



Plaintiff's complaint pursuant to Fed. R. Civ. P. Rules 12(b)(1) and 12(b)(6). (Docket No. 17). Because Commonwealth Defendants relied, in part, on witness declarations to support their Motion, this Honorable Court issued an Order to Show Cause as to why the pending Motion to Dismiss should not be converted to a Motion for Summary Judgment in accordance with Fed. R. Civ. P. 12(d). (Docket No. 22). On May 30, 2019, Defendants filed a joint letter agreeing that the pending Motions to Dismiss should be converted to Motions for Summary Judgment. (Docket No. 26).

In support of their Converted Motion for Summary Judgment, Commonwealth Defendants rely upon the Second Declaration of Andrew Gold attached by Union Defendants as Exhibit 1 to their Amended Motion for Summary Judgment filed on July 19, 2019, the Declaration of Wendell Young, IV, attached by Union Defendants as Exhibit 2 to that Amended Motion, and the Declaration of Peg Rhodes, attached by Union Defendants as Exhibit 3 to the Amended Motion. (Docket No. 35). Commonwealth Defendants further rely on Defendants' Joint Statement of Material Facts Not in Dispute. (Docket No. 36).

Plaintiff is no longer a member of the Union, has no continuing dues deductions and has been refunded all dues from the date of his resignation; therefore, there is no active case or controversy before this Court and the matter is moot. Further, any retroactive relief sought against the Commonwealth

Defendants, sued only in their official capacities, is barred by the Eleventh Amendment to the United States Constitution. Finally, the complaint states no claim upon which relief may be granted and all claims are ripe for judgment as a matter of law.

For any and all of these reasons, Commonwealth Defendants respectfully request that this Honorable Court enter judgment on all claims in favor of the Commonwealth Defendants.

## **II. FACTS RELEVANT TO THE PENDING MOTION**

Commonwealth Defendants incorporate herein by reference Defendants' Joint Statement of Material Facts Not in Dispute filed on July 19, 2019 at Docket No. 36.

## **III. ARGUMENT**

The Memorandum of Law filed in support of Commonwealth Defendants' motion to dismiss on May 17, 2019 (Docket No. 20) sets forth the arguments and applicable authority in support of dismissal of Plaintiff's claims, as a matter of law. Commonwealth Defendants supplement that Memorandum in support of the instant Converted Motion for Summary Judgment and request that this Court apply the appropriate standard of review as discussed below.

### **A. Standard of Review.**

Summary judgment is appropriate where, viewing the evidence in the light

most favorable to the nonmoving party and drawing all reasonable inferences in its favor “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a); *Jutrowski v. Twp. of Riverdale*, 904 F.3d 280, 288 (3d Cir. 2018). A fact is material, for the purpose of a summary judgment motion, if it would affect the outcome of an action under applicable law. *Bland v. City of Newark*, 909 F.3d 77, 83 (3d Cir. 2018).

Conversely, if a nonmoving party is unable to establish “the existence of an essential element of its case on which it bears the burden of proof at trial, there is not a genuine dispute with respect to a material fact” and the moving party is entitled to summary judgment. *Jutrowski*, 904 F.3d at 289 (citing *Goldenstein v. Repossessors, Inc.*, 815 F.3d 142, 146 (3d Cir. 2016)). To withstand a motion for summary judgment, a nonmoving party “may not rest upon the mere allegations or denials of his pleadings[,]” but “must set forth specific facts showing that there is a genuine issue for trial.” *D.E. v. Central Dauphin Sch. Dist.*, 765 F.3d 260, 268-69 (3d Cir. 2014) (citing *Gans v. Mundy*, 762 F.2d 338, 341 (3d Cir. 1985)). Further, “[b]are assertions, conclusory allegations, or suspicions” do not suffice. *Id.*

Finally, when a plaintiff brings suit against state agencies and state officials in their official capacities in federal court, it is necessary to examine whether the action is barred by Eleventh Amendment immunity. See *Pennhurst State Sch. v. Halderman*, 465 U.S. 89, 98-101 (1984) (Eleventh Amendment is a jurisdictional

bar which deprives federal courts of subject matter jurisdiction). Where such immunity applies, no claim lies against the state actors.

As discussed further below, applying these standards to the case at bar, it is respectfully submitted that the Commonwealth Defendants are entitled to summary judgment as a matter of law on Plaintiff's claims.

**B. Relevant supplemental authority from the United States District Court for the Western District of Pennsylvania.**

On July 8, 2019, the United States District Court for the Western District of Pennsylvania issued a non-precedential Memorandum Opinion in *Diamond v. Pennsylvania State Education Association*, No. 18-128, 2019 WL 2929875 (W.D. Pa. July 8, 2019) (Gibson, J.). The Opinion dismissed a lawsuit filed on behalf of a purported class of current or retired Pennsylvania public school teachers against the Pennsylvania State Education Association, affiliated unions, Attorney General Josh Shapiro, and other state actors sued in their official capacities. Although the lawsuit primarily attacked the constitutionality of fair-share fees, in rendering its decision the Court addressed similar arguments to those advanced by Defendants in this action. Therefore, Commonwealth Defendants attach hereto the Memorandum Opinion as Exhibit A, as non-precedential authority.

#### IV. CONCLUSION

For any and all of the reasons set forth herein, the Commonwealth Defendants respectfully request that this Honorable Court grant summary judgment on Plaintiff's claims.

Dated: July 19, 2019

Respectfully Submitted,

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