DOCKET NO.: HHD-CV23-6168859S	:	SUPERIOR COURT
ABBAS MOHAMMADI, ET ALS	:	JUDICIAL DISTRICT OF
	:	HARTFORD AT
VS.	:	HARTFORD
	:	
WILLIAM M. TONG, ET AL	:	APRIL 18, 2024

MEMORANDUM OF DECISION

This action arises out of a press release issued on October 1, 2020, by the defendants, William M. Tong ("Tong") as Attorney General and Deidre S. Gifford ("Gifford") as Commissioner of the Connecticut Department of Social Services, regarding the plaintiffs, Abbas Mohammadi ("Mohammadi"), Columbia Dental, P.C. ("Columbia Dental") and Columbia Oral Maxillofacial Imaging, L.L.C. ("Columbia Oral"). The plaintiffs allege in their eight-count amended complaint that the issuance of the press release violated their federal and state constitutional rights, resulting in damages.

The defendants have moved to dismiss all eight counts of the plaintiffs' amended complaint on the basis of sovereign immunity, qualified immunity and absolute immunity. The plaintiffs object and counter that the defendants are not shielded by any of these doctrines.

For the reasons stated herein, the plaintiffs' amended complaint is dismissed in its entirety.

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SUPERIOR COURT
HARTFORD J.D.

FACTUAL ALLEGATIONS

The amended complaint ("AC") dated June 20, 2023, alleges at all relevant times, the following:

The defendants, Tong as Attorney General and Gifford as Commissioner of the Connecticut Department of Social Services (DSS), were acting as employees of the State of Connecticut under color of state law. AC, ¶¶ 5, 6. Mohammadi was duly licensed by the state Department of Public Health to practice general dentistry in this state and was the sole shareholder, director and president of Columbia Dental. AC, ¶ 13. Columbia Dental had fifteen branch offices statewide, the principal purpose of which was to provide dental services to the general public. AC, ¶¶ 2, 6. Columbia Oral was the billing entity for all dental services provided by the other two plaintiffs. AC, ¶ 3. From April 2012 through February 27, 2013, Columbia Dental employed as a dental assistant Brittany Ames Mahoney ("Mahoney"). AC, ¶ 22. During her employment with Columbia Dental, Mahoney claimed to have discovered certain irregularities in the plaintiff's records, including but not limited to, reimbursement claims submitted to DSS for services the plaintiff rendered to Medicaid beneficiaries. With the assistance of counsel, Mahoney filed a complaint regarding the irregularities she discovered under the federal False Claims Act, 31 U.S.C. § 3729, et seq. AC, ¶ 23. Based upon information learned from Mahoney, on June 15, 2015, the United States (U.S.A.) filed a qui tam action against all three of the plaintiffs, under complete seal. AC, ¶¶ 24, 25. On July 13, 2015, an amended complaint was filed in the qui tam action adding the State of Connecticut as a co-plaintiff. AC, ¶ 27. The U.S.A. and Connecticut in the qui tam action alleged, in part, that Mohammadi, Columbia Dental and Columbia Oral knowingly and willingly engaged in the submission of false and fraudulent claims to the U.S.A. and Connecticut for payment of government funds that included

inflated billings for dental and related services that were never provided to any patient or which were unnecessary. AC, ¶ 27. In September 2020, the qui tam complaint was fully unsealed including the unsealing of an affidavit by Mahoney. AC, ¶ 30. On August 24, 2020, the U.S.A., Connecticut, Mohammadi, Columbia Dental and Columbia Oral executed a settlement agreement regarding the qui tam action, which is filed as Exhibit A to the amended complaint. AC, ¶ 33. The settlement agreement specifically stated that it was made in compromise of a disputed claim and was not an admission of liability on the part of Mohammadi, Columbia Dental or Columbia Oral. AC, ¶ 33. The settlement agreement specifically mentions the billing and claim submissions and conduct of "Dr. A" and non-Dental Assisting National Board-certified dental assistants employed by Columbia Dental. AC, ¶ 34. No actions or conduct of Mohammadi were referenced in the settlement agreement. Id. Based upon the terms of the settlement agreement, the parties filed, and the court granted, on September 23, 2020, a stipulated judgment. AC, ¶ 37. At no time did the state suspend or revoke Mohammadi's license to practice dentistry; nor did DSS suspend or revoke the plaintiff's eligibility to continue to submit Medicaid dental claims, nor was a hearing conducted regarding the subject matter of the settlement agreement. AC, ¶ 38.

On July 30, 2020, the plaintiffs became aware that Tong intended to issue a press release announcing the settlement. AC, ¶ 40. The plaintiff sought a meeting with Tong prior to the issuance of the press release, which meeting request was denied. AC, ¶ 41. On October 1, 2020, the defendants, acting under color of state law, intentionally, maliciously and needlessly published the press release, posting the same on the Attorney General's website, and also issued a National Public Radio press release, attached as Exhibit B, announcing the settlement to the public. AC, ¶ 43. The press release was factually inaccurate in several ways including that it stated an investigation was conducted into the conduct of the plaintiffs, that it stated substantial evidence

was uncovered that Columbia Dental repeatedly overcharged the Connecticut Medical Assistance Program, and that it implied that Columbia Dental was responsible for the misconduct rather than specifying the conduct was limited to "Dr. A" and the non-board certified dental technicians. AC, ¶ 44. After the issuance of the press release, Mohammadi reached out to Tong several times seeking further investigation, an opportunity to be heard, and/or removal or modification of the press release. AC, ¶¶ 46-51. The requests were ignored or declined. Id.

In sum, the plaintiffs claim that the defendants' press release was false, inaccurate, and unconstitutional. AC, ¶¶ 44, 53-59. The plaintiffs claim the issuance of the press release "destroyed the[ir] honor and integrity," "deprived the plaintiffs of their liberty interest in maintaining their good reputations," compelled them "to terminate [a] Facebook account," caused insurers and financers to terminate and suspend the plaintiffs' applications, caused two employees to resign, and has made recruiting employees difficult. AC, ¶¶ 52, 54-56, 59. The plaintiffs assert that the defendants' "issuance of a press release inconsistent with the provisions of the settlement agreement effectively constituted a breach" of a contract. AC, ¶ 57. They claim that before issuing the press release, the defendants "denied the plaintiffs a reasonable public hearing or similar proceeding in which they could contest . . . statements the defendants intended to make in said press release," "failed to inform the plaintiffs . . . of the intended date of the press release," and "failed to inform the plaintiffs . . . of the intended content of the press release." AC, ¶¶ 59 (a)-(c). The plaintiffs allege that after issuing the press release, the defendants failed to provide a "reasonable public hearing or similar proceeding in which they could contest" the statements of the press release and "denied Mohammadi a public hearing or similar proceeding," under General Statutes § 20-103a (b). AC, ¶¶ 59 (d)-(f).

The plaintiffs claim that the defendants' issuance of a false and defamatory press release about them constituted seven separate violations of 42 U.S.C § 1983 and a single violation of Conn. Const., Art. I, § 10. Specifically, the plaintiffs' amended complaint contains the following counts:

Count One: 42 U.S.C. § 1983 claim for violation of Mohammadi's right to liberty and property;
Count Two: § 1983 claim violation of the plaintiffs' rights of freedom from false statements under 15 U.S.C. § 1125(a);
Count Three: § 1983 claim for violation of the plaintiffs' rights of freedom from unfair or deceptive acts or practices in or affecting commerce under 15 U.S.C. §§ 45(a)(1) and 52;
Count Four: § 1983 claim for violating the Connecticut Unfair Trade Practices Act (CUTPA), General Statutes § 42-110a et seq.;
Count Five: § 1983 claim for violating the plaintiffs' rights of freedom from the deliberate indifference thereto and concomitant abuse of power;
Count Six: § 1983 claim for violation of the plaintiffs' right to privacy;
Count Seven: § 1983 claim for violation of the plaintiffs' rights under the Fourteenth Amendment's equal protection clause as a Class of one; and
Count Eight: Violation of Article First, Section 10 of the Connecticut Constitution.

PROCEDURAL HISTORY

On August 21, 2023, the defendants filed a motion to dismiss, docket entry no. 105, and memorandum of law, docket entry no. 106, seeking the dismissal of all eight counts of the plaintiffs' amended complaint. Thereafter, both parties filed numerous additional pleadings relating to the motion to dismiss, and as confirmed by the parties by docket entries 126 and 127, are as follows:

1. The plaintiffs filed new exhibits to the amended complaint. Docket entry nos. 107 & 108;

2. The plaintiffs filed an objection to the motion to dismiss. Docket entry no. 114;

3. The plaintiffs filed a supplement to the objection to the motion to dismiss. Docket entry no. 121;

4. The defendants filed a supplement to their motion to dismiss, in response to the plaintiffs' newly filed exhibits to the amended complaint. Docket entry no. 124;

5. The plaintiffs filed a response to the defendants' supplement. Docket entry no. 122 (superseding docket entry 115);

6. The defendants filed a reply in support of the motion to dismiss. Docket entry no. 125;

7. The plaintiffs filed exhibits in support of the plaintiffs' response to the defendants' supplement. Docket entry no. 116;

8. The plaintiffs filed a motion to strike, accompanied by a memorandum of law, the defendants' exhibits that were appended to the original motion to dismiss. Docket entry nos. 112 & 113;

9. The defendants filed an objection to the plaintiffs' motion to strike the exhibits filed by the plaintiffs. Docket entry no. 119; and

10. The plaintiffs filed a reply in support of the defendants' motion to strike the exhibits filed by the plaintiffs. Docket entry no. 120.

On December 22, 2023, the court heard argument on the aforementioned motions, including the motion to strike the exhibits from the motion to dismiss. During argument, the court agreed some of the exhibits, specifically the qui tam complaints and docket sheet, were likely not relevant to the issues in the motion to dismiss and as such, would not be considered. Therefore, the court has not considered the first five exhibits appended to the defendants' motion

to dismiss in issuing this decision. As such, no further action is required on motions 112, 113, 119 and 120.

DISCUSSION

"In general, a motion to dismiss is the proper procedural vehicle to raise a claim that the court lacks subject matter jurisdiction over the action." *Bellman* v. *West Hartford*, 96 Conn. App. 387, 392, 900 A.2d 82 (2006); *see also* Practice Book § 10-30 (a) (1) ("[a] motion to dismiss shall be used to assert . . . lack of jurisdiction over the subject matter"). "A court deciding a motion to dismiss must determine not the merits of the claim or even its legal sufficiency, but rather, whether the claim is one that the court has jurisdiction to hear and decide." (Internal quotation marks omitted.) *Hinde* v. *Specialized Education of Connecticut, Inc.*, 147 Conn. App. 730, 740-41, 84 A.3d 895 (2014).

"[T]he plaintiff bears the burden of proving subject matter jurisdiction, whenever and however raised." (Internal quotation marks omitted.) *Fort Trumbull Conservancy, LLC* v. *New London*, 265 Conn. 423, 430 n.12, 829 A.2d 801 (2003). "[I]t is the burden of the party who seeks the exercise of jurisdiction in his favor . . . clearly to allege facts demonstrating that he is a proper party to invoke judicial resolution of the dispute. . . . It is well established that, in determining whether a court has subject matter jurisdiction, every presumption favoring jurisdiction should be indulged." (Internal quotation marks omitted.) *Financial Consulting, LLC* v. *Commissioner of Ins.*, 315 Conn. 196, 226, 105 A.3d 210 (2014).

A. Federal Law Claims

Counts one through seven of plaintiff's amended complaint are all brought under 42 U.S.C. § 1983, each under a separate claimed constitutional or statutory violation.

42 U.S.C. § 1983, titled Civil action for deprivation of rights, states as follows:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . . .

"Section 1983 provides redress for the deprivation of federally protected rights by persons acting under color of state law. . . . To prevail on a § 1983 claim, a plaintiff must establish (1) the violation of a right, privilege, or immunity secured by the Constitution or laws of the United States (2) by a person acting under the color of state law." (Citation omitted.) *Kayo* v. *Mertz*, 531 F. Supp. 3d 774, 788 (S.D.N.Y. 2021). "An official acts under color of state law for Section 1983 purposes when the official exercises a power possessed by virtue of state law and made possible only because the [claimed] wrongdoer is cloaked with the authority of state law." (Internal quotation marks omitted.) *Miron* v. *Stratford*, 976 F. Supp. 2d 120, 135 (D. Conn. 2013).

"In general, [state courts] look to the federal courts for guidance in resolving issues of federal law." *Turner* v. *Frowein*, 253 Conn. 312, 340, 752 A.2d 955 (2000); see also *Sullins* v. *Rodriguez*, 281 Conn. 128, 913 A.2d 415 (2007) (applying federal law to a § 1983 claim brought in state court). "Moreover, it is well settled that [t]he decisions of the Second Circuit Court of Appeals carry particularly persuasive weight in the interpretation of federal statutes by Connecticut state courts." (Internal quotation marks omitted.) *Szewczyk* v. *Dept. of Social Services*, 275 Conn. 464, 475, 881 A.2d 259 (2005).

Under federal law, in general, a state employee can be sued in his or her official capacity for prospective injunctive relief if there is an ongoing violation of federal law and can be sued in his or her individual capacity for money damages if the employee is personally involved in the

wrongful conduct alleged. However, a state official sued in his or her official capacity may invoke the doctrine of sovereign immunity and a state official sued in his or her individual capacity may invoke qualified immunity.

Here, the defendants argue that the federal law claims asserted by the plaintiffs against the defendants in their individual capacities, in counts one through seven, are barred by qualified immunity, because none of the counts plausibly demonstrate the violation of a constitutional or statutory right. The defendants further argue that count one against them in their official capacities, based on the plaintiffs' seeking of injunctive relief, is barred by the doctrine of sovereign immunity because there is no violation of, nor ongoing violation of, federal law.

I. Count One: § 1983 claim for violation of Mohammadi's right to liberty and property

While the plaintiff's amended complaint captions this count as to only plaintiff Mohammadi, the allegations in the prayer relief seem to indicate this count was intended as to all of the plaintiffs, and in the exercise of caution, the court will address the issues as to all of the plaintiffs. The plaintiffs in count one purport to bring § 1983 claims against the defendants in both their official and individual capacities predicated on alleged violations of the Fourteenth Amendment right to liberty and property.

The defendants argue that count one should be dismissed because: (1) sovereign immunity bars the claim against them in their official capacities; and (2) qualified immunity bars the claim against them in their individual capacities.

(a) Official Capacities Claim – Sovereign Immunity

To the extent that count one asserts a § 1983 claim for deprivation of liberty and property under the Fourteenth Amendment against the defendants in their official capacities, it is barred by sovereign immunity.

While the plaintiffs in their memorandum in opposition state "[t]he amended complaint advances all of the causes of action therein against the defendants in their individual capacities", docket entry no. 114, p. 5, paragraph five of the claim for relief in plaintiffs' amended complaint seeks "[a] public post-deprivation name-clearing hearing in favor of all plaintiffs against both defendants in their individual and official capacities under the [f]irst [c]ount pursuant to 42 U.S.C. section 1983." Injunctive relief sought against individual state employees must be as to them in only their official capacities. See *Sosa* v. *Robinson*, 200 Conn. App. 264, 282, 239 A.3d 1228 (2020) (when a plaintiff seeks relief that *only* state can provide, he or she may not overcome sovereign immunity simply by suing an individual actor). Although the court could view the claim for relief seeking a post-deprivation hearing as abandoned given the aforementioned statement in the memorandum, and the failure of plaintiffs to brief this issue, the court will nonetheless address on the merits the motion to dismiss count one as to the defendants in their official capacities.

The "doctrine of sovereign immunity implicates subject matter jurisdiction and is therefore a basis for granting a motion to dismiss." (Internal quotation marks omitted.) *State* v. *Avoletta*, 347 Conn. 629, 639, 298 A.3d 1211 (2023); see also *Becker* v. *Western Connecticut State University*, Superior Court, judicial district of Danbury, Docket No. CV-18-6031294 (January 7, 2020, *Brazzel-Massaro, J.*) (dismissing count of complaint brought under federal constitution on Eleventh Amendment grounds). When sovereign immunity is claimed as a defense to a cause of action pursuant to § 1983, federal sovereign immunity jurisprudence preempts analysis under state law. *Sullins* v. *Rodriguez*, supra, 281 Conn. 133. "Without a [s]tate's express waiver or an act by Congress under [s]ection 5 of the [f]ourteenth [a]mendment, the [e]leventh [a]mendment bars . . . courts from adjudicating claims against a [s]tate, as well as

its agencies and agents." *74 Pinehurst LLC* v. *New York*, 59 F.4th 557, 570 (2d Cir. 2023). Generally, states are immune from suit under the terms of the Eleventh Amendment and the doctrine of sovereign immunity, unless the plaintiff brings a claim under the narrow exception to sovereign immunity the United States Supreme Court recognized in *Ex parte Young*. *Whole Woman's Health* v. *Jackson*, 595 U.S. 30, 39, 142 S. Ct. 522, 211 L. Ed. 2d 316 (2021).

"In determining whether *Ex [p]arte Young* applies, a court need only conduct a straightforward inquiry into whether the complaint alleges an ongoing violation of federal law and seeks relief properly characterized as prospective." (Internal quotation marks omitted.) *Sosa* v. *Robinson*, supra, 200 Conn. App. 283 n.10, quoting *Baltas* v. *Erfe*, United States District Court, Docket No. 3:19-cv-1820 (MPS), 2020 WL 1915017, *11 (D. Conn. 2020) (which - in turn - quoted *Verizon Maryland, Inc.* v. *Public Service Commission of Maryland*, 535 U.S. 635, 645, 122 S. Ct. 1753, 152 L. Ed. 2d 871 [2002]); see also *Seneca Nation* v. *Hochul*, 58 F.4th 664, 670 (2d Cir. 2023) ("[a] plaintiff, however, may avoid the [e]leventh [a]mendment bar to suit by suing individual state officers in their official capacities, as opposed to the state, provided that [the] complaint [a] alleges an ongoing violation of federal law and [b] seeks relief properly characterized as prospective" [internal quotation marks omitted]).

Here, the defendants do not dispute whether the injunctive relief requested by the plaintiffs, a hearing, is properly characterized as prospective, but they argue that the plaintiffs have not alleged an ongoing violation of federal law. Generally, the aftereffects of "past alleged unconstitutional acts" are not considered to be "ongoing conduct" for these purposes, even if the damage the plaintiff alleges was caused by the defendant persists. *National Rifle Assn. of America* v. *Cuomo*, 525 F. Supp. 3d 382, 408 (N.D.N.Y. 2021), rev'd and remanded on other grounds sub nom. *National Rifle Assn. of America* v. *Vullo*, 49 F.4th 700 (2d Cir. 2022). Thus, at

least two federal district courts have found no ongoing violation of federal law in cases where the plaintiffs asserted a claim under *Ex parte Young* based on a continuing harm caused by an allegedly defamatory press release issued by a state's Attorney General's office. See id. (no ongoing violation based on previously issued press release by New York's Attorney General where plaintiff alleged, *inter alia*, that "it still has trouble maintaining business relationships"); *Black Farmers & Agriculturists Assn., Inc.* v. *Hood*, United States District Court, Docket No. 3:13-CV-763 (TSL), 2014 WL 935147 (S.D. Miss. March 10, 2014) (allegation that the plaintiffs continued to suffer harm from allegedly misleading and defamatory comments published in press release by Texas' Attorney General was insufficient to allege ongoing violation), aff'd, 585 F. App'x 306 (5th Cir. 2014).

Nothing in count one, interpreted as broadly and favorably to the plaintiffs as possible, alleges any violation of federal law, much less that an ongoing violation of federal law is occurring. Further, the plaintiffs' voluminous briefing; see docket entry nos. 114, 115, 121, 122; does not otherwise address the issue at all. See *Speer* v. *Brown Jacobson P.C.*, 222 Conn. App. 638, 642 n.5, 579 A.3d 539 (2023) ("Analysis, rather than mere abstract assertion, is required in order to avoid abandoning an issue by failure to brief the issue properly. . . . Where a claim is asserted in the statement of issues but thereafter receives only cursory attention in the brief without substantive discussion or citation of authorities, it is deemed to be abandoned. . . . These same principles apply to claims raised in the trial court." [Internal quotation marks omitted.]).

Accordingly, to the extent that count one states a federal law claim against the defendants in their official capacities for deprivation of liberty and property interests, such claim is barred by sovereign immunity.

(b) Individual Capacities Claim – Qualified Immunity

The plaintiffs' claim in count one against the defendants in their individual capacities is alleged as a "stigma plus" claim, essentially asserting that defendants' issuance of the press release and the defendants' failure to provide the plaintiffs with pre- and/or post-deprivation hearings resulted in a deprivation of the plaintiff's constitutionally protected property and liberty interests and an alteration of its status. See AC, First Count, ¶¶ 59, 62; Docket entry no. 114, p. 30.

The defendants argue that they are entitled to qualified immunity on count one with respect to the individual capacity claims because the plaintiffs "cannot assert a valid claim that [the] [d]efendants violated a constitutional right by not providing a 'pre-deprivation hearing' or 'post-deprivation hearing' about the contents of a press release"; docket entry no. 106, p. 21; and that Mohammadi's § 1983 "stigma plus" claim fails to establish a deprivation of constitutionally protected liberty interests under the law.

"Although research reveals no appellate authority in Connecticut directly stating that the issue of qualified immunity implicates subject matter jurisdiction, the Appellate Court has affirmed the Superior Court's dismissal of claims based on qualified immunity for lack of subject matter jurisdiction." *Shehadi* v. *State*, Superior Court, judicial district of Waterbury, Complex Litigation Docket, Docket No. X06-CV-18-6047615-S (May 17, 2019, *Bellis, J.*) (68 Conn. L. Rptr. 693); see *Braham* v. *Newbould*, 160 Conn. App. 294, 306-07, 124 A.3d 977 (2015) (qualified immunity may be raised in motion to dismiss actions brought under § 1983).

Qualified immunity protects government officials from liability for their performance of discretionary official functions "insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow* v.

Fitzgerald, 457 U.S. 800, 818, 102 S. Ct. 2727, 73 L. Ed. 2d 396 (1982). There is a high presumption "in favor of finding qualified immunity" to protect "all but the plainly incompetent or those who knowingly violate the law." (Internal quotation marks omitted.) *Connecticut ex rel. Blumenthal* v. *Crotty*, 346 F.3d 84, 102 (2d Cir. 2003), quoting *Malley* v. *Briggs*, 475 U.S. 335, 341, 106 S. Ct. 1092, 89 L. Ed. 2d 271 (1986).

The qualified immunity inquiry is three-fold. "First, a court must decide whether the facts that a plaintiff has . . . shown . . . make out a violation of a constitutional right. . . . Second, if the plaintiff has satisfied this first step, the court must decide whether the right at issue was 'clearly established' at the time of defendant's alleged misconduct." (Citations omitted.) *Pearson* v. *Callahan*, 555 U.S. 223, 232, 129 S. Ct. 808, 172 L. Ed. 2d 565 (2009). Third, the court must decide whether "it was objectively reasonable [for the defendants] to believe that their acts did not violate these clearly established rights" under the circumstances present. (Internal quotation marks omitted.) *Amore* v. *Novarro*, 624 F.3d 522, 530 (2d Cir. 2010). Regarding the second prong, whether a right is "clearly established" cannot be determined at abstract levels of generality. *Ashcroft* v. *al-Kidd*, 563 U.S. 731, 742, 131 S. Ct. 2074, 179 L. Ed. 2d 1149 (2011). Rather, the specific contours of the right must be established by a "robust consensus" of existing precedents whose facts are not "materially different" from "the particular circumstances that [the defendants] faced." (Internal quotation marks omitted.) *Plumhoff* v. *Rickard*, 572 U.S. 765, 779-80, 134 S. Ct. 2012, 188 L. Ed. 2d 1056 (2014); see *Mullenix* v. *Luna*, 577 U.S. 7, 11-12, 136 S. Ct. 305, 193 L. Ed. 2d 255 (2015).

Regarding whether count one alleges a violation of a clearly established constitutional or statutory right by the defendants, the plaintiffs argue that the denial of a hearing and issuance of the allegedly defamatory press release violated their statutory right to a hearing as a health care

provider accused of medical fraud, and their constitutionally protected liberty interests, respectively.

The court first considers whether Connecticut law creates a clearly established statutory right entitling a health care provider accused of medical fraud to a hearing. The plaintiffs' claim that such a right exists under General Statutes § 20-103a (b).[1] AC, First Count, ¶ 59 (f). This poses a question of statutory interpretation for the court to determine in accordance with General Statutes § 1-2z. Nothing in § 20-103a (b) expressly states that dentists accused of medical fraud or misconduct are entitled to a hearing before the State Dental Commission. Rather, the statutory provision cited by the plaintiffs only establishes duties and procedural requirements relating to the makeup of the State Dental Commission. The plaintiffs cite to no case law where a state court has determined that § 20-103a (b) enumerates such a statutory right. Given the lack of any express language in the statute establishing such a right, or any "existing precedent" that "place[s] the statutory or constitutional question beyond debate"; (internal quotation marks omitted) *Cugini* v. *New York*, 941 F.3d 604, 615 (2d Cir. 2019); the court finds no clearly established statutory right to a hearing before the State Dental Commission for a dentist accused of Medicaid billing fraud existed at the time of the alleged conduct.

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[1] General Statutes § 20-103a (b) provides that: "The Governor shall appoint a chairperson from among such members. Said commission shall meet at least once during each calendar quarter and at such other times as the chairman deems necessary. Special meetings shall be held on the request of a majority of the commission after notice in accordance with the provisions of section 1-225. A majority of the members of the commission shall constitute a quorum. Members shall not be compensated for their services. Any member who fails to attend three consecutive meetings or who fails to attend fifty per cent of all meetings held during any calendar year shall be deemed to have resigned from office. Minutes of all meetings shall be recorded by the commission. No member shall participate in the affairs of the commission during the pendency of any disciplinary proceedings by the commission against such member. No member shall serve for more than two full consecutive terms commencing after July 1, 1980. Said commission shall (1) hear and decide matters concerning suspension or revocation of licensure, (2) adjudicate complaints filed against practitioners and (3) impose sanctions where appropriate."

Next, the court considers whether the defendants' issuance of the press release amounted to a deprivation of the plaintiffs' liberty interest in violation of a clearly established constitutional right. In essence, the plaintiffs claim that by damaging their reputation in the community in a manner that led to concrete harms, such as difficulty retaining staff members, the allegedly defamatory press release implicated their protected liberty interests under the Fourteenth Amendment.

The first problem with this claim, which is a § 1983 liberty interest claim, is that only the individual plaintiff may assert it, because the other plaintiffs "all are corporations. Corporations do not have fundamental rights; they do not have liberty interests, period." *National Paint & Coatings Assn.* v. *Chicago*, 45 F.3d 1124, 1129 (7th Cir. 1995), cert. denied, 515 U.S. 1143, 115 S. Ct. 2579, 132 L. Ed. 2d 829 (1995). A party without liberty interests cannot assert a violation of its liberty interest. Thus, at the outset, the defendants' valid qualified immunity defense bars all of the plaintiffs except for Mohammadi from pursing the stigma plus claim articulated in count one. The court again notes it is entirely possible that count one was intended as applying to Mohammadi alone, based on the caption.

The second problem with the claim is that to support the argument that issuance of an allegedly defamatory press release about a private health care provider and/or businessman violated a clearly established constitutional right, the plaintiffs cite only to *Chiaravallo* v. *Middletown Transit District*, 561 F. Supp. 3d 257, 285 (D. Conn. 2021); however, *Chiaravallo* does not support the plaintiffs' assertion, because the recognition of a clearly established right in that case took place in the specific context of termination from government employment. See id., 286 (acknowledging that "the right to notice and an opportunity to be heard to rebut charges of

professional incompetence *made in conjunction with termination from government service* was clearly established" [emphasis added]).

The court now turns specifically to the stigma plus claim. "In [*Paul* v. *Davis*, 424 U.S. 693, 96 S. Ct. 1155, 47 L. Ed. 2d 405 (1976)], the Supreme Court clarified that procedural due process protections apply to reputational harm only when a plaintiff suffers stigma from governmental action plus alteration or extinguishment of a right or status previously recognized by state law. . . . This holding has come to be known as the 'stigma-plus test.'" (Citation omitted; internal quotation marks omitted.) *Chaudhry* v. *Angell*, United States District Court, Docket No. 1:16-cv-01243 (SAB), 2021 WL 4461667, *31 (E.D. Cal. September 29, 2021), aff'd sub nom. *Chaudhry* v. *Aragon*, 68 F.4th 1161 (9th Cir. 2023); see *Vega* v. *Lantz*, 596 F.3d 77, 81 (2d Cir. 2010) ("[U]nder limited circumstances . . . constitutional relief is available for defamation committed by government officials. . . . Specifically, an action can be grounded in 42 U.S.C. § 1983 when that plaintiff can demonstrate a stigmatizing statement plus a deprivation of a tangible interest." [Citations omitted; internal quotation marks omitted.]). "[D]efamation is not, absent more, a deprivation of a liberty or property interest protected by due process." (Internal quotation marks omitted.) *Gentes* v. *Osten*, United States District Court, Docket No. 3:20-CV-01049 (VLB), 2023 WL 5392670, *11 (D. Conn. August 22, 2023); see also *Valmonte* v. *Bane*, 18 F.3d 992, 1001 (2d Cir. 1994). If a plaintiff successfully proves his stigma-plus claim, due process requires that as a remedy he be given a post-deprivation opportunity to clear his name. *Patterson* v. *Utica*, 370 F.3d 322, 330 (2d Cir. 2004).

To establish a "stigma plus" claim, "a plaintiff must show (1) the utterance of a statement sufficiently derogatory to injure his or her reputation, that is capable of being proved false, and that he or she claims is false, and (2) a material state-imposed burden or state-imposed alteration

of the plaintiff's status or rights." (Internal quotation marks omitted.) *Sadallah* v. *Utica*, 383 F.3d 34, 38 (2d Cir. 2004) (*Sotomayor, J.*). "Both the 'stigma' and the 'plus' must come from state action." *Cutie* v. *Sheehan*, 645 F. App'x 93, 96 (2d Cir. 2016).

Here, the defendants challenge the "plus" aspect of the doctrine. "There is no requirement on courts reviewing stigma-plus claims to analyze the first element—the 'stigma' requirement—before the second element—the 'plus' requirement." *Gentes* v. *Osten*, supra, 2023 WL 5392670, *11.

To satisfy the "plus" requirement, "[t]he relevant state-imposed burden must be separate from the stigmatizing statement and may take the form of a 'deprivation of a plaintiff's property' or the 'termination of a plaintiff's government employment.'" (Internal quotation marks omitted.) Id., quoting *Mudge* v. *Zugalla*, 939 F.3d 72, 80 (2d Cir. 2019) (which quoted *Sadallah* v. *Utica*, supra, 383 F.3d 38). "[D]eleterious effects [flowing] directly from a sullied reputation, standing alone, do not constitute a 'plus' under the 'stigma plus' doctrine." (Internal quotation marks omitted.) *Sadallah* v. *Utica*, supra, 383 F.3d 38.

For example, in *Sadallah*, the plaintiffs claimed that the defendants' acts caused them "damage not only to their business reputation, but [also the deprivation] of the good will in their business, and that this . . . served to discourage customers from availing themselves of the [p]laintiffs' facility." (Internal quotation marks omitted.) Id., 38-39. They further argued that they could "establish that the defamatory statements . . . resulted in substantial damage . . . to the personal reputation of [the individual plaintiff], and the corporate entity, [and] caused irreparable economic harm [to the plaintiffs]. Thus, [the plaintiffs] argue[d], they were able to meet the first [prong] of establishing stigma [plus.]" (Internal quotation marks omitted.) Id., 39. The plaintiffs also argued that this same economic harm was "sufficient to establish the *second* prong of the

'stigma plus' analysis." (Emphasis in original.) Id. The court determined, however, that repeating the economic-harm argument does not satisfy the separate and independent "plus" prong of the "stigma plus" test. Id. Instead, the harms alleged were "direct 'deleterious effects' of that defamation." Id. The *Sadallah* court concluded that "[a]bsent an additional deprivation of a legal right or status . . . such as the revocation of their lease, [the plaintiffs] have not alleged a 'plus' sufficient to sustain a 'stigma plus' claim. (Citation omitted; internal quotation marks omitted.) Id, 39.

In contrast, the court in *Valmonte*, found the plaintiff had met the "plus" requirement because there the state affirmatively imposed restrictions requiring prospective employers who were considering hiring the plaintiff to first consult a specific list and further required any employers who hired the plaintiff to state the reasons why in writing to the state. *Valmonte* v. *Bane*, supra, 18 F.3d 1001. This state-imposed deprivation demonstrates the type of burden that is sufficient to meet the plus requirement. Id. It is the alteration of legal status which, combined with the injury resulting from the defamation that justifies the invocation of procedural safeguards. See *Chaudhry* v. *Angell*, supra, 2021 WL 4461667, *31.

The plaintiffs here have failed to allege any facts to demonstrate the defendants are responsible for any state-imposed burden or alteration of the plaintiffs' status or rights because of the issuance of the press release. The harm alleged (damage to reputation, lost business and profits, mental and emotional distress) all flow from the allegedly defamatory comments. The state, through the actions of the defendants, did nothing to impose any further burden upon the plaintiffs nor did they create an alteration of the plaintiffs' status which would satisfy the "plus" requirement.

Reactions from private third parties to the claimed defamatory statement do not satisfy the "plus" requirement. See id., *34 (collecting cases holding that injury caused by act of some third party in reaction to state's defamatory statements does not satisfy "plus" requirement); *University Gardens Apartments Joint Venture* v. *Johnson*, 419 F. Supp. 2d 733, 741 (D. Md. 2006) (no stigma plus claim because "[the plaintiffs] do not allege that [the defendants] took direct action to harm [the plaintiffs'] leases, property values, or creditor relationships, thus, any injury to [the plaintiffs'] leases, property values, or creditor relationships appears to be the result of actions taken by third parties who acted upon [the defendants'] statements").

Even if the defendants' public statements about the plaintiffs amounted to defamation, the plaintiffs have failed to allege the additional state-imposed burden necessary for invoking the "stigma plus" doctrine.[2] Interpreted in the light most favorable to the plaintiffs, count one alleges, at best, that the harms caused by the press release were to the reputation of the plaintiffs, which does not constitute deprivation of a cognizable liberty interest that gives rise to a stigma plus claim.[3]

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[2] Stigma plus cases are often seen in the narrow contexts of government employment or imprisonment. See, e.g., *Santos-Buch* v. *Financial Industry Regulatory Authority, Inc.*, 32 F. Supp. 3d 475, 484 (S.D.N.Y. 2014) ("Holding that [the plaintiff] has not satisfied the 'stigma-plus' test because he is not a government employee."), aff'd, 591 F. App'x 32 (2d Cir. 2015), cert. denied, 577 U.S. 817, 136 S. Ct. 43, 193 L. Ed. 2d 27 (2015); *Anthony A.* v. *Commissioner of Correction*, 326 Conn. 668, 166 A.3d 614 (2017) (stigma plus claim permitted where state prisoner was erroneously classified as sex offender); *Becker* v. *Western Connecticut State University*, supra, Docket No. CV-18-6031294 (dismissing stigma plus claim because "though the plaintiff alleges damage to his reputation, he does not allege that he was terminated from government employment, and he does not allege facts that demonstrate he lacks adequate process").

[3] In *Mudge* v. *Zugalla*, supra, 939 F.3d 80, the court determined that "[a]ssuming *arguendo* that a constitutional violation did, in fact, take place, the plaintiff has failed to establish that the right was clearly established at the time of the defendants' conduct" and as such, the action would have still been subject to dismissal. The court, under these facts, would reach the same conclusion here.

Accordingly, because the plaintiffs have failed to demonstrate that a clearly established statutory or constitutional right was implicated here, their due process and stigma plus claims against the defendants in their individual capacities are barred by qualified immunity.

Based upon the defendants' sovereign immunity for the official capacity claims and qualified immunity as to the individual capacity claims, count one is dismissed for lack of subject matter jurisdiction.

II. **Count Two: § 1983 claim for violation of the plaintiffs' rights of freedom from false statements under 15 U.S.C. § 1125 (a)**

In count two of their amended complaint, based upon the issuance of the press release, the plaintiffs allege against the defendants in their individual capacities a § 1983 claim based on a violation of the plaintiffs' "rights of freedom from false statements guaranteed under [15 U.S.C. § 1125 (a)]," the Lanham Act. The defendants move to dismiss count two on the basis that qualified immunity bars the claim because no constitutional violations are asserted therein. The plaintiffs' brief on the issue clarifies that count two is meant to represent a Lanham Act claim for false advertising under 15 U.S.C. § 1125 (a) (1) (B).[4] See docket entry no. 114, pp. 33-35.

By claiming a violation of the Lanham Act, the plaintiffs have essentially alleged that a clearly established statutory right was violated by the defendants. Consequently, because the defendants have raised a qualified immunity defense, "[i]f the facts, viewed in [the light most favorable to the plaintiff], do not establish a violation" of the plaintiffs' clearly established rights

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[4] 15 U.S.C. § 1125 (a) (1) (B) provides, in relevant part, that: "Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which . . . in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services, or commercial activities, shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act."