STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND
BUSINESS COURT

FANAERO PROPERTIES, LLC,
And CONTACT AVIATION, LLC,

Plaintiffs,

v. **Case No. 19-174263-CB**
Hon. James M. Alexander

THE COUNTY OF OAKLAND,
And CHERYL BUSH,

Defendants,

_____/

OPINION AND ORDER RE: DEFENDANTS' MOTION FOR SUMMARY DISPOSITION

This matter is before the Court on Defendants' Motion for Summary Disposition pursuant to MCR 2.116(C)(7), (C)(8), and (C)(10). The Court dispenses with oral argument in accordance with MCR 2.119(E)(3).

By way of background, Plaintiff Fanaero Properties, LLC ("Fanaero") entered into a Purchase Agreement on July 31, 2014 for the purchase of an operating and existing FBO (Fixed Base Operation) known as the Pontiac Air Center at the Oakland County International Airport ("OCIA"). The FBO consisted of a fuel farm, selling aviation fuel, as well as an aircraft storage and maintenance facility. That same day, Defendant The County of Oakland ("County") entered into an Airport Land Lease with Fanaero for the lease of the land where the FBO was located. The lease grants Fanaero the right to use the premises as an FBO for commercial use incidental

to the sale, servicing, and storage of aircrafts. See Paragraph 2(a) of the Lease; Exhibit A to Plaintiffs' Complaint. On August 1, 2014, the County and Plaintiff Contact Aviation, LLC ("Contact"), the tenant of Fanaero, entered into a Retail Aviation Fuel Agreement for the right to sell aviation fuel at OCIA for a period of five years. See Exhibit B to Plaintiffs' Complaint. Following the execution of the afore-mentioned agreements, the OCIA shut down the fuel farm on alleged safety violations. Contact cured those violations and commenced selling aviation fuel in August 2018.

Once Contact began selling aviation fuel, Plaintiffs allege that Defendant Cheryl Bush ("Ms. Bush"), the Aviation Manager of the COIA, falsely claimed that Contact's aviation fuel was contaminated. Additionally, Contact asserts that the OCIA promulgated new Rules and Regulations and Minimum Standards that require an FBO to lease a minimum of five airport acres in order to sell aviation fuel. See Exhibits E and F to Plaintiffs' Complaint. Since Fanaero's land lease consists of three acres at the OCIA, the County sent a Cease and Desist letter to Plaintiffs on March 18, 2019. See Exhibit H to Plaintiffs' Complaint. The County also sent Plaintiffs a Notice to Quit, alleging that Plaintiffs had violated their contracts. See Exhibit I to Plaintiffs' Complaint.

Consequently, and on May 30, 2019, Plaintiffs initiated litigation against Defendants on the following claims titled: (Count One) Breach of Contract, Defendant County; (Count Two) Tortious Interference with Contractual Relations; (Count Three) Injunctive Relief; and, (Count Four) Declaratory Relief.

Thereafter, Defendants filed their Motion for Summary Disposition pursuant to MCR 2.116(C)(7), (C)(8), and (C)(10). Defendants seek dismissal of Plaintiff's Count Two under MCR 2.116(C)(7) on the ground that this claim is barred on account of governmental immunity

granted by law. "When reviewing a motion under MCR 2.116(C)(7), this Court must accept all well-pleaded factual allegations as true and construe them in favor of the plaintiff, unless other evidence contradicts them. If any affidavits, depositions, admissions, or other documentary evidence are submitted, the court must consider them to determine whether there is a genuine issue of material fact. If no facts are in dispute, and if reasonable minds could not differ regarding the legal effect of those facts, the question whether the claim is barred is an issue of law for the court. However, if a question of fact exists to the extent that factual development could provide a basis for recovery, dismissal is inappropriate." *Dextrom v Wexford Cty.*, 287 Mich App 406, 428–29; 789 NW2d 211 (2010). (Citations omitted).

A motion under MCR 2.116(C)(8) tests the legal sufficiency of the complaint. *Maiden v Rozwood,* 461 Mich 109, 120; 597 NW2d 817 (1999). When analyzing such a motion, all well-pled factual allegations are accepted as true and construed in a light most favorable to the nonmovant. *Wade v Dept of Corrections*, 439 Mich 158, 162-163; 483 NW2d 26 (1992). A (C)(8) motion may be granted only where the claims alleged are "so clearly unenforceable as a matter of law that no factual development could possibly justify recovery." *Id.* And, when deciding such a motion, the Court considers only the pleadings. MCR 2.116(G)(5). "A party may not support a motion under subrule (C)(8) with documentary evidence such as affidavits, depositions, or admissions." *Dalley v Dykema Gossett*, 287 Mich App 296, 305; 788 NW2d 679 (2010). (Citations omitted).

"A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. In evaluating a motion for summary disposition brought under this subsection, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties…in the light most favorable to the party opposing the motion. Where the proffered

evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law." *Maiden, supra*; *Quinto v Cross & Peters Co.,* 451 Mich 358, 362; 547 NW2d 314 (1996).

Contract-Based Claims

With regard to Plaintiffs' contract-based claims in the Complaint, Defendants argue that it is Plaintiffs that are in direct violation of the Oakland County Airport's Rules and Regulations, the Land Lease, and Michigan Law. Defendants assert that the Oakland County Airport's Rules and Regulations, which were in effect when the parties executed the subject contracts, required an FBO to obtain an Aviation Fuel Agreement in order to sell or use aviation fuel at the OCIA. Specifically, Section 8.9 of the December 12, 2002 Rules and Regulations provides that "[a]ny operator who desires to have aviation fuel delivered from off the Airport for sale or use on the Airport must enter into an 'Aviation Fuel Agreement' with the County. The operator shall be governed by the additional requirements set forth in the agreement." See Exhibit C of Defendants' Motion.

It is Defendants' contention that Plaintiffs did not have an Aviation Fuel Agreement with the County when they commenced selling aviation fuel in August 2018. Defendants offer as Exhibit F to their motion the January 29, 2016 email from John Shirk, Managing Director of Contact, who represented that Contact would like to change its fuel farm status from an FBO to a "facility-based tenants only." In June 2016, Karl Randall, the former Manager of Aviation at the OCIA, emailed Mr. Shirk, writing: "Contact Aero no longer has a retail fuel concession agreement." As such, Mr. Randall instructed Mr. Shirk to remove all references from Contact's website concerning fuel for sale. In response, Mr. Shirk emailed, "[w]e will take care of it ASAP. It is an oversight that some references remain." See Exhibit G of Defendants' Motion.

Defendants also maintain that Plaintiffs are required to comply with the laws of the State of Michigan. In particular, Contact was required to obtain a license to sell aviation fuel for resale by the Department of Treasury of the State of Michigan. See Exhibit N of Defendants' Motion. Since Contact did not obtain a license from the Department of Treasury by August 2018, Defendants assert that Plaintiffs were not authorized to sell or use aviation fuel at the OCIA in August 2018. Defendants defer to the Licensee List of the Department of Treasury, indicating the effective date of Contact's registration as an Aviation Fuel Registrant as October 1, 2018. See Exhibit B to Defendants' Motion.

In further support of their position, Defendants also filed a Supplemental Brief in Support of Motion for Summary Disposition to Present Newly-Acquired Evidence on October 2, 2020. Yet, the hearing on the Motion for Summary Disposition was scheduled for today, October 7, 2020, which is merely five days from this filing. Since Plaintiffs did not have an opportunity to respond to Defendants' Supplemental Brief, the Court will not entertain the Supplemental Brief.

In response to Defendants' summary disposition motion, Plaintiffs have filed a 30-page document in violation of the Court's March 26, 2020 Order Re: Defendants' Motion for Summary Disposition (Amended), which provides that "pursuant to MCR 2119(A)(2), 'the combined length of any motion and brief, or of a response and brief, may not exceed 20 [twenty] pages.' Motions, Responses, or Briefs that violate the Court Rule will be rejected." In accordance with the Court's Order, Plaintiffs' response should have been rejected. However, it was not rejected for filing and so the Court will consider the arguments of Plaintiffs set forth within the response. However, the Court admonishes Plaintiffs to abide by the Court's Orders moving forward.

In their response, Plaintiffs argue that Contact never notified the County that it was intending to cancel the fuel agreement. Rather, Mr. Shirk emailed Mr. Randall to notify him of Contact's intent to change its fuel farm status from an FBO to facility-based tenants only. According to Plaintiffs, this notification cannot be construed as a cancellation of the fuel agreement. See Exhibit 5 of Plaintiffs' Response. Thereafter, Contact presented Ms. Bush and the OCIA with the $6,000.00 deposit and began selling fuel. Contact also maintains that it sent fuel flow payments on a monthly basis to OCIA in accordance with the agreement. Additionally, Plaintiffs assert that they did not request the return of the $6,000.00 deposit and the County did not prorate the $25,000.00 minimum fee as required when an Aviation Fuel Agreement is terminated.

Plaintiffs also maintain that their license renews automatically every year under Section 8.2 of the December 12, 2002 Rules and Regulations, which provides that "[a] license issued by the Airport Management shall be required prior to the conduct of any commercial operation on the Airport…This license shall be automatically renewed from year to year under the same terms and conditions, except that the $15.00 fee shall be waived, unless one of the parties to the license gives notice in writing to the other party that this license shall not be renewed." See Exhibit 2 of Plaintiff's Response.

When Contact advised Ms. Bush in February 2017 of its intention to sell aviation fuel under the parties' agreement, Ms. Bush allegedly advised Contact that a new aviation fuel agreement would be provided. Plaintiffs argue that the County and Ms. Bush subsequently refused to provide the new aviation fuel agreement as promised, even though they provided an aviation fuel agreement to another FBO by the name of Midfield.

What is more, Plaintiffs contend that the Oakland County Airport's new Rules and Regulations and Minimum Standards, which were enacted in October 2018 and December 2018, respectively, are not a part of Fanaero's lease or Contact's agreement. As such, Plaintiffs maintain that they are not subject to those Rules and Regulations and Minimum Standards. In addition, Plaintiffs argue that the County can only terminate Fanaero's lease for specific reasons, which do not include the claims raised in this lawsuit.

In terms of the license to sell fuel from the Department of Treasury, Plaintiffs maintain that they did obtain a license on October 1, 2018 after they were notified of the requirement on September 28, 2018. Plaintiffs point out that their August 1, 2014 Retail Aviation Fuel Agreement provides in Paragraph 20 that "[i]n the event Concessionaire shall neglect or refuse to comply with any other provisions of the agreement after thirty (30) days written notice, then in such event the agreement shall be subject to cancellation by the County in like manner and the rights and privileges granted terminated." See Exhibit 3 of Plaintiffs' Motion. Based upon the argument that their Retail Aviation Fuel Agreement is still valid, Plaintiffs maintain that they have 30 days to correct any violation after written notice. Plaintiffs argue that they complied within 30 days as evidenced by the State of Michigan fire marshal's approval of the fuel farm. See the Quarterly Fuel Site Inspection Report; Exhibit 10 of Plaintiffs' Response.

According to Plaintiffs, Defendants raise the same arguments against both Fanaero and Contact when both entities have separate and distinct contracts with the County. Plaintiffs contend that while Fanaero has the right to sell aviation fuel, it never did and therefore, it was not required to have a state license. Thus, Plaintiffs assert that Fanaero should not be evicted from the OCIA on the ground that it sold aviation fuel illegally. Plaintiffs contend further that Defendants' motion does not even argue that Fanaero violated is land lease. Consequently,

Plaintiffs seek summary disposition under MCR 2.116(I)(2) on the ground that Defendants breached the land lease by threatening to evict Fanaero. Additionally, Plaintiffs make the argument that since the 2018 Rules and Regulations of the OCIA repealed the 2002 Rules and Regulations, Fanaero is no longer governed by those Rule and Regulations within the lease agreement.

Upon review of the parties' respective arguments and supporting documentation, the Court observes that there are two contracts governing the dispute in this matter. First, there is the Airport Land Lease for Construction of Permanent Building between the County and Fanaero. Second, there is or was the August 1, 2014 Retail Aviation Fuel Agreement between the County and Fanaero's tenant, Contact.

Michigan law is well-established that "[a] contract must be interpreted according to its plain and ordinary meaning." *Holmes v Holmes*, 281 Mich App 575, 593; 760 NW2d 300 (2008), citing *St Paul Fire & Marine Ins Co v Ingall*, 228 Mich App 101, 107; 577 NW2d 188 (1998). "Under ordinary contract principles, if contractual language is clear, construction of the contract is a question of law for the court. If the contract is subject to two reasonable interpretations, factual development is necessary to determine the intent of the parties and summary disposition is therefore inappropriate." *Holmes v Holmes*, *supra* at 594; quoting *Meagher v Wayne State Univ*, 222 Mich App 700, 721-722; 565 NW2d 401 (1997).

"A party asserting a breach of contract must establish by a preponderance of the evidence that (1) there was a contract (2) which the other party breached (3) thereby resulting in damages to the party claiming breach." *Miller-Davis Co. v Ahrens Const., Inc.*, 495 Mich 161, 178; 848 NW2d 95 (2014). Clearly, the first element of the breach of contract claim has been satisfied.

However, the second element of the breach of contract claim, regarding an actual breach of the afore-mentioned contracts, is currently in dispute.

Plaintiffs allege in Paragraph 29 of the Complaint that:

Defendant, County, breached its contract with Plaintiffs in the following ways:

a. Imposing and/or attempting to impose unreasonable restrictions on Plaintiff's right to conduct business at OCIA, including the right to sell aviation fuel;
b. Harassing Plaintiffs by conducting unwarranted and unauthorized inspections of Plaintiff's premises;
c. Failing to act in good faith in its dealings with Plaintiffs;
d. By threatening Plaintiff's [sic] with disciplinary action up to and including efforts to evict Plaintiff's [sic] from OCIA.
e. By serving on Plaintiff's [sic] a notice to quit in furtherance of Defendants efforts to evict the Plaintiffs from OCIA.
f. By advising customers of Plaintiffs to find other fuel and maintenance facilities to do business and thereby damaging Plaintiff's reputation and standing and business at OCIA.

Conversely, Defendants argue that they have simply taken appropriate action against Plaintiffs on account of Plaintiffs' failure to obtain an Aviation Fuel Agreement, as required under Section 8.9 of the December 12, 2002 Rules and Regulations, prior to commencing the sale of aviation fuel in August 2018. While Defendants acknowledge that Plaintiffs had a prior Aviation Fuel Agreement, Defendants maintain that Plaintiffs voluntarily terminated that agreement.

The Court has reviewed John Shirk's January 29, 2016 email to Karl Randall in which he states that he would like to change Contact's fuel farm status from an FBO to facility-based tenants only. When Mr. Randall represented in his June 16, 2016 email to Mr. Shirk that "Contact Aero no longer has a retail fuel concession agreement," Mr. Shirk does not contest that representation, but rather responded by stating "[we]e will take care of it [removing references to having fuel for sale on Contact's website] ASAP. It is an oversight that some references remain."

The Court also takes note of John Shirk's July 16, 2018 email to Ms. Bush wherein he requested that Contact's "voluntarily suspended fuel re-seller's agreement be re-activated…It was Contact Aviation that voluntarily suspended our agreement and it should be a simple thing for us to lift our own suspension of the agreement." See Exhibit 11 of Plaintiffs' Response. All of these communications involving Mr. Shirk support Defendants' position that Contact had voluntarily terminated its August 1, 2014 Retail Aviation Fuel Agreement. Further, the evidence is clear that Plaintiffs operated without a license to sell aviation fuel for resale from the Department of Treasury for the months of August and September 2018.

In opposition, Plaintiffs offer the Affidavits of both Felicia Shirk, the Managing Director of Fanaero, and John Shirk, the Managing Director of Contact, to support their argument that the original Retail Aviation Fuel Agreement was not terminated. However, these Affidavits are neither dated nor signed, and consequently not notarized. See Exhibits 4 and 8 of Plaintiffs' Response. "To constitute a valid affidavit, a document must be (1) a written or printed declaration or statement of facts, (2) made voluntarily, and (3) confirmed by the oath or affirmation of the party making it, taken before a person having authority to administer such oath or affirmation." *Wood v Bediako*, 272 Mich App 558, 562; 727 NW2d 654 (2006).

As such, the Court finds that the Affidavits submitted by Plaintiffs are invalid and will not be considered. Even though Plaintiffs filed their Response while Michigan was under a State of Emergency as declared by Governor Whitmer, Plaintiffs had ample opportunity following the Governor's lifting of the stay at home order on June 1, 2020 as well as the issuance of the Michigan Supreme Court's Administrative Order 2020-18 on June 12, 2020 to remedy the defective Affidavits by obtaining signatures and notarizing those documents in support of their Response. However, this was not done. Accordingly, Plaintiffs have not offered any affidavits or

other documentary evidence to support their position and/or to create a genuine question of material fact so that Defendants would not be entitled to judgment as a matter of law. Therefore, Defendants' Motion for Summary Disposition is granted with respect to Plaintiffs' contract-based claims pursuant to MCR 2.116(C)(10).

Tortious Interference with Contractual Relations

With regard to Plaintiffs' claim for Tortious Interference with Contractual Relations,[1] Defendants argue that a governmental agency is immune from tort liability. Pursuant to MCL 691.1407(1), "a governmental agency is immune from tort liability if the governmental agency is engaged in the exercise or discharge of a governmental function." Under MCL 691.1401(b), "'[g]overnmental function' means an activity that is expressly or impliedly mandated or authorized by constitution, statute, local charter or ordinance, or other law. Governmental function includes an activity performed on public or private property by a sworn law enforcement officer within the scope of the law enforcement officer's authority, as directed or assigned by his or her public employer for the purpose of public safety."

MCL 259.132 provides that "[t]he acquisition of any lands for the purpose of establishing airports, landing fields or other aeronautical facilities; the acquisition, of airport protection privileges; the acquisition, establishment, construction, enlargement, improvement, maintenance, equipment and operation of airports, landing fields and other aeronautical facilities, and the exercise of any other powers herein granted to political subdivisions of this state, are hereby

[1] "The elements of tortious interference with a contract are (1) the existence of a contract, (2) a breach of the contract, and (3) an unjustified instigation of the breach by the defendant. By definition, tortious interference with a contract is an intentional tort. Indeed, it is well-settled that one who alleges tortious interference with a contractual...relationship must allege the intentional doing of a per se wrongful act or the doing of a lawful act with malice and unjustified in law for the purpose of invading the contractual rights or business relationship of another…A wrongful act per se is an act that is inherently wrongful or an act that can never be justified under any circumstances. If the defendant's conduct was not wrongful per se, the plaintiff must demonstrate specific, affirmative acts that corroborate the unlawful purpose of the interference." *Knight Enterprises v RPF Oil Co.*, 299 Mich App 275, 280; 829 NW2d 345 (2013). (Citations omitted).

declared to be public, governmental and municipal functions, exercised for a public purpose, and matters of public necessity." Since Plaintiffs cannot raise a tort claim against a governmental agency, Defendants argue that their tortious interference with contractual relations claim is barred against the County as a matter of law.

In relation to Ms. Bush, Defendants contend that she is entitled to governmental immunity because she was acting within the scope of her executive authority. Pursuant to MCL 691.1407(5), "[a] judge, a legislator, and the elective or highest appointive executive official of all levels of government are immune from tort liability for injuries to persons or damages to property if he or she is acting within the scope of his or her judicial, legislative, or executive authority." At a minimum, Ms. Bush was acting within the course and scope of her employment in the exercise of a governmental function via the management of the OCIA. In accordance with MCL 691.1407(2), an officer, employee, or member of a governmental agency is immune from tort liability for "an injury to a person or damage to property caused by the officer, employee, or member while in the course of employment or service or caused by the volunteer while acting on behalf of a governmental agency if all of the following are met: (a) The officer, employee, member, or volunteer is acting or reasonably believes he or she is acting within the scope of his or her authority. (b) The governmental agency is engaged in the exercise or discharge of a governmental function. (c) The officer's, employee's, member's, or volunteer's conduct does not amount to gross negligence that is the proximate cause of the injury or damage."

Not only do Defendants deny Plaintiffs' allegations against Ms. Bush, but Defendants maintain that Plaintiffs have failed to specify to whom Ms. Bush "falsely claimed that Contact was selling contaminated aviation fuel" and they have failed to produce any documentation to support this claim. Defendants assert further that Plaintiffs have not alleged that Ms. Bush

engaged in gross negligence to avoid governmental immunity. Moreover, Defendants argue that the alleged conduct could never reach the threshold of gross negligence. As such, this claim should be dismissed with prejudice.

In opposition, Plaintiffs claim that governmental immunity is inapplicable in actions for intentional misconduct such as the intentional inference with economic relations. Plaintiffs attempt to rely on the Affidavit of John Shirk to argue that Ms. Bush informed certain individuals and entities that Contact was selling fuel illegally. As a result of Ms. Bush's alleged actions, Plaintiffs maintain that Contact is losing income in the amount of $42,000.00 per month. Furthermore, Plaintiffs assert that Ms. Bush is not a government official, but simply an airport manager who is liable for her intentional acts that were made outside the scope of her duties.

Pursuant to MCL 691.1407(1), however, the Court observes that "a governmental agency is immune from tort liability if the governmental agency is engaged in the exercise or discharge of a governmental function." If an employee of a governmental agency acts or reasonably believes that she is acting within the scope of her authority, she will be immune from tort liability unless her conduct amounts to gross negligence. MCL 691.1407(2)(a) and (2)(c). Gross negligence is defined as "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results." MCL 691.1407(8)(a).

"[A]ny plaintiff who seeks to assert an intentional tort claim against a governmental defendant must demonstrate that the defendant committed the alleged tort outside the exercise or discharge of a governmental function. This is a very high—and extremely difficult—burden for a plaintiff to surmount because, as noted, when courts assess whether a governmental defendant was engaged in the exercise or discharge of a governmental function, we look to the *general activity* involved rather than the *specific conduct* engaged in when the alleged injury occurred.

Therefore, an act may be [the] exercise or discharge of a governmental function even though it results in an intentional tort. In other words, if a governmental agency commits an intentional tort during the exercise or discharge of a governmental function, the governmental agency is immune from tort liability." *Genesee Cty. Drain Comm'r v Genesee Cty.*, 309 Mich App 317, 327–28; 869 NW2d 635 (2015). (Citations omitted).

Here, Defendants have presented documentation to support their position that the County's actions, and the actions of Ms. Bush, toward Plaintiffs were within the exercise or discharge of their governmental functions. Regarding the allegations concerning Ms. Bush, specifically, Defendants argue that her purported conduct does not rise to the level of gross negligence for her to be subject to tort liability. As such, they are both immune from tort liability. The Court agrees.

The Court observes Plaintiffs' allegations that Defendants engaged in unethical, improper, and deceptive conduct to interfere with Plaintiffs' relationships, prospective relationships and expectancies. Yet, Plaintiffs do not provide specific factual allegations in their Complaint regarding the purported unethical, improper, and deceptive conduct. Again, Plaintiffs rely on the improper Affidavits of John Shirk and Felicia Shirk to allege that Ms. Bush claimed that Contact was selling aviation fuel illegally. As determined previously, however, the Court will not consider these defective Affidavits. Additionally, the Court finds that Plaintiffs' allegations do not evidence gross negligence by Ms. Bush. Without any proper evidentiary support of Plaintiffs' allegations and in consideration of Defendants' motion and supporting documentation, the Court finds that Plaintiffs' Count Two fails as a matter of law pursuant to MCR 2.116(C)(7).

For the foregoing reasons and viewing all evidence in the light most favorable to Plaintiffs, the Court finds that there are no material facts in dispute and Defendants are entitled to judgment as a matter of law. Therefore, Defendants' Motion for Summary Disposition is GRANTED in relation to Plaintiffs' contract-based claims pursuant to MCR 2.116(C)(10).

It is further ordered that Defendants' Motion for Summary Disposition is GRANTED in relation to Plaintiffs' Count Two pursuant to MCR 2.116(C)(7). As such, Count Two is dismissed from Plaintiffs' Complaint.

However, Defendants' request for attorney fees and costs is DENIED.

It is further ordered that Plaintiffs' request for summary disposition under MCR 2.116(I)(2) is DENIED.

"If the grounds asserted [in a summary disposition motion] are based on subrule (C)(8), (9), or (10), the court shall give the parties an opportunity to amend their pleadings as provided by MCR 2.118, unless the evidence then before the court shows that amendment would not be justified." MCR 2.116(I)(5). In accordance with MCR 2.116(I)(5), the Court shall provide Plaintiffs with the opportunity to amend their Complaint, with the exception of Count Two, within two weeks of this Opinion and Order.

Should Plaintiffs fail to amend their Complaint within two weeks of this Opinion and Order, this matter shall be dismissed in its entirety.

IT IS SO ORDERED.

October 7, 2020
Date

/s/ James M. Alexander
Hon. James M. Alexander
Circuit Court Judge