

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PAUL T. ST. GERMAIN and SANDRA C.	:	
ST. GERMAIN,	:	
	:	CIVIL ACTION
Plaintiffs,	:	
	:	NO. 98-5437
v.	:	
	:	
PENNSYLVANIA LIQUOR CONTROL	:	
BOARD, ROBERT W. GERKEN,	:	
ROBERT KOCH, and DAVID C. MARTIN,	:	
	:	
Defendants.	:	

MEMORANDUM

BUCKWALTER, J.

January 15, 1999

Plaintiffs, Paul and Sandra St. Germain, filed a complaint on October 14, 1998, raising federal and state law claims against the Pennsylvania Liquor Control Board (“PLCB”), and three PLCB employees, Robert Gerken (“Gerken”), the Chief of Investigations, Bureau of Licensing, Robert Koch (“Koch”), Labor Relations Officer, Bureau of Personnel, and David Martin (“Martin”), Director, Bureau of Licensing, in both their individual and official capacities.

Defendants filed a Motion to Dismiss the complaint. In response, Plaintiffs filed a First Amended Complaint. Subsequently, Defendants filed a Motion to Dismiss the First Amended Complaint pursuant to Rule 12(b)(3), 12(b)(6), and 12(e) of the Federal Rules of Civil Procedure. For the following reasons, Defendants’ motion will be **GRANTED IN PART** and **DENIED IN PART**.

Plaintiffs' claims are related to their employment with the PLCB. Counts I and VII allege employment related claims under 42 U.S.C. § 1983 for violation of Plaintiffs' procedural and substantive due process and equal protection rights, and for retaliation due to political affiliation under the First Amendment (Count I), and for conspiring to interfere with their equal protection rights under 42 U.S.C. § 1985(3) (Count VII). These federal civil rights claims are alleged against all defendants. Counts II through VI are founded on state law against the individual defendants, Gerken, Koch, and Martin: Count II alleges violations of the Pennsylvania Civil Service Act, 71 P.S. § 741.1 et seq. ; Count III alleges several specified violations of the Constitution of the Commonwealth of Pennsylvania; Count IV alleges a claim for intentional infliction of emotional distress; Count V alleges a claim for negligent or fraudulent misrepresentations, and Count VI alleges a claim for breach of the covenant of good faith and fair dealing. Finally, Count VIII of the complaint alleges a breach of the collective bargaining agreement against the PLCB. Plaintiffs seek compensatory damages, punitive damages, attorney's fees, and injunctive relief.

Legal Standard

While Defendants assert their Eleventh Amendment objections by way of a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6), the Eleventh Amendment is a jurisdictional bar that deprives federal courts of jurisdiction over the subject matter. See Pennhurst State School & Hosp. v. Halderman, 465 U.S. 89, 98-100 (1984). Therefore, this Court will consider all of Defendants' Eleventh Amendment objections pursuant to 12(b)(1) of the Federal Rules of Civil Procedure. All of Defendants' other objections will be considered under Fed. R. Civ. P. 12(b)(6), except Defendants' objection to venue which will be considered

pursuant to Rule 12(b)(3). The Court notes that Defendants also have raised an objection pursuant to Rule 12(e). As they presented no arguments in support, the Court declines to address the motion in this respect.

“When a motion under Rule 12 is based on more than one ground, the court should consider the 12(b)(1) challenge first because if it must dismiss the complaint for lack of subject matter jurisdiction, all other defenses and objections become moot.” In re Corestates Trust Fee Litig., 837 F. Supp. 104, 105 (E.D. Pa. 1993) (Buckwalter, J.) aff’d, 39 F.3d 61 (3rd Cir. 1994). Accord Bell v. Hood, 327 U.S. 678, 682 (1946) (“Whether the complaint states a cause of action on which relief could be granted is a question of law and just as issues of fact it must be decided after and not before the court has assumed jurisdiction over the controversy.”).

In ruling on a motion to dismiss under Rule 12(b)(1), “a district court is not limited to the fact of the pleadings. Rather, as long as the parties are given an opportunity to contest the existence of federal question, the court ‘may inquire, by affidavits or otherwise, into the facts as they exist.’” Armstrong World Indus., Inc. v. Adams, 961 F.2d 405, 410 n.10 (3rd Cir. 1992) (quoting Land v. Dollar, 330 U.S. 731, 735 n.4 (1947)) (citations omitted). By contrast, in reviewing a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6), the district court must accept all well-pleaded allegations in the complaint as true and view them in the light most favorable to plaintiffs. See In re Burlington Coat Factory Sec. Litig., 114 F.3d 1410, 1420 (3rd Cir. 1997).

I. Venue

Venue in a federal question case is governed by 28 U.S.C. § 1391(b). That section provides, in relevant part:

A civil action wherein jurisdiction is not founded solely on diversity of citizenship may, except as otherwise provided by law, be brought only in (1) a judicial district where any defendant resides, if all defendants reside in the same state, (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, . . . or (3) a judicial district in which any defendant may be found, if there is no district in which the action may otherwise be brought.

The Court finds that venue is proper on the basis of section (b)(2).

Initially, Plaintiffs contend that the PLCB and the PLCB officials reside in the Eastern District of Pennsylvania as well as in the Middle District of Pennsylvania (where the state capitol and PLCB headquarters are located) on the apparent grounds that the PLCB maintains regional offices in the Eastern District. Recent cases in the Eastern District, however, have directly ruled on this issue, holding that “a state official’s residence is located at the state capitol, even where branch offices of the state’s official department are maintained in other parts of the state.” Wilson v. Pennsylvania State Police Dep’t, No. CIV.A. 94-6547, at *1, 1995 WL 129202 (E.D. Pa. Mar. 24, 1995) (citing Perkins v. Snider, No. CIV.A. 94-4784, 1994 WL 530045, at *1 (E.D. Pa. Sept. 2, 1994)). Therefore, the Court rejects Plaintiffs’ argument as to section (b)(1).

However, Plaintiffs next contend that, because they worked, spoke out, lived, and were harmed in the Eastern District, a “substantial part of the events” giving rise to their claims occurred in this District, making venue here proper. Relying on Perkins, Defendants responded that the actions Plaintiffs challenge emanated from Harrisburg, where the decisions were made and implemented, necessitating that the case be transferred to the Middle District. The Court agrees with Plaintiffs and notes that “cases need not be tried ‘in the best place, but merely a place with substantial contacts.’” School Dist. of Philadelphia v. Pennsylvania Milk Mktg. Bd., 877 F.

Supp. 245, 249 (E.D. Pa. 1995). The events Plaintiffs allege are sufficiently substantial for venue to be proper here. Notwithstanding the fact that certain events related to this case allegedly occurred in the Middle District, under § 1391(b)(2), it suffices that other substantial events occurred in this district.

Accordingly, the motion to dismiss or transfer pursuant to Rule 12(b)(3) is

DENIED.

II. Eleventh Amendment Immunity

The Eleventh Amendment to the United States Constitution provides that: “The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign States.” U.S. Const. amend. XI. The Supreme Court has interpreted the Amendment to protect an unconsenting state from suit in federal court by its own citizens as well as those of another state. See Pennhurst State School & Hosp., 465 U.S. at 100.

There are, however, certain well-established exceptions to the Eleventh Amendment’s protections. For example, if a state waives its immunity and consents to suit in federal court, the Eleventh Amendment does not bar the action. See Atascadero State Hosp. v. Scanlon, 473 U.S. 234 (1985). Moreover, Congress may abrogate the state’s Eleventh Amendment immunity through a clear and unmistakable statement. See Dellmuth v. Muth, 491 U.S. 223 (1989). This may be done when Congress acts under the section five enforcement authority of the Fourteenth Amendment. See id.

The individual defendants may also be able to assert the defense of qualified immunity. In Harlow v. Fitzgerald, the Supreme Court set forth the applicable legal standard for

qualified immunity; “government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” 457 U.S. 800, 818 (1982). Five years later, in Anderson v. Creighton, 483 U.S. 635 (1987), the Court clarified the objective test it had propounded in Harlow. The court in Anderson held that to defeat qualified immunity it is not sufficient that the right at issue be clearly established as a general matter. Rather, the question is whether a reasonable public official would know that his or her specific conduct violated clearly established rights. Id. at 636-37.

A. The Eleventh Amendment and § 1983 (Count I)

The Eleventh Amendment prevents federal courts from exercising jurisdiction over a case under 42 U.S.C. § 1983, against a state, even if by a citizen of that state. See Welch v. Texas Highways & Public Transp. Dept., 483 U.S. 468, 487 (1987). The state’s Eleventh Amendment immunity extends to its departments, agencies, and officials in their official capacities. See Hafer v. Melo, 502 U.S. 21 (1991); Pennhurst State Sch. & Hosp., 465 U.S. at 100. While a state may consent to be sued in federal court, the Commonwealth has expressly withheld consent. 42 Pa. Cons. Stat. § 8521(b) (1982); see also Laskaris v. Thornburgh, 661 F.2d 23 (3rd Cir. 1981). Thus, Defendant, PLCB, as an agency of the state, cannot be brought before this court as a defendant regardless of the relief sought. See Atascadero State Hosp. v. Scanlon, 473 U.S. at 234.

Accordingly, the motion to dismiss is **GRANTED** to the extent that Plaintiffs allege claims against Defendant PLCB.

Furthermore, § 1983 only allows “persons” to be sued. In an action for damages, state officials acting in their official capacities are not “persons” under § 1983. See Will v. Michigan Dep’t of State Police, 491 U.S. 58 (1989). Therefore, the Court will dismiss Plaintiffs’ § 1983 claims for monetary relief against defendants Gerken, Koch, and Martin in their official capacities. However, while the Eleventh Amendment bars any claims under § 1983 for monetary relief, it allows claims against defendants in their official capacities for prospective injunctive and declaratory relief because such relief is not treated as an action against the Commonwealth. See id. at 71 n.10 (citing Kentucky v. Graham, 473 U.S. 159, 167 n.14 (1985), and Ex Parte Young, 209 U.S. 123, 159-60 (1908)).

As for Plaintiffs’ § 1983 claims against defendants Gerken, Koch, and Martin for monetary relief in their individual capacities, the Supreme Court’s decision in Hafer v. Melo held unanimously that state officers may be personally liable for damages under § 1983 for actions taken under color of state law and that the Eleventh Amendment does not bar such suits. See 502 U.S. at 21.

Accordingly, the motion is **GRANTED** to the extent that Plaintiffs’ allege claims for monetary relief against defendants Gerken, Koch, and Martin in their official capacities.

B. The Eleventh Amendment and § 1985(3) (Count VI)

As for Plaintiffs’ § 1985(3) claims, the above analysis for § 1983 is applicable here and results in the same outcome. See e.g., Robinson v. Commonwealth of Pa., No. CIV.A. 91-5414, 1991 WL 225079, *2 (E.D. Pa. Oct. 29, 1991). Thus, the Court will dismiss Plaintiffs’ § 1985(3) claims for monetary relief against defendant PLCB and defendants Gerken, Koch, and Martin in their official capacities.

Accordingly, the motion is **GRANTED** to the extent that Plaintiffs allege claims for monetary relief against defendants Gerken, Koch, and Martin in their official capacities.

The remaining claims not barred by the Eleventh Amendment are Plaintiffs' § 1983 and § 1985(3) claims against defendants Gerken, Koch, and Martin in their individual capacities. However, the Court must determine whether Plaintiffs' claims against these individual defendants can survive Defendants' motion to dismiss.

III. Section 1983

To maintain a cause of action under § 1983, a plaintiff must establish: (1) the alleged conduct was committed by a person acting under color of state law; and (2) the conduct deprived the plaintiff of rights, privileges and immunities secured by the Constitution or laws of the United States. See e.g., Hicks v. Feeney, 770 F.2d 375, 377 (3rd Cir. 1985). Section 1983 is not a source of substantive rights; it only provides “a method for vindicating federal rights elsewhere conferred.” Graham v. Connor, 490 U.S. 386, 393-94 (1989). Consequently, Section 1983 does not provide “a right to be free of injury wherever the State may be characterized as the tortfeasor,” the plaintiff must show a deprivation of a federally protected right. Paul v. Davis, 424 U.S. 693 (1976).

Plaintiffs' § 1983 claims are based on the individual PLCB defendants' alleged violations of the Due Process and Equal Protection clauses of the Fourteenth Amendment and First Amendment freedom of political association.

A. Due Process Claim

The Due Process Clause of the Fourteenth Amendment provides that “[n]o state shall . . . deprive any person of life, liberty, or property without due process of law.” U.S. Const.

amend. XIV, § 1. Plaintiffs claim that Defendants violated their due process rights by denying them contract rights guaranteed by the collective bargaining agreement such as travel time, use of PLCB vehicles, payment for mileage, and assessment of taxes. See Am. Compl. ¶ 37. Plaintiffs contend that they had a clearly established contract right to those benefits associated with their collective bargaining agreement and PLCB practice. Defendants answer that the collective bargaining agreement does not confer a protectable property interest in the “perks” or benefits at issue and that their cancellation of these benefits did not violate clearly established rights under the Due Process Clause.

Procedural due process requirements apply only when one is deprived of a property or other interest encompassed by the Constitution. See Board of Regents of State Colleges v. Roth, 408 U.S. 564, 569 (1972). To have a property interest in employment, an individual must have more than an abstract need or desire, or a unilateral expectation of the benefit; the individual must have a legitimate claim of entitlement to it. Id. at 577. Generally, for purposes of the Due Process Clause, property interests are defined by state law. Id. Once a property interest is determined to exist, federal law governs the adequacy of the procedures employed to protect it. See Cleveland Board of Education v. Loudermill, 470 U.S. 532 (1985).

The Court agrees that a contract right is a form of property and that a collective bargaining agreement may give rise to a property interest in employment under Pennsylvania law. See Larsen v. Senate of Commonwealth of Pa., 154 F.3d 82, 93 (3rd Cir. 1998); see also Curry v. Pennsylvania Turnpike Com’n, 843 F. Supp. 988, 991 (E.D. Pa. 1994). The Court also agrees that Plaintiffs have a contractual right to those benefits, which are adversely affected by Defendants’ actions. However, it is too soon to determine whether plaintiffs have a property

interest encompassed by the Constitution. The exact nature of that claimed property interest must be determined through discovery.

Defendants also contend that even if Plaintiffs are found to have a property interest, the procedures afforded Plaintiffs by the collective bargaining agreement's grievance procedures are constitutionally adequate. The mere existence of a grievance procedure, however, does not necessarily indicate that due process has been satisfied. See Curry, 843 F. Supp. at 990 n.1. Moreover, Plaintiffs allege that Defendants failed to follow any procedures provided for in the collective bargaining agreement and denied Plaintiffs' benefits and pay without prior notice or a hearing. Like the property interest issue, this cannot be decided on a Motion to Dismiss.

Finally, as it is questionable whether Plaintiffs were afforded an opportunity to be heard regarding the denial of their benefits, the court is unable to determine whether PLCB officials reasonably believed that Plaintiffs received the process they were due in connection with a deprivation of a property right. Accordingly, Defendants are not entitled, at this preliminary stage, to qualified immunity with respect to Plaintiffs' due process claims. Plaintiffs have alleged violations of due process sufficient to withstand a motion to dismiss.

Accordingly, this motion is **DENIED** to the extent that Plaintiffs' allege procedural due process claims against defendants Gerken, Koch, and Martin in their individual capacities.

B. Equal Protection Claim

In order to state a claim based on the Equal Protection Clause, Plaintiffs must allege that they are "member[s] of a protected class, [were] similarly situated to members of an unprotected class, and [were] treated differently from the unprotected class." Wood v. Rendell,

No. CIV.A. 94-1489, 1995 WL 676418, at *4 (E.D. Pa. Nov. 3, 1995). In its most general sense, the Equal Protection Clause directs that “all persons similarly situated should be treated alike.” City of Cleburne v. Cleburne Living Center, 473 U.S. 432, 439 (1985). To maintain an action under the Equal Protection Clause, a plaintiff “must show intentional discrimination against him because of his membership in a particular class, not merely that he was treated unfairly as an individual.” Poli v. SEPTA, No. CIV.A., 97-6766, 1998 WL 405052, at *10 (E.D. Pa. July 7, 1998).

Defendants argue that Plaintiffs have failed to allege that similarly situated employees outside of the protected class were treated more favorably. The Court, however, finds that Plaintiffs have sufficiently alleged that other PLCB employees who are similarly situated are being treated more favorably than they. See Am. Compl. ¶ 24. The Court also rejects Defendants’ argument that they cannot be liable to Plaintiffs under § 1983 for taking age into consideration because no Age Discrimination in Employment Act claim has been asserted. Plaintiffs have alleged that Defendants’ actions, under color of state law, have deprived them of equal protection because of their age and marital status. See Am. Compl. ¶ 38. This is a cognizable § 1983 claim. Gregory v. Ashcroft, 501 U.S. 452, 469-71 (1991). Thus, the Court finds that Plaintiffs have alleged violations of equal protection at least sufficient to withstand a motion to dismiss.

Accordingly, the motion is **DENIED** to the extent that Plaintiffs allege violations of equal protection against defendants Gerken, Koch, and Martin in their individual capacities.

C. First Amendment Claims

Plaintiffs' complaint also asserts a claim for First Amendment retaliation.

Specifically, Plaintiffs' complaint alleges that Defendants are being punished for speaking out on public interest issues and union affairs. See Am. Compl. ¶¶ 9-12, 24, 25. To state a claim for actionable retaliation under the First Amendment, plaintiffs must show that "they worked for a public agency in a position that does not require a political affiliation, that they were engaged in a constitutionally protected conduct, and that the conduct was a substantial or motivating factor in the government's employment decision." Stephens v. Kerrigan, 122 F.3d 171 at 176 (3d Cir. 1997). Again, at this stage of the proceedings, Plaintiffs have satisfied each of these requirements. Plaintiffs allege that they are PLCB employees in jobs requiring no political affiliation, see Am. Compl. ¶¶ 1-2, describe the constitutionally protected activities, see Am. Compl. ¶¶ 9-11, and allege that their speech activity constituted a substantial or motivating factor in Defendants' retaliatory action, see Am. Compl. ¶¶ 23-25.

Defendants argue that Plaintiffs First Amendment retaliation claim should be dismissed for failure to allege an adverse employment action. The Court rejects this argument since the Plaintiffs allegations of denial of substantial pay and benefits and the imposition of tax burdens may constitute adverse employment action sufficient to state a First Amendment claim.

Defendants also suggest that Plaintiffs' First Amendment claim should be dismissed because Defendants are entitled to qualified immunity. This inquiry is one that cannot properly be resolved on the face of the pleadings, but must await until after Plaintiffs have had an opportunity to adduce evidence in support of the allegations that the true motive for the conduct was retaliation, rather than the legitimate reason proffered by Defendants. See Larsen, 154 F.3d

at 95. Defendants are not entitled, at this preliminary stage, to qualified immunity as to Plaintiffs' First Amendment retaliation claim. Plaintiffs' complaint sufficiently sets forth a claim for First Amendment retaliation under § 1983 to survive Defendants' motion to dismiss.

Accordingly, the motion is **DENIED** to the extent that Plaintiffs allege First Amendment claims against Defendants Gerken, Koch, and Martin in their individual capacities.

IV. Section 1985(3)

Plaintiffs allege that all of Defendants' actions violated 42 U.S.C. § 1985(3). Section 1985(3) authorizes an "action for the recovery of damages" against "two or more persons" who conspire to "deprive other persons of equal protection of the laws." 42 U.S.C. § 1985(3). Plaintiffs allege that Defendants violated § 1985(3) when they conspired to interfere with their rights to equal protection because of their political views, ages, and/or marital status. See Am. Compl. ¶ 60.

A claim under § 1985(3) requires that there must be "some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators' action." Carpenters v. Scott, 463 U.S. 825, 834 (1983). The Third Circuit has reserved comment on whether § 1985(3) embraces private conspiracies to discriminate on the basis of factors other than race. See Stephens, 122 F.3d at 184. While the Third Circuit has yet to rule on the instant issue explicitly, it has held that § 1985 protects individuals from discrimination on the basis of traits for which they bear no responsibility, such as race or gender. See Carchman v. Korman Corp., 594 F.2d 354, 356 (3rd Cir. 1979), cert. denied 444 U.S. 898 (1979). In Robison v. Canterbury Village, Inc., 848 F.2d 424, 430 n.7 (3rd Cir. 1988), while the court acknowledged that other circuits have recognized a cause of action under § 1985(3) for political affiliations, the

Third Circuit has declined to follow this authority. And indeed, courts in this circuit have continued to hold that membership in a political group is not a protected class under § 1985(3). See, e.g. Pierce v. Montgomery County Opportunity Bd., Inc., 884 F. Supp. 965, 978 (E.D. Pa. 1995).

However, neither party has presented any authority as to why the Court should not entertain § 1985(3) claims based on age or marital status. Accordingly, the motion is **DENIED** to the extent that Plaintiffs allege § 1985(3) claims based upon age or marital status against defendants Gerken, Koch, and Martin in their individual capacities.

V. State Law Claims (Counts II-VI and VIII)

Sovereign immunity bars claims asserted against the Commonwealth, its agencies, and its employees acting within the scope of their office or employment. See 1 Pa. Cons. Stat. Ann. § 2310 (West 1982), 42 Pa. Cons. Stat. Ann. § 8522(a), (b) (West 1982). While there are nine statutory exceptions to sovereign immunity in Pennsylvania, see 42 Pa. Cons. Stat. Ann. § 8522(b) (1995), none are applicable here.

The Court rejects Defendants' argument that sovereign immunity requires dismissal of the claims against defendants Gerken, Koch, and Martin named in their individual capacities because they were acting in the scope of their official capacities. That is a question, that, if it has any merit, must await further factual development of the case. See e.g., Bates v. Hess, No. CIV.A. 93-644, 1994 WL 854963, at *12 (M.D. Pa. Aug. 4, 1994).

Accordingly, the motion is **DENIED** to the extent that Plaintiffs allege state law claims against the defendants Gerken, Koch, and Martin in their individual capacities.

VI. Punitive Damages

The parties agree that punitive damages are not recoverable from defendant PLCB or the individual defendants Gerken, Koch, and Martin in their official capacities. Plaintiffs, however, seek punitive damages under §§ 1983 and 1985(3) only from the individual defendants in their individual capacities. This is recoverable under §§ 1983 and 1985(3) against the individual defendants in their individual capacities. See e.g., Feliciano v. City of Philadelphia, No. CIV.A. 96-6149, 1997 WL 59325, at *4 (E.D. Pa. Feb. 11, 1997) (permitting plaintiff's claim for punitives under § 1983 against defendants in their individual capacities); see also Great American Fed. S. & L. Ass'n v. Novotny, 442 U.S. 366, 391 (1979) (finding punitive damages to be recoverable in claims asserted under § 1985(3)). Punitives are recoverable if Plaintiffs can show that their conduct was “motivated by evil motive or intent, or [that] it involve[d] reckless or callous indifference to the federally protected rights of others.” Smith v. Wade, 461 U.S. 30, 56 (1983). This possibility, too, must await the completion of discovery.

Accordingly, the motion is **DENIED** to the extent that Plaintiffs allege claims for punitive damages against defendants Gerken, Koch, and Martin in their individual capacities.

For the foregoing reasons, Defendants' motion is **GRANTED IN PART** and **DENIED IN PART**. An appropriate order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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Plaintiffs,	:	
	:	NO. 98-5437
v.	:	
	:	
PENNSYLVANIA LIQUOR CONTROL BOARD, ROBERT W. GERKEN, ROBERT KOCH, and DAVID C. MARTIN,	:	
	:	
Defendants.	:	

ORDER

AND NOW, this 15th day of January, 1999, upon consideration of Defendants' Motion to Dismiss the Amended Complaint (Docket No. 6) and Plaintiffs' Brief in Opposition thereto (Docket No. 7), it is hereby **ORDERED** that Defendants' motion is **GRANTED IN PART** and **DENIED IN PART** in accordance with the accompanying memorandum, as set forth below:

1. Count I of the Complaint is **DISMISSED** as against Defendant PLCB, as well as against defendants Gerken, Koch, and Martin, in their official capacities, to the extent that it seeks monetary relief;
2. Count VII of the Complaint is **DISMISSED** as against Defendant PLCB, as well as against defendants Gerken, Koch, and Martin, in their official capacities, to the extent that it seeks monetary relief;

3. Count VIII of the Complaint is **DISMISSED**; and
4. Defendants' motion to dismiss is **DENIED** in all other respects.

BY THE COURT:

RONALD L. BUCKWALTER, J.