JOHN ALAN SAKON

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APPENDIX A

Summary Order of the United States Court of Appeals

for the Second Circuit (Feb. 17, 2026)

24-1991

Sakon v. Johnson

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 17th day of February, two thousand twenty-six.

PRESENT:

RICHARD J. SULLIVAN,
MYRNA PÉREZ,
Circuit Judges.
P. KEVIN CASTEL,
*District Judge.**

JOHN ALAN SAKON

Plaintiff-Appellant,

v.

24-1991

* Judge P. Kevin Castel, of the United States District Court for the Southern District of New York, sitting by designation.

JOHN JOHNSON, Officer, of the Glastonbury Police Department, Town of Glastonbury, F. PERRONE, Officer, of the Glastonbury Police Department, Town of Glastonbury, BRUCE D. SKEHAN, Officer, of the Glastonbury Police Department, Town of Glastonbury, PETER BRANDER, Officer, of the Glastonbury Police Department, Town of Glastonbury, NEAL CAVANAUGH, Officer, of the Glastonbury Police Department, Town of Glastonbury, MICHAEL ROBERTS, Officer, of the Glastonbury Emergency Management, Town of Glastonbury, PETER J. CELIO, Officer, of the Manchester Police Department, Town of Manchester, WILMARY LABONTE, Officer, of the Manchester Police Department, Town of Manchester, DANIELLE STONE-MITCHELL, Officer, of the Manchester Police Department, Town of Manchester, CHRISTOPHER FERREIRA, Trooper, of the Connecticut State Police, State of Connecticut, SETH CONANT, FREED MARCROFT LLC, TOWN OF GLASTONBURY, TOWN OF MANCHESTER, STATE OF CONNECTICUT,

Defendants-Appellees,

FRANCELIA MARIE SEVIN, DENNIS O'TOOLE,

Defendants.

For Plaintiff-Appellant:

JOHN ALAN SAKON, *Pro Se*, Farmington, CT.

For Defendants-Appellees John Johnson, F. Perrone, Bruce D. Skehan, Peter Brander, Neal Cavanaugh, Michael Roberts, and Town of Glastonbury:

ASHLEY L. HOYT, (Katherine E. Rule, *on the brief*), Howd & Ludorf, LLC, Wethersfield, CT.

For Defendants-Appellees Peter J. Celio, Wilmary Labonte, Danielle Stone-Mitchell, and Town of Manchester:

ANDREW J. GLASS, Karsten & Tallberg, LLC, Rocky Hill, CT.

**For Defendants-Appellees
Christopher Ferreira and State
of Connecticut:**

EDWARD ROWLEY, Assistant Attorney General (Robin S. Schwartz, Assistant Attorney General, *on the brief*), Assistant Attorney General, *for* William Tong, Attorney General of Connecticut, Hartford, CT.

**For Defendants Seth Conant
and Freed Marcroft LLC:**

MICHAEL S. TRIPICCO, Cohen Vaughan, LLP, Hartford, CT.

Appeal from a judgment of the United States District Court for the District of Connecticut (Alvin W. Thompson, *Judge*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the August 19, 2024 judgment of the district court is **AFFIRMED**.

John Alan Sakon, proceeding *pro se*, appeals from the district court's dismissal of his claims for malicious prosecution under 42 U.S.C. § 1983 against seventeen separate defendants arising from his nine previous arrests. The district court dismissed all of his claims, holding that some were time-barred and that he failed to state a claim as to others; the district court also struck Sakon's proposed amended complaint. We assume the parties' familiarity with the facts, procedural

history, and issues on appeal, to which we refer only as needed to explain our decision.

“We review a dismissal for failure to state a claim *de novo*.” *Sharikov v. Philips Med. Sys. MR, Inc.*, 103 F.4th 159, 166 (2d Cir. 2024). To “survive[] a Rule 12(b)(6) motion to dismiss” the plaintiff must allege facts that – when “taken as true and with all reasonable inferences drawn in the plaintiff’s favor” – “state a plausible claim to relief.” *Id.* And while we “interpret[]” a *pro se* litigant’s pleadings to “raise the strongest claims they suggest,” such parties must still plead facts that “plausibly give rise to an entitlement of relief,” as opposed to “[t]hreadbare recitals of the elements of a cause of action’ that are ‘supported by mere conclusory statements.’” *Id.* (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678–79 (2009)). Meanwhile, “[w]e review a district court’s denial of leave to amend for abuse of discretion, unless the denial was based on futility, in which case we review that legal conclusion *de novo*.” *City of Pontiac Policemen’s & Firemen’s Ret. Sys. v. UBS AG*, 752 F.3d 173, 188 (2d Cir. 2014).

I. Time-Barred Malicious Prosecution Claims

Sakon argues that the district court erroneously dismissed as untimely the malicious prosecution claims set forth in counts one through eight of his complaint. We disagree.

To determine timing rules for section 1983 malicious prosecution claims, we blend federal and state law. While federal law determines “the time at which a claim for malicious prosecution . . . accrues,” we “borrow[]” the “applicable statute of limitations . . . [from] the law of the state where the cause of action accrued.” *Spak v. Phillips*, 857 F.3d 458, 462 (2d Cir. 2017). In other words, federal law determines when the clock starts running, while state law decides when the buzzer sounds.

Under federal law, malicious prosecution claims accrue when “criminal proceedings have terminated in the plaintiff’s favor.” *Heck v. Humphrey*, 512 U.S. 477, 489 (1994). And “a *nolle prosequi* constitutes [such] a ‘favorable termination’ for the purpose of determining when a Section 1983 claim accrues.” *Spak*, 857 F.3d at 463. Meanwhile, as the parties agree, the Connecticut “statute of limitations for a malicious prosecution claim . . . is [generally] three years.” *Id.* at 462; *see also* Conn. Gen. Stat. Ann. § 52-577f. In this case, however, we must tack on an

additional 347 days for the period – during the COVID-19 pandemic – when Connecticut tolled its statute of limitations. To calculate Sakon’s filing cutoff, we therefore must add three years plus 347 days to the date that prosecutors *nolled* the last charges against him.

Sakon failed to meet that deadline. While counts one through eight challenge several different arrests, prosecutors *nolled* their final charges on January 3, 2019. Counting three years plus 347 days from that date yields a limit of December 16, 2022. Because Sakon waited until January 26, 2023 to file his complaint, the statute of limitations bars the claims raised in counts one through eight.

Sakon attempts to sidestep this time bar by arguing that the Supreme Court’s decision in *Thompson v. Clark* abrogated *Spak*’s holding that a malicious prosecution claim accrues as of the date of the *nolle*. 596 U.S. 36 (2022). But, if anything, *Thompson* reinforces *Spak*. There, the Supreme Court held that a plaintiff alleging a Fourth Amendment malicious prosecution claim need not “show that the criminal prosecution ended with some affirmative indication of innocence” and instead “only . . . that the criminal prosecution ended without a conviction.” *Id.* at 49. That is exactly what a *nolle* is. And while Sakon latches onto the Supreme

Court's caution that a prosecution has not ended unless it "cannot be revived," Sakon Br. at 14 (quoting *Thompson*, 596 U.S. at 45), *Spak* expressly addressed that issue, explaining that a "*nolle*" does "terminate[] a specific prosecution by vacating a charging instrument," so that it "cannot be revived." *Spak*, 857 F.3d at 464.¹

II. Count Nine

Unlike counts one through eight, count nine – Sakon's malicious prosecution claim against Officer Peter Brander, the Town of Glastonbury, and the Glastonbury Police Department stemming from Sakon's arrest for larceny on October 22, 2018 – is not time-barred because the state did not *nolle* the larceny charge until July 2020. The district court nevertheless dismissed this count because it concluded that Sakon had failed to state a claim. We agree.

"[T]o prevail on a [section] 1983 claim against a state actor for malicious prosecution, a plaintiff must . . . establish the elements of [such a] claim under state law." *Roberts v. Babkiewicz*, 582 F.3d 418, 420 (2d Cir. 2009) (internal quotation marks omitted). And "under Connecticut law," a plaintiff alleging malicious

¹ Sakon argues that his claim instead accrued thirteen months after the date of the *nolle*, when the charges were automatically erased from the record pursuant to Conn. Gen. Stat. § 54-142a(c)(1). As we recognized in *Spak*, however, that "erasure provision . . . is a purely administrative measure" that, like the entry of the *nolle*, "does not preclude the prosecuting attorney from filing new charges." 857 F.3d at 466. Sakon's preferred date thus "provides no more 'conclusive' bar to future criminal proceedings than the *nolle* itself." *Id.*

prosecution “must prove [that] . . . ‘the defendant acted without probable cause.’” *Id.* (quoting *McHale v. W.B.S. Corp.*, 187 Conn. 444, 446 (1982)). To do so, the plaintiff must carry his “burden” of “prov[ing] affirmatively . . . that the defendant had *no reasonable ground* for instituting the criminal proceeding.” *Bhatia v. Debek*, 287 Conn. 397, 410–11 (2008) (emphasis added and internal quotation marks omitted).

Sakon fails to allege that Officer Brander lacked any reasonable ground for arresting him: as Sakon’s complaint concedes, Officer Brander obtained a judicial warrant after both Sakon’s own brother and his ex-wife had filed criminal larceny complaints against him. And while Sakon’s complaint faults Officer Brander for relying on these reports without conducting “a proper investigation,” Def. App’x at 55, we have never required officers to jump through such pre-arrest hoops; instead, an officer may “rely without further investigation on representations of another” *unless*, as relevant here, “the information received is such as to put an ordinarily prudent and cautious person on inquiry.” *DeLaurentis v. City of New Haven*, 220 Conn. 225, 258 (1991); *see also Betts v. Shearman*, 751 F.3d 78, 82 (2d Cir. 2014) (“[P]robable cause exists if a law enforcement officer received information from some person, normally the putative victim or eyewitness, unless the

circumstances raise doubt as to the person's veracity." (alteration accepted and internal quotation marks omitted)).

Sakon attempts to avoid this problem by arguing that Officer Brander should have made further "inquiry" because the funds at issue (allegedly) came from a tenancy in common. Sakon Br. at 15. But Sakon pleaded no facts to suggest that Officer Brander knew of the intricacies of the Sakon family's competing claims, or that an ordinarily prudent officer would have discredited the criminal complaints against Sakon. See *Alberty v. Hunter*, 144 F.4th 408, 417 (2d Cir. 2025) ("[P]robable cause does not require an officer to be certain that subsequent prosecution of the arrestee will be successful. It is therefore of no consequence that a more thorough or more probing investigation might have cast doubt upon the situation." (internal quotation marks omitted)).

III. Denial of Amendment

Finally, Sakon appeals the district court's denial of his motion to amend. As a threshold matter, we note that Sakon technically filed no such motion: he simply submitted an amended complaint – sixty-seven days after the district court had dismissed his remaining claims, and without consulting either the defendants or the district court. That filing clearly contravened Federal Rule of Civil Procedure

15(a), which permits amended pleadings in these circumstances “only with the opposing party’s written consent or the court’s leave.” Fed. R. Civ. P. 15(a). The district court accordingly struck the amended complaint, while noting in passing that “the situation here is not one where the court should grant leave to file an amended complaint because justice so requires.” Def. App’x at 169.

However, even assuming that the district court should have (i) “liberally constru[ed],” *McLeod v. Jewish Guild for the Blind*, 864 F.3d 154, 156 (2d Cir. 2017), Sakon’s submission as a full-blown request for leave to file an amended complaint, and (ii) therefore explained its decision more thoroughly, Sakon’s appeal still fails because “any amendment would have been futile,” *Yerkyn v. Yakovlevich*, 164 F.4th 224, 225 (2d Cir. 2026); *see also id.* at 229 (“[W]e are free to affirm an appealed decision on any ground which finds support in the record, regardless of the ground upon which the trial court relied.” (internal quotation marks omitted)).

Sakon’s proposed amended complaint alleges no facts suggesting that Officer Brander lacked probable cause; instead, he rehashes his claims that Brander should have conducted a more thorough investigation, *see, e.g.*, Def. App’x at 143–44, and insists that Brander could have included more information in his arrest warrant application, *see, e.g., id.* at 147–48, without alleging any facts

suggesting that Brander knew that specific information or showing why it was necessary. If anything, Sakon's amended complaint, which attaches Brander's thorough warrant application, *undercuts* his claims that Brander lacked probable cause. Dist. Ct. Doc. No. 128-1 at 1-3 (warrant application discussing embezzlement scheme, forensic accounting analysis, and Brander's own knowledge of Sakon).

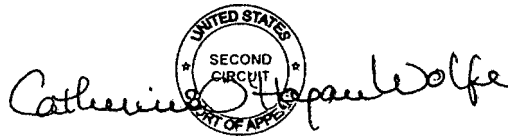
Sakon's brief does not suggest otherwise. He merely argues that the Federal Rules of Civil Procedure are too complicated, and that he filed his proposed amendments "one month late" because the Defendants intentionally delayed him by falsely arresting him and "running [him] over with a truck." Sakon Br. at 16-17. But Sakon's motion to amend fails not because of "byzantine" rules, *id.* at 17, or because of his tardiness. It fails for the more basic reason that the amendment is futile since it does not include facts that undermine the existence of probable cause.

* * *

We have considered Sakon's remaining arguments and find them to be without merit.² Accordingly, we **AFFIRM** the judgment of the district court.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk of Court

The signature of Catherine O'Hagan Wolfe is written in cursive over a circular seal. The seal contains the text "UNITED STATES", "SECOND CIRCUIT", and "COURT OF APPEALS".

² Sakon has abandoned his other claims by failing to challenge their dismissal in his opening brief. *See Green v. Dep't of Educ. of N.Y.C.*, 16 F.4th 1070, 1074 (2d Cir. 2021) ("[A] *pro se* litigant abandons an issue by failing to address it in the appellate brief.").

APPENDIX B

Order of the United States Court of Appeals for the

Second Circuit Denying Rehearing En Banc (Mar. 24, 2026)

**UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT**

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 24th day of March, two thousand twenty-six.

John Alan Sakon,

Plaintiff - Appellant,

v.

John Johnson, Officer, of the Glastonbury Police
Department, Town of Glastonbury, F. Perrone, et al.,

Defendants - Appellees,

Francelia Marie Sevin, Dennis O'Toole,

Defendants.

ORDER

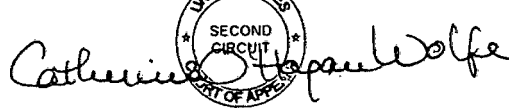
Docket No: 24-1991

Appellant, John Alan Sakon, has filed a petition for rehearing *en banc*. The active members of the Court have considered the request for rehearing *en banc*.

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk


Catherine O'Hagan Wolfe



APPENDIX C

Rulings on Motion to Dismiss: District Court Docket 66 – 08/22/2023 (State of Connecticut and Ferreira); District Court Docket 102 – 03/19/2024 (Manchester Defendants); and District Court Docket 104 – 03/19/2024 (Conant and Freed Marcroft LLC); District Court Docket 109 – 03/28/2024 (Glastonbury Defendants)

Order Re Entering Judgment District Court Docket 140 (Aug. 8, 2024) of the United States District Court for the District of Connecticut

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

-----	X	
JOHN ALAN SAKON,	:	
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
JOHN JOHNSON, F PERRONE, BRUCE	:	
D. SKEHAN, PETER BRANDER, NEAL	:	
CAVANAUGH, MICHAEL ROBERTS,	:	
PETER J. CELIO, WILMARY LABONTE,	:	Civil No. 3:23-cv-107 (AWT)
DANIELLE STONE-MITCHELL,	:	
CHRISTOPHER FERREIRA, FRANCELIA	:	
MARIE SEVIN, DENNIS O'TOOLE,	:	
SETH CONANT, FREED MARCROFT LLC,	:	
TOWN OF GLASTONBURY, TOWN OF	:	
MANCHESTER, and STATE OF	:	
CONNECTICUT,	:	
	:	
Defendants.	:	
-----	X	

ORDER RE MOTION TO DISMISS

Defendant State of Connecticut and defendant Christopher Ferreira, in his official capacity, have moved to dismiss plaintiff John Alan Sakon's Complaint. For the reasons set forth below, the motion is being granted.

I. LEGAL STANDARD

"A district court properly dismisses an action under Fed. R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction if the court 'lacks the statutory or constitutional power to adjudicate it[.]'" Cortlandt St. Recovery Corp. v. Hellas Telecomm., 790 F.3d 411, 416-17 (2d. Cir. 2015) (quoting

Makarova v. United States, 201 F.3d 110, 113 (2d Cir. 2000)).

The party asserting subject matter jurisdiction "bears the burden of proving subject matter jurisdiction by a preponderance of the evidence." Aurechione v. Schoolman Transp. Sys., Inc., 426 F.3d 635, 638 (2d Cir. 2005). When reviewing a motion to dismiss for lack of subject matter jurisdiction, the court may consider evidence outside the pleadings. "On a motion under Fed.R.Civ.P. 12(b)(1) challenging the district court's subject matter jurisdiction, the court may resolve disputed jurisdictional fact issues by reference to evidence outside the pleadings, such as affidavits." Antares Aircraft, L.P. v. Fed. Republic of Nigeria, 948 F.2d 90, 96 (2d Cir. 1991). See Makarova, 201 F.3d at 113 ("In resolving a motion to dismiss for lack of subject matter jurisdiction under Rule 12(b)(1), a district court . . . may refer to evidence outside the pleadings.").

When deciding a motion to dismiss under Rule 12(b)(6), the court must accept as true all factual allegations in the complaint and must draw inferences in a light most favorable to the plaintiff. See Scheuer v. Rhodes, 416 U.S. 232, 236 (1974). Although a complaint "does not need detailed factual allegations, a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a

cause of action will not do." Bell Atlantic Corp. v. Twombly, 550 U.S. 550, 555 (2007) (citing Papasan v. Allain, 478 U.S. 265, 286 (1986)) (on a motion to dismiss, courts "are not bound to accept as true a legal conclusion couched as a factual allegation"). "Nor does a complaint suffice if it tenders naked assertions devoid of further factual enhancement." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Twombly, 550 U.S. at 557). "Factual allegations must be enough to raise a right to relief above the speculative level, on the assumption that all allegations in the complaint are true (even if doubtful in fact)." Twombly, 550 U.S. at 555 (citations omitted). However, the plaintiff must plead "only enough facts to state a claim to relief that is plausible on its face." Id. at 568.

"The function of a motion to dismiss is 'merely to assess the legal feasibility of the complaint, not to assay the weight of the evidence which might be offered in support thereof.'" Mytych v. May Dep't Store Co., 34 F.Supp.2d 130, 131 (D. Conn. 1999) (quoting Ryder Energy Distribution v. Merrill Lynch Commodities, Inc., 748 F.2d 774, 779 (2d Cir. 1984)). "The issue on a motion to dismiss is not whether the plaintiff will prevail, but whether the plaintiff is entitled to offer evidence to support his claims." United States v. Yale New Haven Hosp., 727 F.Supp. 784, 786 (D. Conn. 1990) (citing Scheuer, 416 U.S. at 232).

In its review of a motion to dismiss for failure to state a claim, the court may consider "only the facts alleged in the pleadings, documents attached as exhibits or incorporated by reference in the pleadings and matters of which judicial notice may be taken." Samuels v. Air Transp. Local 504, 992 F.2d 12, 15 (2d Cir. 1993). "[I]n some cases, a document not expressly incorporated by reference in the complaint is nevertheless 'integral' to the complaint and, accordingly, a fair object of consideration on a motion to dismiss. A document is integral to the complaint 'where the complaint relies heavily upon its terms and effect.'" Goel v. Bunge, Ltd., 820 F.3d 554, 559 (2d Cir. 2016) (quoting Chambers v. Time Warner, Inc., 282 F.3d 147, 153 (2d Cir. 2002)).

II. DISCUSSION

The Complaint names the State and Ferreira as defendants in the tenth cause of action (false imprisonment/assault and battery), the fourteenth cause of action (intentional infliction of emotional distress), the fifteenth cause of action (negligent infliction of emotional distress), and the eighteenth cause of action (libel, slander, defamation of character, discrimination). The Complaint also names Ferreira as a defendant in the third cause of action (third false arrest/malicious prosecution/false imprisonment) and the nineteenth cause of action (Section 1983 civil rights

violation), but it does not specify whether these claims are made against Ferreira in his official capacity or in his individual capacity.¹ The Complaint seeks monetary damages only with respect to these claims. The defendants move to dismiss on the basis that these claims are barred by the Eleventh Amendment and common law sovereign immunity. The court agrees.

"[S]uits against governmental entities are limited by the Eleventh Amendment which prohibits a citizen of a State from suing a State or its agencies in federal court." Goonewardena v. New York, 475 F.Supp.2d 310, 322 (S.D.N.Y. 2007). "In order to be subject to suit in federal court, a state must expressly and unambiguously waive its sovereign immunity, or Congress must clearly and unmistakably express its intention to abrogate the immunity in the language of the particular statute." Wagner v. Conn. Dep't of Correction, 599 F.Supp.2d 229, 238 (D. Conn. 2009). Sovereign immunity "also extends to damage actions against state employees acting in their official capacities

¹ Except for the nineteenth cause of action, the Complaint does not specify the legal bases for these causes of action and at least several, such as intentional and negligent infliction of emotional distress, are typically claims brought pursuant to state law. Because the plaintiff is proceeding pro se, the court construes the Complaint liberally and interprets it to raise the strongest arguments that it suggests. See Soto v. Walker, 44 F.3d 169, 173 (2d Cir. 1995). Thus, the court construes these causes of action as claims pursuant to 42 U.S.C. § 1983 and 42 U.S.C. § 1985 and addresses the issue of supplemental jurisdiction over any remaining claims.

because the state is the real party in interest." Gonnewardena, 475 F.Supp.2d at 322.

With respect to Section 1983 and Section 1985, "[a] State's sovereign immunity is not abrogated by 42 U.S.C. § 1983," Thomas v. Calero, 824 F.Supp.2d 488, 498 (S.D.N.Y. 2011), and there is "no express congressional abrogation of the state's Eleventh Amendment immunity with respect to 42 U.S.C. § 1985 actions," Fincher v. State of Fla. Dep't of Lab. & Emp. Sec. Unemployment Appeals Comm'n, 798 F.2d 1371, 1372 (11th Cir. 1986). In addition, "Connecticut has not waived its sovereign immunity with respect to claims for money damages brought under section 1983 or section 1985." Turner v. Boyle, 116 F.Supp.3d 58, 73 (D. Conn. 2015). Thus, to the extent the plaintiff intended to bring claims against the State or against Ferreira in his official capacity pursuant to Section 1983 or Section 1985, those claims must be dismissed.

Because the plaintiff has failed to state a claim upon which relief can be granted as to any claims against the State or Ferreira in his official capacity over which the court might have original jurisdiction, the court declines to exercise supplemental jurisdiction to the extent that there are any remaining state law claims against the State or against Ferreira in his official capacity. See 28 U.S.C. § 1367(c)(3).

Considering the factors set forth in United Mine Workers of Am.

v. Gibbs, 383 U.S. 715, 726 (1966), the court concludes that judicial economy, convenience, and fairness point toward declining jurisdiction over such claims as to these defendants. See Kolari v. New York-Presbyterian Hosp., 455 F.3d 118, 122 (2d Cir. 2006) ("[I]f the federal law claims are dismissed before trial ... the state claims should be dismissed as well." (quoting Gibbs, 383 U.S. at 726)).

III. CONCLUSION

Accordingly, the State Defendants' Motion to Dismiss Plaintiff's Complaint (ECF No. 28) is hereby GRANTED.

The claims over which the court might have original jurisdiction are dismissed, and the court declines to exercise supplemental jurisdiction over any state law claims.

It is so ordered.

Dated this 22nd day of August 2023, at Hartford,
Connecticut.

/s/AWT
Alvin W. Thompson
United States District Judge

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

-----	X	
JOHN ALAN SAKON,	:	
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
JOHN JOHNSON, F PERRONE, BRUCE	:	
D. SKEHAN, PETER BRANDER, NEAL	:	
CAVANAUGH, MICHAEL ROBERTS,	:	
PETER J. CELIO, WILMARY LABONTE,	:	Civil No. 3:23-cv-107 (AWT)
DANIELLE STONE-MITCHELL,	:	
CHRISTOPHER FERREIRA, FRANCELIA	:	
MARIE SEVIN, DENNIS O'TOOLE,	:	
SETH CONANT, FREED MARCROFT LLC,	:	
TOWN OF GLASTONBURY, TOWN OF	:	
MANCHESTER, and STATE OF	:	
CONNECTICUT,	:	
	:	
Defendants.	:	
-----	X	

RULING ON MOTION TO DISMISS

Defendants Town of Manchester, Peter J. Celio, Wilmary LaBonte and Danielle Stone-Mitchell (collectively the "Manchester Defendants") have moved to dismiss all claims against them. For the reasons set forth below, their motion to dismiss being granted.

I. Background

The plaintiff, John Alan Sakon, filed this action on January 26, 2023, proceeding pro se and naming seventeen defendants. The nineteen-count complaint concerns a number of separate events, including the plaintiff being arrested by members of the

Manchester Police Department on March 20, 2017; April 17, 2017; and sometime in June 2017.

Count 5 is a claim for false arrest, malicious prosecution, and false imprisonment brought against Danielle Stone-Mitchell ("Stone-Mitchell"), the Manchester Police Department, and others. It is based on an arrest on March 20, 2017. The criminal case arising from that arrest was nolle on January 3, 2019.

Count 6 is a claim for false arrest, malicious prosecution, and false imprisonment brought against Peter Celio ("Celio"), the Manchester Police Department, and others. It is based on an arrest on April 17, 2017. The plaintiff spent two days in custody following his arrest, and the case was nolle on January 16, 2019.

Count 7 is a claim for false arrest, malicious prosecution, and false imprisonment brought against Wilmary LaBonte ("LaBonte"), the Manchester Police Department, and others. It is based on an arrest that took place at some point during June 2017. The plaintiff spent four months in custody following his arrest, and the case was nolle on January 3, 2019.

Count 10 is a claim for false imprisonment/assault and battery. Count 14 is a claim for intentional infliction of emotional distress. Count 15 is a claim for negligent infliction of emotional distress. Each of these claims is against all of the defendants, but none identifies acts by these defendants

other than acts identified in prior counts.

Count 16 is a personal injury claim against the Manchester Police Department, and Count 17 is a claim pursuant to the Americans with Disabilities Act, 42 U.S.C. §§ 12101 et seq., against the Manchester Police Department.

Count 18 is a claim for libel, slander, and defamation of character. It makes specific reference to an act by defendant Francelia Marie Sevin on August 10, 2016, but makes no reference to these defendants. It simply refers to "actions of all the defendants." (ECF No. 1-1 at 24).

Count 19 claims a 42 U.S.C. § 1983 civil rights violation as to which the "plaintiff cites the complaints found in paragraphs 1-18 hereto" and "claims a deprivation of his rights, privileges, immunities secured by the Constitution which were violated by state and local officials under the color of law." (ECF No. 1-1 at 25).

II. Legal Standard

When deciding a motion to dismiss under Rule 12(b)(6), the court must accept as true all factual allegations in the complaint and must draw inferences in a light most favorable to the plaintiff. See Scheuer v. Rhodes, 416 U.S. 232, 236 (1974). Although a complaint "does not need detailed factual allegations, . . . a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than

labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007) (citations omitted) (citing Papasan v. Allain, 478 U.S. 265, 286 (1986)) (on a motion to dismiss, courts "are not bound to accept as true a legal conclusion couched as a factual allegation"). "Nor does a complaint suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.'" Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Twombly, 550 U.S. at 557). "Factual allegations must be enough to raise a right to relief above the speculative level, . . . on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." Twombly, 550 U.S. at 555 (citations and internal quotations omitted). However, the plaintiff must plead "only enough facts to state a claim to relief that is plausible on its face." Id. at 570. "A claim has facial plausibility when the [claimant] pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Iqbal, 556 U.S. at 678.

"The function of a motion to dismiss is 'merely to assess the legal feasibility of the complaint, not to assay the weight of the evidence which might be offered in support thereof.'" Mytych v. May Dep't Store Co., 34 F. Supp. 2d 130, 131 (D. Conn. 1999) (quoting Ryder Energy Distribution v. Merrill Lynch

Commodities, Inc., 748 F.2d 774, 779 (2d Cir. 1984)). The issue on a motion to dismiss "is not whether the plaintiff will prevail, but whether the plaintiff is entitled to offer evidence to support his claims." United States v. Yale New Haven Hosp., 727 F. Supp. 784, 786 (D. Conn. 1990) (citing Scheuer, 416 U.S. at 232).

In its review of a motion to dismiss for failure to state a claim, the court may consider "only the facts alleged in the pleadings, documents attached as exhibits or incorporated by reference in the pleadings and matters of which judicial notice may be taken." Samuels v. Air Transp. Local 504, 992 F.2d 12, 15 (2d Cir. 1993).

"Where, as here, the complaint was filed pro se, it must be construed liberally 'to raise the strongest arguments [it] suggest[s].'" Walker v. Schult, 717 F.3d 119, 124 (2d Cir. 2013) (quoting Pabon v. Wright, 459 F.3d 241, 248 (2d Cir. 2006)).

"Nonetheless, a pro se complaint must state a plausible claim for relief," Walker, 717 F.3d at 124 (citing Harris v. Mills, 572 F.3d 66, 73 (2d Cir. 2009)), and the defendants have filed a Notice to Self-Represented Litigant Concerning Motion to Dismiss as required by Local Rule 12(a). Consistent with the liberal reading of a pro se plaintiff's complaint, "[a] district court deciding a motion to dismiss may consider factual allegations made by a pro se party in his papers opposing the

motion." Walker, 717 F.3d at 122 n.1.

III. Discussion

The Manchester Defendants contend that the claims against the Manchester Police Department should be dismissed because it is not an entity subject to suit. They further contend that all of the claims against the Manchester Defendants should be dismissed as time-barred. The court agrees.

A. Manchester Police Department

Counts 16 and 17 are brought against the Manchester Police Department only. The Manchester Police Department is a municipal police department and thus is not a separate legal entity under Connecticut law with the capacity to be sued under 42 U.S.C. § 1983. See Rose v. City of Waterbury, No. 3:12-cv-291 (VLB), 2013 WL 1187049, at *9 (D. Conn. Mar. 21, 2013) (noting "Courts in Connecticut have held that the 'Connecticut General Statutes contain no provision establishing municipal departments, including police departments, as legal entities separate and apart from the municipality they serve, or providing that they have the capacity to sue or be sued . . . Rather, pursuant to Connecticut enabling legislation, it is the municipality itself which possesses the capacity to sue and be sued.'" (citation omitted)); Petaway v. City of New Haven Police Dep't, 541 F. Supp. 2d 504, 510 (D. Conn. 2008) ("[A] municipal police department is not subject to suit under section 1983 because it

is not an independent legal entity."); Nicholson v. Lenczewski, 356 F. Supp. 2d 157, 164 (D. Conn. 2005) ("A municipal police department ... is not a municipality nor a 'person' within the meaning of section 1983.").

Therefore, these counts must be dismissed.

B. Executive Orders 7G and 10A

During the COVID-19 pandemic, Governor Ned Lamont issued Executive Orders 7G and 10A, which effectively extended the statutes of limitations in the State of Connecticut. Pursuant to those executive orders, the statutes of limitations in Connecticut were tolled between March 19, 2020 and March 1, 2021. See, e.g., Taylor v. Pillai, No. 3:21-cv-623 (SALM), 2022 WL 4080525, at *4-*6 (D. Conn. Sept. 6, 2022) (interpreting and applying these executive orders). Thus, the applicable statutes of limitations were extended for 347 days.

Therefore, in determining when the applicable statute of limitations ran with respect to a claim at issue here, the court uses a date that is 347 days after the date on which the statute of limitations would otherwise have run, unless it ran prior to March 19, 2020.

C. Counts 5, 6 and 7: Statute of Limitations

1. False Arrest and False Imprisonment

The statute of limitations for false arrest and false imprisonment claims is three years. See Conn. Gen. Stat. § 52-

577; Rivera v. Double A. Transp., Inc., 248 Conn. 21, 32 (1999) (false imprisonment is "an intentional tort governed by § 52-577"); Green v. Donroe, 186 Conn. 265, 267 (1982) ("False imprisonment, or false arrest, is the unlawful restraint by one person of the physical liberty of another."); see also Outlaw v. City of Meriden, 43 Conn. App. 387, 392 (1996) ("Although the plaintiff pleaded a count alleging false arrest and a count sounding in false imprisonment, the applicable law for these two causes of action is identical.").

"[A] plaintiff's false arrest claim begins accruing at the time of arrest, or at the time the plaintiff was otherwise held pursuant to legal process, and [courts in this District] do not take into consideration the ultimate disposition of the criminal case." Harvey v. Town of Greenwich, No. 3:17-cv-1417 (SRU), 2019 WL 1440385, at *7 (D. Conn. Mar. 31, 2019) (citing Nowacki v. Town of New Canaan, No. 3:16-cv-407 (JAM), 2017 WL 1158239, at *7 (D. Conn. Mar. 28, 2017); Spencer v. Connecticut, 560 F. Supp. 2d 153, 161 (D. Conn. 2008); Vilchel v. Connecticut, No. 3:07-cv-1344 (JCH), 2008 WL 5226369, at *2 (D. Conn. Dec. 11, 2008); Collin v. Connecticut Judicial Branch, No. 3:16-cv-1390 (SRU), 2016 WL 6304434, at *2 n.1 (D. Conn. Oct. 26, 2016)).

The arrests here occurred on March 20, 2017 (Count 5); on April 17, 2017 (Count 6); and in June of 2017 (Count 7). "False arrest and false imprisonment overlap; the former is a species

of the latter.” Wallace v. Kato, 549 U.S. 384, 388 (2007). “The sort of unlawful detention remediable by the tort of false imprisonment is detention without legal process” Id. at 389.

Reflective of the fact that false imprisonment consists of detention without legal process, a false imprisonment ends once the victim becomes held pursuant to such process—when, for example, he is bound over by a magistrate or arraigned on charges. . . . Thereafter, unlawful detention forms part of the damages for the entirely distinct tort of malicious prosecution, which remedies detention accompanied, not by absence of legal process, but by wrongful institution of legal process.

Id. at 389-90 (citations omitted) (internal quotations omitted).

The complaint does not distinguish between the dates on which the plaintiff was arrested and the dates on which he was otherwise held pursuant to legal process, but there is no indication that the difference between these dates is material. Thus, the court uses the dates of the arrests.

The latest in time of the three arrests is the one on which Count 7 is based. It occurred in June 2017. The three-year statute of limitations ordinarily would have run on June 30, 2020 at the latest. As the statute of limitations was extended by 347 days because of Executive Orders 7G and 10A, the statute of limitations ran no later than June 12, 2021. Thus, these claims are time-barred.

2. Malicious Prosecution

"When the question before a federal court is at what point a malicious prosecution claim accrued, 'favorable termination' is analyzed under federal common law, because the timing of accrual is a question of federal law." Spak v. Phillips, 857 F.3d 458, 462-63 (2d Cir. 2017) (citing Wallace, 549 U.S. at 388). "When, by contrast, a federal court is analyzing the substantive merits of a plaintiff's claim, the definition of 'favorable termination' is analyzed under state law." Id. at 463 (citing Singleton v. City of New York, 632 F.2d 185, 193 (2d Cir. 1980)). "[A]s a general matter a nolle prosequi constitutes a 'favorable termination' for the purpose of determining when a Section 1983 claim accrues."¹ Id.

The charges against the plaintiff that are the basis for Count 5 were nolleed on January 3, 2019. The charges against the plaintiff that are the basis for Count 6 were nolleed on January 16, 2019. The charges against the plaintiff that are the basis for Count 7 were nolleed on January 3, 2019.

¹"To be sure, courts and common law authorities state that a nolle does not constitute a favorable termination when it is entered for reasons that are 'not indicative of the defendant's innocence.' [Washington v. Summerville, 127 F.3d 552, 557 (7th Cir. 1997)]. However, this qualifier is defined narrowly. It generally only includes nolles that are caused by the defendant—either by his fleeing the jurisdiction to make himself unavailable for trial or delaying a trial by means of fraud. It also includes any nolle entered in exchange for consideration offered by the defendant (e.g., cooperation). See generally RESTATEMENT (SECOND) OF TORTS § 660 (AM. LAW INST. 1977)." Spak, 857 F.3d at 464.

The latest of the three nolles is the one on which Count 6 is based. It occurred on January 16, 2019. The three-year statute of limitations ordinarily would have run on January 16, 2022, but it was extended by 347 days because of Executive Orders 7G and 10A. Thus, the statute of limitations ran on December 29, 2022.

The plaintiff contends, with respect to each of these three counts, that there was not a favorable termination of the case until it was "formally dismissed" thirteen months after the nolle pursuant to Connecticut General Statutes § 54-142a.

Pursuant to Connecticut General Statutes § 54-142a(c)(1):

Whenever any charge in a criminal case has been nolledd in the Superior Court, or in the Court of Common Pleas, if at least thirteen months have elapsed since such nolle, all police and court records and records of the state's or prosecuting attorney or the prosecuting grand juror pertaining to such charge shall be erased

Conn. Gen. Stat. § 54-142a(c)(1). The plaintiff's contention that his claim did not accrue upon entry of the nolle but rather thirteen months later when the records were erased pursuant to § 54-142a was rejected in Spak v. Phillips. There the court held that "Spak's contention that his claim accrued not upon entry of the nolle, but thirteen months later when records of the charges against him were automatically erased pursuant to Connecticut state law, see Conn. Gen. Stat. § 54-142a(c)(1), is meritless." 857 F.3d at 466. "Connecticut courts have made clear that the

erasure provision Spak cites is a purely administrative measure, [State v. Winer, 286 Conn. 666, 679-80 (2008)] (holding that 'the recording of nollies and later, the erasure of criminal records,' are 'administrative rather than substantive in intent')." Id.

The plaintiff argues that Spak v. Phillips is no longer good law because of the enactment of Connecticut General Statutes § 52-577f. However, the analysis in Spak is based on the fact that Connecticut courts have determined that the erasure provision in § 54-142a(c)(1) is a purely administrative matter, and nothing in § 52-577f undermines that holding by the Connecticut Supreme Court in Winer. Rather, prior to the enactment of § 52-577f, pursuant to Connecticut General Statutes § 52-577 the statute of limitations accrued on the date of the act or omission complained of, and that date arguably was the date on which the malicious prosecution commenced. But at that point, a plaintiff could not have satisfied the requirement that there had been a favorable termination. The new provision, § 52-577f, makes it clear that the date of accrual of the cause of action is the date on which there has been a favorable termination, i.e., in a case like this, when a charge is nollied. The fact that the pertinent provision in the Connecticut Practice Book was not changed after the enactment of § 52-577f is consistent with this conclusion. Section 39-31 still provides that "[t]he entry of a

nolle prosequi terminates the prosecution and the defendant shall be released from custody." Conn. Practice Book § 39-31.

Thus, these claims are time-barred.

D. Remaining Claims against the Manchester Defendants

With respect to Count 10, the statute of limitations for false imprisonment and assault and battery is three years. See Conn. Gen. Stat. § 52-577; Rivera, 248 Conn. at 32 (concerning false imprisonment); Lambert v. Stovell, 205 Conn. 1, 4 (1987) (noting "assault and battery" are "governed by § 52-577"). With respect to Count 14, the statute of limitations for a claim for intentional infliction of emotional distress is three years. See Conn. Gen. Stat. § 52-577; Watts v. Chittenden, 301 Conn. 575, 596-98 (2011) (§ 52-577 applies to intentional infliction of emotional distress claims). With respect to Count 15, the statute of limitations with respect to a claim for negligent infliction of emotional distress is two years. See Conn. Gen. Stat. § 52-584;² Rivera, 248 Conn. at 31 (noting that negligent infliction of emotional distress claims fall properly under § 52-584). With respect to Count 19, the statute of limitations for a Section 1983 claim is three years. See Conn. Gen. Stat. § 52-577; Walker v. Jastremski, 430 F.3d 560, 562 (2d Cir. 2005) (statute of limitations for 42 U.S.C. § 1983 claim based in

² Based on the allegations in the complaint, the three-year statute of repose is not implicated here.

Connecticut relies on § 52-577); see also Lounsbury v. Jeffries, 25 F.3d 131, 133 (2d Cir. 1994) ("Since Congress did not enact a statute of limitations governing actions brought under § 1983, the courts must borrow a state statute of limitations").

As noted above, none of these counts identifies actions by any of the Manchester Defendants other than actions attributed to them in Counts 5, 6, and 7. Thus, a three-year statute of limitations with respect to each of these claims would have ordinarily run by January 16, 2022 but was extended by virtue of Executive Orders 7G and 10A to December 29, 2022 at the latest, and the two-year statute of limitations would have run sooner.

With respect to Count 18, the statute of limitations for a claim for libel, slander or defamation is two years. See Conn. Gen. Stat. § 52-597; Doe #2 v. Rackliffe, 337 Conn. 627, 634 n.9 (2020) ("Other examples [of specialized statutes of limitations] include the statutes governing actions for defamation; see General Statutes § 52-597 ('[n]o action for libel or slander shall be brought but within two years from the date of the act complained of') . . ."). The only act alleged to have constituted libel, slander or defamation of character is alleged to have occurred on August 10, 2016, so the two-year statute of limitations ran by August 10, 2018, as Executive Orders 7G and 10A do not apply.

Thus, all of these claims are time-barred.

E. Continuing Course of Conduct; Bankruptcy; and Equitable Tolling

The plaintiff argues that the running of the statute of limitations was tolled by Connecticut's continuing course of conduct doctrine. In Khan v. Yale University, 85 F.4th 86 (2d Cir. 2023), the court explained:

Connecticut law pertaining to the continuing course of conduct doctrine . . . states that[] "[w]hen the wrong sued upon consists of a continuing course of conduct," the relevant statute of limitations or repose "does not begin to run until that course of conduct is completed." Flannery v. Singer Asset Fin. Co., [312 Conn. 286, 311] (2014) (internal quotation marks omitted). The doctrine is "generally applicable under circumstances where it may be impossible to pinpoint the exact date of a [tortious] act or omission that caused injury or where the [tort] consists of a series of acts or omissions and it is [therefore] appropriate to allow the course of action to terminate before allowing the repose section of the limitation period to run." Essex Ins. Co. v. William Kramer & Assocs., LLC, [331 Conn. 493, 503] (2019) (brackets and internal quotation marks omitted); see also Martinelli v. Fusi, [290 Conn. 347, 356] (2009) (stating that "continuing course of conduct doctrine reflects the policy that, during an ongoing relationship, lawsuits are premature because specific tortious acts or omissions may be difficult to identify and may yet be remedied"). To invoke the doctrine, a plaintiff must allege that the defendant, "(1) committed an initial wrong upon the plaintiff; (2) owed a continuing duty to the plaintiff that was related to the alleged original wrong; and (3) continually breached that duty." [Flannery, 312 Conn. at 313] (internal quotation marks omitted). To demonstrate that the defendant owed the plaintiff a continuing duty, the plaintiff may plead "either a special relationship between the parties giving rise to such a continuing duty or some later wrongful conduct of a defendant related to the prior act." [Essex, 331 Conn. at 504], (emphases in original) (internal quotation marks omitted).

Id. at 100.

In Zielinski v. Kotsoris, 279 Conn. 312 (2006), the Connecticut Supreme Court held that "separate and isolated contacts with different physicians who have the same employer . . . will not, without more, give rise to a continuing course of conduct . . . for purposes of tolling the statute of limitations" because such contacts are insufficient to demonstrate the special relationship that the doctrine requires. See id. at 328-30. Instead, such contacts constituted "separate and discrete acts." Id. at 330.

The plaintiff's claims with respect to the Manchester Defendants rely exclusively on alleged conduct by them in 2017. Nowhere in the complaint does the plaintiff allege facts showing that any of the Manchester Defendants took any action after that time. Nor does the complaint allege facts that could show that any of the Manchester Defendants owed the plaintiff a continuing duty under the continuing course of conduct doctrine. See Zielinski, 279 Conn. at 328-30 ("separate and isolated contacts with different [employees] who have the same employer" insufficient to give rise to continuing course of conduct); Macellaio v. Newington Police Dep't, 145 Conn. App. 426, 436 (2013) (plaintiff-arrestee "neither pleaded nor produced any evidence of a special relationship" between himself and police defendants).

Thus, there are no factual allegations in the complaint that support applying the continuing course of conduct doctrine to any of the claims against the Manchester Defendants.

The plaintiff alleges that he "fil[ed] for Bankruptcy protection on September 19th, 2019." (ECF No. 1-1 at 8). He contends that his claims are timely pursuant to 11 U.S.C. § 108, which provides in pertinent part that

(a) If applicable nonbankruptcy law, an order entered in a nonbankruptcy proceeding, or an agreement fixes a period within which the debtor may commence an action, and such period has not expired before the date of the filing of the petition, the trustee may commence such action only before the later of—

(1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or

(2) two years after the order for relief.

11 U.S.C. § 108.

The plaintiff maintains that the applicable order for relief entered on June 8, 2020, when the Bankruptcy Court granted a motion by defendant Town of Glastonbury to convert his case from a Chapter 11 to a Chapter 7 bankruptcy. The plaintiff states that a trustee was appointed following this order. He states that thereafter the Bankruptcy Court found that the trustee had abandoned certain claims to the plaintiff pursuant to an order dated August 1, 2021.

The plaintiff filed his voluntary petition on September 19, 2019. Under 11 U.S.C. § 301(b), "[t]he commencement of a voluntary case under a chapter of this title constitutes an order for relief under such chapter." Thus, the initial order for relief entered on September 19, 2019. Title 11 U.S.C. § 348(a)³

establishes the general rule that, in a converted case, the dates of the filing, the commencement of the case and the order for relief remain unchanged by the conversion, except as expressly provided in subsections (b) and (c). As to "the order for relief," subsections 348(b) and 348(c) enumerate specific exceptions to the general rule, setting out those sections where in a converted case the date of the conversion shall serve as the date of the "order for relief under this chapter."

In re Bell, 225 F.3d 203, 213 (2d Cir. 2000). The plaintiff does not allege facts that could show that any exception to the

³ This subsection, and the two relevant subsections following it, provide:

- (a) Conversion of a case from a case under one chapter of this title to a case under another chapter of this title constitutes an order for relief under the chapter to which the case is converted, but, except as provided in subsections (b) and (c) of this section, does not effect a change in the date of the filing of the petition, the commencement of the case, or the order for relief.
- (b) Unless the court for cause orders otherwise, in sections 701(a), 727(a)(10), 727(b), 1102(a), 1110(a)(1), 1121(b), 1121(c), 1141(d)(4), 1201(a), 1221, 1228(a), 1301(a), and 1305(a) of this title, "the order for relief under this chapter" in a chapter to which a case has been converted under section 706, 1112, 1208, or 1307 of this title means the conversion of such case to such chapter.
- (c) Sections 342 and 365(d) of this title apply in a case that has been converted under section 706, 1112, 1208, or 1307 of this title, as if the conversion order were the order for relief.

general rule in 11 U.S.C. §§ 348(a) is applicable here. See 11 U.S.C. §§ 348(a)-(c); id. at 213. Accordingly, the plaintiff had until September 19, 2021, i.e., two years from the date of the September 19, 2019 order of relief under 11 U.S.C. § 108, to commence this action. See 11 U.S.C. §§ 108, 301(b). Even when 347 days is added pursuant to Executive Orders 7G and 10A, the statute of limitations ran on September 1, 2022. The plaintiff did not file the complaint until January 2023.

Nor is equitable tolling warranted here. Courts "have applied equitable tolling only in 'rare and exceptional circumstances,' where [they] found that 'extraordinary circumstances' prevented a party from timely performing a required act, and that the party 'acted with reasonable diligence throughout the period he [sought] to toll.'" Walker, 430 F.3d at 564 (quoting Doe v. Menefee, 391 F.3d 147, 159 (2d Cir. 2004)). The plaintiff asserts that he had "nine hospital admissions in 2022" that negatively impacted his ability to file his claims. (ECF No. 74 at 18-21). However, the plaintiff was afforded an extra 347 days as a result of the tolling of the time between March 19, 2020 and March 1, 2021 pursuant to Executive Orders 7G and 10A. He has not made a showing that further tolling is warranted here, where the operative events occurred in March, April and June of 2017 and January of 2019.

IV. Conclusion

For the reasons set forth above, the Rule 12(b)(6) Motion to Dismiss (ECF No. 42) filed by defendants Town of Manchester, Peter Celio, Wilmary Labonte and Danielle Stone-Mitchell is hereby GRANTED. The claims against these defendants are dismissed with prejudice.

It is so ordered.

Dated this 19th day of March 2024, at Hartford, Connecticut.

/s/AWT
Alvin W. Thompson
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

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JOHN ALAN SAKON, :
 :
Plaintiff, :
 :
v. :
 :
JOHN JOHNSON, F PERRONE, BRUCE :
D. SKEHAN, PETER BRANDER, NEAL :
CAVANAUGH, MICHAEL ROBERTS, :
PETER J. CELIO, WILMARY LABONTE, : Civil No. 3:23-cv-107 (AWT)
DANIELLE STONE-MITCHELL, :
CHRISTOPHER FERREIRA, FRANCELIA :
MARIE SEVIN, DENNIS O'TOOLE, :
SETH CONANT, FREED MARCROFT LLC, :
TOWN OF GLASTONBURY, TOWN OF :
MANCHESTER, and STATE OF :
CONNECTICUT, :
 :
Defendants. :
----- X

RULING ON MOTION TO DISMISS

Defendants Seth Conant ("Attorney Conant") and Freed Marcroft LLC ("Freed Marcroft") have moved to dismiss all claims against them. For the reasons set forth below their motion to dismiss is being granted.

I. Background

The plaintiff, John Alan Sakon, filed this action on January 26, 2023, proceeding pro se. The nineteen-count complaint concerns a number of separate events, one of which is the plaintiff's divorce from co-defendant Francelia Marie Sevin ("Sevin"). Attorney Conant and Freed Marcroft represented Sevin

in the divorce proceedings.

The complaint makes specific reference to Attorney Conant and Freed Marcroft in two counts only, Count 5 and Count 12. Five additional counts appear to be asserted against all defendants, namely, Counts 10, 14, 15, 18, and 19.

Count 5 is a claim for false arrest, malicious prosecution, and false imprisonment relating to an arrest of the plaintiff by a Manchester police officer on March 20, 2017 "for three felony counts of violations of a Protective Order on malicious complaint of Sevin with the assistance [of] her paramour O'Toole." (ECF No. 1-1 at 14). The complaint alleges the following:

Sevin sought and was granted a Restraining Order in Family Court against John Sakon in addition to the Protective Order. In the divorce proceedings John Sakon was pro se and inquired with the court how he was to proceed with his divorce of Francelia Sevin in light of the Orders of Protection. Judge Bozzuto advised the defendant Sakon that he could communicate as to the divorce with Ms. Sevin's attorneys. Attorney Seth Conant was present at the time of this advice.

On February 22, 2017, John Sakon sent an email [to] Attorney Seth Conant in an effort to settle or resolve the divorce action between the parties. On March 10, 2017, Sakon sent another email to Attorney Seth Conant in an effort to settle or resolve the divorce action.

Despite the conciliatory nature of the emails to encourage an amicable divorce, Attorney Seth Conant suggested by letter on Freed Marcroft Letterhead to his client Francelia Sevin to have John Sakon arrested for a violation of the Orders of Protection for sending Conant emails in an attempt to resolve the divorce between the parties in a reasonable manner.

Attorney Conant, his firm Freed Marcroft, Sevin and her paramour O'Toole sought advantage in a civil proceeding by filing false criminal complaints.

(ECF No. 1-1 at 14-15). Thus, the gravamen of the plaintiff's claim against Attorney Conant and Freed Marcroft is that Attorney Conant suggested that Sevin have the plaintiff arrested for violation of the protective orders.

Count 12 is a claim for violation of the Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. §§ 42-110a et seq. ("CUTPA"). In describing the nature of the case, the complaint alleges that the plaintiff and Sevin had entered into a pre-nuptial agreement, and it also alleges that "Sevin hired defendant Freed Marcroft, filed for divorce on 09/07/2016, contested the prenuptial agreement, but Freed Marcroft failed to attach a copy of the prenuptial agreement which was listed as Exhibit A of her complaint." (ECF No. 1-1 at 7). Count 12 of the complaint alleges that "Freed Marcroft concealed a copy of the prenuptial agreement in [Sevin's] Civil Complaint of Dissolution with the purpose to impair its availability in said proceeding." (ECF No. 1-1 at 22). Thus, the gravamen of the claim in Count 12 is that these defendants stated that the pre-nuptial agreement was an exhibit to the civil complaint in the divorce proceedings but did not actually attach a copy.

Count 10 is a claim for false imprisonment/assault and battery, but it makes no reference to these defendants in that

count; it simply refers to "the defendants." (ECF No. 1-1 at 21).

Count 14 is a claim for intentional infliction of emotional distress, but there is no reference to these defendants in that count; this count simply makes reference to the "acts of all the defendants." (ECF No. 1-1 at 23).

Count 15 is a claim for negligent infliction of emotional distress, but there is no reference to these defendants in that count; this count simply makes reference to "all the defendants." (ECF No. 1-1 at 23).

Count 18 is a claim for libel, slander, and defamation of character. It makes specific reference to an act by Sevin on August 10, 2016 but makes no reference to these defendants. It simply refers to "actions of all the defendants." (ECF No. 1-1 at 24).

Count 19 is a claim for a 42 U.S.C. § 1983 civil rights violation as to which the "plaintiff cites the complaints found in paragraphs 1-18 hereto" and further "claims a deprivation of his rights, privileges, immunities secured by the Constitution which were violated by state and local officials under the color of law." (ECF No. 1-1 at 25). The plaintiff makes no specific reference to these defendants, who are not state or local officials.

II. Legal Standard

When deciding a motion to dismiss under Rule 12(b)(6), the court must accept as true all factual allegations in the complaint and must draw inferences in a light most favorable to the plaintiff. See Scheuer v. Rhodes, 416 U.S. 232, 236 (1974). Although a complaint "does not need detailed factual allegations, . . . a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007) (citations omitted) (citing Papasan v. Allain, 478 U.S. 265, 286 (1986)) (on a motion to dismiss, courts "are not bound to accept as true a legal conclusion couched as a factual allegation"). "Nor does a complaint suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.'" Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Twombly, 550 U.S. at 557). "Factual allegations must be enough to raise a right to relief above the speculative level, . . . on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." Twombly, 550 U.S. at 555 (citations and internal quotations omitted). However, the plaintiff must plead "only enough facts to state a claim to relief that is plausible on its face." Id. at 570. "A claim has facial plausibility when the

[claimant] pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Iqbal, 556 U.S. at 678.

"The function of a motion to dismiss is 'merely to assess the legal feasibility of the complaint, not to assay the weight of the evidence which might be offered in support thereof.'" Mytych v. May Dep't Store Co., 34 F. Supp. 2d 130, 131 (D. Conn. 1999) (quoting Ryder Energy Distribution v. Merrill Lynch Commodities, Inc., 748 F.2d 774, 779 (2d Cir. 1984)). The issue on a motion to dismiss "is not whether the plaintiff will prevail, but whether the plaintiff is entitled to offer evidence to support his claims." United States v. Yale New Haven Hosp., 727 F. Supp. 784, 786 (D. Conn. 1990) (citing Scheuer, 416 U.S. at 232).

In its review of a motion to dismiss for failure to state a claim, the court may consider "only the facts alleged in the pleadings, documents attached as exhibits or incorporated by reference in the pleadings and matters of which judicial notice may be taken." Samuels v. Air Transp. Local 504, 992 F.2d 12, 15 (2d Cir. 1993).

"Where, as here, the complaint was filed pro se, it must be construed liberally 'to raise the strongest arguments [it] suggest[s].'" Walker v. Schult, 717 F.3d 119, 124 (2d Cir. 2013) (quoting Pabon v. Wright, 459 F.3d 241, 248 (2d Cir. 2006)).

"Nonetheless, a pro se complaint must state a plausible claim for relief," Walker, 717 F.3d at 124 (citing Harris v. Mills, 572 F.3d 66, 73 (2d Cir. 2009)), and the defendants have filed a Notice to Self-Represented Litigant Concerning Motion to Dismiss as required by Local Rule 12(a). Consistent with the liberal reading of a pro se plaintiff's complaint, "[a] district court deciding a motion to dismiss may consider factual allegations made by a pro se party in his papers opposing the motion." Walker, 717 F.3d at 122 n.1.

III. Discussion

Attorney Conant and Freed Marcroft argue that all of the plaintiff's claims against them are barred by the applicable statutes of limitations, and in addition, because the defendants are attorneys and the plaintiff's claims are based on their representation of Sevin in the divorce proceeding, they have absolute immunity from suit pursuant to the litigation privilege. They also argue that, in any event, the counts in the complaint that pertain to them fail to state a claim upon which relief can be granted.

For the reasons set forth in the Ruling on Motion to Dismiss with respect to the Town of Manchester and the related defendants (ECF No. 102), the plaintiff's claims against Attorney Conant and Freed Marcroft in Counts 5, 10, 14, 15, 18 and 19 are barred by the applicable statutes of limitations.

However, even if they were not, the plaintiffs' claims against Attorney Conant and Freed Marcroft, except for the claim for malicious prosecution in Count 5, must be dismissed because these defendants are shielded by absolute immunity pursuant to the litigation privilege.

"Federal courts in Connecticut routinely apply the state's litigation privilege to claims that challenge representations made in underlying state court litigation." Weldon v. MTAG Servs., LLC, No. 3:16-cv-783 (JCH), 2017 WL 776648, at *10 (D. Conn. Feb. 28, 2017) (collecting cases). While the defendants argue that the litigation privilege deprives this court of subject-matter jurisdiction, "[a] defense of absolute . . . immunity has nothing to do with a federal court's jurisdiction.'" See Cruz v. Signify North Am. Corp., 3:22-cv-1081 (SVN), 2023 WL 3499579, at *13 n.14 (D. Conn. May 17, 2023) (quoting Wang v. Delphin-Rittmon, 664 F. Supp. 3d 205, 216 (D. Conn. 2023)). Thus, these claims are being addressed in the context of the 12(b)(6) motion filed by these defendants.

"For more than one century, [the Connecticut Supreme Court] has held that, under the litigation privilege, '[a]n attorney at law is absolutely privileged to publish defamatory matter concerning another in communications preliminary to a proposed judicial proceeding, or in the institution of, or during the course and as a part of, a judicial proceeding in which he

participates as counsel, if it has some relation to the proceeding.'" Scholz v. Epstein, 341 Conn. 1, 9 (2021) (some alteration in original) (quoting Simms v. Seaman, 308 Conn. 523, 535 (2013)).

[A]bsolute immunity extends to an array of retaliatory civil actions beyond claims of defamation, including intentional interference with contractual or beneficial relations arising from statements made during a civil action, intentional infliction of emotional distress arising from statements made during judicial proceedings, and fraud against attorneys or party opponents for their actions during litigation.

Dorfman v. Smith, 342 Conn. 582, 592 (2022). The Connecticut Supreme Court has "noted that, '[l]ike other jurisdictions, Connecticut has long recognized the litigation privilege,' and that '[t]he general rule is that defamatory words spoken upon an occasion absolutely privileged, though spoken falsely, knowingly, and with express malice, impose no liability for damages recoverable in an action in slander'" MacDermid, Inc. v. Leonetti, 310 Conn. 616, 627 (2013) (quoting Simms, 308 Conn. at 536).

In making [a determination about whether the litigation privilege applies], the court must decide as a matter of law whether the alleged defamatory statements are sufficiently relevant to the issues involved in a proposed or ongoing judicial proceeding, so as to qualify for the privilege. The test for relevancy is generous, and "judicial proceeding" has been defined liberally to encompass much more than civil litigation or criminal trials. [Kelley v. Bonney, 221 Conn. 549, 566-67 (1992)].

Hopkins v. O'Connor, 282 Conn. 821, 839 (2007).

The Connecticut Supreme Court has

identified the following factors as relevant to any determination of whether policy considerations support applying absolute immunity to any particular cause of action: (1) whether the alleged conduct subverts the underlying purpose of a judicial proceeding in a similar way to how conduct constituting abuse of process and vexatious litigation subverts that underlying purpose; (2) whether the alleged conduct is similar in essential respects to defamatory statements, inasmuch as the privilege bars a defamation action; and (3) whether the alleged conduct may be adequately addressed by other available remedies. [Simms, 307 Conn. at 545]. Assisting in our evaluation of these factors, to the extent applicable, we have considered as persuasive whether federal courts have protected the alleged conduct pursuant to the litigation privilege. See [id., at 545-46]. These factors and considerations, however, are "simply instructive," and courts must focus on "the issues relevant to the competing interests in each case" in light of the "particular context" of the case. [MacDermid, 310 Conn. at 630-31]. [A court is] not required to rely exclusively or entirely on these factors, but, instead, they are useful when undertaking a careful balancing of all competing public policies implicated by the specific claim at issue and determining whether affording parties this common-law immunity . . . is warranted.

Dorfman, 342 Conn. 593-94.

However, in Simms v. Seaman, 308 Conn. 523 (2013), the Connecticut Supreme Court observed that "this court has not barred claims against attorneys for malicious prosecution in criminal cases" Id. at 542.

The alleged conduct on which the plaintiff's claims of false arrest and false imprisonment in Count 5 and his CUTPA claim in Count 12 are based falls squarely within the litigation

privilege. In Count 5, the plaintiff's claim is based on legal advice these defendants allegedly gave Sevin in the course of the divorce proceedings. In Count 12, the claim is based on a pleading filed by these defendants in the divorce proceedings. In neither instance are there factual allegations (as opposed to conclusory assertions) that could support a conclusion that there exists a policy reason not to apply the litigation privilege. The same is true of the plaintiff's generalized claims based on conclusory assertions against these defendants in Counts 10, 14, 15, 18, and 19.

Moreover, with respect to the malicious prosecution claim in Count 5,

"[a]n action for malicious prosecution against a private person requires a plaintiff to prove that: [1] the defendant initiated or procured the institution of criminal proceedings against the plaintiff; [2] the criminal proceedings have terminated in favor of the plaintiff; [3] the defendant acted without probable cause; and [4] the defendant acted with malice, primarily for a purpose other than that of bringing an offender to justice" .

. . . .

Simms, 308 Conn. at 542 (quoting McHale v. W.B.S. Corp., 187 Conn. 444, 447 (1982)). Here the plaintiff has merely alleged that Attorney Conant "suggested" that Sevin have the plaintiff arrested for a violation of the protective orders. Merely pleading facts that show that an attorney gave legal advice to a

client falls well short of alleging facts that show that the attorney initiated or procured the institution of criminal proceedings against the plaintiff.

IV. Conclusion

For the reasons set forth above, the 12(b)(6) Motion to Dismiss (ECF No. 49) filed by defendants Seth Conant and Freed Marcroft LLC is hereby GRANTED. The claims against these defendants are dismissed with prejudice.

It is so ordered.

Dated this 19th day of March 2024, at Hartford, Connecticut.

/s/AWT

Alvin W. Thompson
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

----- x
JOHN ALAN SAKON, :
 :
 Plaintiff, :
 :
 v. :
 :
 JOHN JOHNSON, F PERRONE, BRUCE :
 D. SKEHAN, PETER BRANDER, NEAL :
 CAVANAUGH, MICHAEL ROBERTS, :
 PETER J. CELIO, WILMARY LABONTE, : Civil No. 3:23-cv-107 (AWT)
 DANIELLE STONE-MITCHELL, :
 CHRISTOPHER FERREIRA, FRANCELIA :
 MARIE SEVIN, DENNIS O'TOOLE, :
 SETH CONANT, FREED MARCROFT LLC, :
 TOWN OF GLASTONBURY, TOWN OF :
 MANCHESTER, and STATE OF :
 CONNECTICUT, :
 :
 Defendants. :
----- x

RULING ON MOTION TO DISMISS

Defendants John Johnson, F. Perrone, Bruce D. Skehan, Peter Brander, Neal Cavanaugh, Michael Roberts, and the Town of Glastonbury (collectively the "Glastonbury Defendants") have moved to dismiss all claims against them. For the reasons set forth below, their motion to dismiss is being granted.

I. Background

The plaintiff, John Alan Sakon, filed this action on January 26, 2023, proceeding pro se and naming seventeen defendants. The nineteen-count complaint concerns a number of separate events, including the plaintiff being arrested by officers of the

Glastonbury Police Department twice in August 2016; on September 22, 2016; in June 2018; and on October 22, 2018.

Count 1 is a claim for false arrest, malicious prosecution, and false imprisonment brought against John Johnson ("Johnson") and F. Perrone ("Perrone"), who are both officers in the Glastonbury Police Department; the Glastonbury Police Department; and others. It is based on an arrest on August 10, 2016. The criminal case arising from that arrest was nolle on January 3, 2019.

Count 2 is a claim for false arrest, malicious prosecution, and false imprisonment brought against Bruce Skehan ("Skehan"), who is an officer in the Glastonbury Police Department; the Glastonbury Police Department; and others. It is based on an arrest on nine felony charges in August 2016. "Before trial, the State entered a nolle prosequi on the 9th felony charge" (ECF No. 1-1 at 10). "On November 5, 2018, a jury, in a record 18 minutes, found the defendant Sakon innocent of the remaining eight felony counts." Id.

Count 4 is a claim for false arrest, malicious prosecution, and false imprisonment brought against Peter Brander ("Brander"), who is an officer in the Glastonbury Police Department; the Glastonbury Police Department; and the Town of Glastonbury. It is based on an arrest on September 22, 2016. The criminal case arising from that arrest was nolle in December

2018.

Count 8 is a claim for false arrest, malicious prosecution, and false imprisonment brought against Neal Cavanaugh ("Cavanaugh"), who is an officer in the Glastonbury Police Department; and the Glastonbury Police Department. It is based on an arrest in June 2018. The criminal case arising from that arrest was nolle on January 3, 2019.

Count 9 is a claim for false arrest, malicious prosecution, and false imprisonment brought against Brander; the Glastonbury Police Department; and the Town of Glastonbury. It is based on an arrest on October 22, 2018. The criminal case arising from that arrest was nolle on July 8, 2020.

Count 10 is a claim for false imprisonment/assault and battery. Count 14 is a claim for intentional infliction of emotional distress. Count 15 is a claim for negligent infliction of emotional distress. Each of these claims is against all of the defendants, but none identifies acts by these defendants other than acts identified in prior counts.

Count 13 is an antitrust claim against the Town of Glastonbury for damages under the Sherman Anti-Trust Act, 15 U.S.C. §§ 1 et seq.; the Connecticut Antitrust Act, Conn. Gen. Stat. §§ 35-24 et seq.; and the Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. §§ 42-110a et seq., ("CUTPA"). The plaintiff alleges that the Town of Glastonbury arrested him

"multiple times" in order to "prevent the development and refinancing of plaintiff's development and to derail the developments of Sakon" and thereby "favor development in the Redevelopment District," "complete its inverse condemnation of the subject properties owned by Sakon," and "create a monopoly of grocery sales in the local community so as to benefit the local insiders and Stop & Shop." (ECF No. 1-1 at 23-24).

Count 18 is a claim for libel, slander, and defamation of character. It makes specific reference to an act by defendant Francelia Marie Sevin on August 10, 2016, but makes no reference to these defendants. It simply refers to "actions of all the defendants." (ECF No. 1-1 at 24).

Count 19 claims a 42 U.S.C. § 1983 civil rights violation as to which the "plaintiff cites the complaints found in paragraphs 1-18 hereto" and "claims a deprivation of his rights, privileges, immunities secured by the Constitution which were violated by state and local officials under the color of law." (ECF No. 1-1 at 25).

II. Legal Standard

When deciding a motion to dismiss under Rule 12(b)(6), the court must accept as true all factual allegations in the complaint and must draw inferences in a light most favorable to the plaintiff. See Scheuer v. Rhodes, 416 U.S. 232, 236 (1974). Although a complaint "does not need detailed factual

allegations, . . . a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007) (citations omitted) (citing Papasan v. Allain, 478 U.S. 265, 286 (1986)) (on a motion to dismiss, courts "are not bound to accept as true a legal conclusion couched as a factual allegation"). "Nor does a complaint suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.'" Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Twombly, 550 U.S. at 557). "Factual allegations must be enough to raise a right to relief above the speculative level, . . . on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." Twombly, 550 U.S. at 555 (citations and internal quotations omitted). However, the plaintiff must plead "only enough facts to state a claim to relief that is plausible on its face." Id. at 570. "A claim has facial plausibility when the [claimant] pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Iqbal, 556 U.S. at 678.

"The function of a motion to dismiss is 'merely to assess the legal feasibility of the complaint, not to assay the weight of the evidence which might be offered in support thereof.'"

Mytych v. May Dep't Store Co., 34 F. Supp. 2d 130, 131 (D. Conn. 1999) (quoting Ryder Energy Distribution v. Merrill Lynch Commodities, Inc., 748 F.2d 774, 779 (2d Cir. 1984)). The issue on a motion to dismiss "is not whether the plaintiff will prevail, but whether the plaintiff is entitled to offer evidence to support his claims." United States v. Yale New Haven Hosp., 727 F. Supp. 784, 786 (D. Conn. 1990) (citing Scheuer, 416 U.S. at 232).

In its review of a motion to dismiss for failure to state a claim, the court may consider "only the facts alleged in the pleadings, documents attached as exhibits or incorporated by reference in the pleadings and matters of which judicial notice may be taken." Samuels v. Air Transp. Local 504, 992 F.2d 12, 15 (2d Cir. 1993).

"[I]n some cases, a document not expressly incorporated by reference in the complaint is nevertheless 'integral' to the complaint and, accordingly, a fair object of consideration on a motion to dismiss. A document is integral to the complaint 'where the complaint relies heavily upon its terms and effect.'" Goel v. Bunge, Ltd., 820 F.3d 554, 559 (2d Cir. 2016) (quoting Chambers v. Time Warner, Inc., 282 F.3d 147, 153 (2d Cir. 2002)).

"Where, as here, the complaint was filed pro se, it must be construed liberally 'to raise the strongest arguments [it]

suggest[s].'" Walker v. Schult, 717 F.3d 119, 124 (2d Cir. 2013) (quoting Pabon v. Wright, 459 F.3d 241, 248 (2d Cir. 2006)). "Nonetheless, a pro se complaint must state a plausible claim for relief," Walker, 717 F.3d at 124 (citing Harris v. Mills, 572 F.3d 66, 73 (2d Cir. 2009)), and the defendants have filed a Notice to Self-Represented Litigant Concerning Motion to Dismiss as required by Local Rule 12(a). Consistent with the liberal reading of a pro se plaintiff's complaint, "[a] district court deciding a motion to dismiss may consider factual allegations made by a pro se party in his papers opposing the motion." Walker, 717 F.3d at 122 n.1.

III. Discussion

The Glastonbury Defendants contend that the claims against the Glastonbury Police Department should be dismissed because it is not an entity subject to suit. They further contend that almost all of the plaintiff's claims against the Glastonbury Defendants should be dismissed as time-barred, and those that are not time-barred should be dismissed for failure to state a claim upon which relief can be granted.

A. Glastonbury Police Department

Counts 1, 2, 4, 8 and 9 are brought against, among other defendants, the Glastonbury Police Department. The Glastonbury Police Department is a municipal police department and thus is not a legal entity with the legal capacity to be sued under 42

U.S.C. § 1983. See Rose v. City of Waterbury, No. 3:12-cv-291 (VLB), 2013 WL 1187049, at *9 (D. Conn. Mar. 21, 2013) (noting "Courts in Connecticut have held that the 'Connecticut General Statutes contain no provision establishing municipal departments, including police departments, as legal entities separate and apart from the municipality they serve, or providing that they have the capacity to sue or be sued Rather, pursuant to Connecticut enabling legislation, it is the municipality itself which possesses the capacity to sue and be sued.'" (citation omitted)); Petaway v. City of New Haven Police Dep't, 541 F. Supp. 2d 504, 510 (D. Conn. 2008) ("[A] municipal police department is not subject to suit under section 1983 because it is not an independent legal entity."); Nicholson v. Lenczewski, 356 F. Supp. 2d 157, 164 (D. Conn. 2005) ("A municipal police department . . . is not a municipality nor a 'person' within the meaning of section 1983.").

Therefore, all claims against the Glastonbury Police Department must be dismissed.

B. Defendants Roberts and Perrone

As to defendant Michael Roberts ("Roberts"), his name is included in the caption of the complaint but the complaint does not allege any involvement by Roberts in any conduct that is the basis for any of the plaintiff's claims in this case. Rather, Count 8 merely contains a reference to a personal injury

lawsuit, Sakon v. Roberts, HHD-CV20-6130471-S (Conn. Super. Ct. 2020), the plaintiff filed against Roberts, the Town of Glastonbury, and Cavanaugh, in Connecticut Superior Court. “It is well settled in this Circuit that personal involvement of defendants in alleged constitutional deprivations is a prerequisite to an award of damages under § 1983.” Brandon v. Kinter, 938 F.3d 21, 36 (2d Cir. 2019) (quoting Wright v. Smith, 21 F.3d 496, 501 (2d Cir. 1994)) (internal quotations omitted). “Where a defendant is listed in the caption but the body of the complaint fails to indicate what the defendant did to the plaintiff, dismissal is appropriate.” Hardaway v. City of Hartford, Civ. No. 3:16-cv-00115, 2016 WL 10951271, at *3 (D. Conn. July 5, 2016) (Merriam, M.J.), recommended ruling affirmed, adopted, and ratified July 21, 2016, (quoting Napierkowski v. Fischer, No. 9:09-CV-0601 (GTS) (GHL), 2009 WL 3165837, at *1 (N.D.N.Y. Sept. 29, 2009)).

As to defendant Perrone, he died on August 29, 2021, and his counsel filed notice of his death on February 15, 2023. Federal Rule of Civil Procedure 25 provides:

If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.

Fed. R. Civ. P. 25(a)(1). Here, the 90-day period under Rule 25(a)(1) ended on May 16, 2023. The plaintiff did not file a motion for substitution by that date; nor did he file one after that date.

Although courts have "long accorded pro se litigants 'special solicitude' to protect them from 'inadvertent forfeiture of important rights because of their lack of legal training,' . . . solicitude for pro se litigants does not require [the court] to excuse failure to comply with understandable procedural rules and mandatory deadlines." Kotler v. Jubert, 986 F.3d 147, 156 (2d Cir. 2021) (quoting Triestman v. Federal Bureau of Prisons, 470 F.3d 471, 475 (2d Cir. 2006) (internal citations omitted); see also, e.g., Chace v. Machado, No. 3:08-cv-774 (CSH), 2009 WL 3416422, at *1 (D. Conn. Oct. 22, 2009) ("While parties proceeding pro se are due a certain degree of latitude, particularly with regard to complex or obscure matters, that does not extend to permitting their failure to comply with the requirements of the Federal Rules of Civil Procedure . . . with respect to matters such as deadlines."). Here, the Suggestion of Death (ECF No. 18) made specific reference to Rule 25(a), thereby directing the plaintiff's attention to that rule. Under such circumstances, the plaintiff was not dealing with a complex or obscure matter; he was dealing with an understandable procedural rule to which his attention had been directed.

Therefore, this case is dismissed as to defendants Roberts and Perrone.

C. Antitrust Claim (Count 13)

Count 13 is an antitrust claim against the Town of Glastonbury only. The plaintiff alleges that the Town of Glastonbury acted "to prevent the development and refinancing of plaintiff's development and to derail the developments of Sakon so as to create a monopoly of grocery sales in the local community so as to benefit the local insiders and Stop & Shop." (ECF No. 1-1 at 22). "Plaintiff claims damages under the Sherman Act, the Connecticut Anti-trust Act and the Unfair Trade Practices Act against the town of Glastonbury." Id.

The plaintiff made an identical claim in a case he filed before filing this action. In John Alan Sakon v. Town of Glastonbury, et al., 3:23-cv-53-AWT, which was filed on January 13, 2023, the plaintiff alleges in Claim VI that defendants created and financed a campaign "to derail the developments of Sakon so as to create a monopoly of grocery sales in the local community so as to benefit the local insiders and Stop & Shop." 3:23-cv-53-AWT, ECF No. 1 at 11. "Plaintiff claims damages under the Sherman Act, the Connecticut Anti-trust Act and the Unfair Trade Practices Act." Id.

Under the prior pending action doctrine, "[w]here there are two competing lawsuits, the first suit should have priority,

absent the showing of balance of convenience . . . or . . . special circumstances giving priority to the second.'" Adam v. Jacobs, 950 F.2d 89, (2d Cir. 1991) (internal quotations omitted) (quoting First City Nat'l Bank and Trust Co. v. Simmons, 878 F.2d 76, 79 (2d Cir. 1989)). "Deference to the first filing 'embodies considerations of judicial administration and conservation of resources.'" Adam, 878 F.2d at 89 (quoting Simmons, 878 F.2d at 79). "Balancing factors of convenience is essentially an equitable task." Simmons, 878 F.2d at 80 (quoting Kerotest Mfg. Co. v. C-O-Two Fire Equipment Co., 342 U.S. 180, 183-84 (1952)).

Here, the balance of convenience weighs in favor of dismissing this claim, but without prejudice to the plaintiff pursuing it in the first-filed case. A number of the plaintiff's other claims in that case also relate to the Town of Glastonbury's alleged antitrust violations, for example, the claim under the Racketeer Influenced and Corrupt Organizations Act. See 3:23-cv-53-AWT, ECF No. 1 at 11. In the instant action, the relationships between the plaintiff's antitrust claim and the other claims in the complaint range from nonexistent to attenuated. Thus, it would be more efficient for the parties and for the court if the plaintiff's antitrust claim is litigated in the first-filed case. In addition, the plaintiff has been instructed to file an amended complaint in the first-filed case,

which will give him the opportunity to do a better job of pleading his antitrust claim. See 3:23-cv-53-AWT, Order Requiring the Plaintiff to Provide Greater Specificity in the Complaint, ECF No. 78.

Therefore, the antitrust claim is dismissed without prejudice to the plaintiff pursuing it in the first-filed case.

D. Executive Orders 7G and 10A

During the COVID-19 pandemic, Governor Ned Lamont issued Executive Orders 7G and 10A, which effectively extended the statutes of limitations in the State of Connecticut. Pursuant to those executive orders, the statutes of limitations in Connecticut were tolled between March 19, 2020 and March 1, 2021. See, e.g., Taylor v. Pillai, No. 3:21-cv-623 (SALM), 2022 WL 4080525, at *4-*6 (D. Conn. Sept. 6, 2022) (interpreting and applying these executive orders). Thus, the applicable statutes of limitations were extended for 347 days for all claims filed before March 19, 2020.

Therefore, in determining when the applicable statute of limitations ran with respect to a claim at issue here, the court uses a date that is 347 days after the date on which the statute of limitations would otherwise have run, unless it ran prior to March 19, 2020.

E. Statute of Limitations

1. False Arrest and False Imprisonment (Counts 1, 2, 4, 8 and 9)

The statute of limitations for false arrest and false imprisonment claims is three years. See Conn. Gen. Stat. § 52-577; Rivera v. Double A. Transp., Inc., 248 Conn. 21, 32 (1999) (false imprisonment is "an intentional tort governed by § 52-577"); Green v. Donroe, 186 Conn. 265, 267 (1982) ("False imprisonment, or false arrest, is the unlawful restraint by one person of the physical liberty of another."); see also Outlaw v. City of Meriden, 43 Conn. App. 387, 392 (1996) ("Although the plaintiff pleaded a count alleging false arrest and a count sounding in false imprisonment, the applicable law for these two causes of action is identical.").

"[A] plaintiff's false arrest claim begins accruing at the time of arrest, or at the time the plaintiff was otherwise held pursuant to legal process, and [courts in this District] do not take into consideration the ultimate disposition of the criminal case." Harvey v. Town of Greenwich, No. 3:17-cv-1417 (SRU), 2019 WL 1440385, at *7 (D. Conn. Mar. 31, 2019) (citing Nowacki v. Town of New Canaan, No. 3:16-cv-407 (JAM), 2017 WL 1158239, at *7 (D. Conn. Mar. 28, 2017); Spencer v. Connecticut, 560 F. Supp. 2d 153, 161 (D. Conn. 2008); Vilchel v. Connecticut, No. 3:07-cv-1344 (JCH), 2008 WL 5226369, at *2 (D. Conn. Dec. 11,

2008); Collin v. Connecticut Judicial Branch, No. 3:16-cv-1390 (SRU), 2016 WL 6304434, at *2 n.1 (D. Conn. Oct. 26, 2016)).

The arrests here occurred on August 10, 2016 (Count 1); in August 2016 (Count 2); on September 22, 2016 (Count 4); in June 2018 (Count 8); and on October 22, 2018 (Count 9). "False arrest and false imprisonment overlap; the former is a species of the latter." Wallace v. Kato, 549 U.S. 384, 388 (2007). "The sort of unlawful detention remediable by the tort of false imprisonment is detention without legal process" Id. at 389.

Reflective of the fact that false imprisonment consists of detention without legal process, a false imprisonment ends once the victim becomes held pursuant to such process—when, for example, he is bound over by a magistrate or arraigned on charges. . . . Thereafter, unlawful detention forms part of the damages for the entirely distinct tort of malicious prosecution, which remedies detention accompanied, not by absence of legal process, but by wrongful institution of legal process.

Id. at 389-90 (citations omitted) (internal quotations omitted).

The complaint does not distinguish between the dates on which the plaintiff was arrested and the dates on which he was otherwise held pursuant to legal process, but there is no indication that the difference between these dates is material. Thus, the court uses the dates of the arrests.

The latest in time of these arrests is the one on which Count 9 is based. It occurred on October 22, 2018. The three-year statute of limitations ordinarily would have run on October 22,

2021. As the statute of limitations was extended by 347 days because of Executive Orders 7G and 10A, the statute of limitations for these claims ran by October 4, 2022. Thus, these claims are time-barred.

2. Malicious Prosecution (Counts 1, 2, 4 and 8)

"When the question before a federal court is at what point a malicious prosecution claim accrued, 'favorable termination' is analyzed under federal common law, because the timing of accrual is a question of federal law." Spak v. Phillips, 857 F.3d 458, 462-63 (2d Cir. 2017) (citing Wallace, 549 U.S. at 388). "When, by contrast, a federal court is analyzing the substantive merits of a plaintiff's claim, the definition of 'favorable termination' is analyzed under state law." Id. at 463 (citing Singleton v. City of New York, 632 F.2d 185, 193 (2d Cir. 1980)). "In the malicious prosecution context . . . to be deemed a favorable termination, the prosecution's 'final disposition [must be] such as to indicate the accused is not guilty.'" Ashley v. City of New York, 992 F.3d 128, 140 (2d Cir. 2021) (quoting Singleton, 632 F.2d at 193). Thus, a verdict of not guilty satisfies the favorable termination requirement. See Janetka v. Dabe, 892 F.2d 187, 189-90 (2d Cir. 1989). "[A]s a general matter a nolle prosequi constitutes a 'favorable

termination' for the purpose of determining when a Section 1983 claim accrues."¹ Id.

The charges against the plaintiff that are the basis for Count 1 were nolle on January 3, 2019. There was a favorable termination, by no later than November 5, 2018, with respect to the charges against the plaintiff that are the basis for Count 2 as a result of the combination of a nolle and an acquittal. The charges against the plaintiff that are the basis for Count 4 were nolle in December 2018. The charges against the plaintiff that are the basis for Count 8 were nolle on January 3, 2019.

The latest of these four favorable terminations is the one related to Count 8, and it occurred on January 3, 2019. The three-year statute of limitations ordinarily would have run on January 3, 2022, but it was extended by 347 days because of Executive Orders 7G and 10A. Thus, the statute of limitations ran with respect to all of these claims by no later than December 16, 2022.

¹"To be sure, courts and common law authorities state that a nolle does not constitute a favorable termination when it is entered for reasons that are 'not indicative of the defendant's innocence.' [Washington v. Summerville, 127 F.3d 552, 557 (7th Cir. 1997)]. However, this qualifier is defined narrowly. It generally only includes nolles that are caused by the defendant—either by his fleeing the jurisdiction to make himself unavailable for trial or delaying a trial by means of fraud. It also includes any nolle entered in exchange for consideration offered by the defendant (e.g., cooperation). See generally RESTATEMENT (SECOND) OF TORTS § 660 (AM. LAW INST. 1977)." Spak, 857 F.3d at 464.

The plaintiff contends, with respect to each of these four counts, that there was not a favorable termination until the case was "formally dismissed" thirteen months after the nolle pursuant to Connecticut General Statutes § 54-142a.

Pursuant to Connecticut General Statutes § 54-142a(c)(1):

Whenever any charge in a criminal case has been nolle in the Superior Court, or in the Court of Common Pleas, if at least thirteen months have elapsed since such nolle, all police and court records and records of the state's or prosecuting attorney or the prosecuting grand juror pertaining to such charge shall be erased

Conn. Gen. Stat. § 54-142a(c)(1). The plaintiff's contention that his claim did not accrue upon entry of the nolle but rather thirteen months later when the records were erased pursuant to § 54-142a was rejected in Spak v. Phillips. There the court held that "Spak's contention that his claim accrued not upon entry of the nolle, but thirteen months later when records of the charges against him were automatically erased pursuant to Connecticut state law, see Conn. Gen. Stat. § 54-142a(c)(1), is meritless." 857 F.3d at 466. "Connecticut courts have made clear that the erasure provision Spak cites is a purely administrative measure, [State v. Winer, 286 Conn. 666, 679-80 (2008)] (holding that 'the recording of nolle and later, the erasure of criminal records,' are 'administrative rather than substantive in intent')." Id.

The plaintiff argues that Spak v. Phillips is no longer good law because of the enactment of Connecticut General Statutes § 52-577f. However, the analysis in Spak is based on the fact that Connecticut courts have determined that the erasure provision in § 54-142a(c)(1) is a purely administrative matter, and nothing in § 52-577f undermines that holding by the Connecticut Supreme Court in Winer. Rather, prior to the enactment of § 52-577f, pursuant to Connecticut General Statutes § 52-577 the statute of limitations accrued on the date of the act or omission complained of, and that date arguably was the date on which the malicious prosecution commenced. But at that point, a plaintiff could not have satisfied the requirement that there had been a favorable termination. The new provision, § 52-577f, makes it clear that the date of accrual of the cause of action is the date on which there has been a favorable termination, i.e., in a case like this, when a charge is nolle. The fact that the pertinent provision in the Connecticut Practice Book was not changed after the enactment of § 52-577f is consistent with this conclusion. Section 39-31 still provides that "[t]he entry of a nolle prosequi terminates the prosecution and the defendant shall be released from custody." Conn. Practice Book § 39-31.

Thus, these claims are time-barred.²

² With respect to the malicious prosecution claim in Count 9 the charges against the plaintiff that are the basis for this claim were nolle on July 8, 2020. The three-year statute of limitations ordinarily would have run on

3. Claims in Counts 10, 13, 14, 15, 18 and 19

With respect to Count 10, the statute of limitations for false imprisonment and assault and battery is three years. See Conn. Gen. Stat. § 52-577; Rivera, 248 Conn. at 32 (concerning false imprisonment); Lambert v. Stovell, 205 Conn. 1, 4 (1987) (noting "assault and battery" are "governed by § 52-577"). With respect to Count 14, the statute of limitations for a claim for intentional infliction of emotional distress is three years. See Conn. Gen. Stat. § 52-577; Watts v. Chittenden, 301 Conn. 575, 596-98 (2011) (§ 52-577 applies to intentional infliction of emotional distress claims). With respect to Count 15, the statute of limitations with respect to a claim for negligent infliction of emotional distress is two years. See Conn. Gen. Stat. § 52-584;³ Rivera, 248 Conn. at 31 (noting that negligent infliction of emotional distress claims fall properly under § 52-584). With respect to Count 19, the statute of limitations for a Section 1983 claim is three years. See Conn. Gen. Stat. § 52-577; Walker v. Jastremski, 430 F.3d 560, 562 (2d Cir. 2005) (statute of limitations for 42 U.S.C. § 1983 claim based in Connecticut relies on § 52-577); see also Lounsbury v. Jeffries, 25 F.3d 131, 133 (2d Cir. 1994) ("Since Congress did not enact a

July 8, 2023, after this case was filed, but was extended because of Executive Orders and 7G and 10A.

³ Based on the allegations in the complaint, the three-year statute of repose is not implicated here.

statute of limitations governing actions brought under § 1983, the courts must borrow a state statute of limitations").

As noted above, none of Counts 10, 14, 15 or 19 identifies actions by any of the Glastonbury Defendants other than actions attributed to them in Counts 1, 2, 4, 8, and 9. The latest in time of the arrests on which these counts are based is the one on which Count 9 is based. That arrest occurred on October 22, 2018. The three-year statute of limitations for that claim ordinarily would have run on October 22, 2021. As the statute of limitations was extended by 347 days because of Executive Orders 7G and 10A, the statute of limitations ran on October 4, 2022. The two-year statute of limitations for the plaintiff's negligent infliction of emotional distress claim against these defendants would have run earlier. Thus, these claims are time-barred.

With respect to Count 18, the statute of limitations for a claim for libel, slander or defamation is two years. See Conn. Gen. Stat. § 52-597; Doe #2 v. Rackliffe, 337 Conn. 627, 634 n.9 (2020) ("Other examples [of specialized statutes of limitations] include the statutes governing actions for defamation; see General Statutes § 52-597 ('[n]o action for libel or slander shall be brought but within two years from the date of the act complained of') . . ."). The only act alleged to have constituted libel, slander or defamation of character is alleged

to have occurred on August 10, 2016, so the two-year statute of limitations ran by August 10, 2018, as Executive Orders 7G and 10A do not apply.

F. Failure to State a Claim: Malicious Prosecution (Count 9)

The malicious prosecution claim is brought against Brander and the Town of Glastonbury, in addition to the Glastonbury Police Department.

The plaintiff alleges that "with encouragement from the Glastonbury Police Department, on 10/22/2018, Sakonchick filed [a] criminal complaint against John Sakon for embezzling money from the tenancy in common." (ECF No. 1-1 at 20). "By his own admission, James Sakonchick did so 'as a card to play' in defense of the civil lawsuits between the parties." Id. "James Sakonchick then, in recorded conversation, offers to 'withdraw the charges', if John Sakon agreed to withdraw the civil actions" that he had brought against Sakonchik in Connecticut Superior Court. Id.

"Plaintiff alleges Officer Brander with malice sought to pursue a political agenda on behalf of the town of Glastonbury by filing yet another false larceny charge in the inverse condemnation of . . . Sakon's commercial lands to prevent the plaintiff's refinancing of his properties." Id. "Officer Brander relied, almost exclusively, on the prior larceny complaint filed by Linda Sakon for \$32,026.66, in his Arrest Warrant Affidavit."

Id. The plaintiff alleges that had Brander conducted a proper investigation, he would have learned a number of facts that would have made it apparent that the plaintiff should not be arrested. "Officer Brander clearly exercised prejudice, negligence, incompetence, slackness and unfairly prosecuted the felony larceny arrest to advance the town of Glastonbury's agenda to inversely claim Sakon's commercial lands by destroying the reputation of Sakon to do business." Id. at 21. "On July 8, 2020, the state noted a conviction on the charge was unlikely and the court entered a nolle prosequi." Id.

"In order to prevail on a § 1983 claim against a state actor for malicious prosecution, a plaintiff must show a violation of his rights under the Fourth Amendment, and establish the elements of a malicious prosecution claim under state law.'" Roberts v. Babkiewicz, 582 F.3d 418, 420 (2d Cir. 2009) (quoting Fulton v. Robinson, 289 F.3d 188, 195 (2d Cir. 2002)). In Connecticut, "[a]n action for malicious prosecution against a private person requires a plaintiff to prove that: (1) the defendant initiated or procured the institution of criminal proceedings against the plaintiff; (2) the criminal proceedings have terminated in favor of the plaintiff; (3) the defendant acted without probable cause; and (4) the defendant acted with malice, primarily for a purpose other than bringing an offender to justice.'" Bhatia v. Debek, 287 Conn. 397, 404 (2008)

(quoting McHale v. W.B.S. Corp., 187 Conn. 444, 447 (1982)).

Under Connecticut law,

"[p]robable cause has been defined as the knowledge of facts sufficient to justify a reasonable [person] in the belief that he has reasonable grounds for prosecuting an action Mere conjecture or suspicion is insufficient Moreover, belief alone, no matter how sincere it may be, is not enough, since it must be based on circumstances which make it reasonable Although want of probable cause is negative in character, the burden is upon the plaintiff to prove affirmatively, by circumstances or otherwise, that the defendant had no reasonable ground for instituting the criminal proceeding."

Bhatia, 287 Conn. at 397 (some modification in original)

(quoting Zenik v. O'Brien, 137 Conn. 592, 597 (1951)). The

"probable cause determination is, simply, an analysis of probabilities," and it is "not a technical [determination], but is informed by the factual and practical considerations of everyday life on which reasonable and prudent [persons], not legal technicians, act.'" State v. Brown, 279 Conn. 493, 523 (2006) (some modification in original) (quoting State v. Eady, 249 Conn. 431, 440 (1999)).

The plaintiff has failed to allege facts that could show that Brander acted without probable cause. The complaint alleges that Brander arrested the plaintiff on a charge of larceny in the first degree based on a criminal complaint by Saconchik claiming that Sakon had embezzled money. The complaint further alleges that Brander relied on a prior larceny complaint filed

by Linda Sakon. These allegations establish that Brander had knowledge of facts sufficient to justify a reasonable person in the belief that the plaintiff had committed a crime. The plaintiff alleges that Brander did not contact him as part of the investigation and alleges further that had Brander conducted a proper investigation, he would have learned a number of facts that would have made it apparent that the plaintiff had not committed an offense.

In DeLaurentis v. City of New Haven, the court stated:

One may not rely without further investigation on representations of another where the information received is such as to put an ordinarily prudent and cautious person on inquiry, or, it has been held, where he has no personal knowledge of the truth of the representations. So, also, there is authority to the effect that to proceed without inquiry would be to act without probable cause where the information is readily obtainable, or where the accused himself points out sources of information that would establish his innocence.

220 Conn. 225, 258 (1991) (emphasis added) (internal citations omitted).

Here, the plaintiff claims that Brander could have learned information tending to exonerate the plaintiff, but the complaint contains no factual allegations showing that Brander received information that would have "put an ordinarily prudent and cautious person on inquiry." Id.

In addition, the plaintiff has failed to allege facts that could show that Brander acted with malice, or with a purpose

other than bringing a suspected offender to justice. There are no factual allegations in the complaint that suggest a connection between Brander and any political agenda of the Town of Glastonbury or an inverse condemnation of Sakon's commercial lands. The plaintiff simply asserts there is one. A complaint does not suffice "if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.'" Iqbal, 556 U.S. at 678 (quoting Twombly, 550 U.S. at 557). Thus, vague, conclusory assertions concerning Brander's mental state are not sufficient to state a claim. "We accept as true factual allegations but not conclusions, such as statements concerning a defendant's state of mind." Nat'l Rifle Ass'n of Am. v. Vullo, 49 F.4th 700, 713 (2d Cir. 2022) (citing Iqbal 556 U.S. at 681). See also Whiteside v. Hover-Davis, Inc., 995 F.3d 315, 321 (2d Cir. 2021) ("a court should not accept as true allegations that amount to mere 'legal conclusions,' . . . including those concerning a defendant's state of mind . . ." (quoting Iqbal, 556 U.S. at 678) (internal citations omitted)).

The plaintiff has also failed to state a claim for malicious prosecution upon which relief can be granted with respect to the Town of Glastonbury.

The Supreme Court has said that a municipality may be liable for the acts of a single official—but only if that official is someone "whose edicts or acts may fairly be said to represent official policy" for the entire municipality. Monell, [436 U.S. at 694]. It is

not enough that an official had discretion to make a decision that was unreviewable. Anthony v. City of New York, 339 F.3d 129, 139 (2d Cir. 2003). Rather, the official must have been sufficiently "high up in the municipal hierarchy," Walker v. City of New York, 974 F.2d 293, 297 (2d Cir. 1992), that he was "responsible under state law for making policy in that area of the municipality's business," [Jeffes v. Barnes,] 208 F.3d 49, 57 (2d Cir. 2000)] (emphasis and alteration omitted). The authority to make policy "necessarily" means "the authority to make final policy." City of Saint Louis v. Praprotnik, [485 U.S. 112, 127 (1988)]. Stated another way, the official must have had state-law "authority to adopt rules for the conduct of [the municipal] government." Auriemma v. Rice, 957 F.2d 397, 401 (7th Cir. 1992).

Agosto v. New York City Dep't of Educ., 982 F.3d 86, 98 (2d Cir. 2020). The plaintiff does not allege any facts that could show that a municipal policymaker was involved in the prosecution on which Count 9 is based. Rather, the complaint seeks to tie the Town of Glastonbury to the arrest by means of a vague allegation with respect to Brander's state of mind when he made the arrest.

Thus, the malicious prosecution claim in Count 9 must be dismissed for failure to state a claim upon which relief can be granted.

IV. Conclusion

For the reasons set forth above, the amended motion to dismiss filed by the Manchester Defendants (ECF No. 48) is hereby GRANTED. The case is dismissed with prejudice as to the Glastonbury Police Department, F. Perrone and Michael Roberts. The claims against John Johnson, Bruce D. Skehan, Peter Brander

and Neal Cavanaugh are dismissed with prejudice. The claims against the Town of Glastonbury, with the exception of Count 13, are dismissed with prejudice. Count 13 is dismissed without prejudice to the plaintiff pursuing that claim in the first-filed case, John Alan Sakon v. Town of Glastonbury, et al., 3:23-cv-53-AWT.

It is so ordered.

Dated this 28th day of March 2024, at Hartford, Connecticut.

/s/AWT

Alvin W. Thompson
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

----- x
JOHN ALAN SAKON, :
 :
Plaintiff, :
 :
v. :
 :
JOHN JOHNSON, F PERRONE, BRUCE :
D. SKEHAN, PETER BRANDER, NEAL :
CAVANAUGH, MICHAEL ROBERTS, :
PETER J. CELIO, WILMARY LABONTE, : Civil No. 3:23-cv-107 (AWT)
DANIELLE STONE-MITCHELL, :
CHRISTOPHER FERREIRA, FRANCELIA :
MARIE SEVIN, DENNIS O'TOOLE, :
SETH CONANT, FREED MARCROFT LLC, :
TOWN OF GLASTONBURY, TOWN OF :
MANCHESTER, and STATE OF :
CONNECTICUT, :
 :
Defendants. :
----- x

ORDER RE ENTERING JUDGMENT

As to defendant Christopher Ferreira in his official capacity, the claims over which the court might have original jurisdiction were dismissed with prejudice and the court declined to exercise supplemental jurisdiction over any state law claims. See ECF No. 66. The claims against defendant Ferreira in his individual capacity were dismissed with prejudice. See ECF No. 103.

As to defendant State of Connecticut, the claims over which the court might have original jurisdiction were dismissed, and the court declined to exercise supplemental jurisdiction over any state law claims. See ECF No. 66.

As to defendants Dennis O'Toole and Francelia Marie Sevin, the

claims over which the court might have original jurisdiction were dismissed with prejudice and the court declined to exercise supplemental jurisdiction over any state law claims. See ECF No. 65.

As to the Manchester Defendants (i.e., defendants Town of Manchester, Peter Celio, Wilmary Labonte and Danielle Stone-Mitchell), all claims against them have been dismissed with prejudice. See ECF No. 102.

As to defendants Seth Conant and Freed Marcroft LLC, all claims against these defendants have been dismissed with prejudice. See ECF No. 104.

As to defendants the Glastonbury Police Department, F. Perrone and Michael Roberts, the case was dismissed with prejudice as to these defendants. See ECF No. 109 at 27.

As to defendants John Johnson, Bruce D. Skehan, Peter Brander and Neal Cavanaugh, the claims against these defendants have been dismissed with prejudice. See ECF No. 109 at 27-28.

As to defendant the Town of Glastonbury, with the exception of Count 13, the claims against it have been dismissed with prejudice; Count 13 was dismissed without prejudice to the plaintiff pursuing that claim in the first-filed case John Alan Sakon v. Town of Glastonbury, et al., 3:23-cv-53-AWT. Id. at 28.

The Clerk shall enter judgment in accordance with the foregoing and close this case.

It is so ordered.

Dated this 8th day of August 2024, at Hartford, Connecticut.

/s/AWT

Alvin W. Thompson
United States District Judge

APPENDIX D

Ruling on Application for Extension of Time to File a Petition for a Writ of Certiorari (Rule 13.5)

**Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001**

June 18, 2026

Scott S. Harris
Clerk of the Court
(202) 479-3011

Clerk
United States Court of Appeals for the Second
Circuit
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

RECEIVED
26 JUN 29 PM 3:42
U.S. COURT OF APPEALS
SECOND CIRCUIT

Re: John Alan Sakon
v. John Johnson, Officer of the Glastonbury Police
Department, et al.
Application No. 25A1411
(Your No. 24-1991)

Dear Clerk:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Sotomayor, who on June 18, 2026, extended the time to and including August 21, 2026.

This letter has been sent to those designated on the attached notification list.

Sincerely,

Scott S. Harris, Clerk

by



Pipa Fisher
Case Analyst

**Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001**

NOTIFICATION LIST

**Scott S. Harris
Clerk of the Court
(202) 479-3011**

**Mr. John Alan Sakon
28 Fenwick Dr.
Farmington, CT 06032**

**Clerk
United States Court of Appeals for the Second Circuit
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007**

APPENDIX E

Legislative History of Conn. Gen. Stat. § 52-577f and Conn. Gen. Stat. § 52-577f

Appendix E, consisting of the legislative history of Public Act No. 21-104, § 60 (2021) (originating in House Bill No. 6592, “An Act Concerning the Filing of a Civil Action for Malicious Prosecution”),

2025 Connecticut General Statutes

Title 52 - Civil Actions

Chapter 926 - Statute of Limitations

Section 52-577f. - Limitation of action for damages caused by malicious prosecution.

Universal Citation:

CT Gen Stat § 52-577f. (2025) ○

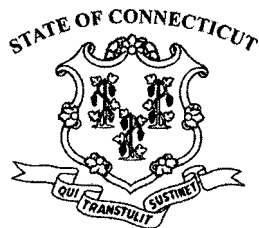
[< Previous](#)

[Next >](#)

Notwithstanding the provisions of section 52-577, no action to recover damages for malicious prosecution may be brought later than three years from the date of the termination of the criminal proceeding that is the subject of such action.

(P.A. 21-104, S. 60.)

History: P.A. 21-104 effective July 1, 2021, and applicable to any cause of action arising from a criminal proceeding terminating prior to, on or after said date.



House of Representatives

General Assembly

File No. 476

January Session, 2021

House Bill No. 6592

House of Representatives, April 15, 2021

The Committee on Judiciary reported through REP. STAFSTROM of the 129th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

AN ACT CONCERNING THE FILING OF A CIVIL ACTION FOR MALICIOUS PROSECUTION.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

- 1 Section 1. (NEW) (*Effective July 1, 2021, and applicable to any cause of*
2 *action arising from a criminal proceeding terminating prior to, on or after said*
3 *date*) Notwithstanding the provisions of section 52-577 of the general
4 statutes, no action to recover damages for malicious prosecution may be
5 brought later than three years from the date of the termination of the
6 criminal proceeding that is the subject of such action.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>July 1, 2021, and applicable to any cause of action arising from a criminal proceeding terminating prior to, on or after said date</i>	New section
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JUD

Joint Favorable

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 22 \$	FY 23 \$
Comptroller - Adjudicated Claims Account	GF - Potential Cost	See Below	See Below

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill extends the statute of limitation for bringing a civil action for malicious prosecution and results in a potential cost to the Office of the Comptroller Adjudicated Claims Account. In the event that this extension results in a case that would previously not have been settled or reach a judgement, the bill results in a potential cost to the state for any monetary settlement that may result. Settlements and decisions made against a state employee while performing his or her duties are the responsibilities of the state and paid from the Office of the Comptroller Adjudicated Claims Account.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to the number of new settlements.

OLR Bill Analysis**HB 6592****AN ACT CONCERNING THE FILING OF A CIVIL ACTION FOR MALICIOUS PROSECUTION.****SUMMARY**

This bill extends the statute of limitations for malicious prosecution actions. By law, these tort actions must be brought within three years from the date of the act or omission complained of (CGS § 52-577).

Regardless of the existing law, the bill instead begins the three-year statute of limitations from the date the criminal proceeding that is the subject of the malicious prosecution action ends. In doing so, the bill provides additional time for an aggrieved criminal defender to bring a civil action against the person who falsely prosecuted him or her.

A person commits "malicious prosecution" when he or she falsely prosecutes another person for any criminal charge, without probable cause and with malicious intent unjustly to vex and trouble the other person. Offenders must be fined up to \$100 or imprisoned up to one year (CGS § 53-39).

EFFECTIVE DATE: July 1, 2021, and applicable to any cause of action arising from a criminal proceeding terminating prior to, on, or after that date.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable

Yea 36 Nay 0 (03/29/2021)

OLR Bill Analysis

HB 6592

***AN ACT CONCERNING THE FILING OF A CIVIL ACTION FOR
MALICIOUS PROSECUTION.***

SUMMARY

This bill extends the statute of limitations for malicious prosecution actions. By law, these tort actions must be brought within three years from the date of the act or omission complained of (CGS § 52-577).

Regardless of the existing law, the bill instead begins the three-year statute of limitations from the date the criminal proceeding that is the subject of the malicious prosecution action ends. In doing so, the bill provides additional time for an aggrieved criminal defender to bring a civil action against the person who falsely prosecuted him or her.

A person commits "malicious prosecution" when he or she falsely prosecutes another person for any criminal charge, without probable cause and with malicious intent unjustly to vex and trouble the other person. Offenders must be fined up to \$100 or imprisoned up to one year (CGS § 53-39).

EFFECTIVE DATE: July 1, 2021, and applicable to any cause of action arising from a criminal proceeding terminating prior to, on, or after that date.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable

Yea 36 Nay 0 (03/29/2021)

Public Act No. 21-104, § 60 (as Enacted)

(Approved June 28, 2021, effective July 1, 2021; substance of H.B. 6592, § 1 carried into H.B. 6505 by House Amendment Schedule A, LCO No. 9024, adopted May 24, 2021)

Sec. 60. (NEW) (Effective July 1, 2021, and applicable to any cause of action arising from a criminal proceeding terminating prior to, on or after said date) Notwithstanding the provisions of section 52-577 of the general statutes, no action to recover damages for malicious prosecution may be brought later than three years from the date of the termination of the criminal proceeding that is the subject of such action.

This section was codified without substantive change as Conn. Gen. Stat. § 52-577f.

APPENDIX F

Order on Motion for Summary Judgment,

Sakon v. Sakonchick, Superior Court, Judicial District of Hartford (Farley, J., Nov. 7, 2025)

SCRAM notice sent electronically on 11/7/2025 + copy mailed to self-represented plaintiff John A. Sakon on 11/7/2025. 20/60

DOCKET NO. HHD-CV-23-5079403-S

JOHN A. SAKON

v

JAMES N. SAKONCHICK

SUPERIOR COURT

OF HARTFORD

NOVEMBER 7, 2025

HARTFORD J.D.

NOV - 7 2025

FILED

ORDER ON MOTION FOR SUMMARY JUDGMENT

This case arises from the plaintiff's arrest by the Glastonbury Police Department on October 22, 2018 on a charge of larceny based on a complaint by the plaintiff's brother. The plaintiff, John Sakon, alleges that his brother, the defendant James Sakonchick, procured his arrest without probable cause on a complaint that the plaintiff had improperly taken money from a joint checking account used by the parties to operate their shared business.

The plaintiff and defendant co-own, as tenants in common, a commercial property in Glastonbury. Their joint checking account was used in the operation of the business. According to the defendant, in October, 2016, Berkshire Bank informed him that the mortgage on the property had not been paid for three months. He also learned that utility expenses and taxes on the property had not been paid. The defendant became suspicious that the plaintiff, who managed the property, had been diverting funds belonging to the business to himself. In November, 2016, according to the plaintiff, the defendant made forcible entry into the office and residence that the plaintiff maintained on the property, removed all of the plaintiff's possessions and changed the locks. The plaintiff reentered the property but subsequently vacated it because he no longer felt safe there.

#13880

On December 20, 2016, the defendant's attorney retained a forensic accountant to review and analyze the financial records of the business. The accountant reported his findings to the defendant and his lawyer in January, 2017. The accountant concluded that over a period of three years, from January 1, 2014 through December 31, 2016, the plaintiff transferred \$98,053 out of the joint checking account to his own personal account. The accountant also raised questions concerning unexplained payments and cash withdrawals from the account, as well as \$16,900 in rent payments that were not deposited into the joint checking account. After applying certain credits, the accountant concluded that up to \$114,217 had been steered to the plaintiff over the three-year period, while over the same period only \$10,265 had been distributed to the defendant, despite the parties' equal ownership of the property. No action was taken at this time by the defendant to report to the police. The defendant maintains that instead he was attempting to resolve the issues with the plaintiff and prevent a foreclosure action on the property. Those efforts were unsuccessful. A foreclosure action was commenced in March, 2017 and a receiver was appointed to manage the property.

In February, 2018, the plaintiff commenced a civil action against the defendant and an engineering firm with which the defendant is associated, seeking damages related to his alleged "eviction" from the premises and the defendant's alleged removal of his possessions in November, 2016. Later that year, the defendant's lawyer requested a written report from the accountant and, in June, 2018, the defendant wrote a letter to a Glastonbury police officer who had prior dealings with the plaintiff on complaints of larceny by the plaintiff's ex-wife. The letter registered an "official complaint" that the plaintiff had "taken money belonging to me" and provided the police officer with the written report from the accountant setting forth his findings from January, 2017. On October 22, 2018, the police obtained an arrest warrant from a judge

authorizing the plaintiff's arrest on charges of larceny. The plaintiff maintains that the defendant's allegations were false and that his complaint to the police was in retaliation for the plaintiff's 2018 lawsuit against the defendant and his engineering firm.

The arrest warrant application included the above information and some additional background information furnished by the defendant, including a failed effort by the defendant to purchase the plaintiff's interest in the property. The application states that the defendant made his complaint to the police department shortly after the plaintiff "reneged" on the deal to sell his interest to the defendant. The arrest warrant also reflects the defendant's report concerning a loan requested by the plaintiff from the defendant in October, 2016, a request the defendant declined.

The arrest warrant application references additional information that was not provided by the defendant but was based on the personal knowledge of the police officer who applied for the warrant. This information includes reference to the plaintiff's arrests in 2016 on similar larceny charges based on his ex-wife's complaints concerning the plaintiff's management of a commercial property she owned. Those charges were dismissed one month after the plaintiff's arrest on the complaint of the defendant and, according to the plaintiff, the defendant knew the charges had been shown to be baseless and he failed to advise the police officer accordingly. The arrest warrant application also explained that the police chose not to interview the plaintiff prior to seeking his arrest on the defendant's complaint based on previous experience questioning the plaintiff about his ex-wife's complaints of larceny. The application states that during the prior interviews the plaintiff allegedly made veiled threats of litigation against the police and was "evasive" and "intentionally misleading" when responding to questions. A judge signed the warrant.

There are disputed facts concerning the merits of the larceny charge. The case against the plaintiff was eventually nolleed by the state's attorney in July, 2020 because, according to the state's attorney, there had been "no criminal conduct during the pendency of the case and in consideration of the COVID shut down." The plaintiff disputes that these were the reasons for the nolle. Instead, the plaintiff maintains that the charges were dropped because they had no merit and a motion to dismiss the case was pending. The plaintiff is especially focused on the fact that he and the defendant owned the property as tenants in common and, for example, in the context of a distribution of assets to the co-tenants, the equities might yield disproportionate shares in the property. See *Levay v. Levay*, 137 Conn. 92, 96, 75 A.2d 400 (1950) (owners of undivided one-half interests not necessarily entitled to equal shares of sale proceeds in partition action). The plaintiff contests the notion, implicit in the defendant's complaint to the police, that the parties were entitled to equal shares of the proceeds from the business because the defendant was a passive owner while the plaintiff managed the property, served as its broker, performed required maintenance on the property and provided other necessary services. On this basis the plaintiff maintains that the mere transfer or diversion of funds from the joint checking account was insufficient to establish probable cause for his arrest.

Further, there is no written agreement between the parties concerning how the proceeds of the business were to be divided. The plaintiff maintains that the property generated very little cash return and that small amount was reinvested in the property. Any distributable profits would result from the appreciation of value and reduction of debt on the property over time. The plaintiff further maintains that it was a usual and customary practice of the business to deposit rents into his personal banking account and to pay expenses associated with the property from that account as well. An annual accounting regularly reconciled that activity, according to the

plaintiff. The plaintiff maintains that none of the funds transferred out of the joint checking account or allegedly diverted from that account were converted to his personal use. Rather, all those funds were used to pay the expenses associated with the property.

The plaintiff, in unorthodox and procedurally questionable fashion, has submitted an affidavit attesting to the truth of the factual assertions set forth in his brief in opposition to the motion for summary judgment. Considering the plaintiff's status as a self-represented party, the court treats the facts asserted in the plaintiff's opposition as properly supported by an affidavit. None of the plaintiff's explanations and factual assertions concerning the cash flow associated with the business were presented to either the accountant retained by the defendant's attorney or to the police officer who secured the arrest warrant. The judge who signed the arrest warrant did not have any of the information the plaintiff now presents.

Malicious Prosecution, Negligent and Intentional Infliction of Emotional Distress (Claims Resting on a Lack of Probable Cause)

The defendant maintains that several causes of action asserted by the plaintiff require a lack of probable cause as an essential element. These include counts one, two and three asserting claims of malicious prosecution, intentional infliction of emotional distress, and negligent infliction of emotional distress respectively. The defendant has moved for summary judgment on those counts on the grounds that probable cause existed for his complaint to the police as a matter of law. The court first addresses the issue in the context of the malicious prosecution claim.

"An action for malicious prosecution against a private person requires a plaintiff to prove that: (1) the defendant initiated or procured the institution of criminal proceedings against the plaintiff; (2) the criminal proceedings have terminated in favor of the plaintiff; (3) the defendant

acted without probable cause; and (4) the defendant acted with malice, primarily for a purpose other than that of bringing an offender to justice.” (Internal quotation marks omitted.) *Bhatia v. Debek*, 287 Conn. 397, 404, 948 A.2d 1009 (2008). The defendant has not contested the first element, initiation of criminal proceedings, on summary judgment.¹ Nor does the defendant contest the other elements, except for the third, lack of probable cause.

“Probable cause has been defined as the knowledge of facts sufficient to justify a reasonable [person] in the belief that he [or she] has reasonable grounds for prosecuting an action.... Mere conjecture or suspicion is insufficient.... Moreover, belief alone, no matter how sincere it may be, is not enough, since it must be based on circumstances which make it reasonable.... Although want of probable cause is negative in character, the burden is upon the plaintiff to prove affirmatively, by circumstances or otherwise, that the defendant had no reasonable ground for instituting the criminal proceeding.” (Citations omitted; internal quotation marks omitted.) *Mulligan v. Rioux*, 229 Conn. 716, 739, 643 A.2d 1226 (1994). It is the facts known to the defendant that determine whether the defendant had probable cause, not all the facts that are subsequently brought to bear on the issue. *Brooks v. Sweeney*, 299 Conn. 196, 205, 9 A.3d 347 (2010). The question is not whether the Glastonbury Police Department had probable cause to arrest the plaintiff; rather, the question is whether it was reasonable for the defendant to seek criminal prosecution based on the facts known to him. *Liu v. Tangney*, United

¹ “[A] private person has not initiated a criminal proceeding if he has undertaken no more than to provide potentially incriminating information to a public officer. In such a case, if the defendant has made a full and truthful disclosure and has left the decision to prosecute entirely in the hands of the public officer, he cannot be held liable for malicious prosecution.” (Emphasis omitted; internal quotation marks omitted.) *Bhatia v. Debek*, supra, 287 Conn. 407. In the present case, had the defendant contested this element, whether he made a full and truthful disclosure to the police would be a question of fact preventing the entry of summary judgment.

States District Court, Docket No. 3:19-CV-894 (OAW) (D. Conn., September 21, 2022) (2022 WL 4367594 *7).

In the present case, the defendant relies on the facts he presented to the police department, as reflected in the arrest warrant application, to support his claim that he had probable cause to initiate a criminal prosecution against the plaintiff. In sum, the information the defendant had was that the plaintiff transferred funds out of the joint checking account to his personal account and had not deposited some of the rents collected into the joint checking account. The defendant, however, has not addressed the plaintiff's assertions that the intermingling of funds was the usual and customary practice of the business over a period of years and that the cash flow associated with the business was accounted for on an annual basis. The defendant has not disputed those assertions by the plaintiff and has not presented evidence that he was unaware of it. This information, apparently unknown to the police when applying for the arrest warrant, would cast the information presented to the police in a substantially different light. Specifically, while on the surface the diversion of funds appears to be suspicious, if the facts the plaintiff presents were known to the defendant, more than the mere diversion of funds would be required to establish a reasonable belief that the plaintiff had committed larceny. For these reasons, the court concludes that the defendant has failed to establish, as a matter of law, that the facts known to him justified a reasonable belief that, as he said in his letter to the police, the plaintiff had "taken money belonging to me." For this reason, the court denies the motion for summary judgment on the malicious prosecution claim in count one.

The defendant rests his claim for summary judgment on the intentional and negligent infliction of emotional distress counts strictly on the ground that he had probable cause to initiate the criminal proceedings. See *Pritsker v. Keating*, Superior Court, judicial district of Stamford,

Docket No. CV-14-5014277-S (May 26, 2016) (2016 WL 3451679); *Acker v. Wall*, Superior Court, judicial district of Fairfield, Docket No. CV-12-6025830-S (Feb. 13, 2013) (2013 WL 1010664). Without addressing the legal merit of the argument, because the defendant's motion rests on the existence of probable cause as a matter of law and the defendant has not demonstrated the existence of probable cause as a matter of law, the court denies the motion for summary judgment as to counts two and three.

"Tort of Intimidation"

In count five the plaintiff asserts a cause of action for the "tort of intimidation." Count five alleges that the defendant initiated the criminal prosecution against him "for the sole purpose of extorting, blackmailing and coercing the plaintiff" to drop the civil lawsuit the plaintiff had previously initiated against the defendant arising out of the alleged eviction and removal of his possessions from the property. This claim is merely a reiteration of the malice element of the plaintiff's claim for malicious prosecution, that is that the initiation of the criminal proceeding was undertaken for an improper and malicious reason. The plaintiff has identified no authority supporting his position that this constitutes a separate cause of action. The court grants summary judgment on count five.

Cause of Action to an Elderly Person

Count seven purports to allege a "cause of action to an elderly person," under General Statutes § 17b-462. That statute provides a cause of action to "[a]n elderly person who has been the victim of abuse, neglect, exploitation or abandonment, as such terms are defined in section 17b-450...." The statute does not create an additional and separate cause of action for all elderly plaintiffs with any tort cause of action against a defendant. It addresses the physical, mental and

financial exploitation, abuse and neglect of elderly persons by their caregivers and others. It does not provide elderly plaintiffs with access to enhanced damages for tort claims based simply upon the fact that they are “sixty years of age or older.” § 17b-450 (1). The present case does not involve elderly abuse, neglect, exploitation or abandonment as defined in § 17b-462.² The motion for summary judgment is granted as to count seven.

Breach of Fiduciary Duty

Count four, captioned as “Personal Injury,” alleges that the defendant breached a duty owed to him as a partner in the business “[b]y having him arrested without cause.” The defendant construes this count as a breach of fiduciary duty claim and the court concurs. The defendant argues that he had no fiduciary duty to the plaintiff because there was no partnership between them. In response, the plaintiff makes no effort to establish the existence of a partnership and focuses his argument on the removal of the plaintiff and his possessions from the property in 2016. The plaintiff already pursued that claim in a separate action and lost the case on summary judgment. *Sakon v. Sakonchik*, Superior Court, judicial district of Hartford, Docket No. CV-18-6088742-S (March 2, 2023) (2023 WL 2386115). The plaintiff’s brief also accuses

² Section 17b-450 defines these terms as follows:

(5) The term “abuse” includes, but is not limited to, the wilful infliction of physical pain, injury or mental anguish, or the wilful deprivation by a caregiver of services which are necessary to maintain physical and mental health.

(6) The term “neglect” refers to the failure or inability of an elderly person to provide for himself or herself the services which are necessary to maintain physical and mental health or the failure to provide or arrange for provision of such necessary services by a caregiver.

(7) The term “exploitation” refers to the act or process of taking advantage of an elderly person by another person or caregiver whether for monetary, personal or other benefit, gain or profit.

(8) The term “abandonment” refers to the desertion or wilful forsaking of an elderly person by a caregiver or the foregoing of duties or the withdrawal or neglect of duties and obligations owed an elderly person by a caregiver or other person.

the defendant of “assaulting” him by pursuing a criminal prosecution against the plaintiff. Because, however, the plaintiff has not contested the defendant’s assertion that there was no partnership, and therefore no fiduciary duty, the court grants summary judgment on count four.

Defamation

Count six alleges that the defendant defamed the plaintiff with his report to the police, which damaged the plaintiff’s reputation and resulted in lost business opportunities. The defendant moves for summary judgment, arguing that the public reports of the plaintiff’s arrest were accurate and, additionally, that truth is a defense. As to the first argument, the defendant erroneously focuses on whether the news reports were accurate. The plaintiff does not claim that they were inaccurate and whether they were accurate is beside the point. A defamation cause of action is available against a person who makes a false report of wrongdoing by the plaintiff to law enforcement that results in a publicized arrest. *Silano v. Cooney*, 189 Conn. App. 235, 207 A.3d 84 (2019); *Crismale v. Walston*, 184 Conn. App. 1, 194 A.3d 301 (2018). Although such claims may be subject to a qualified privilege, no claim of privilege has been asserted. One who makes a false report to the police is not shielded from liability because the arrest is publicized by others. The publicity is a natural consequence of the initial false report.

Truth is a defense against a claim that the defendant made a false report to the police, but the truthfulness of a statement is a question of fact. *Silano v. Cooney*, supra, 189 Conn. App. 245-46; *Crismale v. Walston*, supra, 184 Conn. App. 9. In the present case, the defendant has failed to establish probable cause for his statement to the police that the plaintiff had taken money belonging to him, much less the truthfulness of that statement. The motion for summary judgment as to count six is denied.

Fraudulent Misrepresentation

In count eight, the plaintiff asserts a cause of action for fraudulent misrepresentation claiming that the defendant submitted a false affidavit in the 2018 lawsuit filed by the plaintiff. The affidavit resulted in the entry of summary judgment for the defendant in that case. *Sakon v. Sakonchik*, Superior Court, judicial district of Hartford, Docket No. CV-18-6088742-S (March 2, 2023) (2023 WL 2386115).³ The defendant moves for summary judgment on this count based on the fact that the alleged misrepresentation was made to the court, not to the plaintiff and, alternatively, that the claim is barred by the doctrine of res judicata, or claim preclusion. Strictly speaking, claim preclusion does not apply; rather, the defendant raises a question of collateral estoppel, or issue preclusion. See *Peterson v. Wells Fargo Trustee*, 721 Fed. Appx. 13 (2d Cir. 2018) (claim of false affidavit filed in prior foreclosure action implicated collateral estoppel, not res judicata).

“Although the doctrines of collateral estoppel and res judicata are conceptually related, in practice their application may yield distinct results. Unlike collateral estoppel, under which preclusion occurs only if a claim actually has been litigated, [u]nder the doctrine of res judicata, or claim preclusion, a former judgment on a claim, if rendered on the merits, is an absolute bar to a subsequent action on the same claim ... [or any claim based on the same operative facts that] might have been made.... [T]he appropriate inquiry with respect to [claim] preclusion is whether the party had an adequate opportunity to litigate the matter in the earlier proceeding” (Emphasis in original; internal quotation marks omitted.) *Connecticut National Bank v. Rytman*, 241 Conn. 24, 43–44, 694 A.2d 1246 (1997). “[C]ollateral estoppel, or issue preclusion ...

³ The court takes judicial notice of the file in that case.

prohibits the relitigation of an issue when that issue was actually litigated and necessarily determined in a prior action between the same parties or those in privity with them upon a different claim.... An issue is actually litigated if it is properly raised in the pleadings or otherwise, submitted for determination, and in fact determined. ... An issue is necessarily determined if, in the absence of a determination of the issue, the judgment could not have been validly rendered. ... If an issue has been determined, but the judgment is not dependent upon the determination of the issue, the parties may relitigate the issue in a subsequent action. Findings on nonessential issues usually have the characteristics of dicta.” (Citations omitted; emphasis in original; internal quotation marks omitted.) *Dowling v. Finley Associates, Inc.*, 248 Conn. 364, 374, 727 A.2d 1245 (1999).

In the prior case between the parties, in which the defendant obtained summary judgment based on the allegedly false affidavit, the plaintiff sought reconsideration of the court’s decision entering summary judgment. In doing so the plaintiff submitted an affidavit identifying the alleged untruths in the defendant’s affidavit and argued, among other things, that the defendant had perjured himself by submitting a false affidavit. *Sakon v. Sakonchik*, supra, 2023 WL 2386115, Docket Entry Nos. 156-158. The court denied the motion. *Id.*, Docket Entry No. 156.86. Thus, the claim that the defendant filed a false affidavit in the prior case was raised and determined in the prior case and the reassertion of that issue is precluded by the doctrine of collateral estoppel. *Peterson v. Wells Fargo Trustee*, supra, 721 Fed. Appx. 16-17. The court grants summary judgment on count eight.⁴

⁴ The court also notes that it appears to lack subject matter jurisdiction to consider count eight. Because the affidavit in question was submitted to the court, other than vexatious litigation and abuse of process causes of action, claims based on an assertion that the affidavit was false are barred by the litigation privilege. *Dorfman v. Smith*, 342 Conn. 582, 592, 271 A.3d 53 (2022). The applicability of the litigation privilege “implicates the court’s subject matter jurisdiction.” *Id.*, 594. Because neither party has briefed the issue, the court does not rest the entry of summary

CUTPA

Finally, count nine asserts a violation of the Connecticut Unfair Trade Practices Act, General Statutes § 42-110a et seq. (CUTPA) and incorporates all the allegations of the other counts in the complaint. The defendant reasserts its arguments with respect to count eight to the extent that count nine reasserts the fraudulent misrepresentation claim. The court agrees that, to the extent that count nine incorporates the claims asserted in count eight, the claims are barred for the same reasons count eight is barred. The remaining allegations concern the defendant's complaint to the police. The defendant argues that CUTPA does not apply to that conduct because reporting illegal acts does not constitute an unfair or deceptive trade practice. The argument assumes that there was probable cause for the complaint, which has not yet been established, or that the conduct is protected by a privilege, which has not been articulated and argued by the defendant. The defendant also argues, however, that CUTPA does not apply because the plaintiff's claim involves intra-corporate matters or, alternatively, arises out of an employer-employee relationship.

The plaintiff argues that the defendant engaged in "malicious prosecution to advance business concerns," thus bringing his claims within the scope of CUTPA. The plaintiff does not specify what the business concern is; his principal claim is that the defendant sought the plaintiff's prosecution in retaliation for the plaintiff's prior lawsuit against the defendant. The court reads the complaint broadly, however, and considers CUTPA's applicability to a false complaint of larceny against a business associate to gain some advantage in the business. Such claims can be within the scope of CUTPA. *Dorfman v. Smith*, supra, 342 Conn. 619-20.

judgment on that ground. Any further proceedings on count eight, however, must first address the court's subject matter jurisdiction to adjudicate the claim of fraudulent misrepresentation.

The defendant argues that to the extent his complaint to the police may be viewed as related to the business the suit is barred because it involves an “intra-corporate conflict.”⁵ “[P]urely intracorporate conflicts do not constitute CUTPA violations....” *System Pros, Inc. v. Kasica*, 166 Conn. App. 732, 764, 145 A.3d 241 (2016). “Although CUTPA generally does not apply to intra-corporate conflicts, an exception to that rule exists when a defendant’s actions went well beyond governance of the corporation, and placed him in direct competition with the interests of the corporation.... That exception is implicated when the conduct of a defendant has the effect of usurping the customers, employees or assets of one business in favor of another business.... In determining whether the exception applies, the critical inquiry does not concern the relationship between individual parties within a corporation, such as the plaintiff and the defendant in the present case.... Rather, that analysis asks whether such an individual’s conduct is adverse to the corporation and its interests.” (Citations omitted; internal quotation marks omitted.) *Id.*, 755-56.

In the present case, the exception to the rule is not implicated. Misguided or malicious as the defendant’s decision to complain to the police about the apparent diversion of funds from the business might arguably have been, it did not place the defendant in direct competition with the business; nor did it usurp the assets of the business. If anything, it was aimed at bringing assets back into the business. To the extent the defendant’s complaint to the police was motivated by a desire to retaliate against the plaintiff for bringing the prior lawsuit, the defendant’s conduct was primarily personal in nature and not a “business concern,” as argued by the plaintiff. To the

⁵ The defendant also argues that CUTPA does not apply to employment relationships but has not established that either of the parties were an employer or an employee of the unorganized business they shared. There does not appear to be any legal business entity involved, except the plaintiff’s limited liability company, Sakon Development LLC, which performed the brokerage work for the property. The plaintiff is the sole member of the LLC, which is not a party, and the basis upon which the defendant relies on the exemption of employment relationships from CUTPA’s scope is unclear.

extent that the conflict involved the business it was intra-corporate. On that basis, the court grants the motion for summary judgment as to count nine.

The defendant's motion for summary judgment is granted as to counts four, five, seven eight and nine. The motion is denied as to counts one, two, three and six.

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Farley, J.