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

VONDELL WILBOURN, individually and for others similarly situated,	)	
Plaintiff,	)	
	)	Case No. 23-cv-1782
-vs-	)	
	)	Honorable Manish S. Shah
SHERIFF OF COOK COUNTY and COOK COUNTY, ILLINOIS,	)	Magistrate Judge Young B. Kim
Defendants.	)	

DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT

Defendants, SHERIFF OF COOK COUNTY and COOK COUNTY, ILLINOIS, by their attorney KIMBERLY M. FOXX, State's Attorney of Cook County, through her Special Assistant State's Attorneys, JOHNSON & BELL, LTD., move to dismiss Plaintiff's amended complaint with prejudice pursuant to Rule 12. Grounds for this motion are as follows:

INTRODUCTION

Plaintiff alleges that employees of the Sheriff's Office unlawfully detained him when they brought him back to the Cook County Jail ("Jail") for violating the conditions of electronic monitoring. Plaintiff alleges that the Sheriff's Office is liable because the employees did not have a warrant or court order to bring him back to the Jail. But a warrant or court order are not absolute requirements. The standard under the Fourth Amendment is reasonableness. Various exceptions to the warrant requirement exist, but Plaintiff fails to account for these exceptions. Most notably, Plaintiff fails to acknowledge that probable cause is an exception to the warrant requirement. Another exception that particularly applies to this case is based on the custodial relationship of the surety to the person bailed, as existed at common law. Because Plaintiff's amended complaint does

not account for these exceptions, it lacks facial plausibility. Plaintiff's amended complaint must be dismissed under Rule 12(b)(6) for failure to state a claim upon which relief can be granted.

In addition, Plaintiff's amended complaint must be dismissed under Rule 12(b)(1) for lack of subject matter jurisdiction because Plaintiff's alleged injury cannot be redressed by the requested relief. Plaintiff was sentenced in his state court criminal case and received credit for the time he spent in custody, including the time he alleges he was unlawfully detained. Under Seventh Circuit precedent, a plaintiff cannot receive damages under such circumstances. Therefore, Plaintiff lacks standing, depriving this Court of jurisdiction over the case.

Finally, because Plaintiff fails to plausibly allege an underlying constitutional violation, Plaintiff's *Monell* claim against the Sheriff's Office must be dismissed. Without an individual claim, Plaintiff's class allegations must be dismissed, and Cook County is joined in this case solely for indemnification purposes. For all these reasons, this Court should dismiss Plaintiff's amended complaint against Defendants.

STATEMENT OF FACTS

I. Allegations in Plaintiff's Amended Complaint

In 2019, Plaintiff was charged with felony offenses, and at his initial appearance, bond was set at $10,000 cash deposit with electronic monitoring as a condition of bond. (Am. Compl. ¶¶ 6–7, ECF No. 19.) On September 27, 2019, Plaintiff was released from the Jail, subject to the conditions of bond, including electronic monitoring. (*Id.* ¶ 8.)

Plaintiff alleges that the Sheriff's Office has an "express policy" requiring employees to arrest individuals who have violated a condition of electronic monitoring. (*Id.* ¶ 14.) On February 25, 2023, a Sheriff employee concluded that on four occasions, Plaintiff violated the conditions of electronic monitoring when he "deviated in his essential movement" and "was traced traveling outside of his placement." (*Id.* ¶¶ 11, 21.) On Friday, March 3, 2023, based on the determination

that Plaintiff violated the conditions of electronic monitoring, Sheriff's officers transported Plaintiff from his home back to the Jail to appear before the state court judge for the violations. (*Id.* ¶¶ 11, 19–21.)

The next court day, Tuesday, March 7, 2023, Plaintiff appeared before the state court judge via Zoom. (*Id.* ¶ 20.) In connection with the hearing, the State's Attorney's Office filed a Petition for a Hearing on Violation of Bail Bond Conditions and Application to Increase Amount of Bail Pursuant to 725 ILCS 5/110-S(a)&(e).[1] (Ex. A, Petition for VOBB.) During the hearing, the prosecutor provided the judge with the factual basis for the petition, which included four violations of the electronic monitoring program. (Am. Compl. ¶ 21.) Finding the factual basis to be sufficient, the state court judge ordered Plaintiff to be detained and held on no bail. (*Id.* ¶ 22; Ex. B, Order on VOBB.) Plaintiff remained at the Jail until March 21, 2023. (Am. Compl. ¶¶ 19, 24.)

Plaintiff was originally arrested on August 7, 2019, and sentenced on May 9, 2023. (Ex. C, Information Indictment; Ex. D, Order of Commitment and Sentence.) The total number of days from August 7, 2019, to May 9, 2023, is 1,371 days, which includes the time spent at the Jail and on electronic monitoring. (Am. Compl. ¶ 26.) Plaintiff received credit for all 1,371 days for "time actually served in custody." (Ex. D, Order of Commitment and Sentence.)

II. Offense of Escape (730 ILCS 5/5-8A-4.1).

Under the state statutes in force on March 3, 2023, the date when Plaintiff alleges he was taken back into custody, a person charged with a felony who violates the conditions of electronic monitoring is guilty of a Class 3 felony. *See* 730 ILCS 5/5-8A-4.1(a) (version of statute in force

[1] "A court can take judicial notice of matters of public record without converting a motion to dismiss into a motion for summary judgment." *Jordan v. Klamenrus*, No. 15 C 157, 2020 U.S. Dist. LEXIS 140233, at *8 n.2 (N.D. Ill. Aug. 6, 2020). This Court may take judicial notice of Plaintiff's criminal case. *See Opoka v. INS*, 94 F.3d 392, 394 (7th Cir. 1996) (recognizing that proceedings in other courts, both inside and outside the federal system, may be judicially noticed); *Henson v. CSC Credit Servs.*, 29 F.3d 280, 284 (7th Cir. 1994) (confirming that court documents from state proceeding are noticeable).

prior to the amendments established by the Pretrial Fairness Act, which the Illinois Supreme Court stayed on December 31, 2022, see Footnote 2 *infra*).

An individual may be "charged with escape pursuant to section 5-8A-4.1(a) of the Electronic Monitoring Law (*id.* § 5-8A-4.1(a)), which provides, in pertinent part:

> § 5-8A-4.1. Escape; failure to comply with a condition of the electronic monitoring or home detention program.
>
> (a) A person charged with or convicted of a felony . . . conditionally released from the supervising authority through an electronic monitoring or home detention program, who knowingly violates a condition of the electronic monitoring or home detention program . . . is guilty of a Class 3 felony.

People v. Duffie, 2022 IL App (2d) 210281, ¶ 12.

Plaintiff alleges that he was "charged with felony offenses in the Circuit Court of Cook County." (Am. Compl. ¶ 6.) A Sheriff's employee determined that Plaintiff violated the conditions of electronic monitoring because on four occasions he deviated in his essential movement and was traced traveling outside of his placement. (*Id.* ¶¶ 11, 21.) A state court judge found this factual basis to be sufficient to hold Plaintiff without bail. (*Id.* ¶¶ 21–22.) Thus, probable cause existed that Plaintiff committed the offense of escape because he was a "person charged with or convicted of a felony" who was determined to have violated a "condition of the electronic monitoring" program. *See* 730 ILCS 5/5-8A-4.1(a).

LEGAL STANDARD

Dismissal is appropriate under Rule 12(b)(1) when the district court lacks subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1). "In order to establish a case or controversy, the party invoking federal jurisdiction must demonstrate 'a personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief.'" *G&S Holdings LLC v. Cont'l Cas. Co.*, 697 F.3d 534, 540 (7th Cir. 2012) (quoting *Allen v. Wright*, 468 U.S. 737,

751 (1984)). "As the party invoking the court's jurisdiction, the plaintiff bears the burden of establishing the elements of standing." *Spuhler v. State Collection Serv., Inc.*, 983 F.3d 282, 285 (7th Cir. 2020) (citing *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016)).

"To survive a motion to dismiss under Rule 12(b)(6), a complaint must 'state a claim to relief that is plausible on its face.'" *Adams v. City of Indianapolis*, 742 F.3d 720, 728 (7th Cir. 2014) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)).

ARGUMENT

I. Plaintiff's Amended Complaint Should Be Dismissed Under Rule 12(b)(1) Because the Court Does Not Have Jurisdiction Over the Case.

The Fourth Amendment applies to any wrongful pretrial custody, "whether for want of probable cause, as in *Manuel*, or for want of a neutral decisionmaker, as in *Gerstein*, where the Court 'decided some four decades ago that a claim challenging pretrial detention fell within the scope of the Fourth Amendment.'" *Williams v. Dart*, 967 F.3d 625, 632–33 (7th Cir. 2020) (quoting *Manuel v. City of Joliet*, 137 S. Ct. 911, 917 (2017)).

Plaintiff seeks compensatory damages for an alleged unlawful detention at the Jail from March 3, 2023, to March 21, 2023. (Am. Compl. ¶¶ 19, 24.) Plaintiff's alleged injury, however, cannot be redressed with damages because Plaintiff received credit to his sentence for the time spent in custody, including the time at Jail from March 3, 2023, to March 21, 2023. *See Ewell v. Toney*, 853 F.3d 911, 917 (7th Cir. 2017) ("[A] section 1983 plaintiff may not receive damages for time spent in custody, if that time was credited to a valid and lawful sentence."). Therefore, this Court lacks jurisdiction because Plaintiff's alleged injury cannot be redressed by the requested

relief. *See G&S Holdings*, 697 F.3d at 540 (stating that the party invoking federal jurisdiction must demonstrate an injury that is "likely to be redressed by the requested relief").

A. This Court may consider Plaintiff's criminal case in ruling on Defendants' motion to dismiss.

Plaintiff's criminal court proceedings are relevant to assessing the Court's jurisdiction, and the Court may take judicial notice of those proceedings. *See Opoka*, 94 F.3d at 394; *Henson*, 29 F.3d at 284. Moreover, because Defendants are launching a factual attack against jurisdiction, this Court "may properly look beyond the jurisdictional allegations of the complaint and view whatever evidence has been submitted on the issue to determine whether in fact subject matter jurisdiction exists.'" *Apex Digital, Inc. v. Sears, Roebuck & Co.*, 572 F.3d 440, 443 (7th Cir. 2009) (quoting *Evers v. Astrue*, 536 F.3d 651, 656–57 (7th Cir. 2008)). "[I]f the facts place the district court on notice that the jurisdictional allegation probably is false, the court is duty-bound to demand proof of its truth." *Id.* (citation omitted).

B. This Court lacks jurisdiction because Plaintiff cannot recover any damages in this case because he received credit for all his time in custody.

The Seventh Circuit's decision in *Ewell v. Toney*, 853 F.3d 911 (7th Cir. 2017), bars Plaintiff's claims in this case. Just as in the present case, the plaintiff in *Ewell* filed a complaint under Section 1983 alleging that she was unlawfully detained. *Id.* at 915. After the plaintiff filed the complaint, she was sentenced by a state court and received credit for the time she spent in custody. *Id.* at 917. The Seventh Circuit pointed out that the plaintiff's sentence and credit for time spent in custody was an "obstacle" to plaintiff's claim for unlawful pretrial detention. *Id.* "The problem [the plaintiff] face[d] is this: a section 1983 plaintiff may not receive damages for time spent in custody, if that time was credited to a valid and lawful sentence." *Id.*

After the Seventh Circuit reviewed the plaintiff's complaint and the state criminal proceedings, which it took judicial notice of, the Seventh Circuit concluded that the plaintiff was

"not entitled to seek damages related to her detention and therefore to this extent has no injury that a favorable decision by a federal court may redress." *Id.* "Without a redressable injury, [the plaintiff] lack[ed] Article III standing to press [her] claim." *Id.* (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–62 (1992)).

In the present case, the time Plaintiff spent in custody was credited to a valid and lawful sentence, just as the plaintiff in *Ewell*. Plaintiff was arrested on August 7, 2019, and sentenced on May 9, 2023. (Ex. C, Information Indictment; Ex. D, Order of Commitment and Sentence.) The total number of days from August 7, 2019, to May 9, 2023, is 1,371 days, which includes the time spent at the Jail and on electronic monitoring. (Am. Compl. ¶ 26.) Plaintiff received credit for all 1,371 days for "time actually served in custody," including the time Plaintiff alleges he was unlawfully detained from March 3, 2023, to March 21, 2023. (Am. Compl. ¶¶ 19, 24; Ex. C, Information Indictment; Ex. D, Order of Commitment and Sentence.)

As such, Plaintiff may not receive damages for his alleged unlawful detention, and therefore, he has "no injury that a favorable decision by a federal court may redress." *Ewell*, 853 F.3d at 917. Without a redressable injury, Plaintiff lacks Article III standing to press his claim, *see id.*, and accordingly, this case must be dismissed for lack of jurisdiction.

II. Plaintiff's Amended Complaint Should Be Dismissed Under Rule 12(b)(6) Because Plaintiff Fails to State a Claim Upon Which Relief Can Be Granted.

Plaintiff alleges that the Sheriff's Office has an express policy that violates the Fourth Amendment because Sheriff's employees arrest individuals for violating the conditions of electronic monitoring "without an order from a judicial officer." (Am. Compl. ¶¶ 14, 16.) Plaintiff also alleges that the Sheriff's Office has an express policy that violates the Due Process Clause of the Fourteenth Amendment because "it does not provide notice or hearing before the deprivation of the conditional liberty of release on bail." (*Id.* ¶¶ 14, 15.) Regardless of the legal theory, the

claim Plaintiff alleges is that the express policy caused him to be unlawfully detained at the Jail from March 3, 2023, to March 21, 2023. (*Id.* ¶¶ 19, 24–25.)

Plaintiff's amended complaint lacks plausibility because it does not allow the Court to draw any inference that the Sheriff's Office is liable for the alleged conduct. *See Adams*, 742 F.3d at 728 (stating that a claim has facial plausibility when the plaintiff pleads factual content that allows "the court to draw the reasonable inference that the defendant is liable for the misconduct alleged").

First, Plaintiff completely ignores established exceptions to the warrant requirement. Thus, taking as true Plaintiff's allegation that he was taken back to the Jail "without an order from a judicial officer," this allegation does not allow the Court to infer that the Sheriff's Office is liable because a court order is not required in all circumstances.

Second, due process does not require that a hearing take place before a Fourth Amendment seizure. Plaintiff received due process because he appeared before a judge the very next court day, and the judge ordered Plaintiff to be held at the Jail without bail. For these reasons, Plaintiff fails to state a claim under the Fourth and Fourteenth Amendments.

A. Plaintiff fails to state a Fourth Amendment claim for unlawful seizure because Plaintiff does not plead lack of probable cause and his allegations show that the officers had probable cause that he committed an offense.

"The Fourth Amendment permits warrantless arrests supported by probable cause." *Taylor v. Hughes*, 26 F.4th 419, 436 (7th Cir. 2022). Plaintiff's amended complaint, however, focuses only on the lack of a *warrant or court order* as the basis for his alleged Fourth Amendment violation. Plaintiff alleges that his Fourth Amendment rights were violated because Sheriff's officers entered Plaintiff's dwelling "without a warrant or court order," put him in handcuffs, and brought him back to the Jail. (Am. Compl. ¶ 19.) This is insufficient to state a Fourth Amendment claim. Plaintiff's amended complaint completely ignores the fact that probable cause is an exception to the warrant requirement. Knowing only that a seizure was made without a warrant or

court order does not plausibly state a Fourth Amendment claim because seizures may also be effected based on probable cause.

Plaintiff's failure to plead lack of probable cause is fatal to his claim. A plaintiff "bears the initial burden of alleging facts sufficient to show that [d]efendants lacked probable cause." *Roldan v. Town of Cicero*, No. 17-cv-3707, 2018 U.S. Dist. LEXIS 49122, at *14 (N.D. Ill. Mar. 26, 2018). Even where a plaintiff alleges "lack of probable cause" in a conclusory manner, such an allegation is insufficient to withstand a motion to dismiss. *See id.* at 13–14 (citing cases).

Here, Plaintiff failed to include *any* allegations of probable cause, and thus, Plaintiff falls short of even conclusory allegations that have been found to be insufficient. *See id.*; *see also Miles v. McNamara*, No. 13 C 2395, 2014 U.S. Dist. LEXIS 31398, at *14 (N.D. Ill. Mar. 11, 2014) (dismissing false arrest claim where plaintiff "did not sufficiently allege information that indicates CPD officers lacked probable cause to arrest him").

Moreover, the allegations in Plaintiff's amended complaint show that the officers had probable cause that Plaintiff committed an offense when they took him back to the Jail to appear before a judge for violating the conditions of electronic monitoring. Under the state statutes in force on March 3, 2023, the date when Plaintiff alleges he was taken back into custody, a "person charged with or convicted of a felony" who "knowingly violates a condition of the electronic monitoring . . . program" commits the offense of escape, a Class 3 felony. *See* 730 ILCS 5/5-8A-4.1(a); *Duffie*, 2022 IL App (2d) 210281, ¶ 12.[2]

[2] Plaintiff may argue that 730 ILCS 5/5-8A-4.1(a) was amended by the Pretrial Fairness Act, and he may argue that a different version of the statute applied to Plaintiff on March 3, 2023. These arguments would fail, however. On December 31, 2022, the Illinois Supreme Court stayed "the effective date of the Pretrial Fairness Act (Public Act 101-652 and Public Act 102-1104)" in order to "maintain consistent pretrial procedures throughout Illinois." (Ex. E, Illinois Sup. Ct. Order.) Thus, the amendments to the electronic monitoring statutes set forth by the Pretrial Fairness Act were not in effect on March 3, 2023, and therefore, they are inapplicable to Plaintiff's case.

Plaintiff alleges that he was "charged with felony offenses in the Circuit Court of Cook County." (Am. Compl. ¶ 6.) A Sheriff's employee determined that Plaintiff violated the conditions of electronic monitoring because on four occasions he deviated in his essential movement and was traced traveling outside of his placement. (*Id.* ¶¶ 11, 21.) Based on this determination, Sheriff's officers transported Plaintiff from his home back to the Jail to appear before the state court judge for the violations. (*Id.* ¶¶ 11, 19–21.) The next court day, Plaintiff appeared before the state court judge via Zoom. (*Id.* ¶ 20.) During the hearing, the prosecutor provided the factual basis for the petition for bail violation, which included four violations of the electronic monitoring program. (*Id.* ¶ 21.) The state court judge found this factual basis to be sufficient to hold Plaintiff without bail. (*Id.* ¶¶ 21–22.)

As such, based on the allegations in Plaintiff's amended complaint, probable cause existed that Plaintiff committed the offense of escape because he was a "person charged with or convicted of a felony" who was determined to have violated a "condition of the electronic monitoring" program. *See* 730 ILCS 5/5-8A-4.1(a). Thus, Plaintiff's amended complaint lacks facial plausibility and should be dismissed. *See Aasen v. Drm*, No. 09 C 50228, 2010 U.S. Dist. LEXIS 68054, at *12 (N.D. Ill. July 8, 2010) (dismissing false arrest claim where the plaintiff's allegations showed that the officer "had probable cause to place plaintiff under arrest").

On a final note, Plaintiff alleges that the Sheriff's Office violated the Fourth Amendment because officers entered his residence "without a warrant or court order." (Am. Compl. ¶¶ 17, 19.) Plaintiff, however, "omits one important exception to the warrant requirement: consent." *Burritt v. Ditlefsen*, 807 F.3d 239, 249 (7th Cir. 2015). When a person "consents to an entry by law enforcement, that entry is reasonable and does not infringe on the person's Fourth Amendment rights." *Id.* (collecting cases).

Here, Plaintiff provided consent for officers to enter his home based on his participation in the electronic monitoring program. By statute, the Sheriff's Office "may develop reasonable guidelines for the operation of its electronic home detention program." *People v. Garcia*, 2021 IL App (1st) 190026, ¶ 29 (citing 730 ILCS 5/5-8A-4). "At minimum, participants shall stay home at all designated times and *shall admit* any agent of the supervising authority inside at any time for the purpose of verifying compliance with the conditions of home detention." *Id.* (emphasis in original) (citing 730 ILCS 5/5-8A-4(A), (B)). Accordingly, Plaintiff gave "prospective consent" for officers to enter his home "based on such condition of his participation in the sheriff's EM program." *Id.* ¶ 40. Therefore, Plaintiff fails to state a Fourth Amendment claim based on allegations that officers entered his home to bring him back to the Jail to appear before a judge for violating the conditions of electronic monitoring.

B. Plaintiff fails to state a plausible claim because bringing him before the state court for violating the conditions of bail is reasonable under the Fourth and Fourteenth Amendments.

The "touchstone of the Fourth Amendment is reasonableness." *Ohio v. Robinette*, 519 U.S. 33, 39 (1996) (quoting *Florida v. Jimeno*, 500 U.S. 248, 250 (1991)). A warrant or court order is not necessary in all situations, as courts have long recognized "exceptions to the warrant requirement." *United States v. Slone*, 636 F.3d 845, 848 (7th Cir. 2011). One such exception is based on the custodial relationship of the surety to the person bailed, as existed at common law. *See Williams*, 967 F.3d at 635–36. In a case involving processing bail admissions, the Seventh Circuit made clear that the "Fourth Amendment does not require any particular administrative arrangement for processing bail admissions." *Id.* at 636. Rather, what the Fourth Amendment requires is that "*whatever arrangement is adopted* not result in seizures that are unreasonable in light of the Fourth Amendment's history and purposes." *Id.* (emphasis added).

In *Williams*, the Seventh Circuit examined the custodial relationship between a surety and the person bailed that existed at common law. *Id.* at 635–36. "The bail have their principal on a string, and may pull the string whenever they please, and render him in their discharge." *Id.* at 636 (quoting *Taylor v. Taintor*, 83 U.S. (16 Wall.) 366, 371–72, 21 L. Ed. 287 (1872)). "Whenever they choose to do so, they may seize him and deliver him up in their discharge; and if that cannot be done at once, they may imprison him until it can be done." *Id.* (quoting *Taylor*, 83 U.S. at 371). "[T]he parties that take him to bail are in law his keepers, and *may re-seize him to bring him in*." *Id.* (emphasis added) (quoting 2 Matthew Hale, *Pleas of the Crown* 124 (1736)).

Consistent with this common law, the Seventh Circuit granted the premise that "the Sheriff was thus free to pull the string whenever he pleased." *Id.* After reseizing a person on bail, the Sheriff is required "to deliver plaintiffs at once or to detain them very briefly until it could be done—to return them to court after a brief time needed for administrative purposes, as we would say today." *Id.*

That is exactly what occurred in Plaintiff's case. Plaintiff was "re-seized" and taken back into custody for violating the conditions of electronic monitoring and brought before the state court to answer for those violations. (Am. Compl. ¶¶ 20–22.) Based on the factual basis provided by the prosecutor, the state court judge ordered that Plaintiff be held without bail. (*Id.* ¶ 22.) Taking Plaintiff back into custody for violating the conditions of electronic monitoring is reasonable under the Fourth Amendment. *See Williams*, 967 F.3d at 636; *see also Thomas v. City of Peoria*, 580 F.3d 633, 637–38 (7th Cir. 2009) (stating that "the Fourth Amendment does not forbid an arrest for a 'nonjailable' offense").

Plaintiff's allegations do not allow the Court to draw any inference that Defendants are liable for taking Plaintiff back into custody and bringing him before a judge for violating the conditions of electronic monitoring. *See Adams*, 742 F.3d at 728 (stating that a claim has facial

plausibility "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged"). For these reasons, Plaintiff's amended complaint lacks facial plausibility and must be dismissed.

C. Plaintiff fails to state a Fourteenth Amendment procedural due process claim because he received a hearing before the state court judge, who ordered Plaintiff to be held without bail.

Plaintiff alleges that the Sheriff's Office has an express policy that violates the Due Process Clause of the Fourteenth Amendment because "it does not provide notice or hearing *before* the deprivation of the conditional liberty of release on bail." (Am. Compl. ¶¶ 14, 15, emphasis added.) However, "Due process permits an arrest *without a previous hearing* because it is dangerous to allow a person who the police have probable cause to believe has committed a crime to roam at large while awaiting a hearing." *Holly v. Woolfolk*, 415 F.3d 678, 681 (7th Cir. 2005) (emphasis added). Here, Plaintiff alleges he received a hearing on the next court day after being taken back to the Jail. (Am. Compl. ¶ 20.) Therefore, Plaintiff fails to state a procedural due process claim.

In addition, dismissal is appropriate because Plaintiff's Fourteenth Amendment claim is redundant with his Fourth Amendment claim. The Fourth Amendment applies to *any* wrongful pretrial custody, "whether for want of probable cause, as in *Manuel*, or for want of a neutral decisionmaker, as in *Gerstein*, where the Court 'decided some four decades ago that a claim challenging pretrial detention fell within the scope of the Fourth Amendment.'" *Williams*, 967 F.3d at 632–33 (quoting *Manuel*, 137 S. Ct. at 917).

In *Terry v. Talmontas*, No. 11 CV 6083, 2013 U.S. Dist. LEXIS 28063, at *27–28 (N.D. Ill. Feb. 26, 2013), the district court dismissed the plaintiff's Fourteenth Amendment procedural due process claim because it was "redundant" with his Fourth Amendment claim. As the district court stated:

> Plaintiff's Fourteenth Amendment procedural due process claims are redundant. His allegations of procedural due process violations are identical to his allegations of Fourth Amendment violations, namely, that his rights were violated when he was arrested without probable cause and detained in violation of his liberty until he was arraigned and indicted . . . .

Id.

Likewise, Plaintiff's Fourteenth Amendment claim is redundant with his Fourth Amendment claim because both claims are based on the identical allegation that he was unlawfully detained at the Jail for "violat[ing] a condition of electronic monitoring" "without an order from a judicial officer." (Am. Compl. ¶ 14.) As such, Plaintiff's Fourteenth Amendment claim should be dismissed for this additional reason, as well.

III. Plaintiff's *Monell* Claim Must Be Dismissed Because He Fails to Allege an Underlying Constitutional Violation.

As stated above, Plaintiff fails to state a claim for any constitutional violations under the Fourth and Fourteenth Amendments. Where a plaintiff "has failed to allege any underlying constitutional deprivation, he has likewise failed to state a *Monell* claim." *Valle v. City of Chicago*, 333 F. Supp. 3d 800, 809 (N.D. Ill. 2018) (citing *Barrow v. City of Chicago*, No. 13 C 8779, 2014 U.S. Dist. LEXIS 126929, 2014 WL 4477945, at *3 (N.D. Ill. Sept. 11, 2014) (granting motion to dismiss *Monell* claim because plaintiff failed to allege an underlying constitutional deprivation)).

Because Plaintiff "has failed to establish an underlying constitutional violation," his *Monell* claim must be dismissed. *See Word v. City of Chicago*, 946 F.3d 391, 395 (7th Cir. 2020) (citing *King v. East St. Louis School Dist. 189*, 496 F.3d 812, 817 (7th Cir. 2007) ("It is well established that there can be no municipal liability based on an official policy under *Monell* if the policy did not result in a violation of [a plaintiff's] constitutional rights.")).

IV. Plaintiff's Indemnification Allegation Against Defendant Cook County and Plaintiff's Class Allegations Should Be Dismissed Because Plaintiff Fails to State an Underlying Individual Claim.

Plaintiff's amended complaint should be dismissed in full, including Plaintiff's indemnification allegation against Defendant Cook County and Plaintiff's class allegations. Without an underlying individual claim, these allegations necessarily fail.

"An indemnification claim necessarily will be tied to an underlying claim for liability." *Baskins v. Gilmore*, No. 17 C 07566, 2018 U.S. Dist. LEXIS 168579, at *40 (N.D. Ill. Sep. 30, 2018) (citing *McGreal v. AT&T Corp.*, 892 F. Supp. 2d 996, 1017–18 (N.D. Ill. 2012) (dismissing plaintiff's *respondeat superior* and indemnification claims against the employer because plaintiff failed to state a claim against the employees, meaning there was "no wrongdoing to indemnify")). Thus, because Plaintiff fails to state an underlying claim for liability, his indemnification allegation must be dismissed, as well.

As to Plaintiff's class allegations, those must also be dismissed. Where a plaintiff fails to state a claim under Rule 12(b)(6), "both the individual and putative class claims" must be dismissed. *Coleman v. Garrison Prop. & Cas. Ins. Co.*, No. 19 C 1745, 2020 U.S. Dist. LEXIS 16439, at *10 (N.D. Ill. Jan. 30, 2020) (citing *Wiesmueller v. Kosobucki*, 513 F.3d 784, 786 (7th Cir. 2008) (If "the named plaintiff's claim becomes moot before the class is certified, the suit must be dismissed because no one besides the plaintiff has a legally protected interest in the litigation")); *see also Garnett v. Millennium Med. Mgmt. Res.*, No. 10 C 3317, 2010 U.S. Dist. LEXIS 131035, at *1 n.1 (N.D. Ill. Dec. 9, 2010) ("Plaintiffs bring this action as a putative class action. However, they have not moved for class certification. Since named plaintiff's individual claims are being dismissed, a class will not be certified and the claims of the putative class will be dismissed without prejudice.").

CONCLUSION

For these reasons, Defendants respectfully request that this Honorable Court dismiss Plaintiff's amended complaint with prejudice and for any other relief this Court deems appropriate.

Respectfully Submitted,

KIMBERLY M. FOXX
State's Attorney of Cook County

Dated: July 17, 2023

/s/ *Samuel D. Branum*
Special Assistant State's Attorney

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