

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

ANNABEL MELONGO,	)	
Plaintiff,	)	
	)	13 C 4924
v.	)	Honorable Judge
	)	John Z. Lee
ASA PODLASEK, et al.,	)	
Defendant(s).	)	

**REPLY IN SUPPORT OF DEFENDANTS’  
MOTION TO DISMISS PLAINTIFF’S COMPLAINT**

Defendants, Assistant State’s Attorney Robert Podlasek, Assistant State’s Attorney Julie Gunnigle, and Assistant State’s Attorney Randy Roberts (incorrectly sued as Investigator Randy Roberts), Investigator Kate O’Hara, Investigator James Dillon, Investigator Antonio Rubino, Investigator Rich Lesiak, Cook County Sheriff Thomas Dart, and Cook County (collectively referred to as the “County Defendants”) by their attorney, Anita Alvarez, State’s Attorney of Cook County, through Thomas E. Nowinski, Assistant State’s Attorney hereby submit their Reply in Support of Defendants’ Motion to Dismiss Plaintiff’s Complaint as follows:

**INTRODUCTION**

On January 9, 2015, Defendants filed a Motion to Dismiss Plaintiff’s Second Amended Complaint. On February 13, 2015, Plaintiff filed Plaintiff’s Response to Cook County Defendants’ Motion to Dismiss Her Complaint (“Plaintiff’s Response”). Plaintiff’s Response suffers from the same fatal flaw as her Complaint, namely, that her bare allegations do not sufficiently plead a cause of action. Plaintiff cannot sustain his claims against the County defendants because various immunities prohibit her claims, the Second Amended Complaint fails to state a cause of action upon which relief can be granted, and the statute of limitations bars her claims. As such, Plaintiff’s Second Amended Complaint is deficient and should be dismissed.

**I. Plaintiff's claims against Cook County fail as a matter of law.**

It is widely known and held in this Circuit that Cook County cannot be held either directly or vicariously liable for the acts of any Cook County Sheriff's employee or the acts of any Cook County State's Attorney employee because Cook County is not the employer of those individuals. See *Hernandez v. Joliet Police Department*, et al. 197 F.3d 256, 265 (7th Cir. 1999) citing *Garcia v. City of Chicago*, 24 F.3d 966, 969 (7th Cir. 1994) and *Ingemunson v. Hedges*, 133 Ill. 2d 364, 549 N.E.2d 1269, 1272 (Ill. 1990) (noting that the Illinois Supreme Court has held that state's attorneys are state officials) Similarly, Illinois sheriffs are independently elected officials not subject to the control of the county. *Thompson v. Duke*, 88 F.2d 1180, 1187 (7th Cir. 1989). Accordingly, no matter what theory of liability Plaintiff is proceeding under, Count II alleging a cause of action against Cook County must be dismissed.

**II. Plaintiff's claims in Count I and Count IV must be dismissed.**

The arguments in Plaintiff's response to avoid dismissal of Counts I and IV are as equally confusing as her Second Amended Complaint. However, Plaintiff's response does make one important clarification, namely that her claims in Count I are pursuant to the Fourth and First Amendments for her arrests on October 31, 2006 and April 13, 2010. Plaintiff admits that the applicable statute of limitations for those claims is two years, but incorrectly argues that the claims accrued when the charges against her were dismissed. To be sure, Plaintiff argues in her Response that the First Amendment violation was a result of her "retaliatory arrest" which can be no other date than April 13, 2010. Accordingly, she was required to file her claim by April 13, 2012, and her failure to do so is fatal to her claim under the First Amendment.

Plaintiff argues in her response that the Fourth Amendment violation was a result of her arrest without probable cause for threatening a public official and eavesdropping. There is no

doubt that she was arrested and charged on October 31, 2006 and April 13, 2010. Again, Plaintiff's Fourth Amendment claims are clearly time barred and should be dismissed.

Plaintiff's state law claims fair no better in that they are subject to a one year statute of limitations. 745 ILCS 10/8-101(a) Plaintiff's argument that the statute of limitations should be equitably tolled is unavailing. Plaintiff makes no claims in either her Second Amended Complaint or her Response that any of the County Defendants actively misled her in bringing forth her claims and that extraordinary circumstances prohibited her from bringing her claims. To be sure, the only alleged claims of misconduct that Plaintiff raises in her Response occurred well after her arrest, and therefore could not be the basis of a claim for equitable tolling as Plaintiff's claims accrued when she was arrested. Accordingly, Plaintiff's state law claims must be dismissed as well.

Even if her claims were timely, Plaintiff has failed to sufficiently plead a cause of action against any of the County Defendants pursuant to *Iqbal*. In her Response, Plaintiff argues that paragraph 92 of her Second Amended Complaint clearly states her various causes of action. However, as pointed out in the motion to dismiss, paragraph 92 of the Second Amended Complaint is nothing more than a laundry list of alleged "freedoms" that does not comport with the spirit of *Iqbal*. "A pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678, (2009) Accordingly, Plaintiff's claims fail and must be dismissed.

### **III. Plaintiff's claims are barred by absolute and qualified immunity.**

Absolute immunity protects ASAs Podlasek, Gunnigle, and Roberts because the State's Attorney "is vested with the exclusive discretion in the initiation and management of a criminal prosecution." *Spiegel v. Rabinovitz*, 121 F.3d 251, 257 (7th Cir. 1997) Plaintiff alleges in her

Second Amended Complaint that ASA Roberts' actions were in the initiation of computer tampering charges against her and that ASAs Podlasek and Gunnigle's actions were conducted as part of Plaintiff's criminal prosecution. (Second Amended Complaint, ¶¶40, 56, 58) All of those functions are clearly prosecutorial in nature such that the ASAs are entitled to absolute immunity.

Plaintiff attempts to defeat the immunity by continuously arguing that the ASAs were acting in an investigatory capacity. However, Plaintiff ignores the fact that all of the alleged actions were either in the initiation of criminal charges or occurred after charges were initiated. Even if the ASAs actions were investigatory in some fashion, the investigation is inextricable from Plaintiff's criminal prosecution, and therefore the actions are inherently prosecutorial in nature. Therefore, Plaintiff's claims are barred by absolute immunity.

Plaintiff offers no substantive argument or support to defeat Defendants' claim of qualified immunity. This is not surprising because Plaintiff did not sufficiently allege any constitutional violation, let alone a constitutional violation of a clearly established right. Therefore, Plaintiff's claims against the County Defendants should be dismissed on qualified immunity as well.

**IV. Plaintiff's state law claims are barred by the Illinois Tort Immunity Act.**

Plaintiff's lone response to Defendants' argument that her state law claims are barred by the Illinois Tort Immunity Act rests on paragraph 110 of her Second Amended Complaint. However, reliance on that paragraph does not save Plaintiff's claims. Paragraph 110 relates to a claim of punitive damages, which is not an actual cause of action, and makes a conclusory allegation that Defendants' actions were "unlawful, conscience shocking, and unconstitutional, and performed maliciously, recklessly, fraudulently, intentionally, willfully, wantonly, in bad

faith, and in such a manner to entitle the Plaintiff to a substantial award of punitive damages against defendants.” Plaintiff’s unsupported legal conclusion is not sufficient to defeat the Illinois Tort Immunity Act and therefore Plaintiff’s state law claims must be dismissed.

**CONCLUSION**

WHEREFORE, Assistant State’s Attorney Robert Podlasek, Assistant State’s Attorney Julie Gunnigle, Assistant State’s Attorney Randy Roberts, Investigator Kate O’Hara, Investigator James Dillon, Investigator Antonio Rubino, Investigator Rich Lesiak, Cook County Sheriff Thomas Dart, and Cook County Cook County move this Court to dismiss Plaintiff’s Complaint with prejudice pursuant to Rule 12 (b)(6) and decline to exercise supplemental jurisdiction over any remaining state law claims.

Respectfully submitted,

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State's Attorney of Cook County

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**NOTICE OF MOTION**

TO: All Counsel of Record

PLEASE TAKE NOTICE that on February 27, 2015, Defendants filed their Reply In Support of Motion to Dismiss with the Clerk of the United States District Court, for the Northern District of Illinois, Eastern Division. The document has been linked to this notice via Electronic Case Filing (ECF).

ANITA ALVAREZ  
State's Attorney of Cook County

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**CERTIFICATE OF SERVICE**

I, Thomas E. Nowinski, Assistant State's Attorney, hereby certify that on February 27, 2015, I filed Defendants' Reply In Support of Motion to Dismiss and that all counsel of record were served via Electronic Case Filing (ECF).

/s/ Thomas E. Nowinski\_\_\_\_\_