

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
LUBBOCK DIVISION

|                                |   |                                |
|--------------------------------|---|--------------------------------|
| RAJIN PATEL,                   | ) |                                |
|                                | ) |                                |
| Plaintiff,                     | ) |                                |
|                                | ) |                                |
| v.                             | ) |                                |
|                                | ) |                                |
| TEXAS TECH UNIVERSITY, et al., | ) |                                |
|                                | ) |                                |
| Defendants.                    | ) | Civil Action No. 5:17-CV-174-C |

**ORDER**

On this day, the Court considered Defendants' Motion to Dismiss, filed September 1, 2017, and Plaintiff Rajin Patel's Opposition to Defendants' Motion to Dismiss, filed September 13, 2017. Having considered the foregoing, the Court is of the opinion that Defendants' Motion should be **GRANTED in part** and **DENIED in part**.

**I. BACKGROUND**

Plaintiff Rajin Patel is a business student at Texas Tech University. During the fall semester of the 2016–17 academic year, he was enrolled in a graduate school course taught by Defendant Duane Jones. After Jones accused Patel of academic dishonesty on a final exam, Texas Tech conducted an internal inquiry that resulted in an adverse Final Investigation Report. After a panel hearing, the Student Conduct Office found Patel guilty of academic dishonesty, dismissed him from the College of Business graduate program, put him on deferred suspension until January of 2018 in his undergraduate classes, and gave him a grade of "F" in his graduate school course. The deferred suspension further requires Patel to pay a penalty for plagiarism, admit that he plagiarized his exam answers, and enroll in an academic integrity course about

plagiarism. Patel's internal appeal was denied by Texas Tech. On April 26, 2017, Texas Tech froze Patel's account after he refused to pay the plagiarism penalty, effectively barring him from completing his undergraduate degree and costing him a prestigious summer internship.

Patel brought this civil action against Texas Tech and Defendants Duane Jones, William Pasewark, Robert Ricketts, and Brittany Todd (all officers or agents of Texas Tech) in their official and individual capacities. He asserts causes of action under 42 U.S.C. § 1983 for substantive due process and equal protection violations, as well as a cause of action against Texas Tech for breach of contract. Defendants now move to dismiss each of these claims.

## II. STANDARDS

### ***12(b)(1) Motion to Dismiss***

Lack of subject-matter jurisdiction may be found in any one of three instances: (1) the complaint alone, (2) the complaint supplemented by undisputed facts evidenced in the record, or (3) the complaint supplemented by undisputed facts plus the court's resolution of disputed facts. *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001). The burden of proof for a Rule 12(b)(1) motion to dismiss is on the party asserting jurisdiction. *Id.* Accordingly, the plaintiff constantly bears the burden of proof that jurisdiction does in fact exist. *Id.* In examining a Rule 12(b)(1) motion, the district court is empowered to consider matters of fact that may be in dispute. *Williamson v. Tucker*, 645 F.2d 404, 413 (1981). Ultimately, a motion to dismiss for lack of subject-matter jurisdiction should be granted only if it appears certain that the plaintiff cannot prove any set of facts in support of his claim that would entitle plaintiff to relief. *Home Builders Ass'n of Miss., Inc. v. City of Madison, Miss.*, 143 F.3d 1006, 1010 (5th Cir. 1998).

**12(b)(6) Motion to Dismiss**

A complaint must contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a). The court must accept all factual allegations in a complaint as true and draw all reasonable inferences in the plaintiff’s favor. *Lormand v. US Unwired, Inc.*, 565 F.3d 228, 232 (5th Cir. 2009). In reviewing a motion to dismiss under Rule 12(b)(6), a district court must generally examine only the complaint and any attachments to the complaint. *Collins v. Morgan Stanley Dean Witter*, 224 F.3d 496, 498 (5th Cir. 2000). But a court may consider extrinsic documentary evidence if (1) the document is attached to a defendant’s motion to dismiss, (2) the document is referred to in the plaintiff’s complaint, and (3) the document is “central” to the plaintiff’s claim. *Id.* at 498–99. To survive a 12(b)(6) motion to dismiss, a complaint must contain enough facts to state a claim that is “plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is facially plausible when it asserts facts that allow the court “to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). This determination is context-specific and requires the court to draw upon its own experience and common sense. *Id.*

**III. DISCUSSION**

Defendants move to dismiss each of Plaintiff’s claims under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). When a Rule 12(b)(1) motion is filed in conjunction with other Rule 12 motions, the court should consider the Rule 12(b)(1) jurisdictional attack before addressing any attack on the merits. *Ramming*, 281 F.3d at 161. This requirement prevents a court without jurisdiction from prematurely dismissing a case with prejudice. *Id.* Accordingly, the Court addresses Defendants’ 12(b)(1) motion first.

## A. Jurisdictional Attacks

### 1. Immunity from § 1983 Claims

Defendant Texas Tech and the individual Defendants in their official capacities move to dismiss Patel's § 1983 claims pursuant to the doctrine of sovereign immunity. But Patel correctly points out that sovereign immunity only shields state-actor Defendants from monetary damages, and Patel's Complaint clearly does not seek impermissible monetary damages. Instead, Patel seeks injunctive relief against the state-actor Defendants pursuant to the exception established by *Ex Parte Young*. See *Ex Parte Young*, 209 U.S. 123 (1908); *Saltz v. Tennessee Dep't of Emp't Sec.*, 976 F.2d 966, 968 (5th Cir. 1992) ("The essential ingredients of the *Ex parte Young* doctrine are that a suit must be brought against individual persons in their official capacities as agents of the state and the relief sought must be declaratory or injunctive in nature and prospective in effect.").

The Court is of the opinion that Defendant Texas Tech is clearly immune from § 1983 claims under the Eleventh Amendment and Defendant Texas Tech's Motion to Dismiss must be granted with respect to these claims. E.g., *United States v. Texas Tech Univ.*, 171 F.3d 279, 289 n.14 (5th Cir. 1999); *Gaines v. Texas Tech Univ.*, 965 F. Supp. 886, 889 (N.D. Tex. 1997). However, the Court is further satisfied that Patel has adequately pleaded a claim for injunctive relief against the individual Defendants in their official capacities; Patel's § 1983 claims against these Defendants satisfy the *Ex Parte Young* exception to sovereign immunity and are not jurisdictionally barred.

## 2. Immunity from Breach of Contract Claim

Defendant Texas Tech further argues that it is entitled to sovereign immunity on Patel's breach of contract claim because the Texas Legislature has not waived immunity for breach of contract suits. *See Gen. Servs. Comm'n v. Little-Tex Insulation Co.*, 39 S.W.3d 591, 594 (Tex. 2001). While this statement of the law is *generally* true, the Court is persuaded by Patel's arguments that Texas Tech's immunity has been waived in this case pursuant to the Texas Local Government Code and the nature of Patel's contractual relationship with Texas Tech. Tex. Gov't Code Ann. § 271.152; *see Burnett v. College of the Mainland*, 994 F. Supp. 2d 823, 829 (S.D. Tex. 2014).

Notably, Defendant Texas Tech did not seek to file any reply to Patel's arguments and has not presented evidence that its student handbook provides any disclaimer about express or implied contracts. *Compare Univ. of Tex. Health Sci. Ctr. at Houston v. Babb*, 646 S.W.2d 502, 506 (Tex. App.—Houston [1st Dist.] 1982, no writ) (finding that a school catalog was an express contract where it assured students that it would remain in effect during their completion of the program) *with Tobias v. Univ. of Tex. at Arlington*, 824 S.W.2d 201, 211 (Tex. App.—Fort Worth 1991, writ denied) (finding that a school catalog was not a binding contract because it contained a disclaimer of any contractual relationship). The Court reserves the right to revisit this jurisdictional issue if Defendant Texas Tech can later produce evidence that it expressly disclaimed any contract with Patel. For now, the Court is satisfied that Patel has pleaded a valid claim for breach of contract against Defendant Texas Tech for which Texas Tech's sovereign immunity has been waived.

**B. Qualified Immunity**

The individual Defendants further argue that all claims against them in their individual capacities should be dismissed pursuant to the doctrine of qualified immunity. It is the usual practice of this Court to call for motions for summary judgment on the issue of qualified immunity once that defense has been properly raised. The Court notes that Plaintiff's Motion for Preliminary Injunction is currently pending and that request for temporary injunctive relief should be addressed as soon as possible. Further, the Court notes that any qualified immunity analysis is not likely to have an impact on the request for preliminary injunctive relief because this doctrine only protects the Defendants from claims asserted against them in their *individual* capacities, and Plaintiff seeks injunctive relief against the Defendants in their *official* capacities. Therefore, the Court denies the Motion to Dismiss without prejudice as to any qualified immunity arguments. The Court will address the qualified immunity issue by calling for a separate motion for summary judgment (in accordance with the Court's normal procedures) after the Court has addressed Plaintiff's Motion for Preliminary Injunction.

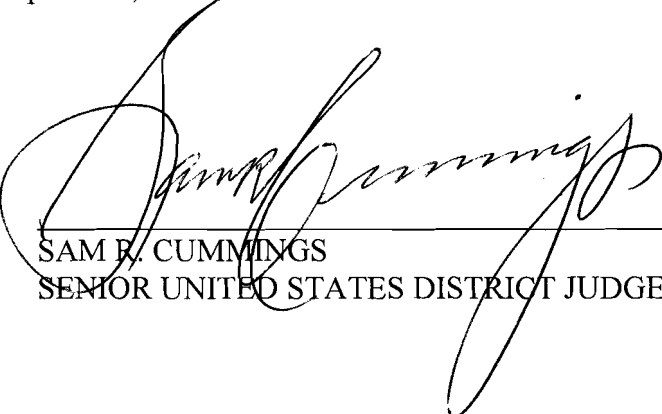
**C. Plausibility of Plaintiff's Complaint**

Having addressed Defendants' jurisdictional and qualified immunity arguments, the Court now turns to the 12(b)(6) motion. Defendants argue that Plaintiff's equal protection claim is not sufficiently pleaded and that the Complaint fails to state a claim for injunctive relief. Accepting all factual allegations in the Complaint as true and drawing all reasonable inferences in Patel's favor, the Court is of the opinion that the Complaint is sufficiently well-pleaded to survive Defendants' 12(b)(6) Motion. For the reasons more thoroughly stated in Plaintiff's Brief, that Motion is denied as to both arguments.

#### IV. CONCLUSION

For the reasons stated above, as well as those more thoroughly stated in the parties' briefing, Defendants' Motion to Dismiss is **GRANTED in part** and **DENIED in part**. Specifically, the Motion is **GRANTED** as to the § 1983 claims asserted against Defendant Texas Tech and these claims are **DISMISSED WITHOUT PREJUDICE** for lack of jurisdiction. The Motion is **DENIED WITHOUT PREJUDICE** as to the individual Defendants' qualified immunity arguments and **DENIED** in all other respects.

SO ORDERED this 26<sup>th</sup> day of September, 2017.



SAM R. CUMMINGS  
SENIOR UNITED STATES DISTRICT JUDGE