STATE OF MICHIGAN

COURT OF CLAIMS

EVAN NEILSON,

Plaintiff,

v Case No. 24-000049-MZ

MICHIGAN STATE POLICE and YVONNE BRANTLEY, Hon. Sima G. Patel

Defendants.
_____/

NICHOLAS SALSKI,

Plaintiff,

v Case No. 24-000099-MZ

MICHIGAN STATE POLICE, YVONNE BRANTLEY, and JARED CHIROS, Hon. Sima G. Patel

Defendants.
_____/

BRANDEE HART,

Plaintiff,

v Case No. 24-000106-MZ

MICHIGAN STATE POLICE, YVONNE BRANTLEY, and JARED CHIROS, Hon. Sima G. Patel

Defendants.
_____/

MERIK WHIPPLE,

Plaintiff,

v

Case No. 24-000118-MZ

MICHIGAN STATE POLICE and YVONNE BRANTLEY,

Hon. Sima G. Patel

Defendants.
_____/

DAVID MINCHELLA,

Plaintiff,

v

Case No. 24-000124-MZ

MICHIGAN STATE POLICE and YVONNE BRANTLEY,

Hon. Sima G. Patel

Defendants.
_____/

NASON HAENLEIN,

Plaintiff,

v

Case No. 24-000131-MZ

MICHIGAN STATE POLICE and YVONNE BRANTLEY,

Hon. Sima G. Patel

Defendants.
_____/

CASEY MCLAUGHLIN-SMITH,

Plaintiff,

v

Case No. 24-000132-MZ

MICHIGAN STATE POLICE and YVONNE BRANTLEY,

Hon. Sima G. Patel

Defendants.
_____/

OPINION AND ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' 5/23/24, 9/24/24, AND 10/2/24 MOTIONS FOR SUMMARY DISPOSITION

The Court GRANTS summary disposition in favor of all defendants of all plaintiffs' Count I under MCR 2.116(C)(8). The Court GRANTS summary disposition in favor of all defendants of plaintiff Brandee Hart's Counts IV and V because they were filed beyond the Court of Claims notice period. The Court GRANTS defendant Jared Chiros's motion for summary disposition of plaintiff Hart's Counts VII and VIII and plaintiff Nicholas Salski's Counts IV and V based on qualified immunity. To the extent those counts are raised against defendant Yvonne Brantley, those claims are not dismissed. To the extent plaintiff Evan Neilson's Counts I, II, and III are based on the fraudulent concealment of discriminatory promotional practices, the Court HOLDS IN ABEYANCE defendants' motions for summary disposition pending the Michigan Supreme Court's resolution of *McCormick v Mich State Univ* (Docket No. 168334). Defendants' motions for summary disposition are DENIED in all other respects.

I. BACKGROUND

The claims involved in these seven consolidated lawsuits arise from events at the Flint Post of the Michigan State Police (MSP). Broadly, plaintiffs contend that former Post Commander Yvonne Brantley played favorites with the troopers and officers under her command. One of her favorites, former Sergeant Jared Chiros, allegedly created a hostile work environment, sexually harassed and assaulted a trooper under his command, and threatened and physically assaulted other coworkers.

Events boiled over on March 25, 2023. That evening, several employees of the Flint Post attended the wedding of a coworker and went to a local bar after. At the bar, Chiros called plaintiff

Neilson a "snitch ass bitch" for reporting in 2021, that Chiros lied in a report regarding the circumstances of an arrest. Chiros told Casey Smith-McLaughlin and Nason Haenlein that he wanted to go outside and fight Neilson. He accused Hart of "fuck[ing] with snitches," became belligerent, and followed her around the bar. Neilson reported Chiros's conduct on March 27, 2023.

The MSP Professional Standards Committee, essentially Internal Affairs, investigated several allegations against Chiros and interviewed various troopers at the Flint Post, including each plaintiff in this matter. The MSP suspended Chiros on May 12, 2023, and he was later terminated. Brantley allegedly retaliated against the seven plaintiffs by falsely claiming they lied during their interviews. In August 2023, Brantley secretly placed plaintiffs on the Genesee County *Brady-Giglio* list. When a law enforcement officer has engaged in dishonesty, it must be disclosed to the prosecutor's office. The listed officer then cannot be called as a witness for the prosecution and statements in their police reports come into question. The officer's reputation is seriously undermined, impacting his or her ability to function as a law enforcement officer. Although plaintiffs' names were later removed, they allege the damage was already done. The MSP later investigated Brantley's conduct and she was terminated in the spring of 2024.

In January 2024, the MSP notified Nicholas Salski and Hart that they were under investigation for insurance fraud. In August 2022, Salski and Hart were involved in an off-duty motor vehicle accident in their personal vehicles. Neither reported the accident to authorities, claiming no injury occurred and they believed the damage to their vehicles did not exceed $1,000. See MCL 257.622 (describing when an individual is not required to report a motor vehicle accident to law enforcement). During an interview in an internal affairs investigation, Chiros reported Salski and Hart for insurance fraud. Criminal charges were not levied against Salski and Hart, but

an internal investigation in the Spring of 2024, led to 10-day suspensions and their return to the *Brady-Giglio* list.

II. LAWSUITS

Plaintiff Neilson filed suit first in Docket No. 24-000049-MZ against defendants MSP and Brantley. He alleged that in 2021, he internally reported his belief that Chiros made misrepresentations in a police report. Neilson asserted that in retaliation he was passed over for a promotion. To ensure that her preferred candidate, Chiros, received the position, Brantley secretly provided the interview questions to Chiros ahead of time. In the summer of 2022, Brantley instructed Neilson to apologize to Chiros for accusing him of dishonesty. Neilson alleged that Chiros verbally harassed him and his wife at the bar on March 25, 2023. Neilson then filed the report that initiated the internal investigation against Chiros. Stacy Moore called Neilson and told him he had committed "career suicide." Then, on August 11, 2023, Brantley listed Neilson on the Genesee County *Brady-Giglio* list.

Plaintiff Salski filed suit in Docket No. 24-000099-MZ against defendants MSP, Brantley, and Chiros. Salski described that on the evening of January 5, 2023, he observed Chiros engage in the sexual assault of a female trooper (Hart). Salski learned he had been placed on the *Brady-Giglio* list on September 9, 2023. Salski contended that defendants further retaliated against him by moving his patrol duties from Genesee to Shiawassee County. On October 26, 2023, Chiros was interviewed by Specialist Lieutenant Eric Shumaker. During that interview, Chiros accused Salski and Hart of fraud in relation to their August 10, 2022 accident in retaliation for their involvement in the investigation against him. Salski was suspended for 10 days following an internal investigation and was placed back on the *Brady-Giglio* list.

Plaintiff Hart filed suit in Docket No. 24-000106-MZ against defendants MSP, Brantley, and Chiros. She alleged that between March 2022, and January 2023, Chiros regularly sexually harassed her, and sexually assaulted her by rubbing her leg under tables and slapping and groping her buttocks. On January 5, 2023, Chiros invited a group of troopers to his home for drinks after a work event. Chiros directed the male officers to "strand" Hart, who had been drinking alcohol, at his home so he could have sex with her. Fellow plaintiff Salski warned Hart. Hart also raised allegations related to the incidents on March 25, 2023. She asserted that in retaliation for her involvement in the internal investigation, Brantley placed her on the *Brady-Giglio* list in August 2023, and Chiros falsely accused her of insurance fraud, leading to an internal investigation and her 10-day suspension and being placed on the *Brady-Giglio* list in the spring of 2024.

Plaintiff Merik Whipple filed suit in Docket No. 24-000118-MZ against defendants MSP and Brantley. He alleged that Chiros was his supervisor through the summer of 2022. Whipple requested to switch shifts because Chiros created a hostile work environment by engaging in abusive behaviors, blackmail, and retaliation. Whipple was only removed from Chiros's shift for six months. Upon Whipple's return, Chiros physically assaulted Whipple at a bar and other officers had to restrain Chiros. Chiros later bragged about his assault of Whipple. Chiros appeared on Whipple's doorstep to harass him for calling in sick for a shift. Whipple alleged that he reported these events during the internal affairs investigation, and Brantley retaliated against him by placing him on the *Brady-Giglio* list.

Plaintiff David Minchella filed suit in Docket No. 24-000124-MZ against defendants MSP and Brantley. Minchella was assigned to handle several of Chiros's cases following his suspension. He then learned from a Genesee County Sheriff's Deputy stationed at the county jail that Chiros texted him an unsolicited picture of his penis. Minchella reported this conduct as part

of the internal investigation. He learned in late September 2023, that Brantley had placed him on the *Brady-Giglio* list.

Plaintiff Haenlein filed suit in Docket No. 24-000131-MZ against defendants MSP and Brantley. He asserted that Chiros approached him at the bar on March 25, 2023, called Neilson a snitch, and stated his intent to fight Neilson. Haenlein gave a statement about this event during the internal investigation. Haenlein alleged that Brantley retaliated by placing him on the *Brady-Giglio* list.

Finally, plaintiff Smith-McLaughlin filed suit in Docket No. 24-000132-MZ against defendants MSP and Brantley. Smith-McLaughlin also observed Chiros call Neilson a snitch on March 25, 2023, and state his desire to fight him. Two days later, Brantley called Smith-McLaughlin into her office and ordered him to recount all events that occurred at the bar. She then ordered Smith-McLaughlin to pretend the meeting had not occurred. During the internal investigation, Chiros repeatedly attempted to talk to him. Smith-McLaughlin later learned that Brantley placed him on the *Brady-Giglio* list for allegedly lying during the investigation.[1]

Plaintiffs raised five counts in common: Free Speech Retaliation in Violation of Const 1963, art I, § 5, based on defendants placing them on the *Brady-Giglio* list in retaliation for their speech during the internal investigation; Denial of Due Process for defendants' interference with their property interest of being able to perform in their employment by placing them on the *Brady-Giglio* list; Denial of Substantive Due Process based on defendants' selective retaliation against

[1] The Court notes that all seven plaintiffs also filed federal suits against Brantley in the Eastern District of Michigan. Salski also named Chiros as a defendant in his federal action.

employees who reported the unlawful and unethical conduct of favored employees; Defamation against Brantley (all plaintiffs) and against Chiros (plaintiffs Salski and Hart) for falsely accusing plaintiffs of dishonesty during the internal investigation (all plaintiffs) and of insurance fraud (plaintiffs Salski and Hart); and False Light Invasion of Privacy for the same reasons. Neilson's due process claims were additionally based on defendants' denial of a promotion in 2021. Plaintiff Hart raised an additional count of Sexual Discrimination in violation of the Elliott-Larsen Civil Rights Act (ELCRA) and Substantive Due Process Violation of Bodily Integrity. Plaintiff Minchella raised an additional count of Retaliation in Violation of the ELCRA for being placed on the *Brady-Giglio* list in retaliation for reporting Chiros's sexual harassment of a jail deputy.

III. SUMMARY DISPOSITION MOTIONS

Brantley did not respond to any of the complaints against her and a default entered on October 31, 2024. Plaintiffs later moved to enter a default judgment against Brantley and to hold the MSP financially liable for those damage awards. Following a September 25, 2025 hearing, the Court denied that motion without prejudice.

In the meantime, defendants MSP and Chiros moved for summary disposition under MCR 2.116(C)(7), (8), and (10). Defendants contended that plaintiffs' claims sounded in personal injury and, therefore, plaintiffs were required to file notice of their claims within six months of accrual as required by MCL 600.6431(4). Defendants asserted that notice was not timely filed, divesting the Court of jurisdiction and requiring dismissal under MCR 2.116(C)(7). Defendants further contended that plaintiffs failed to plead viable claims and that plaintiffs could not factually support their claims.

A. NOTICE

MCL 600.6431(1) requires a plaintiff to file with the clerk of the Court of Claims "within 1 year after the action has accrued" "either a written claim or a written notice of intention to file a claim." For a claim of property damage or personal injury, a plaintiff must file the claim or notice "within 6 months after the event that gives rise to the claim." MCL 600.6431(4). This time requirement is a condition precedent to "successfully expose the defendant state agencies to liability." *Fairley v Dep't of Corrections*, 497 Mich 290, 298; 871 NW2d 129 (2015). Failure to meet this condition precedent requires dismissal of an action. *Id*. at 300.

Defendants contend that plaintiffs' claims were subject to the shorter notice period applicable to claims of personal injury. The Court of Appeals recently held, although in an unpublished opinion, that the six-month notice period for personal injury claims requires a claim raising some type of physical harm. *Chiravuri v Univ of Mich*, unpublished opinion of the Court of Appeals, issued September 11, 2025 (Docket No. 373389), slip op at 5-6. The only allegations raised by any plaintiff that sound in physical harm are Hart's claims that Chiros sexually assaulted her and Whipple's allegation that Chiros physically assaulted him.

Hart raised one count tied directly to the sexual assault allegations—denial of the substantive due process right to bodily integrity. The final act of alleged sexual assault occurred on January 5, 2023. As this claim was based on physical harm, Hart was required to file notice of that claim within six months, i.e., by June 5, 2023. Even if the one-year notice period applied, Hart would have been required to file notice by January 5, 2024. However, Hart did not file notice of her claim until she filed suit on July 25, 2024. Accordingly, Hart's Count IV Denial of the

Substantive Due Process Right to Bodily Integrity must be dismissed under MCR 2.116(C)(7) for lack of timely notice.

Although Whipple made allegations regarding his physical assault, he did not raise any count regarding the 2022 physical altercation with Chiros. Rather, Whipple focused on his placement on the *Brady-Giglio* list. Accordingly, unlike Hart, none of Whipple's claims were subject to the shortened six-month notice period.

Hart raises two additional counts not common to all plaintiffs that are subject to the one-year notice period. In Count V, Hart alleged Sex Discrimination in Violation of the ELCRA. The latest possible incident of sexual harassment to support Hart's claim occurred on March 25, 2023. Hart's July 25, 2024 notice came four months too late. Accordingly, Hart's Count V must also be dismissed under MCR 2.116(C)(7).

In Count VI, Retaliation in Violation of the ELCRA, Hart contends that Chiros and Brantley retaliated against her for reporting Chiros's conduct. The retaliation claim did not accrue until Hart learned she was placed on the *Brady-Giglio* list in August or September of 2023. Hart filed notice on July 25, 2024, and therefore, this claim was timely raised.

The remainder of plaintiffs' claims are not based on personal injury and plaintiffs had one year to file notice. With one exception described in the next paragraph, plaintiffs' claims are based on their placement on the *Brady-Giglio* list. Brantley placed all plaintiffs' names on the list on August 11, 2023; however, plaintiffs learned of their placement on the list at different times throughout August and September of that year. Plaintiffs Neilson, Salski, Hart, Whipple, Minchella, and Haenlein all timely filed notice of their claims on or before August 11, 2024. Plaintiff Smith-McLaughlin alleges that he did not learn of his placement on the list until

September 11, 2023. Accordingly, unless this claim is disproven, Smith-McLaughlin's August 21, 2024 complaint provided timely notice of his claims.

In addition to placement on the *Brady-Giglio* list, Neilson also bases his claims on being passed over for a promotion in October 2021. Notice of that claim was required by October 2022, long before Neilson filed his first notice of intent to file suit in December 2023. However, Neilson contends that the notice period was tolled because defendants fraudulently concealed the existence of this cause of action. MCL 600.5855 provides for the tolling of statutes of limitation when a defendant fraudulently conceals the existence of a cause of action as follows:

> If a person who is or may be liable for any claim fraudulently conceals the existence of the claim or the identity of any person who is liable for the claim from the knowledge of the person entitled to sue on the claim, the action may be commenced at any time within 2 years after the person who is entitled to bring the action discovers, or should have discovered, the existence of the claim or the identity of the person who is liable for the claim, although the action would otherwise be barred by the period of limitations.

The Court of Appeals has described fraudulent concealment as follows:

> Fraudulent concealment means employment of artifice, planned to prevent inquiry or escape investigation, and mislead or hinder acquirement of information disclosing a right of action. The acts relied on must be of an affirmative character and fraudulent. The fraud must be manifested by an affirmative act or misrepresentation. Thus, the plaintiff must show that the defendant engaged in some arrangement or contrivance of an affirmative character designed to prevent subsequent discovery. There must be concealment by the defendant of the existence of a claim or the identity of a potential defendant, and the plaintiff must plead in the complaint the acts or misrepresentations that comprised the fraudulent concealment. If there is a known cause of action there can be no fraudulent concealment which will interfere with the operation of the statute, and in this behalf a party will be held to know what he ought to know.
>
> For a plaintiff to be sufficiently apprised of a cause of action, a plaintiff need only be aware of a possible cause of action. [*Doe v Roman Catholic Archbishop*, 264 Mich App 632, 642-643; 692 NW2d 398 (2004) (cleaned up).]

"A plaintiff is required to plead more than mere silence." *Reserve at Heritage Village Ass'n v Warren Fin Acquisition, LLC*, 305 Mich App 92, 123; 850 NW2d 649 (2014).

Neilson sufficiently pled fraudulent concealment in his complaint. Neilson described that in October 2021, he was denied an interview for an open sergeant position despite that he had passed the sergeant's exam. Chiros was given the position. In the summer of 2022, Brantley telephoned Neilson and informed him that he needed to apologize to Chiros for reporting in July 2021, that Chiros had lied in a police report. This "call raised red flags for [Neilson] as it would appear Defendant Brantley made the call the intimidate and retaliate against [Neilson] for his reports" regarding Chiros. Neilson believed Brantley was "implying she would not treat [Neilson] fairly until he had apologized to" Chiros for reporting his "gross misconduct." Neilson described the conspiracy to promote certain troopers over others as follows:

> 37. That unbeknownst to [Neilson], it is believed that Defendant Brantley had developed a relationship with Sgt. Chiros and several other administrative and command officers with the [MSP].
>
> 38. That in fact, it has been determined that Defendant Brantley would favor certain individuals and target them for either promotion or non-promotion and, for those who she wanted promoted, she would feed them answers to test questions and provide the test questions to prepare for taking the examination.
>
> 39. That moreover, Defendant Brantley was in charge of promotions and had the power to allow [Neilson] to promote to sergeant; however, she utilized her power in a retaliatory manner, taking action against [Neilson] in retaliation for his prior reports of Sgt. Chiros' unlawful behavior.
>
> 40. That furthermore, it is believed that Lt. Short, who had been promoted by Defendant Brantley, worked in unison with Defendant Brantley to undermine Plaintiff's promotional opportunities after Plaintiff reported Sgt. Chiros lied on a police report.
>
> 41. That when [Neilson] had filed the above-referenced administrative complaint [in July 2021], Lt. Short was supposed to immediately file an Internal Affairs complaint; he did not do so.

* * *

> 43. That following [Neilson's] report of Sgt. Chiros' false police report and his behavior at and after said wedding, [Neilson] received a telephone call from Stacy Moore, who criticized [Neilson] for filing his complaint against Sgt. Chiros and disclosed to [Neilson] that what he had done was "career suicide."
>
> 44. That a later investigation uncovered that Defendant Brantley and Sgt. Chiros had called Ms. Moore to find out what was going on with [Neilson], what he was going to do, and what he had complained about.

In July 2023, Neilson was demoted to road patrol through August 7, 2023, and was placed on the *Brady-Giglio* list on August 11. Neilson continued:

> 62. That Defendants retaliated against [Neilson] by denying him promotions. . . .
>
> 63. That Defendants fraudulently concealed their involvement in rigging promotions, blocking [Neilson's] promotional opportunities. . . .
>
> 64. That [Neilson] did not discover Defendants' involvement and that Defendants were the cause of these adverse actions until the results of an internal affairs investigation were publicly disclosed in February 2024.

Neilson alleged more than mere silence. He alleged that Brantley hand chose a small number of individuals to favor, regardless of their improper police conduct, and secretly provided them interview questions ahead of time. Brantley, along with Chiros and other officers, actively undermined and retaliated against individuals who called out the improper conduct of the chosen few. Neilson alleged that although he was concerned, he did not actually know what happened until the public release of information from an internal affairs investigation.

Although Neilson sufficiently pled fraudulent concealment in his complaint, it is not clear at this time whether MCL 600.5855 tolls the *notice* period of the COCA. The Michigan Supreme Court recently ordered oral argument on whether to grant leave to appeal in *McCormick v Mich State Univ* (Docket No. 168334), in relevant part, to consider "whether the fraudulent-concealment exception in MCL 600.5855 applies to the statutory notice period in MCL 600.6431(1)." The

Court will await resolution of that matter before determining its jurisdiction to consider Neilson's claims on this theory.

The Court will HOLD IN ABEYANCE its determination whether Neilson filed timely notice of his claims based on promotional practices at the MSP Flint Post until the Supreme Court resolves *McCormick*. The Court GRANTS defendants' motion for summary disposition under MCR 2.116(C)(7) of Hart's Counts IV and V. The Court otherwise DENIES defendants' motions for summary disposition based on belated notice.

B. MCR 2.116(C)(8) AND (C)(10)

Defendants also seek summary disposition under MCR 2.116(C)(8) and (C)(10).

> A motion under MCR 2.116(C)(8) tests the *legal sufficiency* of a claim based on the factual allegations in the complaint. When considering such a motion, a trial court must accept all factual allegations as true, deciding the motion on the pleadings alone. A motion under MCR 2.116(C)(8) may only be granted when a claim is so clearly unenforceable that no factual development could possibly justify recovery.
>
> A motion under MCR 2.116(C)(10), on the other hand, tests the *factual sufficiency* of a claim. When considering such a motion, a trial court must consider all evidence submitted by the parties in the light most favorable to the party opposing the motion. A motion under MCR 2.116(C)(10) may only be granted when there is no genuine issue of material fact. A genuine issue of material fact exists when the record leaves open an issue upon which reasonable minds might differ. [*El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159-160; 934 NW2d 665 (2019) (cleaned up).]

1. DEFAMATION/FALSE LIGHT INVASION OF PRIVACY

All plaintiffs contend that Brantley defamed them and invaded their privacy by placing them in a false light in reporting to the Genesee County Prosecutor's Officer that they had been dishonest in an internal investigation, resulting in their placement on the *Brady-Giglio* list. Salski

and Hart further allege that Chiros committed these torts by falsely reporting that they committed insurance fraud connected to their August 2022 accident.

Brantley did not answer the complaints against her and a default against her has entered. And the MSP has not argued in support of summary disposition of these claims on Brantley's behalf. Accordingly, there is no ground for this Court to dismiss the defamation and false light counts based on Brantley's placing plaintiffs on the *Brady-Giglio* list.

Chiros seeks summary disposition of the defamation and false light claims raised against him by Salski and Hart. Within his (C)(8) ad (C)(10) arguments, Chiros claims governmental immunity and that he was protected by absolute and qualified privileges. Defamation and false light are intentional torts. A government agent is immune from liability for an intentional tort if (1) the employee was acting or reasonably believed he was acting in the scope of his authority; (2) the acts were taken in good faith and not with malice; and (3) the acts were discretionary, rather than ministerial. *Odom v Wayne Co*, 482 Mich 459, 480; 760 NW2d 217 (2008). Chiros was clearly acting within the scope of his employment when he was interviewed as part of an internal investigation on October 26, 2023. Although Chiros was suspended in May 2023, he remained an MSP employee until December 2023. Salski and Hart alleged that Chiros did not act in good faith, however. They allege that Chiros waited more than a year to report his belief that Salski and Hart illegally failed to report their accident, suggesting that the report was made in retaliation for their involvement in the internal affairs investigation against Chiros and not because he honestly believed they engaged in malfeasance. Salski and Hart also argue that Chiros falsely claimed that Salski was driving under the influence at the time as an alternative explanation for why Salski and Hart did not contemporaneously make an accident report. These allegations overcome Chiros's claimed entitlement to governmental immunity.

Chiros contends that the defamation claim must be dismissed because his statements were subject to an absolute privilege. "[P]ersons who make statements to the police when reporting crimes or assisting the police in investigating crimes enjoy a privilege in those statements against the police divulging them for any purpose other than law enforcement." *Eddington v Torrez*, 311 Mich App 198, 201; 874 NW2d 394 (2015). The facts of this case do not fall neatly into this category, however. Chiros was himself a law enforcement officer who was the subject of an internal investigation. He made his statements in the course of an internal investigation. The Court declines to extend absolute privilege to these circumstances.

Chiros also contends that he enjoyed a qualified privilege requiring dismissal of the defamation and false light claims. A defendant is entitled to qualified immunity if he establishes the following elements: "(1) good faith, (2) an interest to be upheld, (3) a statement limited in its scope to this purpose, (4) a proper occasion, and (5) publication in a proper manner and to proper parties only." *Johnson v Mich Minority Purchasing Council*, 341 Mich App 1, 17-18; 988 NW2d 800 (2022) (cleaned up). "A plaintiff may overcome a qualified privilege only by showing that the statement was made with actual malice, i.e., with knowledge of its falsity or reckless disregard of the truth." *Id*. at 18. Here, the question is whether Chiros truthfully believed his report that Salski and Hart did not honestly believe the damage to their vehicles was under $1,000 such that they were not required to report their accident. Salski and Hart allege that Chiros must have acted with malice because he waited to make the report until he had a reason to retaliate against them. Chiros may have waited to make the report for improper reasons, but that does not mean the report was false. Following an internal investigation, MSP officials concluded that Salski and Hart did not honestly believe they were not required to report the accident. The Court finds that this

supports Chiros's qualified immunity defense to the defamation and false light counts raised by Salski and Hart.

Salski and Hart's false light claims also must be dismissed on the merits. To support a claim for false light invasion of privacy, "a plaintiff must show that the defendant broadcast to the public in general, or to a large number of people" the subject information. *Puetz v Spectrum Health Hosps*, 324 Mich App 51, 69; 919 NW2d 439 (2018) (cleaned up). There is no allegation that Chiros widely publicized his statements against Salski and Hart; he made the statements to officers conducting an internal investigation during an official interview. Accordingly, the Court GRANTS Chiros's motion for summary disposition of Salski's Count IV Defamation and Count V False Light Invasion of Privacy, and Hart's Count VII Defamation and Count VIII False Light Invasion of Privacy as they relate to defendant Chiros, but not defendant Brantley.

2. RETALIATION IN VIOLATION OF THE ELCRA

In her Count VI, Hart alleges that defendants MSP, Brantley, and Chiros retaliated against her for reporting Chiros's sexual harassment and assault by placing her on the *Brady-Giglio* list and reporting and punishing her for failing to report her motor vehicle accident with Salski. In his Count IV, Minchella alleges that defendants MSP and Brantley retaliated against him for reporting that Chiros sexually harassed an Oakland County Sheriff's Deputy by texting him a photo of his penis by placing him on the *Brady-Giglio* list.

Defendant MSP's motion for summary disposition of this count is limited to Hart's claim that the MSP retaliated against her by suspending her for 10-days and placing her on the *Brady-Giglio* list following the internal investigation into the charge of insurance fraud. The MSP does not seek summary dismissal of Minchella's claim of retaliation in violation of the ELCRA.

Defendant Chiros seeks summary disposition of Hart's retaliation claim because he claims her "timeline is factually impossible."

The Court first notes that Chiros mischaracterizes Hart's complaint. Chiros focuses on Hart's placement on the *Brady-Giglio* list in August 2023, and argues that as this occurred before he reported Hart's insurance fraud in October 2023, the two events are not connected. However, Hart alleged that the MSP suspended her for 10 days and placed her back on the *Brady-Giglio* list in April 2024, as a result of Chiro's October 2023 report. Chiros also contends that he cannot be held liable for retaliation because he is not an employer. However, this is inconsistent with the ELCRA. An employer for purposes of the ELCRA includes "an agent of the" employer, such as a supervisory officer like Chiros. MCL 37.2201(a).

Turning to defendants' motions for summary disposition on the merits of Hart's ELCRA retaliation claim:

> To establish a prima facie case of unlawful retaliation under the [ELCRA], a plaintiff must show (1) that he engaged in a protected activity; (2) that this was known by the defendant; (3) that the defendant took an employment action adverse to the plaintiff; and (4) that there was a causal connection between the protected activity and the adverse employment action. [*El-Khalil*, 504 Mich at 161 (cleaned up).]

Hart alleged that she was engaged in a protected activity; she reported during the internal investigation that Chiros had sexually harassed and assaulted her. Both the MSP and Chiros were aware of Hart's report. The MSP took an employment action adverse to Hart; in April 2024, Hart was suspended for 10 days and was placed back on the *Brady-Giglio* list. Defendants contend that there is no causal connection because the April 2024 penalties were based on evidence of Hart's wrongdoing during the investigation into her August 2022 accident with Salski, and not her report of Chiros's misconduct. There remains a question of fact regarding defendants' motivation

precluding summary disposition of her claims. The Court DENIES defendants' motions for summary disposition of Hart's claim of retaliation in violation of the ELCRA.

C. CONSTITUTIONAL CLAIMS

The MSP and Chiros seek summary disposition of plaintiffs' constitutional claims as well. These counts are Count I retaliation against plaintiffs for exercising their rights to free speech, Count II denial of due process for interfering in plaintiffs' property interest in performing their jobs by placing them on the *Brady-Giglio* list in August 2023 without notice and based on false allegations of dishonesty, and Count III denial of substantive due process based on defendants' scheme to favor Chiros over plaintiffs because they reported Chiros's wrongdoing.

Defendants first contend that these constitutional claims must be dismissed because plaintiffs have an adequate legal remedy outside of court. Defendants acknowledge that monetary claims against the state for violation of the state constitution "may be recognized in appropriate cases." *Bauserman v Unemployment Ins Agency*, 509 Mich 673, 693; 983 NW2d 855 (2022). A cause of action against the state for a state constitutional violation "exists except in two specific circumstances: (1) when the Constitution has delegated to another branch of government the obligation to enforce the constitutional right at issue or (2) when another branch of government has provided a remedy that we consider adequate." *Id.* at 706.

Defendants contend that the executive branch has provided an adequate remedy to rectify plaintiffs' damages: the grievance procedures under the civil service rules and the parties' collective bargaining agreement (CBA). The Supreme Court held in *Bauserman*, 509 Mich at 710, that "[a]dministrative agencies don't have the power to determine constitutional questions or afford consequential damages." Further, defendants have cited no authority to support that the

grievance procedures under the civil service rules or a CBA have been found to be an adequate remedy for a public employee's constitutional claims. Moreover, the CBA at issue in this case specifically states that it does not deny any employee any rights or benefits extended by statute or constitution and that claims related to those rights "shall not be brought under the grievance procedures set forth in this agreement." This is not a ground to support summary disposition.

Chiros further contends that the constitutional claims raised against him by Salski and Hart must be dismissed because "the Michigan Supreme Court has held that no inferred damages remedy for violating a state constitutional right exists against individual government employees." Although the cited case of *Lavey v Mills*, 248 Mich App 244; 639 NW2d 261 (2001), included as defendants an MSP trooper and a child protective services worker, the cases upon which *Lavey* relied do not support this legal proposition. See *Jones v Powell*, 462 Mich 329; 612 NW2d 423 (2000), relying on *Smith v Dep't of Public Health*, 428 Mich 540; 410 NW2d 749 (1987) (explaining in a case against police officers for the city of Detroit that a federal or state constitutional claim against a municipality or municipal employee cannot proceed in state court because there are alternative remedies available). Rather, a claim against a state employee in his or her official capacity is akin to a claim against the state and is properly raised in state court, *Mays v Governor*, 506 Mich 157, 198; 954 NW2d 139 (2020), and plaintiffs have filed suit in federal court against Brantley, and Salski against Chiros, in their individual capacities.

1. RETALIATION FOR FREE SPEECH

In relation to each plaintiff's Count I, retaliation for engaging in free speech, defendants assert that reporting the alleged misconduct of a supervising sergeant (Chiros) up the chain of command and in an internal affairs investigation is not protected speech under Const 1963, art 1,

§ 5. Defendants contend that to support such a claim, a plaintiff must show that he or she made a statement in his or her private capacity on a matter of public concern and his or her interest in speech must outweigh that of the public employer in promoting the efficiency of the public services it provides. When a public employee reports concerns up the chain of command, on the other hand, defendants assert he or she is acting within the confines of his employment. *Mayhew v Smyrna Twp*, 856 F3d 456, 465 (CA 6, 2017).

The right to free speech under the Michigan Constitution is coterminous with the federal First Amendment right. Relevant to the issues in this case, the United States Court of Appeals for the Sixth Circuit has held:

> It is long "settled that a state cannot condition public employment on a basis that infringes the employee's constitutionally protected interest in freedom of expression." *Connick v Myers*, 461 US 138, 142; 103 S Ct 1684; 75 L Ed 2d 708 (1983). However, because "government offices could not function if every employment decision became a constitutional matter," *id*. at 143, a public employee's First Amendment rights are narrower than the citizenry at large. See, e.g., *Pickering v Bd of Educ*, 391 US 563, 568; 88 S Ct 1731; 20 L Ed 2d 811 (1968). That is, "the First Amendment protects a public employee's right, *in certain circumstances*, to speak as a citizen addressing matters of public concern." *Garcetti v Ceballos*, 547 US 410, 417; 126 S Ct 1951; 164 L Ed 2d 689 (2006) (emphasis added).
>
> A public employee alleging First Amendment retaliation must satisfy three requirements. *Evans-Marshall v Bd of Educ*, 624 F3d 332, 337-38 (CA 6, 2010). First, the employee must speak on "matters of public concern." *Id*. at 337, citing *Connick*, 461 US at 143. Second, the employee must speak as a private citizen and not as an employee pursuant to his official duties. *Id*. at 338, citing *Garcetti*, 547 US at 421. Third, the employee must show that his speech interest outweighs "the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees." *Id*., quoting *Pickering*, 391 US at 568. [*Mayhew*, 856 F3d at 461-462.]

At issue is whether plaintiffs' statements to MSP officials during the internal investigation were speech "as a private citizen and not as an employee pursuant to his official duties." "[W]hile the First Amendment invests public employees with certain rights, it does not empower them to

'constitutionalize the employee grievance.' " *Garcetti*, 547 US at 420, quoting *Connick*, 461 US at 154. It is not dispositive that the public employee exercised his or her speech in his office, and not in public. *Garcetti*, 547 US at 420. The question is whether the public employee was speaking "pursuant to [the] duties" of his or her position; "when public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline." *Id*. at 421. "Restricting speech that owes its existence to a public employee's professional responsibilities does not infringe any liberties the employee might have enjoyed as a private citizen. It simply reflects the exercise of employer control over what the employer itself has commissioned or created." *Id*. at 421-422.

According to this precedent, if an employee makes an internal report about a supervisor's conduct and then participates in an internal investigation or review about that report, and if these activities are part of the employee's official duties, then the speaker is not engaged in speech as an ordinary citizen. With its initial motion for summary disposition, the MSP presented a Michigan State Police Official Order 1, Article 4, effective April 19, 2022. Section 4.24 requires members to report to a commanding or supervising officer if another MSP member violates the rules of conduct. The failure to report is cause for discipline. Section 4.35 requires members to "fully and truthfully answer questions *pertaining to job-related matters* or to their conduct which is under investigation by the department when ordered to do so by a supervisor." "Job related matters include on duty conduct, use of department materials, supplies, or equipment, and criminal conduct or other conduct that has a direct relationship to the member's position in the department." Plaintiffs were required to truthfully answer questions during the May 2023 internal investigation. Accordingly, their speech was part of their official duties and was not made as private citizens.

Free speech protections did not apply and the Court must summarily dismiss all plaintiffs' Count I under MCR 2.116(C)(8).

2. DUE PROCESS CHALLENGES

Plaintiffs raise both a procedural due process and substantive due process claim based on their placement on the *Brady-Giglio* list. "While the touchstone of due process, generally, is protection of the individual against arbitrary action of government, the substantive component protects against the arbitrary exercise of governmental power, whereas the procedural component is fittingly aimed at ensuring constitutionally sufficient procedures for the protection of life, liberty, and property interests." *Bonner v Brighton*, 495 Mich 209, 224; 848 NW2d 380 (2014) (cleaned up).

The first question under either standard is whether the interest raised by the plaintiff "comes within the definition of life, liberty or property." *Id.* at 225 (cleaned up). Defendants argue that plaintiffs do not have a protected property interest in their employment. "A property right emanates from a contract or statute; public employment in and of itself is not a property interest automatically entitling an employee to procedural due process." *Eplee v Lansing*, 327 Mich App 635, 655; 935 NW2d 104 (2019) (cleaned up). "[A] public employee does not have a property right in continued employment when the position is held at the will of the employee's superiors and the employee has not been promised termination only for just cause." *Id.* at 656 (cleaned up). Plaintiffs in this case had a property interest in their employment because they could only be terminated for just cause.

In addition, under either standard, a plaintiff must establish he or she was actually deprived of a property right. *Bauserman*, 503 Mich at 188. Defendants contend that Whipple, Minchella,

Haenlein, and Smith-McLaughlin cannot make this showing. Despite being briefly placed on the *Brady-Giglio* list, they did not allege that they were prevented from testifying in any of their cases or that their authority and right to perform their job were impacted in any way. In the fall of 2023, Salski and Hart were temporarily assigned to patrol in Shiawassee, rather than Genesee, County. However, defendants note, officers from the Flint Post are tasked with patrolling in both counties. Accordingly, defendants contend that they cannot establish the necessary deprivation of a property interest. The Court rejects defendants' arguments in this regard. Plaintiffs alleged that their credibility with prosecutors, defense attorneys, and the courts were permanently damaged by their placement on the *Brady-Giglio* list, even temporarily. Summary disposition is not supportable on this ground.

Procedural due process requires notice and an opportunity to be heard before the deprivation of a property interest. *Cary Investments, Inc v Mt Pleasant*, 342 Mich App 304, 315; 994 NW2d 802 (2022). Plaintiffs alleged that in the fall of 2023, Brantley placed them on the *Brady-Giglio* list without notice and without an opportunity to be heard. These allegations were sufficient to support the procedural due process challenge.

Substantive due process requires more than notice and an opportunity to be heard. Substantive due process protects interests of substantial importance, including "those protected by specific constitutional guarantees, freedom from government actions that shock the conscience, and certain interests that the Supreme Court has found so rooted in the traditions and conscience of our people as to be fundamental." *Hussein v City of Perrysburg*, 617 F3d 828, 833 (CA 6, 2010) (cleaned up). Defendants contend that plaintiffs' substantive due process claims must be dismissed because they failed to allege government action that shocks the conscience. In this regard, defendants focus too narrowly on the act of placing plaintiffs on the *Brady-Giglio* list. More

broadly, plaintiffs alleged that high level police officials tasked with the protection of the community and who are held to a higher standard of behavior essentially formed a clique. One member of that clique, Chiros, engaged in alarming behavior (physically and sexually assaulting and harassing subordinate officers, forming a plan to rape a subordinate and asking other troopers to assist, threatening other officers with violence, and creating an overall hostile work environment) and other members of the clique tried to cover it up. When subordinate troopers finally reported Chiros's course of conduct, Brantley falsely accused them of lying and fraudulently placed them on the *Brady-Giglio* list. This conduct, if proven, meets the shocks-the-conscience standard, precluding summary disposition on this ground as well.

IV. CONCLUSION

1. The Court GRANTS summary disposition in favor of all defendants of all plaintiffs' Count I, Free Speech Retaliation in Violation of Const 1963, art 1, § 5, under MCR 2.116(C)(8).

2. To the extent plaintiff Neilson's Counts II (Denial of Procedural Due Process), and III (Denial of Substantive Due Process) are based on the fraudulent concealment of discriminatory promotional practices, the Court HOLDS IN ABEYANCE defendants' motion for summary disposition based on the timeliness of the notice of his claims under MCL 600.6341(1) pending the Michigan Supreme Court's resolution of *McCormick v Mich State Univ* (Docket No. 168334).

3. The Court otherwise DENIES defendants' motions for summary disposition of all plaintiffs' Counts II and III.

4. The Court GRANTS summary disposition in favor of all defendants of plaintiff Hart's Count IV, denial of substantive due process right to bodily integrity, and Count V, sex discrimination in violation of the ELCRA, because notice of these claims was filed beyond the Court of Claims notice period.

5. The Court GRANTS defendant Chiros's motion for summary disposition of plaintiff Hart's Count VII (Defamation) and Count VIII (False Light Invasion of Privacy) and plaintiff Salski's Count IV (Defamation) and Count V (False Light Invasion of Privacy) based on qualified immunity.

6. Defendants' motions for summary disposition are DENIED in all other respects.

7. This is not a final order resolving all matters in these consolidated cases.

IT IS SO ORDERED.

Date: November 5, 2025

Hon. Sima G. Patel
Judge, Court of Claims