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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

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9 Lawanda Denise Meabon,
10 Plaintiff,

No. CV-11-0940-PHX-DGC

ORDER

11 v.

12 Town of Gilbert Police Department, et al.,
13 Defendants.

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15 Pro Se Plaintiff Lawanda Denise Meabon filed an amended complaint against the
16 Town of Gilbert Police Department; Larry E. Sinks, a Gilbert Police Officer; the Gilbert
17 Town Prosecutors Office; Lynn R. Arouh, a Gilbert Town Prosecutor; and Jack C.
18 Pemberton, a Gilbert Assistant Town Prosecutor (collectively “Defendants”). Doc. 9.
19 Defendants have filed a motion for summary judgment. Doc. 57. The motion has been
20 fully briefed (Docs. 57, 58), and neither party has requested oral argument. For the
21 reasons that follow, the Court will grant summary judgment to Defendants and against
22 Plaintiff.¹

23 **I. Background.**

24 The following facts are based on the allegations in Plaintiff’s first amended

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26 ¹ After Defendants filed their reply, Plaintiff filed “Plaintiff’s amended responsive
27 pleading to Defendants (57) motion for summary judgment” (Doc. 63), which the Court
28 will construe as an attempt to file an unauthorized sur-reply. Such replies are not
permitted under the Federal Rules of Civil Procedure or the Court’s Local Rules. In light
of Plaintiff’s pro se status, the Court has nonetheless considered the additional material in
the sur-reply and finds that it does not change the outcome in this case.

1 complaint and are not disputed by Defendants. Plaintiff alleges that on or about
2 February 7, 2010, she arrived on the scene of a traffic stop, already in progress, in which
3 Officer Larry Sinks had stopped her cousin, Trevor Reed, for speeding. Doc. 9 at 2-3.
4 Plaintiff alleges that she arrived in a blue Suzuki driven by Schamarge Brown and left in
5 the same vehicle driven by Reed while Brown left the scene driving Reed's vehicle. *Id.*
6 at 3. While at the scene, Officer Sinks confirmed Plaintiff's name and date of birth and
7 questioned her about her relationship to Reed and his passengers. *Id.* He also stated that
8 Reed would receive a citation by mail. *Id.*

9 On or about May 19, 2010, Plaintiff alleges that she received a summons to appear
10 in Gilbert Municipal Court on charges filed against her by Gilbert Prosecutors Jack C.
11 Pemberton and Lynn R. Arouh, claiming that on or about February 7, 2010, she had been
12 driving on a suspended license. *Id.* Plaintiff appeared in court and, upon being presented
13 with a plea offer that would impose a suspended jail term, three years of probation, and a
14 \$608.00 fine, declined the offer and sought a continuance to conduct discovery. *Id.* at 4.

15 Plaintiff alleges that she secured a copy of the complaint which showed that
16 Officer Sinks had made statements in his police report that he had seen Plaintiff driving
17 when her privilege to do so had been suspended. *Id.* Plaintiff alleges that Officer Sinks
18 also stated that Jerry Robinson, the registered owner of the blue Suzuki, was the driver of
19 that vehicle when it arrived with Plaintiff at the scene of the traffic stop, while Plaintiff
20 alleges that Brown was the driver and that Robinson has made a sworn statement that he
21 was nowhere near the scene on the day of the traffic stop. *Id.* Plaintiff alleges that the
22 police report also falsely states that Robinson was both the driver of the blue Suzuki that
23 arrived at the scene as well as the vehicle Officer Sinks initially stopped. *Id.* at 6.

24 Plaintiff alleges that she was not driving on the day of the traffic stop, and she
25 subsequently had to make eight continued court appearances – each time rejecting the
26 same proffered plea – while preparing to defend herself against the false charges
27 stemming from Officer Sinks' report. *Id.* at 5. Plaintiff's trial was held on March 2,
28 2011. *Id.* She alleges that Officer Sinks provided false information at trial, including that

1 she was driving on February 7, 2010, and that Robinson, not Brown, was the one who
2 drove the blue Suzuki to the location where Officer Sinks had stopped Reed. *Id.* at 5-6.

3 Plaintiff called Brown and Reed as witnesses to provide evidence that she was not
4 driving and to refute the allegedly false statements contained in Officer Sinks' testimony
5 and report. *Id.* at 6. Plaintiff was acquitted of the charges against her, and the complaint
6 was dismissed with prejudice. *Id.* Plaintiff subsequently filed this amended complaint,
7 alleging that Officer Sinks provided false testimony against her and that the prosecutors
8 also misled the court and acted in bad faith. *Id.* at 4-6.

9 The amended complaint asserts violations of 42 U.S.C. § 1983 stemming from the
10 allegations that Officer Sinks falsified information in his police report and at trial and that
11 the prosecutors "violated plaintiff's civil rights by committing malicious prosecution and
12 depriving plaintiff of her 14th Amendment right to liberty." *Id.* at 5. The amended
13 complaint also lists, in serial fashion, a number of allegations such as "defamation of
14 character, harassment, discrimination . . . evasion of constitutional rights", etc. that could
15 be construed as additional claims. *Id.* at 7.

16 **II. Standard for Summary Judgment.**

17 A party seeking summary judgment "bears the initial responsibility of informing
18 the district court of the basis for its motion, and identifying those portions of [the record]
19 which it believes demonstrate the absence of a genuine issue of material fact." *Celotex*
20 *Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Summary judgment is appropriate if the
21 evidence, viewed in the light most favorable to the nonmoving party, shows "that there is
22 no genuine dispute as to any material fact and the movant is entitled to judgment as a
23 matter of law." Fed. R. Civ. P. 56(a). Summary judgment is also appropriate against a
24 party who "fails to make a showing sufficient to establish the existence of an element
25 essential to that party's case, and on which that party will bear the burden of proof at
26 trial." *Celotex*, 477 U.S. at 322. Only disputes over facts that might affect the outcome
27 of the suit will preclude the entry of summary judgment, and the disputed evidence must
28 be "such that a reasonable jury could return a verdict for the nonmoving party."

1 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

2 **III. Discussion.**

3 Defendants argue that they are entitled to summary judgment as a matter of law
4 because Plaintiff fails to offer evidence to support the necessary elements of her § 1983
5 claims. Doc. 57 at 3-4. Defendants additionally argue that Plaintiff’s § 1983 claims fail
6 as to Defendants Arouh and Pemberton because prosecutors have absolute immunity for
7 conduct undertaken in pursuit of a criminal prosecution and as to Officer Sinks because,
8 as a witness at trial, he is entitled to absolute immunity for his testimony. *Id.* at 4-5.
9 Defendants argue that the Town of Gilbert Police Department and the Town of Gilbert
10 Prosecutors Office are non-jural entities. *Id.* at 5. Defendants also argue that to the
11 extent Plaintiff attempts to make any state law claims, these fail as a matter of law
12 because Plaintiff has failed to serve a notice of claim on any Defendant as required for
13 claims against public employees under Arizona’s Notice of Claim Statute. *Id.* at 5-6.

14 **A. Plaintiff’s § 1983 Claims.**

15 “To state a claim for relief in an action brought under 42 U.S.C. § 1983, [Plaintiff]
16 must [allege] that [she was] deprived of a right secured by the Constitution or laws of the
17 United States, and that the alleged deprivation was committed under color of state law.”
18 *Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 49-50 (1999). “Section 1983 ‘is not
19 itself a source of substantive rights,’ but merely provides ‘a method for vindicating
20 federal rights elsewhere conferred.’” *Albright v. Oliver*, 510 U.S. 266, 271 (1994)
21 (quoting *Baker v. McCollan*, 443 U.S. 137, 144, n. 3 (1979)). “It is well settled that
22 section 1983 ‘imposes liability for violations of rights protected by the Constitution, not
23 for violations of duties of care arising out of tort law.’” *Johnson v. Barker*, 799 F.2d
24 1396, 1399 (9th Cir. 1986) (quoting *Baker*, 443 U.S. at 146).

25 Defendants argue that Plaintiff’s § 1983 claims based on malicious prosecution
26 fail as a matter of law because they rest entirely on unsupported allegations that
27 Defendants falsified evidence against her, and these allegations are insufficient to show a
28 due process violation. Doc. 57 at 3. Defendants rely on *Freeman v. City of Santa Ana*,

1 68 F.3d 1180, 1189 (9th Cir. 1995), in which the Ninth Circuit stated that “[m]alicious
2 prosecution, by itself, does not constitute a due process violation; to prevail [the plaintiff]
3 must show that the defendants prosecuted her with malice and without probable cause,
4 and that they did so for the purpose of denying her equal protection or another specific
5 constitutional right.” Defendants argue that Plaintiff fails to offer any evidence that they
6 prosecuted her “for the purpose of denying her equal protection or another specific
7 constitutional right.” Doc. 57 at 3 (citing *Freeman*, 68 F.3d at 1189).

8 Plaintiff did not submit a separate statement of facts with her memorandum
9 opposing summary judgment as required under Local Rule of Civil Procedure 56.1(b).
10 Nor did she comply with Federal Rule of Civil Procedure 56(c), which requires that she
11 set out specific facts in declarations, depositions, or authenticated documents, and not
12 merely rely on the allegations in her complaint to support her claims. *See Celotex*, 477
13 U.S. at 324. Plaintiff instead merely avers that her amended complaint and other
14 documents “speak for themselves.” Doc. 61 at 2. This generalized assertion is not
15 sufficient to withstand a motion for summary judgment where the plaintiff “must produce
16 at least some ‘significant probative evidence tending to support the complaint.’” *T.W.*
17 *Electrical. Serv., Inc. v. Pac. Electrical Contractors*, 809 F.2d 626, 630 (9th Cir. 1987)
18 (internal citation omitted). Plaintiff, not the Court, bears the burden of finding and
19 presenting evidence in the record. As the Ninth Circuit has made clear, a “district court
20 need not examine the entire file for evidence establishing a genuine issue of fact, where
21 the evidence is not set forth in the opposing papers with adequate references so that it
22 could conveniently be found.” *Carmen v. S.F. Unified Sch. Dist.*, 237 F.3d 1026, 1031
23 (9th Cir.2001); *see also Martin v. Great Lakes Reinsurance*, 2010 WL 94120, at *1, n.3
24 (D. Ariz. Jan. 6, 2010) (stating that “the Court . . . will not consider facts for which it
25 cannot easily find support”).

26 Even if Plaintiff had pointed to specific evidence that Defendants made false
27 statements, such evidence would not present a genuine issue of material fact on whether
28 Defendants acted with malice and with the purpose of denying Plaintiff equal protection

1 or another specific constitutional right. Moreover, such evidence might simply show
2 negligence or mistake, and violations of the duty of care under tort law are not sufficient
3 to support a § 1983 claim. *Johnson v. Barker*, 799 F.2d at 1399. Although Plaintiff
4 makes conclusory allegations that Officer Sinks “falsified information against me” and
5 “acted in bad faith” (Doc. 9 at 4, 6), she presents no probative evidence on which a
6 reasonable jury could conclude that Officer Sinks acted out of malice toward her and not
7 merely out of negligence or carelessness, particularly where the alleged errors in his
8 report do not pertain exclusively to Plaintiff but extend to other alleged drivers.
9 Furthermore, Plaintiff points to no evidence that Defendants Pemberton and Arouh had
10 reason to think the statements in Officer Sinks’ report or testimony were false, thereby
11 showing that they acted with malice or to deprive Plaintiff of her constitutional rights.

12 Plaintiff does not allege or point to any evidence upon which a reasonable jury
13 could find that her 14th Amendment due process rights were violated. *See* Doc. 9 at 5, 6.
14 The facts alleged in the amended complaint show that Plaintiff was notified of the
15 charges against her, was given the opportunity to accept a plea or request a continuance
16 to prepare for trial, was permitted to conduct discovery and have the trial date continued
17 at least eight times while she prepared her defense, and was permitted to present
18 witnesses on her behalf. Doc. 9 at 3-6. Plaintiff was acquitted of the charges against her
19 at trial, and the complaint against her was dismissed with prejudice. *Id.* at 6. These facts
20 do not support a claim that Plaintiff was denied due process of law. Plaintiff’s specific
21 claim that she was deprived of liberty appears to rest solely on the allegation that she was
22 required to defend herself against false charges, but Plaintiff cites no law suggesting that
23 criminal charges alone violate one’s liberty interest.

24 In summary, Plaintiff has failed to present evidence that Defendants acted with
25 malice and the intent to deprive her of her constitutional rights, or that she was denied
26 due process of law. As noted above, summary judgment may be granted against a party
27 who “fails to make a showing sufficient to establish the existence of an element essential
28 to that party’s case, and on which that party will bear the burden of proof at trial.”

1 *Celotex*, 477 U.S. at 322. Because Plaintiff fails to support the factual allegations in her
2 complaint by pointing to probative evidence, Plaintiff's § 1983 claims fail as a matter of
3 law. Having determined that Plaintiff's § 1983 claims fail as a matter of law, the Court
4 need not address Defendants' alternative arguments that Defendants Sinks, Pemberton,
5 and Arouh are entitled to complete immunity or that the Town of Gilbert Police
6 Department and the Town of Gilbert Prosecutor Office are non-jural entities.²

7 **B. Plaintiff's Additional Claims.**

8 To the extent that Plaintiff's amended complaint attempts to make state-law
9 claims, these fail as a matter of law because Plaintiff failed to comply with Arizona's
10 Notice of Claim statute. *Nored v. City of Tempe*, 614 F. Supp. 2d 991, 998 (D. Ariz.
11 2008). This statute requires that "[p]ersons who have claims against a public entity or a
12 public employee shall file claims with the person or persons authorized to accept service
13 for the public entity or public employee as set forth in the Arizona rules of civil
14 procedure within one hundred eighty days after the cause of action accrues." A.R.S.
15 § 12-821.01(A). The statute further provides that "[a]ny claim that is not filed within one
16 hundred eighty days after the cause of action accrues is barred and no action may be
17 maintained thereon." *Id.* Defendants present evidence, undisputed by Plaintiff, that she
18 did not serve a Notice of Claim on any Defendant within 180 days after her trial on
19 March 2, 2011, when her claims against the public entities and employees named in the
20 amended complaint accrued. Doc. 58, ¶ 5 (*see* Affs. of Lynn Arouh, Doc. 58-1 at 2, Jack
21 Pemberton, Doc. 58-1 at 4; Larry Sinks, Doc. 58-1 at 6). Thus, Plaintiff forfeited any
22 potential state law claims.

23 **IT IS ORDERED:**

- 24 1. Defendants' motion for summary judgment (Doc. 57) is **granted**.

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26 ² To the extent Plaintiff attempts to make any additional § 1983 claims, these also
27 fail because Plaintiff only lists in serial fashion a smattering of common-term legal
28 violations without reference to the elements of any particular claims. Plaintiff also fails
to present sufficient evidence to support any additional constitutional violation.

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2. The Clerk of the Court is directed to terminate this matter.

Dated this 27th day of November, 2012.



David G. Campbell
United States District Judge