

IN THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY

ALEXANDRA WILSON,)	
)	CASE NO. LACL157381
Plaintiff,)	
)	
v.)	
)	Defendants' Motion to Dismiss Amended
RELIABLE STREET INC., LOCKWOOD)	Petition Filed June 17
CAFÉ, [REDACTED] [REDACTED] [REDACTED])	
[REDACTED] [REDACTED] [REDACTED] [REDACTED])	
[REDACTED] and [REDACTED] [REDACTED])	
)	
Defendants.)	

Defendants Reliable Street Inc., Lockwood Café, [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED] and [REDACTED] [REDACTED] pursuant to Iowa Rule of Civil Procedure

1.421(1)(e) and (f), file this Pre-Answer Motion to Dismiss Plaintiff's Amended Petition at Law.

Introduction

1. Defendant Reliable Street Inc. is a non-profit that operates an art gallery and community space in Ames, Iowa. Defendant Lockwood Café is a café that operates in the same building as Reliable Street. Defendant [REDACTED] [REDACTED] is President of Reliable Street Inc. Defendant [REDACTED] [REDACTED] is owner and operator of Lockwood Café. Defendant [REDACTED] [REDACTED] is a current employee of Lockwood Café. Defendant [REDACTED] [REDACTED] is a former employee of Lockwood Café. Defendant [REDACTED] [REDACTED] is a former customer at Lockwood Café.

2. Plaintiff is a former customer at Lockwood Café and participant in various community events and programs held at Reliable Street.

3. Defendants have been subject to years of harassing conduct by Plaintiff, both inside and outside of the legal system.

4. Defendants request that this court dismiss Plaintiff's latest claims.

Background

5. In early 2022, Reliable Street Inc. and Lockwood Café barred Plaintiff from the premises due to reports of harassing conduct towards customers and employees.

6. In April of 2022, Plaintiff filed complaints with the Iowa Civil Rights Commission (“ICRC”) and Equal Employment Opportunity Commission (“EEOC”) regarding Reliable Street and Lockwood Café’s conduct. (See ICRC Complaint CP# 04-22-78255; EEOC# 26A-2022-00580).

7. Plaintiff specifically alleged discrimination on the basis of her gender identity.

8. In August of 2022, the ICRC administratively closed Plaintiff’s case.

9. This suit followed.

10. Plaintiff has made related allegations in *Alexandra Sondra Wilson v. State of Iowa, et. al.*, No. LACL157953, Polk County (filed Feb. 8, 2024). See, e.g., Petition, Case No. LACL157953, pages 13 – 18.

11. In that case, Plaintiff filed a 22-page Petition, which alleged “numerous torts and crimes committed against me by the following parties, each of whom either work(ed) as employees for the State of Iowa, or whose actions were enabled (through negligence) and/or aided and abetted by the State.” Petition, Case No. LACL157953, page 1. The Petition in Case No. LACL157953 appears to name the following Defendants, among others:

- The State of Iowa
- Kim Reynolds
- City of Ames
- Judge Steven Van Marel
- The Iowa Civil Rights Commission
- The Story County Attorney’s Office
- The Office of the Attorney General of Iowa

12. In relevant part, Plaintiff’s Case No. LACL157953 alleges various misconduct by certain state entities in their handling of Plaintiff’s allegations against Reliable Street, Lockwood Café, and the other defendants in this case—including complaints that Plaintiff appears to have lodged with ICRC, Story County Attorney’s Office, and Office of the Attorney General of Iowa. Case No. LACL157953 also separately alleges various unrelated misconduct by others, including Governor Kim Reynolds.

13. Certain Defendants in Case No. LACL157953 are seeking dismissal of the claims in that case.

14. Defendants in this case similarly seek dismissal of Plaintiff’s claims for failure to state a claim.

15. Defendants also seek assessment of costs to Plaintiff, as well as assessment of the attorneys’ fees associated with the change of venue—a ruling on which the Polk County District Court previously held in abeyance. (*See* D0001, p. 5).

Relevant Law

16. A court may grant a motion to dismiss if the plaintiff fails to state a claim upon which any relief may be granted. Iowa R. Civ. P. 1.421(1)(f). A motion to dismiss is proper if the petition on its face shows no right of recovery under any state of facts. *Tate v. Derifield*, 510 N.W.2d 885, 887 (Iowa 1994). “While a motion to dismiss admits the truth of all well-pleaded, issuable and relevant facts, it does not admit mere conclusions of fact or law not supported by allegations of ultimate facts.” *Krise v. Cota*, 2000 WL 1825447, *1 (Iowa Ct. App., 2000).

17. When a pleading is filed *pro se*, “some leeway must be accorded from precision in draftsmanship.” *Knight v. Knight*, 525 N.W.2d 841, 843 (Iowa 1994); *see also* *Munz v. State*,

382 N.W.2d 693, 697 (Iowa Ct. App. 1985) (noting that an “applicant proceeding pro se is entitled to a liberal construction of [their] pleadings”).

18. But *pro se* litigants are not “excused from complying with requirements with which represented parties must comply. In short, the challenges to pro se pleading do not entitle Plaintiff to special leniency with regard to standards of pleading.” *Pickens v. Zeien*, No. LACV089735, 2018 WL 7863488 (Iowa Dist. Ct., May 14, 2018) (McPartland, J.); *see also Debruin v. State*, 779 N.W.2d 494 (Iowa Ct. App. 2010) (“The law does not judge by two standards, one for lawyers and the other for lay persons. Rather, all are expected to act with equal competence. If lay persons choose to proceed pro se, they do so at their own risk.”)

ARGUMENT

19. The Amended Petition (D0020) (hereinafter, “Petition”) lists four specific claims:

“I. Unjust Enrichment Claim” (Petition at 29).

- Plaintiff specifically alleges that “Defendants Reliable Street Inc., [REDACTED] [REDACTED] [REDACTED] and Lockwood Café were unjustly enriched.” (*Id.*)

“II. First Defamation Claim” (*Id.* at 31).

- Under this section heading, Plaintiff alleges that “[REDACTED] [REDACTED] and [REDACTED] [REDACTED] . . . allegedly submitted defamatory statements against me to [REDACTED] [REDACTED] and then to [REDACTED] [REDACTED] (*Id.* at 32).

- Later in the Petition, Plaintiff again lists the alleged defamation by [REDACTED] [REDACTED] and [REDACTED] [REDACTED] and separately lists alleged defamation by [REDACTED] [REDACTED] [REDACTED] [REDACTED] and [REDACTED] [REDACTED] (*Id.* at 48–58).

“III. Two Promissory Estoppel Claims” (*Id.*).

- Plaintiff specifically alleges that “Two agreements were entered into between . . . Reliable Street Inc. and myself . . . [one] agreement was also entered into by Lockwood Café” (*Id.*).

“IV. Discrimination Claim” (*Id.* at 33).

- Plaintiff specifically alleges that she is entitled to employment law protections pursuant to the “Threshold Remuneration Test for Volunteers.” (*Id.*).
- It appears Plaintiff is pursuing this theory against by Reliable Street and Lockwood Café.
- It is not clear whether Plaintiff is also making a public accommodation claim.

20. Separately, the Petition appears to broadly claim fraud by “several defendants.”

(*See id.* at 58–59) (“Several Defendants appear to have commit [*sic*] actual fraud . . .”).

21. For the sake of completeness, this Motion to Dismiss will address all five possible claims:

- a. Unjust Enrichment
- b. Defamation
- c. Promissory Estoppel
- d. Discrimination
- e. Fraud

22. The Petition, on its face, shows no right of recovery for any of these claims, against any Defendant, under any state of facts.

23. Defendants humbly request that all claims against all seven defendants be dismissed.

Unjust Enrichment

24. The claim for Unjust Enrichment appears on pages 29 – 31 of the Petition.

25. The Petition specifically alleges that the following Defendants were unjustly enriched:

- a. Reliable Street
- b. Lockwood Café
- c. [REDACTED]
- d. [REDACTED]

26. The unjust enrichment claims against all four of these defendants should be dismissed.

27. “Recovery based on unjust enrichment can be distilled into three basic elements of recovery. They are: (1) defendant was enriched by the receipt of a benefit; (2) the enrichment was at the expense of the plaintiff; and (3) it is unjust to allow the defendant to retain the benefit under the circumstances.” *State, Dep’t of Hum. Servs. ex rel. Palmer v. Unisys Corp.*, 637 N.W.2d 142, 154–55 (Iowa 2001).

28. As an initial matter, the Petition does not allege any enrichment of [REDACTED] and [REDACTED] in their personal capacities. Instead, the Petition alleges that they are “personally liable” under the “Responsible Corporate Officer Doctrine.” This allegation is insufficient to form the basis for a claim of unjust enrichment against Ms. [REDACTED] or Ms. [REDACTED] in their personal capacities.

29. Because the Petition fails to make any allegation concerning enrichment by Ms. [REDACTED] or Ms. [REDACTED] in their personal capacities, the unjust enrichment claim should be dismissed against Ms. [REDACTED] and Ms. [REDACTED]

30. As for Reliable Street and Lockwood Café, the Petition fails on elements (2) and (3) of unjust enrichment.

31. The heart of Plaintiff’s unjust enrichment claim appears to relate to the volunteer gardening efforts.

32. On this issue, the Petition fails to allege facts sufficient for a finding that element (2) of unjust enrichment has been satisfied. The only “expense” identified by Plaintiff is this: “My time, physical and emotional energy, trust, and labor were taken from me.” (Petition at 30). Crucially, Plaintiff herself characterizes this “labor” as “volunteering.” (Petition at 37, 42, 44).

33. Plaintiff does not appear to allege any unjust enrichment for the gardening supplies that she purchased, because she acknowledges that she was reimbursed for these expenses. (Petition at 27) (“[REDACTED] handed gave me \$300 in cash. This covered most of the supplies I had purchased, however it certainly did not cover the approximately six months of labor I had just performed.”).

34. Furthermore, the Petition, on its face, demonstrates that no injustice has occurred with regard to Plaintiff’s volunteer gardening efforts. Thus, element (3) has not been met.

35. In sum, the unjust enrichment claim should be dismissed as to Reliable Street and Lockwood Café – in addition to its dismissal as to Ms. [REDACTED] and Ms. [REDACTED]

The Defamation Claim

36. Plaintiff’s defamation allegations appear on pages 31, 32, and 48–58 of the Petition.

37. Plaintiff appears to allege that all five individual defendants committed defamation. Thus, this claim involves the following defendants:

- a. [REDACTED]
- b. [REDACTED]
- c. [REDACTED]
- d. [REDACTED]

e. [REDACTED]

38. As an initial matter, all allegations on pages 48–58 should be dismissed because they are quotations from statements made to the ICRC.

39. Statements submitted to the ICRC should be dismissed because they do not qualify as the “publication” of a statement. *See Bierman v. Weier*, 826 N.W.2d 436, 444 (Iowa 2013) (identifying “publication” of a statement as the first of six elements of defamation). “The key to whether [a] statement meets the publication requirement of defamation is whether [the receiver of the statement] heard and understood the statement to be defamatory.” *Huegerich v. IBP, Inc.*, 547 N.W.2d 216, 222 (Iowa 1996). A defamatory statement is one that “tend[s] to injure a person's reputation and good name.” *Id.* at 221. In determining what the third person understands, the defamatory statement must be viewed in the context of the surrounding circumstances and within the entire communication. *Kidd v. Ward*, 59 N.W. 279, 280–81 (Iowa 1894); *see also* Restatement (Second) of Torts § 563 cmts. d, e.

40. A statement made to the Iowa Civil Rights Commission in the context of an investigation cannot satisfy the “publication” element, as described above, because—in that context—an ICRC staff person receiving a statement from a witness would not “understand” a statement to “tend to injure a person’s reputation.”

41. Public policy considerations also strongly counsel against a finding that a statement made to the ICRC can give rise to a defamation claim.

42. If statements to the ICRC can give rise to a cognizable defamation claim, it will have a substantial chilling effect on the willingness of witnesses to speak with ICRC investigators, which will hinder the ICRC’s ability to investigate claims.

43. Separately, the defamation allegations in paragraphs 71–72 (pages 31–32) should be dismissed because they are merely conclusory statements, or recitations of the elements of defamation. For example, paragraph 72 states “██████████ and ██████████ . . . allegedly submitted defamatory statements against me to ██████████ and then to ██████████ (Petition at 32). *See Krise v. Cota*, 2000 WL 1825447, *1 (Iowa Ct. App., Dec. 13, 2000) (“While a motion to dismiss admits the truth of all well-pleaded, issuable and relevant facts, it does not admit mere conclusions of fact or law not supported by allegations of ultimate facts”).

44. These two issues are sufficient to dispense with all defamation allegations against the following four defendants:

- a. ██████████ ██████████
- b. ██████████ ██████████
- c. ██████████ ██████████
- d. ██████████ ██████████

45. This leaves only one paragraph of remaining allegations, paragraph 73 of the Petition. These allegations concern Defendant ██████████ ██████████

46. Paragraph 73 states: “According to ██████████ ██████████ statement to the ICRC, ██████████ accused me of both stalking and harassing her, and of intentionally coming in during her shifts. I absolutely never stalked or harassed ██████████ nor did I know when she was working, nor did I come in or attempt to intentionally come in during her shifts.” (Petition at 32).

47. To the extent Paragraph 73 could be construed to allege that Defendant ██████████ ██████████ made statements to third parties *other than* the Iowa Civil Rights Commission, it still fails to state a claim for defamation.

48. The Iowa Supreme Court has identified six elements of defamation: “(1) publication, (2) of a defamatory statement, (3) which was false and (4) malicious, (5) made of

and concerning the plaintiff, (6) which caused injury.” *Bierman v. Weier*, 826 N.W.2d 436, 444 (Iowa 2013).

49. The Petition, on its face, fails to allege facts sufficient to establish elements (1), (2), or (4) of defamation as it relates to the allegation that ██████ made statements relating to Plaintiff’s “stalking and harassing” behavior.

50. Regarding Element (1), Ms. ██████ statements cannot satisfy the publication requirement. As noted above, “The key to whether [a] statement meets the publication requirement of defamation is whether [the receiver of the statement] heard and understood the statement to be defamatory.” *Huegerich v. IBP, Inc.*, 547 N.W.2d 216, 222 (Iowa 1996). In determining what the third person understands, the defamatory statement must be viewed in the context of the surrounding circumstances and within the entire communication. *Kidd v. Ward*, 59 N.W. 279, 280–81 (Iowa 1894); *see also* Restatement (Second) of Torts § 563 cmts. d, e.

51. In this circumstance, the “third person” who received Ms. ██████ alleged statements is, presumably, ██████ ██████. A defamatory statement is one that “tend[s] to injure a person's reputation and good name.” *Huegerich*, 547 N.W.2d at 221. Thus, Ms. ██████ statements could only be defamatory if Ms. ██████ understood them to injure Ms. Wilson’s reputation, in the context of the surrounding circumstances and within the entire communication. *See Kidd*, 59 N.W. at 280–81.

52. The Petition itself provides insight into this context and demonstrates that Ms. ██████ did not understand the intention of the statements to be causing injury to Ms. Wilson’s reputation. In fact, the Petition concedes that Ms. ██████ understood the purpose of Ms. ██████ statements was to protect her livelihood and safety at work: “Although I experienced

[sic] from [REDACTED] [REDACTED] and [REDACTED] [REDACTED] may have been done out of genuine safety concern for [REDACTED] [REDACTED] and [REDACTED] [REDACTED] . . .” (Petition at 37).

53. The Petition also quotes Ms. [REDACTED] as explaining her receipt of Ms. [REDACTED] statements as follows:

[W]e had a meeting with two employees . . . [one] employee expressed that . . . she no longer wanted to come to work. Sondra [Plaintiff, Ms. Wilson] had become quite frankly obsessed with this woman. Coming into the café during every shift the woman had . . . The employee stated that she had started watching for Sondra and if she saw her coming, she would hide in the kitchen until Sondra left. [Sondra] texted, emailed, anyway she could contact this woman constantly. . . .

. . . [the two employees] felt Sondra should no longer be involved or come to the cafe or events.

(Petition at 54).

54. Crucially, Ms. [REDACTED] Ms. [REDACTED] and Ms. [REDACTED] all assiduously avoided broadcasting the situation in a manner that would cause injury to Ms. Wilson. (*See, e.g.*, Petition at 55) (quoting Ms. [REDACTED] as reporting the following to the ICRC “[REDACTED] and I made the decision to ask Sondra to leave the projects and the space. We met with her on March 31, 2022. We did our best to not hurt her feelings and also to protect the employees that spoke to us. So our explanation was rather broad. . . . I told her my best advice was to really try to learn about boundaries and active listening.”).

55. Plaintiff, on the other hand, appears to have gone to great lengths to disseminate the statements that she now alleges were defamatory. (*See, e.g.*, Petition at 37–38) (“I contacted friends from the space to inform them what happened 89. I wrote messages to each of my friends/acquaintances from [Reliable Street/Lockwood Café] to inform them that I was banned from the property”).

56. In sum, Plaintiff fails to allege facts sufficient to establish that Ms. [REDACTED] alleged statements satisfy element (1) of defamation.

57. Regarding Element (2), the Petition’s allegations regarding Ms. [REDACTED] do not satisfy the requirement of a “defamatory statement” because the alleged statements by Ms. [REDACTED] are mere statements of opinion. “One limit on a defamation claim is that ‘[o]pinion is absolutely protected under the First Amendment.’” *Andrew v. Hamilton Cnty. Pub. Hosp.*, 960 N.W.2d 481, 489 (Iowa 2021) (quoting *Kiesau v. Bantz*, 686 N.W.2d 164, 177 (Iowa 2004)).

58. The Iowa Supreme Court has explained the line between opinion and fact as follows:

Although there is no strict dichotomy between “opinion” and “fact,” we must consider “whether the alleged defamatory statement can reasonably be interpreted as stating actual facts and whether those facts are capable of being proven true or false.”

Bandstra v. Covenant Reformed Church, 913 N.W.2d 19, 47 (Iowa 2018) (quoting *Yates v. Iowa W. Racing Ass'n*, 721 N.W.2d 762, 771 (Iowa 2006)).

59. Iowa courts specifically “utilize a four-part test to determine whether a statement is factual or a protected opinion:”

The first factor is whether the alleged defamatory statement has a precise core of meaning for which a consensus of understanding exists or, conversely, whether the statement is indefinite and ambiguous. The second factor is the degree to which the alleged defamatory statements are objectively capable of proof or disproof. The third factor is the context in which the alleged defamatory statement occurs. The final factor we consider is the broader social context into which the alleged defamatory statement fits.

Bandstra, 913 N.W.2d at 47 (cleaned up) (internal quotations omitted) (emphasis added).

60. Ms. [REDACTED] statement that Plaintiff was “stalking and harassing her” (*see* Petition, ¶ 73) was a mere statement of opinion—particularly when viewed in the relevant

context. Ms. ██████ was not stating that Plaintiff had been convicted of certain crimes, but rather was using the verbs “stalking and harassing” in the colloquial sense. In everyday conversation, these words do not have a “precise core of meaning for which a consensus of understanding exists” (*Bandstra* Factor 1) and cannot be objectively proven or disproven (*Bandstra* Factor 2). Instead, these alleged statements—as recited in the Petition—indicate Ms. ██████ subjective beliefs about the nature of Plaintiff’s conduct.

61. Because these allegations concern statements of opinion, Plaintiff has not alleged facts sufficient to satisfy element (2) of defamation.

62. Regarding Element (4) of defamation, the Petition does not allege that Ms. ██████ made any statements with malice. “A statement is made with actual malice if the speaker ‘acted with knowing or reckless disregard of the truth of the statement.’” *Bandstra v. Covenant Reformed Church*, 913 N.W.2d 19, 48 (Iowa 2018) (quoting *Barreca v. Nickolas*, 683 N.W.2d 111, 118 (Iowa 2004)). The Petition does not allege that Defendant ██████ acted with actual malice, or otherwise did not have regard for the truth of her statements. Thus, the Plaintiff fails to allege facts sufficient to establish element (4).

63. If the Court concludes that Plaintiff has failed to allege any one of these elements, the claim for defamation should be dismissed as to Defendant ██████ ██████

64. Taking the foregoing together, any claim for defamation should be dismissed as to all seven named Defendants.

The Promissory Estoppel Claims

65. The Petition alleges that Reliable Street entered into two agreements with Plaintiff (1) an agreement related to a garden, and (2) an agreement related to a prairie; the Petition

further alleges that Lockwood Café was also a party to “the garden agreement.” (*See* Petition at 32).

66. The Iowa Supreme Court has identified four elements of promissory estoppel: “(1) a clear and definite promise; (2) the promise was made with the promisor's clear understanding that the promisee was seeking an assurance upon which the promisee could rely and without which [the promisee] would not act; (3) the promisee acted to [the promisee's] substantial detriment in reasonable reliance on the promise; and (4) injustice can be avoided only by enforcement of the promise.” *Mowery v. City of Carter Lake*, 961 N.W.2d 739, 757 (Iowa Ct. App. 2021) (quoting *Kunde v. Est. of Bowman*, 920 N.W.2d 803, 810 (Iowa 2018)).

67. The Petition, on its face, fails to allege facts sufficient to establish elements (1), (2), (3), or (4) of promissory estoppel as it relates to the alleged “garden agreement” or “prairie agreement.”

68. The promissory estoppel claim should be dismissed out of hand in light of Plaintiff's concession that all of her work on the garden and prairie “was done as a volunteer.” (Petition at 27). Equitable principles require dismissal of a promissory estoppel claim that is based on a “volunteer” project.

69. Even if the Court does not dismiss the promissory estoppel claim on the basis of Plaintiff's volunteering concession, the elements of promissory estoppel have not been met.

70. Regarding Element (1), the Petition does not allege any clear and definite promise of ongoing compensation for gardening or prairie management or restoration, or any other services, or guarantee an ongoing relationship.

71. Regarding Element (2), the Petition does not allege that any Defendant had a clear understanding that Plaintiff was—at any point—seeking an assurance of any kind upon which the Plaintiff could rely. Thus, the Plaintiff fails to allege facts sufficient to establish element (2).

72. Regarding Element (3), Plaintiff has not alleged facts sufficient for a finding that she suffered “substantial detriment” at the hands of Reliable Street and Lockwood Café’s termination of her volunteering. Although Plaintiff alleges that the termination of her volunteer relationship was “offensive and unfair,” (*id.*) she does not articulate any manner in which she was concretely damaged by this termination—much less that the damage was substantial. Thus, the Plaintiff has failed to allege facts sufficient to establish element (3).

73. Regarding Element (4), Plaintiff has not alleged facts sufficient to establish that she has suffered injustice. Plaintiff acknowledges that she was given a 50% discount on all orders at Lockwood Café through March 31, 2022. (*Id.* at 18). Plaintiff also acknowledges that she was given \$300 which “covered most of the supplies I had purchased.” (*Id.* at 27). The only injustice Plaintiff alleges is that the \$300 “did not cover the approximately six months of labor I had just performed . . . as a volunteer.” Volunteering is, by definition, work that is not compensated. Thus, Reliable Street and Lockwood Café’s failure to compensate Plaintiff is not unjust. Plaintiff fails to allege facts sufficient to establish element (4).

74. If the Court concludes that Plaintiff has failed to allege any one of these elements, the claim for promissory estoppel should be dismissed as to Reliable Street and Lockwood Café, and to the extent it alleges them, against [REDACTED] [REDACTED] and [REDACTED] [REDACTED] as well.

The Discrimination Claim

75. As an initial matter, the Petition does not allege any discrimination by any of the following defendants:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

76. As for Defendants Reliable Street and Lockwood Café, the Petition appears to make two claims: (1) that Plaintiff was unlawfully barred from the premises at Reliable Street and Lockwood Café – i.e. discrimination in public accommodation; and (2) employment discrimination pursuant to the “Threshold Remuneration Test for Volunteers.” (Petition at 33–35).

77. Each of these claims will be taken in turn. Taking the allegations on the face of the Petition as true, the Petition fails to state a claim that shows any “right of recovery [for discrimination] under any state of facts.” *Tate*, 510 N.W.2d at 887.

(1) Public Accommodation Discrimination

78. Unlawful discrimination in public accommodations can be proven through direct evidence, or indirectly using the pretext analytical model. *Butler v. Crittenden Cty., Ark.*, 708 F.3d 1044, 1050 (8th Cir. 2013) (citing *Young-Losee v. Graphic Packaging Int’l, Inc.*, 631 F.3d 909, 912 (8th Cir. 2011); *Price Waterhouse v. Hopkins*, 490 U.S. 228, 242 109 S. Ct. 1775 (1989)).

79. The Petition first fails to state a claim of discrimination via direct evidence. The Petition fails to allege that any action “occurred under circumstances giving rise to an inference

of discrimination,” *and* that Plaintiff’s status as a protected class member was a motivating factor in the decision. *DeBoom v. Raining Rose, Inc.*, 772 N.W.2d 1, 13 (Iowa 2009) (emphasis added).

80. Specifically, Plaintiff fails to allege that protected class membership was a motivating factor in Reliable Street and Lockwood Café’s alleged decision to ban Plaintiff from the premises.

81. Moving to the indirect evidence option: A prima facie case of discrimination in public accommodation requires a showing Plaintiff (1) is a member of a protected class; (2) sought to enjoy the accommodations of the public accommodation; and (3) did not enjoy the accommodations because of discrimination in that (a) the Plaintiff was refused or denied the accommodations while similarly situated persons outside the protected class were not deprived of those services, or (b) the individual was allowed to use them but was subjected to markedly hostile conduct. *Kirt v. Fashion Bug #3253*, 479 F. Supp. 2d 938, 959 (N.D. Iowa 2007).

82. The Petition similarly fails to state a claim for discrimination under the indirect evidence option, because the face of the Petition fails to allege facts sufficient to establish a prima facie case of discrimination in public accommodation. Specifically, the Petition fails to allege facts sufficient to establish prong (3) of the indirect evidence option.

83. Plaintiff does not allege that similarly situated persons outside the protected class were not deprived of services at Reliable Street or Lockwood Café. In particular, Plaintiff fails to allege that non-transgender persons who had generated employee complaints were allowed to continue to patronize Reliable Street or Lockwood Café.

84. Thus, any claim for public accommodation discrimination should be dismissed as to Defendants Reliable Street and Lockwood Café.

(2) Employment Discrimination / The “Threshold Remuneration Test for Volunteers.”

85. Simply put, Iowa Courts have not adopted any “Threshold Remuneration Test For Volunteers.”

86. Iowa Courts also have not held that a volunteer can bring a discrimination claim using an employment law or Title VII framework.

87. Thus, any claim for employment discrimination against a volunteer should be dismissed as to Defendants Reliable Street and Lockwood Café.

The Fraud Claim

88. As an initial matter, the Court should disregard Petition’s conclusory statement that “all five Defendants commit [sic] fraud against me.” (*Id.*). See *Krise v. Cota*, 2000 WL 1825447, *1 (Iowa Ct. App., Dec. 13, 2000) (“While a motion to dismiss admits the truth of all well-pleaded, issuable and relevant facts, it does not admit mere conclusions of fact or law not supported by allegations of ultimate facts”).

89. Setting aside stated conclusions of law, the Petition does not allege any facts on its face that relate to any fraudulent conduct by any of the following defendants:

- Reliable Street Inc.
- [REDACTED]
- [REDACTED]
- [REDACTED]

90. Thus, any claim for fraud should be dismissed as to these four defendants.

91. As for Defendants Lockwood Café, [REDACTED] and [REDACTED] the Petition appears to allege that these defendants are liable for fraud because they were involved in the submission of “a falsified document” to the Iowa Civil Rights Commission, in alleged violation of Iowa Code § 714.8.

92. Iowa Code § 714.8 is a criminal statute and is not relevant.

93. Even assuming that Plaintiff intended to allege a civil claim for fraudulent misrepresentation, the allegations on the face of the Petition fail to state a claim that shows any “right of recovery [for fraud] under any state of facts.” *Tate*, 510 N.W.2d at 887.

94. To establish fraudulent misrepresentation, the plaintiff must “show by a preponderance of the evidence, satisfactory and convincing evidence each of the following elements: (1) representation; (2) falsity; (3) materiality; (4) scienter; (5) intent to deceive; (6) reliance; and (7) resulting injury and damage.” *Cornell v. Wunschel*, 408 N.W.2d 369, 374 (Iowa 1987); *Arthur v. Brick*, 565 N.W.2d 623, 625 (Iowa Ct.App.1997). “[A]ll seven elements of fraudulent misrepresentation must be met.” *Arthur*, 565 N.W.2d at 625.

95. The Petition, on its face, fails to allege facts sufficient to establish any of these seven elements—either related to any submissions to the ICRC, or otherwise.

96. If the Court concludes that Plaintiff has failed to allege any one of these elements, the claim for fraud should be dismissed as to Defendants Lockwood Café, [REDACTED] [REDACTED] and [REDACTED] [REDACTED]

97. Taking the foregoing together, any claim for fraud should be dismissed as to all seven named Defendants.

Timing of this Motion

98. The caption of Plaintiff’s June 17 filing is “Plaintiff Alexandra Wilson’s Amended Petition in Progress”—similar to Plaintiff’s prior Petition drafts. *Compare* D0020, *with* D0019, *and* D0015.

99. Thus, Defendants were not clear whether the June 17 filing was, in fact, the “final” Amended Petition, or whether the parties were awaiting another filing by Plaintiff.

100. Because no further filings have been made since June 17, Defendants now bring this renewed and restated Motion to Dismiss in advance of the July 23 hearing.

WHEREFORE, Defendants respectfully request the Court enter an Order dismissing the Petition in its entirety pursuant to Iowa R. Civ. P. 1.421(1)(f); assess all costs to Plaintiff; and grant such further relief as the Court deems appropriate.

Alternatively, Defendants respectfully request the Court enter an Order dismissing any claims against any defendant that have not been properly stated pursuant to Iowa Rule of Civil Procedure 1.421(1)(f); assess all costs to Plaintiff; and grant such further relief as the Court deems appropriate.

Defendants humbly request to be heard on this Motion at the hearing set for July 23, 2024.

Date: July 5, 2024

/s/ [REDACTED] J. [REDACTED]
[REDACTED] J. [REDACTED] (#AT0007443)
of
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[REDACTED] First Avenue SE
P.O. Box [REDACTED]
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ATTORNEY FOR DEFENDANTS

Copy to:

ALEXANDRA WILSON

[REDACTED]

AMES, IA 50014-3736

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of this document was served upon the persons listed on this document at the addresses indicated on EDMS by transmitting a copy via email on July 5, 2024. I declare under penalty of perjury that the foregoing is true and correct.

/s/ [REDACTED] _____