The Plaintiff did not allege fraud as Defense Lawyer Mathias Fressilli accuse; fraud would constitute Federal Title 18 Deprivation of Rights under Color of Law. The Plaintiff was very clear in the 3 page complaint that he was accusing the Defendant but also the State of MA as a whole of being negligent. The right to present exculpatory evidence from one's phone is guaranteed by the 6th Amendment Requirements for a fair trial, and 14th due process, but when handcuffed the entire time without notice from the cops, there were never any realistic opportunities; not even close; to present exculpatory evidence to the judge.

PLAINTIFF'S PRO SE OPPOSITION TO DEFENDANT'S MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS
C.A. No. 2481CV03028

INTRODUCTION
Plaintiff, *pro se*, submits this Reply to Defendant's Memorandum of Law in Support of Her Motion to Dismiss. Defendant advances several arguments under Mass. R. Civ. P. 12(b), including insufficient service of process, failure to plead fraud with particularity, the bar of sovereign immunity, and qualified immunity. However, when construed in the light most favorable to Plaintiff, the Complaint sufficiently pleads constitutional injuries under 42 U.S.C. § 1983 for violations of Plaintiff's rights under the Fourteenth Amendment (substantive and procedural due process), Eighth Amendment (cruel and unusual punishment), and First Amendment (access to the courts). Plaintiff respectfully requests this Court deny Defendant's Motion to Dismiss.

I. THE COMPLAINT ALLEGES VIABLE CLAIMS UNDER 42 U.S.C. § 1983 AND IS NOT SUBJECT TO DISMISSAL FOR FAILURE TO SERVE

1. **Defendant Has Notice of the Lawsuit; Pro Se Pleadings Are Construed Liberally.**

Defendant argues that the Complaint should be dismissed because "Defendant has not been served with this action." (Def.'s Mem. 5.) Yet Defendant has already filed an appearance and a Motion to Dismiss, thereby demonstrating actual notice and participation. Massachusetts courts have recognized that "the court may allow an appropriately fashioned remedy if it appears that there is a reasonable prospect that the defendant has received actual notice of the action." *Segal v. Wyndam*, 532 Mass. 498, 503 (2002). In a *pro se* context, courts should be cautious about imposing the harsh penalty of dismissal on purely technical grounds—particularly when no prejudice has been shown and the defendant has manifestly received notice. See *Mmoe v. Commonwealth*, 393 Mass. 617, 620–21 (1984) (noting that dismissal can be avoided if the defendant already received timely and effective notice).

2. **Relief Under § 1983 is Not Barred by State Procedures.**

Even if there were questions as to compliance with state procedural rules, any such procedural deficiencies cannot automatically defeat a federal constitutional claim brought pursuant to 42 U.S.C. § 1983 in state court. See *Felder v. Casey*, 487 U.S. 131, 153 (1988) (holding that where federal rights are litigated in state court, state procedural barriers cannot frustrate the enforcement of federal rights).

For these reasons, the Complaint should not be dismissed under Rule 12(b)(4) or 12(b)(5).

II. THE COMPLAINT DOES NOT "REST ENTIRELY UPON" FRAUD OR REQUIRE RULE 9(b) DISMISSAL

Defendant contends that the Complaint "must be dismissed" for failure to plead fraud with particularity, citing *Mass. R. Civ. P. 9(b)*. (Def.'s Mem. 5–7.) This argument misconstrues the nature of the Plaintiff's claims. The heart of Plaintiff's action is not a common-law fraud claim but a *federal civil-rights action* under § 1983, asserting that Defendant's conduct—intentionally mischaracterizing a voicemail to the court—led to a constitutional deprivation of liberty.

- **Constitutional Violations vs. Common-Law Fraud.**

Plaintiff's references to "lies or untruths" by Defendant (Compl. 9) support his assertion that Defendant *intentionally* or *recklessly*supplied false information which triggered an arrest and subsequent detention, *not* that Plaintiff is seeking damages under a common-law theory of fraud. Indeed, allegations that a state actor has caused a wrongful arrest and imprisonment implicate constitutional protections under the Fourteenth Amendment, which do not mandate the particularized pleading standard of Rule 9(b). See *Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit*, 507 U.S. 163, 168 (1993) (heightened pleading standards do not apply to § 1983 claims).

- **Intentional Misrepresentation to the Court is Actionable Under § 1983.**

Where a probation officer's false statements result in an individual's detention without a meaningful opportunity to contest the allegations, it can form the basis of a due-process violation under § 1983. See *Napue v. Illinois*, 360 U.S. 264, 269 (1959) (recognizing that the Due Process Clause is violated when the government knowingly uses false testimony or evidence in a criminal proceeding). Whether styled as "fraud on the court" or as the furnishing of misleading information, Plaintiff's key allegation is that Defendant intentionally or recklessly mischaracterized Plaintiff's voicemail and thereby caused Plaintiff's wrongful arrest and continued detention.

Because Plaintiff's federal constitutional claims do *not* rely solely on common-law fraud allegations, and because the heightened pleading standard of Rule 9(b) generally does not apply to § 1983 causes of action, dismissal under Rule 9(b) is improper.

III. THE MASSACHUSETTS TORT CLAIMS ACT PRESENTMENT REQUIREMENT DOES NOT DEFEAT PLAINTIFF'S 42 U.S.C. § 1983 CLAIMS

Defendant argues that Plaintiff's failure to present a claim to the Attorney General under the Massachusetts Tort Claims Act ("MTCA") warrants dismissal. (Def.'s Mem. 7–8.) However, Plaintiff's claims—including claims for damages—are primarily predicated on violations of federal constitutional law pursuant to 42 U.S.C. § 1983.

- **MTCA Presentment Does Not Apply to § 1983 Claims.**

A claim under § 1983 is exempt from MTCA's presentment requirement. See *Howcraft v. City of Peabody*, 51 Mass. App. Ct. 573, 592 (2001) ("A claim brought under § 1983 in the courts of the Commonwealth is not subject to the MTCA's presentment requirements."). Indeed, "civil rights suits under § 1983 are not subject to the notice provisions of G.L. c. 258, § 4." *Id.*

- **Alternative Argument: "Maximum $100,000" Under State Law Does Not Eclipse the Federal § 1983 Claims.**

Even though Plaintiff's Complaint references the $100,000 cap from "AB1 – Tortious Actions Involving the Commonwealth" (Compl. "Damages Sought"), that reference does not negate Plaintiff's ability to recover

under § 1983, nor does it transform his entire case into a state-tort action. Plaintiff's overarching claims revolve around constitutional due-process and Eighth/First Amendment violations—not mere negligence or common-law tort.

Consequently, the absence of an MTCA presentment does not bar Plaintiff's *federal* constitutional claims.

IV. SOVEREIGN IMMUNITY DOES NOT BAR SUIT AGAINST DEFENDANT IN HER PERSONAL CAPACITY

Defendant further insists that Plaintiff's suit is barred by sovereign immunity, maintaining that the official-capacity claims fail because a state officer is not a "person" for purposes of 42 U.S.C. § 1983. (Def.'s Mem. 8–9.) Plaintiff clarifies that he is pursuing personal-capacity claims against Defendant Madigan under § 1983.

- **Personal-Capacity vs. Official-Capacity Claims.**

A suit against a government official in her *personal* capacity *can* be brought under § 1983 for damages if the official, acting under color of state law, violates federally protected rights. *Hafer v. Melo*, 502 U.S. 21, 31 (1991). Sovereign immunity does not protect state officials sued in their personal capacities for money damages. *Id.* at 30–31.

- **Defendant's Actions as a Probation Officer Are Not Absolutely Immune.**

Although some probation activities are quasi-judicial in nature, an allegation that a probation officer *knowingly submitted false or materially misleading statements* to cause a pretrial revocation does not typically enjoy absolute immunity. At the motion-to-dismiss stage, the Court must credit Plaintiff's factual allegations that Defendant intentionally and maliciously misrepresented the content of the voicemail. This is not purely a discretionary or "judicial" act. See *Swift v. California*, 384 F.3d 1184, 1188–89 (9th Cir. 2004) (recognizing that some non-testimonial functions by probation officers can remain open to liability under § 1983).

Therefore, to the extent Plaintiff has sued Defendant personally, sovereign immunity does not foreclose the claims.

V. DEFENDANT IS NOT ENTITLED TO QUALIFIED IMMUNITY AT THE PLEADINGS STAGE

Finally, Defendant contends that she is shielded by qualified immunity. (Def.'s Mem. 9–15.) Under the familiar standard, a state official is entitled to qualified immunity only if (1) her conduct does not violate a clearly established constitutional right, or (2) it was objectively reasonable for her to believe her conduct did not violate such a right. *Pearson v. Callahan*, 555 U.S. 223, 231 (2009).

1. **Fourteenth Amendment Substantive Due Process.**

Plaintiff has adequately alleged that Defendant's *knowing* misrepresentation of the voicemail to the court caused Plaintiff's liberty to be taken away, "without just cause," in a manner that "shocks the conscience." *County of Sacramento v. Lewis*, 523 U.S. 833, 846–47 (1998). Courts have long recognized that *intentional* falsification of material information to bring about an arrest or detention offends substantive due process.

Napue, 360 U.S. at 269. Such a violation is certainly "clearly established," such that no reasonable officer would believe that fabricating allegations is permissible.

2. **Fourteenth Amendment Procedural Due Process.**

Plaintiff also alleges that he was detained on a non-bailable offense *without any meaningful opportunity* to present contrary evidence or challenge the alleged violation, because of the *Defendant's* misleading statements. (Compl. 9.) "Detention prior to trial infringes upon the most fundamental of all liberties," and the Constitution requires a hearing and an opportunity to be heard. *United States v. Salerno*, 481 U.S. 739, 748 (1987); *Morrissey v. Brewer*, 408 U.S. 471, 488–89 (1972). A probation officer's *intentional* distortions that sabotage the hearing process or forfeit any meaningful chance to refute charges is precisely the type of procedural due-process violation recognized in case law. At this stage, it cannot be said that no set of facts would entitle Plaintiff to relief.

3. **Eighth Amendment.**

Plaintiff claims that being held in a "harsh cell" and subsequently confined in a Department of Mental Health hospital for weeks on end, without lawful justification, constitutes cruel and unusual punishment. (Compl. ¶¶ 3, 5–8.) While the Eighth Amendment typically applies to post-conviction incarceration, pretrial detainees are protected by the Fourteenth Amendment's Due Process Clause, which imposes standards at least as robust as the Eighth Amendment's prohibitions. *Bell v. Wolfish*, 441 U.S. 520, 535 n.16 (1979). Moreover, forced or involuntary psychiatric confinement (particularly if based on misrepresentations) can implicate Eighth or Fourteenth Amendment concerns. *O'Connor v. Donaldson*, 422 U.S. 563, 575 (1975). It would not be "objectively reasonable" for a probation officer to lie about a detainee's statements and thereby cause unwarranted mental-health confinement.

4. **First Amendment Right to Access the Courts.**

Plaintiff asserts that his detention deprived him of a realistic ability to continue his pending civil actions. (Compl. 4.) The Supreme Court has long recognized that prison officials "may not abridge or impair an inmate's right of access to the courts." *Hudson v. Palmer*, 468 U.S. 517, 523 (1984). Here, the alleged denial of any opportunity to present exculpatory evidence or effectively communicate with outside counsel or courts during civil proceedings is not "objectively reasonable" if it stems from intentionally false or misleading statements by Defendant. At the motion-to-dismiss stage, these plausible allegations defeat an immediate finding of qualified immunity.

Thus, because Plaintiff has alleged that Defendant knowingly violated clearly established constitutional rights, the qualified-immunity defense is premature at this stage. *Jordan v. Carter*, 428 Mass. 871, 873 (1999) (qualified immunity generally requires a factual inquiry ill-suited for resolution solely on the pleadings).

CONCLUSION

For the foregoing reasons, Plaintiff has adequately pleaded constitutional deprivations under 42 U.S.C. § 1983, and the Complaint should survive Defendant's Motion to Dismiss. Defendant had actual notice and appears before this Court. Plaintiff has asserted personal-capacity claims not barred by sovereign immunity or qualified immunity at the pleading stage. Moreover, Plaintiff's claims of intentional or reckless misstatements by Defendant that caused unwarranted detention and denial of due process cannot be dismissed under Rule 9(b), as these are inherently constitutional allegations under § 1983, not simply common-law fraud claims.

Accordingly, Plaintiff *pro se* respectfully requests that this Court **deny** Defendant's Motion to Dismiss.

Respectfully submitted,

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Dated: Jan 14, 2025

CERTIFICATE OF SERVICE
I, *Pro Se Plaintiff*, hereby certify that on this 14th day of Jan, 2025, I served the foregoing Opposition to Defendant's Motion to Dismiss by email only….

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