STATE OF MICHIGAN

COURT OF CLAIMS

JONNY'S ROAD TESTING, LLC, and
JONATHAN GRIMM,

Plaintiffs,

v

Case No. 25-000035-MZ

JOCELYN BENSON, in her official capacity as Michigan Secretary of State, and MICHIGAN DEPARTMENT OF STATE,

Hon. Michael F. Gadola

Defendants.
_____ /

OPINION AND ORDER

Plaintiffs, Jonny's Road Testing, LLC, and Jonathan Grimm, filed this lawsuit against defendants, the Michigan Department of State (MDOS) and Secretary of State Jocelyn Benson, after MDOS terminated a driver testing business (DTB) contract with Jonny's Road Testing. Before the Court are (1) defendants' July 8, 2025 corrected motion for summary disposition of plaintiffs' first-amended complaint under MCR 2.116(C)(7), (8) and (10), (2) plaintiffs' August 5, 2025 motion for relief from the Court's August 5, 2025 order striking their response to defendants' motion for summary disposition as untimely, (3) plaintiffs' August 5, 2025 corrected motion for leave to file a second-amended complaint,[1] (4) plaintiffs' August 12, 2025 motion for a pretrial

[1] Plaintiffs refer to this motion as a motion to file a first-amended complaint. However, plaintiffs have already amended their complaint, making the proposed complaint a second-amended complaint.

and electronically stored information (ESI) conference, and (5) defendants' March 30, 2026 motion for a protective order to stay discovery pending resolution of the other pending motions. The Court dispenses with oral argument under Court of Claims LCR 2.119(E)(3). The Court GRANTS plaintiffs' motion for relief from the August 5, 2025 order striking their response brief, GRANTS defendants' corrected motion for summary disposition, DENIES plaintiffs' corrected motion for leave to file a second-amended complaint, DISMISSES the first-amended complaint with prejudice, and DISMISSES AS MOOT plaintiffs' motion for a pretrial/ESI conference and defendants' motion for a protective order.

I. BACKGROUND

Jonny's Road Testing is a Michigan DTB. Grimm owns and operates the business. In June 2021, Grimm executed a three-year DTB agreement with MDOS allowing Jonny's Road Testing to conduct driver-skills testing on behalf of the State. The agreement provided, in relevant part, that Jonny's Road Testing "shall ensure that each test is administered in strict accordance with the [Michigan Vehicle Code, MCL 257.1 *et seq*.], current [Department of Transportation, Federal Motor Carrier Safety Administration, American Association of Motor Vehicle Administrators, and Motorcycle Safety Foundation] standards, and the methods and examination criteria prescribed by the Department."

The agreement provided that Jonny's Road Testing was an independent contractor and not an employee or agent of MDOS. The agreement further provided that MDOS could examine, inspect, or audit the company with or without prior notice and through either covert or overt methods, provided that the methods employed were reasonable. The agreement required 30 days' notice of voluntary termination by either party. The agreement would remain in effect until its expiration date unless it was voided, terminated, canceled, or amended. The agreement provided,

"If the Department determines that the DTB has failed to comply with this Agreement or for violation of federal, state, and/or local civil rights, fair labor, or other applicable laws, the Department may immediately terminate this Agreement, or take other action prescribed by this Agreement."

According to plaintiffs, in late 2020, defendants informed plaintiffs that, starting in March 2021, MDOS would launch an electronic system, known as the Customer and Automotive Records System (CARS), for the DTB reporting and recordkeeping obligations. Plaintiffs assert that defendants did not provide enough lead-up, training, or support before rolling out the new system. CARS experienced various technical errors throughout the spring and summer of 2021. Plaintiffs allege that, because of the various technical issues with the CARS platform, they were unable at times to meet defendants' deadline for daily reporting obligations, resulting in noncompliance notices. According to plaintiffs, the issues with CARS persisted into 2023 and 2024.

In December 2023 and February 2024, two MDOS employees covertly observed Jonny's Road Testing, as permitted under the agreement. According to the MDOS employees, there were no test applicants, examiners, or cars present, and the driving skills course was not assembled on the two observation days. According to MDOS, following those observations, three examiners submitted score sheets for driving tests via CARS that were not conducted during the covert observations. MDOS concluded this conduct violated both the agreement and the Michigan Vehicle Code. MDOS represented that it possessed photographs and videos taken during the covert observations.

On March 5, 2024, MDOS sent plaintiffs a Notice of Action informing plaintiffs that Jonny's Road Testing must suspend operations immediately and that an investigation would be

conducted to observe testing practices that might violate the agreement. In June 2024, plaintiffs (through their counsel) requested an administrative review of that decision per the agreement. Plaintiffs maintain that the notices provided insufficient information to allow plaintiffs to respond to the allegations. As part of the investigation, MDOS interviewed Grimm and several other employees in April 2024. Plaintiffs argue that MDOS failed to inform the interviewed employees of their right to retain counsel for the interviews.

In early May 2024, plaintiffs contacted MDOS to request more information about the suspension, to which MDOS responded that it could not provide additional information at that time because the investigation was "active and ongoing." MDOS informed plaintiffs that they could submit a request under the Freedom of Information Act (FOIA), MCL 15.231 *et seq*. In late June 2024, plaintiffs submitted a petition for administrative review to MDOS, requesting that the suspension be set aside because of procedural due-process violations or that the suspension be lifted pending the outcome of the investigation.

Following the fact-finding portion of the investigation, on July 2, 2024, MDOS issued twenty Notices of Noncompliance. On July 3, 2024, MDOS sent plaintiffs a Notice of Intended Termination, informing plaintiffs that MDOS determined that Jonny's Road Testing breached its agreement with MDOS and that the agreement was "terminated effectively immediately." The letter informed plaintiffs of their right to petition for an administrative review within 14 days. MDOS also informed plaintiffs that they were responsible for the costs of retesting approximately 145 applicants who were affected by the testing violations.

Later that month, on July 30, 2024, an administrative review occurred. During the review, plaintiffs' counsel argued for the suspension to be lifted on the basis that CARS experienced

numerous technical problems, and the business could not enter test results properly as a result. Additionally, plaintiffs argued that MDOS lost or misplaced the scoresheets in the past. They also argued the Notices of Noncompliance were too vague. On March 31, 2025, MDOS issued a Notice of Final Action, in which it detailed its findings and found that several examiners violated the Michigan Vehicle Code by deviating from MDOS standards, methods, and examination criteria. MDOS deauthorized several examiners employed by Jonny's Road Testing and terminated the agreement effective that day.[2]

Before MDOS issued its Notice of Final Action, during the summer of 2024, plaintiffs submitted several FOIA requests. On July 22, 2024, plaintiffs requested "[a] full and complete copy of the investigative file created, maintained and/or otherwise associated with [Jonny's Road Testing]," as well as "[a]ll documents the Michigan Department of State has received from anyone relating to [Jonny's Road Testing]." MDOS initially denied the FOIA request under MCL 15.243(1)(m), which provides an exemption for "[c]ommunications and notes within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to a final agency determination of policy or action."

After plaintiffs appealed, however, MDOS reversed its decision on the exemption and granted plaintiffs' request for any "existing, nonexempt public records." MDOS estimated a FOIA processing fee of $98,065.95, and required a 50% deposit of $49,032.98, on the basis of an estimated rate of $56.19 per hour and 25,029 estimated pages of responsive documents. In additional communications, plaintiffs' counsel maintained that the estimated costs were

[2] One employee did not have violations and was permitted to transfer to a different DTB contracting with the State.

unreasonable and requested an in-person inspection of the documents. MDOS responded that the expenses would still have to be paid, even in the case of an in-person inspection, noting that the request was extremely large and incorporated approximately 25,000 pages of potentially responsive documents. Plaintiffs' counsel maintained that the fee constituted a constructive denial of the FOIA request. He once again requested an in-person review of the materials. However, plaintiffs never paid the deposit in relation to their first FOIA request, so the inspection never occurred.

On August 20, 2024, plaintiffs made a second FOIA request seeking nine categories of documents, including "[a] full and complete copy of all documents, records and/or communications associated with any investigation of [Jonny's Road Testing]." The request was granted as it related to nonexempt materials, and the estimated cost of production, as modified, was $64,454.74, with a 50% deposit required in advance. In mid-October 2024, plaintiffs appealed the decision, arguing, in relevant part, that MDOS failed to follow its itemization protocols when determining the fee, which was once again unreasonably high. MDOS denied that grounds for appeal existed under MCL 15.240 because MDOS granted the FOIA request. MDOS further concluded that the fee calculations were accurate and appropriate.

In early October 2024, plaintiffs submitted a third FOIA request, asking for "[a]ny and all documents, records, reports, notices, and/or communications created and/or exchanged between January 1, 2022 and August 20, 2024 relating in any way to [Jonny's Road Testing]." MDOS responded by granting the FOIA request as it related to existing, nonexempt records. MDOS continued to estimate around $84,285.00 in fees on the basis of about 1,500 hours of work at $56.19 per hour. Plaintiffs appealed that decision, and MDOS denied the appeal on the same grounds as plaintiffs' second appeal.

Plaintiffs submitted four additional FOIA requests on October 14, 2024, each requesting "[r]ecords, [d]ocuments, reports, notices, and/or communications created and/or exchanged between January 1, 2022 and August 20, 2024 concerning [Jonny's Road Testing]." Defendants once again estimated a FOIA processing fee of $84,285.00, requesting a 50% deposit. Plaintiffs appealed that estimate on the basis that the fees were calculated improperly and did not comply with FOIA. On November 1, 2024, MDOS upheld the fees and time estimates for the same reasons as the prior FOIA requests. Thus, by November 1, 2024, MDOS had resolved the appeals for the first seven FOIA requests.

Plaintiffs filed this lawsuit on March 6, 2025. While this lawsuit was pending, on April 17, 2025, plaintiffs submitted two additional FOIA requests. The first asked for "records, documents, and other communications related to any investigation of [Jonny's Road Testing]," "[r]ecords regarding the CARS system being unavailable or experiencing issues between July 1, 2023-August 20, 2024," and "[t]raining materials provided to driver testing businesses regarding record-keeping, the CARS system, and compliance," and asked that MDOS prioritize the first item. MDOS responded on May 7, 2025, granting the request as to existing, nonexempt records and estimating a fee of $21,004.44, with a 50% required deposit.

The second April 17, 2025 FOIA request related more specifically to the alleged instances of noncompliance leading to the termination of the agreement. On May 7, 2025, MDOS responded to this request, granting the request as to existing, nonexempt records and estimating a processing fee of $325.29, which was based on seven hours of work at a rate of $46.47 per hour. The parties agree that plaintiffs paid the deposit for this FOIA request. In their proposed second-amended complaint, plaintiffs allege that in June 2025, defendants produced documentation, which plaintiffs

allege were not responsive to their request. Plaintiffs appealed, and defendants responded in late July 2025, providing further clarity on the exemptions raised in the FOIA response.

II. RELEVANT PROCEDURAL BACKGROUND

With leave of this Court, plaintiffs amended their complaint in June 2025.[3] In their first-amended complaint, they raised claims for violation of FOIA (Count I), violation of the Administrative Procedures Act (APA), MCL 24.201 *et seq*., for terminating the contract with plaintiffs without adequate due process (Count II), violation of due process under Const 1963, art 1, § 17 (Count III), "constitutional tort" under "Michigan's Declaration of Rights" (Count IV), an unconstitutional taking without just compensation (Count V), abuse of government authority or ultra vires activity (Count VI), tortious interference with a business relationship or economic expectancy (Count VII), violation of the APA (Count VIII), declaratory judgment (Count IX), and violation of due process under Const 1963, art 1, § 17 (Count X).

In response to the first-amended complaint, defendants move for summary disposition under MCR 2.116(C)(7) (immunity), (8), and (10). They argue that plaintiffs' FOIA claim fails because it is untimely as it relates to the issue of excessive fees, fails to provide adequate notice of the claims against defendants, and fails on the merits because defendants complied with all relevant FOIA provisions. They also challenge the ripeness of any claims relating to the April 2025 FOIA

[3] The Court originally granted plaintiffs' motion for leave to file a first-amended complaint in May 2025, and directed the Clerk of the Court to accept the proposed first-amended complaint attached to the motion as-filed. A month later, the Court signed a stipulated order allowing plaintiffs to file an amended complaint by June 17, 2025, and outlining the response deadline. On June 17, 2025, plaintiffs filed a first-amended complaint that differed from the one attached to the motion for leave. Consistently with the parties' briefing, the Court will consider the June 17, 2025 first-amended complaint for purposes of deciding defendants' motion for summary disposition.

requests. Defendants additionally argue that plaintiffs did not exhaust their administrative remedies, as required under the agreement, before filing the lawsuit. They also argue that the APA procedures do not apply to the contract in dispute. On the merits, defendants argue that plaintiffs cannot establish a genuine issue of fact on whether their due-process rights were violated or whether plaintiffs lacked a vested property interest to support a claim for unconstitutional taking. They further argue that plaintiffs' tortious-interference claim is barred by governmental immunity, that plaintiffs cannot establish that defendants engaged in ultra vires activities, and that plaintiffs' declaratory-relief claim is not a separate cause of action.

Plaintiffs submitted an untimely response brief, in which they argued that each of their claims stated a valid claim for relief and that various issues of material fact needed to be explored in discovery. That brief was stricken by the Court as untimely. Defendants filed a timely reply brief in support of their motion for summary disposition. Plaintiffs now move for relief from the order striking their response brief and for leave of the Court to consider the response brief.

Plaintiffs have also filed a corrected motion for leave to file a second-amended complaint and have attached the proposed second-amended complaint to that motion. The proposed second-amended complaint adds various factual allegations but does not add or remove any legal claims from the first-amended complaint. Defendants responded to the request for leave file a second-amended complaint, arguing that the allegations in the proposed second-amended complaint do not address the inadequacies in the pleadings raised in defendants' motion for summary disposition. Plaintiffs also request a pretrial and ESI conference, which defendants oppose on the basis that such a request is premature. Defendants have moved for a protective order to stay any discovery pending the outcome of the motion for summary disposition.

III. ANALYSIS

A. MOTION FOR RELIEF FROM AUGUST 5, 2025 ORDER

Before addressing the substantive merits of the motion for summary disposition, the Court addresses plaintiffs' request for relief from the August 5, 2025 order striking their response to the motion for summary disposition as untimely. Defendants' motion for summary disposition was filed on July 8, 2025. Defendants filed a corrected motion for summary disposition on the same day. Plaintiffs' response brief was filed on July 29, 2025, which was 21 days after the filing of the motion for summary disposition. As such, the response brief was untimely under Court of Claims LCR 2.119(C)(2), which required plaintiffs to file and serve a response within 14 days of the date of filing as it appears in the title of the motion for summary disposition. For this reason, the Court, acting sua sponte, struck plaintiffs' response brief and mooted plaintiffs' corresponding request to exceed the page limit.

In their motion for relief from that order, plaintiffs explain that they mistakenly believed the 14-day deadline began after this Court entered an order permitting defendants' motion for summary disposition to exceed the page limit, which was entered on July 15, 2025. Plaintiffs request relief under MCR 2.612(C) and MCR 2.108(E). MCR 2.612(C)(1) permits this Court to grant relief from an order for "[m]istake, inadvertence, surprise, or excusable neglect." A longstanding principle of Michigan law is that "[w]hile many acts of neglect are not excusable, some are, else that word would not appear in the rule." *Reno v Glen R Gale, Corner of State & William Partnership*, 165 Mich App 86, 95; 418 NW2d 434 (1987) (quotation marks and citation omitted). Whether an instance of neglect is excusable is a matter within the discretion of the court. *Muntean v Detroit*, 143 Mich App 500, 510; 372 NW2d 348 (1985). Additionally, this Court is also guided by the principle that the law generally favors a determination of the claims on the

merits. See *Alken-Ziegler, Inc v Waterbury Headers Corp*, 461 Mich 219, 229; 600 NW2d 638 (1999). MCR 2.108(E) gives this Court discretion to extend the period for filing a motion, even after the expiration of the original period, upon a finding of excusable neglect. The rule provides, in relevant part:

> A court may, with notice to the other parties who have appeared, extend the time for serving and filing a pleading or motion or the doing of another act, if the request is made before the expiration of the period originally prescribed. After the expiration of the original period, the court may, on motion, permit a party to act if the failure to act was the result of excusable neglect. [*Id*.]

Plaintiffs' response brief was untimely under LCR 2.119(C)(2), which provides:

> Unless a different period is set by these rules or by the court for good cause, any response to a motion (including a brief or affidavits) required or permitted by these rules must be filed with the court and served within 14 days after the date of filing as appears in the title of the motion and in accordance with MCR 2.107.

Plaintiffs argue that they were confused about when the 14-day period was triggered for their response to the motion and "unintentionally and inadvertently misconstrued the date from which the deadlines were triggered based upon their belief that the Defendants needed to obtain this Court [sic] permission to exceed the page limit and at that time, the 14-day countdown for a response would begin." Considering the explanation provided in plaintiffs' motion for relief, the Court finds that the neglect was excusable. Additionally, the Court notes that defendants timely filed their reply brief in support of summary disposition, and defendants do not argue in their response brief that they will suffer any prejudice from this Court's decision to accept the response brief (nor is any prejudice evident from the record). The Court will therefore grant plaintiffs' motion for relief from the August 5, 2025 order upon a finding of excusable neglect and will accept and consider the July 29, 2025 opposition brief as-filed.

B. MOTION FOR SUMMARY DISPOSITION

1. STANDARDS OF REVIEW

As for defendants' motion for summary disposition, a motion for summary disposition under MCR 2.116(C)(7) is granted when the claim is barred by immunity granted by law. *Plunkett v Dep't of Transp*, 286 Mich App 168, 180; 779 NW2d 263 (2009). When reviewing a motion under this subrule, a court must accept the well-pleaded factual allegations as true and construe them in the plaintiff's favor, unless other evidence contradicts the allegations. *Dextrom v Wexford Co*, 287 Mich App 406, 428; 789 NW2d 211 (2010). "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." *Id*. at 429. As the Michigan Court of Appeals has explained,

> [i]f 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. [*Id*.]

A motion under MCR 2.116(C)(8) examines the legal sufficiency of the claims on the basis of the factual allegations raised in the complaint. *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159; 934 NW2d 665 (2019). The court must accept the factual allegations in the complaint as true and will decide the motion on the pleadings alone. *Id*. at 160. The court will grant the motion if the claim is so clearly unenforceable as a matter of law that no factual development would justify recovery. *Id*. When the claim is based on a written instrument, a copy of that instrument must be attached to the complaint and is considered part of the pleading. MCR 2.113(C)(1)-(2). In contrast, a motion filed under MCR 2.116(C)(10) examines the factual sufficiency of the claim. *El-Khalil*, 504 Mich at 160. The court must consider all the submitted

evidence in the light most favorable to the nonmoving party. *Id*. "A motion under MCR 2.116(C)(10) may only be granted when there is no genuine issue of material fact." *Id*.

Additionally, plaintiffs request leave to amend their complaint to add additional allegations supporting each claim, primarily factual allegations regarding the status of their eighth and ninth FOIA requests. MCR 2.118(A)(2) permits a party to amend the pleadings by leave of the Court, which "shall be freely given when justice so requires." "Leave to amend should be denied only for particularized reasons, such as undue delay, bad faith or dilatory motive on the movant's part, repeated failure to cure deficiencies by amendment previously allowed, undue prejudice to the opposing party, or where amendment would be futile." *Miller v Chapman Contracting*, 477 Mich 102, 105; 730 NW2d 462 (2007). "An amendment is futile if it merely restates the allegations already made or adds allegations that still fail to state a claim." *Lane v KinderCare Learning Centers, Inc*, 231 Mich App 689, 697; 588 NW2d 715 (1998).

2. FOIA CLAIM

Defendants first argue that plaintiffs fail to state a valid FOIA claim because (1) their claims related to excessive fees are untimely, and (2) the claims contain insufficient factual information to place defendants on notice of the claims against them. Alternatively, defendants argue that no genuine issue of material fact exists because the record establishes that defendants complied with FOIA. They argue that plaintiffs' proposed second-amended complaint does not address these deficiencies and would be futile.

Defendants first argue that any attempt by plaintiffs to raise a claim for excessive fees under MCL 15.240a is untimely. Public bodies are able to charge a fee for a public record search, for necessary copying of public records for the purpose of an inspection, or for providing a copy

of the public records; however, they must establish, make publicly available, and follow their guidelines and procedures. MCL 15.234(1). MCL 15.240a provides, in relevant part, that

> (1) If a public body requires a fee that exceeds the amount permitted under its publicly available procedures and guidelines or [MCL 15.234], the requesting person may do any of the following:
>
> * * *
>
> (b) Commence a civil action in the circuit court, or if the decision of a state public body is at issue, in the court of claims, for a fee reduction. *The action must be filed within 45 days after receiving the notice of the required fee or a determination of an appeal to the head of a public body*. If a civil action is commenced against the public body under this subdivision, the public body is not obligated to complete the processing of the written request for the public record at issue until the court resolves the fee dispute. . . . [Emphasis added.]

MCL 15.240a(6) and (7) allow for attorney fees, costs, and punitive damages associated with excessive fees under certain circumstances.

Plaintiffs allege that MDOS obstructed their access to public records by imposing "excessive and unjustified" cost estimates. However, they do not raise a fee-reduction claim explicitly in either their first-amended complaint or proposed second-amended complaint. Even if they had, the fee-reduction claim is barred by the 45-day limitations period.

Plaintiffs received the response to their first fee appeal in October 2024 but did not file this lawsuit until March 2025, which was well after the 45-day period. As for the second through seventh FOIA requests, plaintiffs received written notices about their fee appeals on November 1, 2024, meaning that they had to file any civil action by December 16, 2024. Their claim was therefore untimely.

Plaintiffs' eighth and ninth FOIA requests were submitted *after* this lawsuit was filed, and plaintiffs do not allege a fee dispute in relation to those FOIA requests. In fact, plaintiffs allege

that MDOS significantly reduced the estimated fees, and they paid at least one of the requested deposits. Instead, plaintiffs raise allegations about these FOIA requests, including updated information in their proposed second-amended complaint, to illustrate their allegation that the earlier fee requests were excessive. It is also noteworthy that plaintiffs do not raise an argument on the limitations period in their response brief.[4] Therefore, to the extent plaintiffs are raising an excessive-fee claim, that claim fails on the pleadings, and the proposed amendment to the complaint would be futile.

Aside from the allegations regarding the fees, plaintiffs allege that defendants (1) failed to provide a proper itemization or a good-faith time estimate in violation of MCL 15.234(3), (2) failed to provide legally required responses and appeal responses within the statutory time frames, (3) withheld "critical information and details" relating to the investigation of plaintiffs' business activities, and (4) claimed improper exemptions in bad faith. Defendants argue that plaintiffs' first-amended complaint does not notify defendants of the allegations with enough detail to respond. MCR 2.111(A)(1) provides that "[e]ach allegation of a pleading must be clear, concise, and direct." MCR 2.111(B)(1) provides that a complaint must contain "a statement of the facts, without repetition, on which the pleader relies in stating the cause of action, with the specific allegations necessary reasonably to inform the adverse party of the nature of the claims the adverse party is called on to defend[.]" The Michigan Court of Appeals has held that a complaint does not meet the requirements of this rule when it "is vague, overly long to the point of excess, and contains confusing syntax and grammar," or "consists mainly of incoherent ramblings, interspersed with

[4] In their response to defendants' original motion for summary disposition, plaintiffs argued that the doctrine of equitable tolling would apply in this context. They do not renew that argument in their July 29, 2025 response to the instant motion for summary disposition.

legal jargon, resulting in allegations that are not clear, concise, or direct." *Woods v SLB Prop Mgt, LLC*, 277 Mich App 622, 627-628; 750 NW2d 228 (2008).

Plaintiffs have already had the opportunity to amend their complaint. After having the opportunity to view defendants' motion for summary disposition, plaintiffs moved for leave to amend their complaint for a second time, attaching a proposed second-amended complaint to their motion. Yet plaintiffs' proposed second-amended complaint remains incredibly vague. It does not specify which FOIA requests plaintiffs are challenging and does not detail any of the alleged FOIA violations with sufficient details necessary to inform defendants of the nature of the claims. For example, plaintiffs do not outline what exceptions were improperly claimed and why. Nor do they outline which itemizations or time estimates violated FOIA. Plaintiffs never paid the fee deposit for the first seven FOIA requests, so defendants never reviewed the materials to raise any exemptions in relation to these requests. And plaintiffs provide no details about any deficiencies in their April 17, 2025 FOIA requests, which were submitted *after* this lawsuit was filed.

As for the timeliness issue, defendants had five business days to either respond to the FOIA request or issue a notice extending the period to respond by 10 business days. MCL 15.235(2). Under MCL 15.240, defendants had 10 business days to respond to the written appeals. MCL 15.240(2). Defendants outline in their motion for summary disposition that each FOIA response was provided within the required period, and each appeal response was provided within 10 business days, which is consistent with the documents attached to and incorporated into the first-amended complaint. See MCR 2.113(C)(2). Plaintiffs do not challenge defendants' argument or provide the Court with any details about why they claim defendants' responses were untimely. In fact, plaintiffs do not provide any details on these claims in their response brief, choosing instead

to concentrate on what they characterize as excessive fees. Therefore, plaintiffs fail to state a valid claim in relation to the timeliness of the claims.

Although plaintiffs allege a broader pattern of misconduct or constructive denial under FOIA, they fail to provide legal authority to support that such claims are recognizable under FOIA. Despite amending their complaint with leave of the Court and proposing to amend their complaint yet again, plaintiffs have not stated a claim on which relief may be granted in relation to Count I, and summary disposition is appropriate under MCR 2.116(C)(8). The proposed amendment would be futile because it does not address these deficiencies. The Court declines to grant plaintiffs another opportunity to amend their complaint to state a valid FOIA claim.

3. EXHAUSTION OF ADMINISTRATIVE REMEDIES

As it relates to the remaining counts, defendants argue that plaintiffs had a contractual duty to exhaust their administrative remedies before filing this lawsuit, which they failed to do because they only petitioned MDOS for administrative review of their summary suspension, but not their termination. The Court disagrees.

The agreement provided, in relevant part, "If the Business believes it is aggrieved by any decision, action or inaction of the Department concerning a matter covered by this Agreement, it must petition the Department for an administrative review before taking any other legal action." A court must construe and apply any unambiguous contract provisions as written. *Henry Ford Health Sys v Everest Nat'l Ins Co*, 326 Mich App 398, 403; 927 NW2d 717 (2018). A contract is considered ambiguous "if it is equally susceptible to more than a single meaning." *Id*. (quotation marks and citation omitted).

In March 2024, MDOS sent plaintiffs a Notice of Action notifying them that the business was suspended immediately and that an investigation had commenced. Plaintiffs requested an administrative review of that decision. By the end of June 2024, the fact-finding portion of the investigation was completed, and in early July 2024, defendants mailed a Notice of Intent to Terminate the Agreement. The administrative review occurred on July 30, 2024. On March 31, 2025, MDOS issued a Final Action that deauthorized several employees of Jonny's Road Testing and terminated the agreement effective that same day. The Notice of Final Action did not inform plaintiffs of any further right to an administrative review. The Court concludes that this process *was* the administrative review required under the agreement. The business was suspended pending an investigation of the alleged instances of misconduct, the investigation was completed, a hearing was conducted in relation to the suspension, and a final action was taken.

The language of the agreement does not support that further administrative review was required once the agency notified plaintiffs of its intent to terminate the agreement. Even if it were, such a procedural step would have been clearly futile considering the agency had already conducted an administrative review on the basis of the same factual record and rendered a final action on the same issue. See *L & L Wine & Liquor Corp v Liquor Control Comm'n*, 274 Mich App 354, 358; 733 NW2d 107 (2007) (explaining that exhaustion of administrative remedies is not required if an appeal would be futile). So plaintiffs did not need to request yet another administrative review to exhaust their administrative remedies. Therefore, the Court will address plaintiffs' remaining claims on the merits.[5]

[5] Plaintiffs argue in their response brief that an MDOS representative told them on two occasions that a separate filing was not necessary. They attach an e-mail correspondence to their response

4. THE APA CLAIMS

Counts II and VIII of the first-amended complaint both allege violations of the APA on the basis that defendants deprived plaintiffs of a property interest and suspended and terminated the agreement without adequate procedural due process. Count VIII adds that defendants conducted an arbitrary investigation and issued disciplinary actions without the due-process protections afforded under the APA.

Although plaintiffs received a hearing in connection with the decision to suspend their operations, plaintiffs challenge the adequacy of the March 5, 2024 notice, allege that the entire investigation was a "sham," and claim that defendants misrepresented that an investigation was ongoing in response to plaintiffs' FOIA requests.

In general, due process requires "that deprivation of life, liberty, or property by adjudication must be preceded by notice and an opportunity to be heard." *Bonner v Brighton*, 495 Mich 209, 235; 848 NW2d 380 (2014). Plaintiffs' argument is based, primarily, on MCL 256.685, MCL 256.689, and MCL 256.695, which are provisions of the Driver's Education Provider and Instructor Act, MCL 256.621 *et seq*., that collectively require certain due-process protections before the Secretary of State may suspend the contract or issue other sanctions. Plaintiffs maintain that these statutes required compliance with the APA.

However, the Driver's Education Provider and Instructor Act applies expressly to "driver education providers," who are, in relevant part, individuals who "maintain[] or obtain[] the

---

brief to support their argument. However, the Court need not address whether a factual dispute might exist on the issue because, even if no such statements were made, the contract did not require a separate appeal process for the termination.

facilities and certified instructors to give instruction in the driving of a motor vehicle or maintain[] or obtain[] the facilities and certified instructors to prepare an applicant for an exam given by the secretary of state for a license." MCL 256.625(c)(*i*). The Act also applies to "driver education instructors" who are individuals "who the secretary of state certifies has met the instructor qualifications of this act to instruct a student in a driver education course." MCL 256.623(k). Plaintiffs are not involved in driver education—they are involved in driver testing. They provide no legal basis for why the Driver's Education Provider and Instructor Act would apply to a DTB.

Plaintiffs also argue that their claim is supported by the provisions of the Michigan Vehicle Code relating to the States's ability to contract with a DTB. MCL 257.309 provides, in relevant part:

> (2) The secretary of state may appoint sheriffs, their deputies, the chiefs of police of cities and villages that have organized police departments within this state, their duly authorized representatives, employees of the secretary of state, or the secretary of state's duly authorized representatives as examining officers for the purpose of examining applicants for operator's and chauffeur's licenses. An examining officer shall conduct examinations of applicants for operator's and chauffeur's licenses in accordance with this chapter and the rules promulgated by the secretary of state under subsection (3). After conducting an examination an examining officer shall make a written report of his or her findings and recommendations to the secretary of state.
>
> (3) The secretary of state shall promulgate rules under the [APA] for the examination of the applicant's physical and mental qualifications to operate a motor vehicle in a manner as not to jeopardize the safety of persons or property, and shall ascertain whether facts exist that would bar the issuance of a license . . .
>
> (4) The secretary of state shall not issue an original operator's or chauffeur's license without a vehicle group designation or indorsement without an examination that includes a driving skills test conducted by the secretary of state or by a designated examining officer . . . . The secretary of state *may* enter into an agreement with another public or private corporation or agency to conduct a driving skills test conducted under this section. . . . [Emphasis added.]

MCL 257.309(2)–(4) allow the Secretary of State to contract with private entities but do *not* require defendants to provide the private entities with any specific due-process protections when suspending or terminating an agreement. MCL 257.309(2) requires an examiner to follow any rules promulgated by the Secretary of State under the APA. And MCL 257.309(3) requires the Secretary of State to promulgate rules under the APA relating to the examination of the applicant for a driver's license. This Subsection does *not* require any specific procedure when suspending or terminating an agreement with a driver's testing business. Nor does MCL 257.309(4) require the Secretary of State to contract with any private entities. Instead, the statute provides that MDOS *may* contract with a private entity to conduct driving tests. Additionally, the agreement between MDOS and Jonny's Road Testing did not require MDOS to follow the APA. So the language of the Michigan Vehicle Code does not support plaintiffs' position.

Plaintiffs also compare this case with *O'Halloran v Benson*, Court of Claims Case No. 22-000162-MZ, arguing that the arguments the defendants raised in that case are "identical to" those raised in this case and support that the language in MCL 256.309(3) entitles plaintiffs to the due-process protections outlined in the APA. However, *O'Halloran* is distinguishable on its facts. That case involved the issue whether a manual issued by the Secretary of State relating to election challengers and poll watchers violated the Michigan Election Law, MCL 168.1 *et seq.*, and whether the challenged provisions had to be promulgated via the formal process outlined in the APA. *O'Halloran v Secretary of State*, 515 Mich 606, 619-620; 29 NW3d 429 (2024) (affirming in part, reversing in part, and vacating in part the opinion and order of the Court of Claims).

Plaintiffs do not recognize in their response brief that *O'Halloran* was appealed to the Michigan Court of Appeals and the Michigan Supreme Court. The Michigan Supreme Court reviewed each challenged portion of the manual in question to decide whether it had to be

promulgated via the formal rulemaking process and held that several of the provisions did not amount to formal rules requiring promulgation through the APA because they did not impose new substantive requirements or limitations on the election challengers. *Id*. at 638-658. This case is distinguishable from *O'Halloran* because that case involved interpretive guidance intended to apply to a broad array of individuals rather than a contract between MDOS and a private entity. Moreover, given that the Michigan Supreme Court held that some of the manual was merely interpretive guidance, the holding is not helpful to plaintiffs' position. In sum, there is no legal or contractual basis for plaintiffs' claims that defendants had to comply with the APA procedures. Therefore, Counts II and VII fail to state a claim on which relief may be granted, and amendment would be futile.

5. PLAINTIFFS' CONSTITUTIONAL CLAIMS

Next, defendants argue that no genuine issue of material fact exists in relation to plaintiffs' due-process claims, in Counts III, IV,[6] and X, or in relation to the taking claim, in Count V, because plaintiffs have no recognizable liberty or property interest. The Court agrees.

The Michigan Supreme Court has recognized the validity of a substantive due-process claim as it relates to claims against the government, and the "touchstone of due process" is the "protection of the individual against arbitrary action of government." *Bonner* 495 Mich at 223-224. Specifically, substantive due process "protects against the arbitrary exercise of governmental power, whereas the procedural component is fittingly aimed at ensuring constitutionally sufficient

[6] Plaintiffs' Count IV is styled as a claim for "Constitutional Tort under Michigan Declaration of Rights," but the allegations arise from Const 1963, art 1, § 17, which is the same legal basis cited for Count III.

procedures for the protection of life, liberty, and property interests." *Id.* at 224. The threshold issue for both issues is whether a recognizable property interest exists. *Id*. at 225-226.

Similarly, for purposes of procedural due process, "[a] procedural due-process claim must identify a property or liberty interest interfered with by the challenged state action and must show that the procedures leading to the deprivation of that interest were constitutionally inadequate." *Ass'n of Home Help Care Agencies v Dep't of Health & Human Servs*, 334 Mich App 674, 689; 965 NW2d 707 (2020). "A protected property interest is present where an individual has a reasonable expectation of entitlement deriving from existing rules or understandings that stem from an independent source such as state law." *Mettler Walloon, LLC v Melrose Twp*, 281 Mich App 184, 209; 761 NW2d 293 (2008) (quotation marks and citation omitted). Thus, "[t]o have a property interest protected requires more than a unilateral expectation to the claimed interest; the claimant must have a legitimate claim of entitlement." *Hanlon v Civil Serv Comm'n*, 253 Mich App 710, 723; 660 NW2d 74 (2002).

As it relates to plaintiffs' unconstitutional taking claim, both the Fifth Amendment to the United States Constitution and the Michigan Constitution prohibit a government taking of private property for a public use without just compensation. *Cummins v Robinson Twp*, 283 Mich App 677, 706; 770 NW2d 421 (2009). The term "taking" can include governmental interference with both tangible and intangible property. *AFT Mich v Michigan*, 497 Mich 197, 218; 866 NW2d 782 (2015). As with due process, a taking claim requires vested property rights, which are "created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law." *Long v Liquor Control Comm'n*, 322 Mich App 60, 68; 910 NW2d 674 (2017) (quotation marks and citation omitted). All three claims require, as a threshold determination, a legitimate claim of entitlement to a recognized property interest.

Plaintiffs assert that they had a recognized property interest "in the continued operation of their driver testing businesses, its goodwill, customer relations and test site authorizations." However, plaintiffs have not provided a legal basis for a finding that they had a property interest arising from their state contract. MCL 259.309(4) provides that the Secretary of State *may* enter into agreements with private companies to conduct driving skills tests. There is no language in the statute that would entitle plaintiffs to a state contract. Nor did plaintiffs have a license that might create a protected property interest. See *Maxwell v Dep't of Environmental Quality*, 264 Mich App 567, 571-572; 692 NW2d 68 (2004).

To support that they have a vested and recognizable property interest in their ability to continue to contract with the State, plaintiffs rely on *Bd of Regents of State Colleges v Roth*, 408 US 564, 577; 92 S Ct 2701; 33 L Ed 2d 548 (1972). In *Roth*, the respondent was hired via a one-year contract as an assistant professor. *Id*. at 566. He had no tenure rights to continued employment. *Id*. Under state law, the respondent had no legal right to future employment without tenure. *Id*. at 566-567. The respondent was not rehired after the first academic year of his contract without reason or the opportunity for a hearing. *Id*. at 568.

On appeal to the United States Supreme Court, the issue was whether the respondent had a constitutional right to a statement of reasons and a hearing on the decision. *Id*. at 569. The Supreme Court acknowledged that the liberty rights protected by the Fourteenth Amendment include, among other things, the right to contract and engage in "the common occupations of life." *Id*. at 572. However, in that case, the situation did not involve a charge against the respondent that could seriously damage his reputation and associations in his community. *Id*. at 573. The Court explained that "[w]here a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him, notice and an opportunity to be heard are essential." *Id*.

(quotation marks and citations omitted). Nor was there any claim that the respondent had a stigma caused by the nonrenewal, foreclosing his ability to find other employment opportunities. *Id*. So the respondent was not deprived of any liberty interests by not being rehired in one job because he remained free to seek another job. *Id*. at 574. As for property interests, the respondent's rights were created and defined by the terms of his contract, which did not provide for a right of renewal or re-employment. *Id*. at 578. Thus, while the respondent had an "abstract concern in being rehired," he did not have a property interest sufficient to require due process. *Id*.[7]

Likewise in this case, plaintiffs cannot point to any statutory or contractual basis to support their claim that they had a right to an ongoing contractual relationship with the State. The agreement, which was for only a three-year term, stated that it did not create an employment relationship and outlined the circumstances under which the agreement could be terminated. In addition to immediate termination for failure to follow the agreement or the law, either party could terminate the agreement with 30 days' written notice, meaning that the contract did not vest plaintiffs with any ongoing legal rights. And while plaintiffs assert that their business was mostly (or entirely) with the State, the State did not foreclose plaintiffs' freedom to take advantage of other employment opportunities in the private sector. Nor is there any allegation that the State made any public charges that would harm plaintiffs' business reputation. Plaintiffs did not have a vested property right or liberty interest in their agreement with the State. Summary disposition is

[7] Plaintiffs also rely on *Sambo's Restaurants, Inc v Ann Arbor*, 663 F2d 686 (CA 6, 1981), as persuasive authority. However, *Sambo's* involved a First Amendment freedom-of-speech issue and did not address the constitutional issues presented here. See *id*. at 687-695.

proper as a matter of law in relation to Counts III, IV, and X, and amendment of the complaint in relation to these claims would be futile.

6. ULTRA VIRES ACTS

Plaintiffs also plead a claim for ultra vires acts or abuse of government authority in Count VI. The governmental tort liability act (GTLA), MCL 691.1407 *et seq*., provides that governmental entities are "immune from tort liability" for claims that arise from activities in which they are "engaged in the exercise or discharge of a governmental function." MCL 691.1407(1). The only exceptions to this general rule are the exceptions expressly delineated in the GTLA, as well as constitutional torts. *Pohutski v Allen Park*, 465 Mich 675, 689-690; 641 NW2d 219 (2002). The definition of governmental function should be applied broadly, and "only requires that there be some constitutional, statutory, or other legal basis for the activity in which the governmental agency was engaged." *Herman v Detroit*, 261 Mich App 141, 144; 680 NW2d 71 (2004) (quotation marks and citation omitted). A governmental entity is only liable in tort for ultra vires activities. *Id*.

"A determination of whether an activity was a governmental function must focus on the general activity and not the specific conduct involved at the time of the tort." *Id*. An ultra vires activity is an "activity *not* expressly or impliedly mandated or authorized by law." *Richardson v Jackson Co*, 432 Mich 377, 381; 443 NW2d 105 (1989). An exception to governmental immunity applies when the governmental agency is involved in the performance of a proprietary function. MCL 691.1413. Plaintiffs invoke this exception to governmental immunity to the extent the alleged wrongdoing constituted a governmental activity.

Plaintiffs' ultra vires claim fails, as a matter of law, because they do not assert that defendants lacked legal authority for their actions. Again, MCL 257.309(4) expressly permitted MDOS to enter into agreements with driver's testing businesses and to regulate the "method and examination criteria" to be used by the examiner. Plaintiffs allege that defendants imposed improper compliance standards, improperly enforced CARS despite several glitches, and failed to follow the correct procedures for investigations and sanctions. But these are all claims relating to the performance of a governmental function. The same is true for plaintiffs' claim that defendants engaged in "FOIA fee manipulation," which is a claim arising under FOIA and not based on an nongovernmental activity.

As for plaintiffs' argument that defendants' "driver testing program" was a proprietary function, "[t]o constitute a proprietary function an activity (1) must be conducted primarily for the purpose of producing a pecuniary profit, and (2) it cannot be normally supported by taxes and fees." *Ward v Mich State Univ (On Remand)*, 287 Mich App 76, 85; 782 NW2d 514 (2010) (quotation marks and citation omitted). The primary motive of the activity must be to generate a profit. *Id*. The activities alleged in the first-amended and proposed second-amended complaint are not proprietary in nature. MDOS was engaged, at all times, in its statutorily authorized role of contracting with private businesses to conduct driver testing examinations. Finally, Michigan does not recognize a claim for abuse of government authority, which appears to be a disguised tort claim. Defendants are entitled to summary disposition of Count VI of the first-amended complaint under MCR 2.118(C)(8), and plaintiffs' proposed amendment of the complaint would be futile.

7. TORTIOUS INTERFERENCE

Defendants further argue that they are entitled to immunity in relation to plaintiffs' claim for tortious interference with a business relationship or economic expectancy (Count VII). A

plaintiff has the burden to plead their case in avoidance of governmental immunity. *Mack v Detroit*, 467 Mich 186, 190; 649 NW2d 47 (2002). Plaintiffs allege that defendants engaged in intentional wrongdoing by issuing notices on an arbitrary basis and imposed undue compliance requirements with the goal of interfering with plaintiffs' business relationships. Plaintiffs do not contest that defendants include both a state agency and a state official, or that both defendants are entitled to immunity. As noted earlier, their argument that defendants were engaged in a proprietary function lacks merit. They invoke no other exception to governmental immunity. For these reasons, plaintiffs' tortious-interference claim is barred by governmental immunity, and amendment of the complaint would be futile.

8. DECLARATORY JUDGMENT

Count IX is not a separate claim for relief but instead requests a declaratory judgment on the basis of the alleged due-process violation and the alleged FOIA violation. "Although it has become commonplace in this state for a plaintiff to assert a request for declaratory relief as a separately labeled cause of action within his or her complaint, this is technically improper because declaratory relief is a remedy, not a claim." *Wiggins v City of Burton*, 291 Mich App 532, 561; 805 NW2d 517 (2011) (quotation marks and citation omitted). Accordingly, plaintiffs have failed to state a valid claim for relief in relation to Count IX of their complaint. Finally, this Court's ruling on defendants' motion for summary disposition renders plaintiffs' motion for a pretrial and ESI conference, as well as defendants' motion for a protective order, moot.

IV. CONCLUSION

For the reasons stated in this Opinion and Order,

IT IS ORDERED that plaintiffs' motion for relief from the August 5, 2025 order striking their response brief is GRANTED and the response brief filed July 29, 2025 is ACCEPTED AS-FILED.

IT IS FURTHER ORDERED that defendants' July 8, 2025 corrected motion for summary disposition is GRANTED.

IT IS FURTHER ORDERED that plaintiffs' first-amended complaint is DISMISSED with prejudice.

IT IS FURTHER ORDERED that plaintiffs' August 5, 2025 motion for leave to file a second-amended complaint is DENIED.

IT IS FURTHER ORDERED that plaintiffs' August 12, 2025 motion for a pretrial/ESI conference is DISMISSED AS MOOT.

IT IS FURTHER ORDERED that defendants' March 30, 2026 motion for a protective order is DISMISSED AS MOOT.

This is a final order that resolves the last pending claim and closes the case.

Date: April 22, 2026

Hon. Michael F. Gadola
Chief Judge, Court of Claims