IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

PATRICK J. DOHENY, JR.,	)	
	)	
Plaintiff,	)	
	)	Civil Action No. 16-1744
v.	)	
	)	
COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF TRANSPORTATION, BUREAU OF DRIVER LICENSING, *et al*.	)	Judge Cathy Bissoon
	)	
Defendants.	)	

MEMORANDUM AND ORDER

I. MEMORANDUM

Pending before the Court is Plaintiff Patrick J. Doheny, Jr.'s ("Plaintiff")'s Motion for Preliminary Injunction (**Doc. 19**) and Defendants' Motion to Dismiss for Failure to State a Claim (**Doc. 13**). For the reasons that follow, Plaintiff's Motion for Preliminary Injunction (**Doc. 19**) will be DENIED, and Defendants' Motion to Dismiss for Failure to State a Claim (**Doc. 13**) will be GRANTED.

A. BACKGROUND

This case stems from Plaintiff's unsuccessful statutory appeal of a one-year suspension of his vehicle operating privilege. On January 23, 2013, Plaintiff was convicted of one count of aggravated assault by vehicle while driving under the influence of alcohol pursuant to 75 Pa. C.S.A. § 3735.1 (AA-DUI) and one count of driving under the influence (high rate of alcohol)

pursuant to 75 Pa. C.S.A. § 3802(b) (DUI). (Amended Complaint (Doc. 12) ¶ 48). On July 3, 2013, Pennsylvania's Department of Transportation, Bureau of Driver Licensing ("PENNDOT") issued two separate notices to Plaintiff: (1) one notice advised of his license suspension for one year "effective 08/07/13" based on his AA-DUI conviction (Doc. 12-1); and (2) the second notice advised of his license suspension for one year "effective 08/07/14" based on his DUI conviction (Doc. 12-2). (Doc. 12 ¶¶ 51-54). The signature of then-Director Janet L. Dolan ("Dolan") appeared on both notices. (Id.). Both notices stated that Plaintiff had a right to appeal within 30 days of the mail date, July 3, 2013 (by August 2, 2013). (Doc. 12 ¶ 69).

Plaintiff contends the notices were drafted so as to make him believe PENNDOT was only imposing a one-year merged suspension; thus, he did not file an appeal by August 2, 2013. (Doc. 12 ¶¶ 68-71). Plaintiff claims he had no idea he was subject to two separate one-year suspensions until he received the August 20, 2013 "restoration requirements letter" from PENNDOT which advised he was eligible to have his operator's privilege restored as of 8/7/15. (Doc. 12 ¶¶ 73-77). Nearly 30 days later, on September 17, 2013, Plaintiff filed a "Petition to File Appeal Nunc Pro Tunc" with the Court of Common Pleas of Allegheny County. (Doc. 12 ¶¶ 85-86). On September 26, 2013, the Court of Common Pleas held a hearing on his Petition, wherein Defendant Kuhar represented PENNDOT. According to Plaintiff's observations of the tone used by the Judge and counsel, Kuhar effectively consented to his filing an untimely, nunc pro tunc Petition. (Doc. 12 ¶¶ 87-115).

The Amended Complaint details the subsequent *de novo* hearing process, including the fact that Kuhar requested several continuances (to which Plaintiff consented) pending a decision by the Pennsylvania Supreme Court in a similar case, Bell. (Doc. 12 ¶¶ 140-148). The

Pennsylvania Supreme Court ultimately issued its Opinion in Bell on July 21, 2014, finding that the criminal doctrine of merger was not applicable in the civil arena of operating privilege suspensions. Bell v. Com., Dept. of Trans. Bureau of Driver Licensing, 96 A.3d 1005, 1019-20 (Pa. 2014). At Plaintiff's *de novo* hearing on July 24, 2014, Court of Common Pleas Judge Gallo, following Bell, held that Plaintiff's operating privilege suspensions for AA—DUI and DUI did not merge. (Doc. 12 ¶ 226).

Thereafter, Plaintiff appealed to the Commonwealth Court which, on December 23, 2015, held that the trial court erred in allowing Plaintiff's late, nunc pro tunc, appeal in the first place, and dismissed his appeal. (Doc. 12-5, p. 9). According to the Commonwealth Court, a "misunderstanding rooted in a licensee's failure to read a suspension notice carefully is not a basis for allowing an appeal nunc pro tunc and the record does not contain any evidence showing either extraordinary or non-negligent circumstances." (Id.). Subsequently, Plaintiff filed a Petition for Allowance of Appeal to the Pennsylvania Supreme Court, which was denied by *per curiam* Order on July 6, 2016. (Doc. 12 ¶¶ 306, 309).

Following the Pennsylvania Supreme Court's decision, on or about November 1, 2016, Plaintiff filed a Complaint against Defendants in the Court of Common Pleas of Allegheny County. Defendants thereafter timely removed the action to federal court. (Doc. 1). On December 23, 2016, Plaintiff filed the currently operative Amended Complaint. (Doc. 12). Plaintiff's Amended Complaint seeks declaratory, injunctive and monetary relief relating to the "double-suspension" of Plaintiff's driver's license, and in particular, the second of the two one-year Suspension Notices issued by PENNDOT on July 3, 2013. (See generally Doc. 12). In Count I, Plaintiff seeks a declaration that his DUI Suspension is null and void, *ab initio*, as a

violation of state law. (Doc. 12 ¶¶ 312-327). In Count II, he seeks a declaration that Section 1550(a) of the Vehicle Code (which gives individuals whose licenses have been suspended a right to appeal pursuant to the Judicial Code) and Section 5571(b) of the Judicial Code (which requires the appeal to be commenced within 30 days) are "unconstitutional on their face and as applied." (Doc. 12 ¶¶ 329-350). In particular, Plaintiff disputes the Commonwealth Court's interpretation of those statutory provisions as jurisdictional and accuses defendants of "exploiting" that interpretation. (See Doc. 12 ¶¶ 332, 334, 341, 345, 346-348). In Count III, Plaintiff seeks prospective injunctive relief against PENNDOT and Defendant Templeton under 42 U.S.C. §1983 to cure the alleged continuing violation of his property right to operate a motor vehicle, citing to the Due Process and Equal Protection Clauses of the Fourteenth Amendment. (Doc. 12 ¶¶ 352-367). Count IV is a claim for damages under §1983 against six of the individual defendants (former Director Dolan and five attorneys) for alleged violations of due process and equal protection. (Doc. 12 ¶¶ 369-391). Finally, Count V is a conspiracy claim under §1985(3) against the same individuals. (Doc. 12 ¶¶ 393-404).

On January 20, 2017, Defendants filed a Motion to Dismiss the Amended Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). (Doc. 13). On February 28, 2017, Plaintiff filed a Motion for Preliminary Injunction. (Doc. 19). On March 1, 2017, the Court issued a Show Cause Order to the Defendants as to why this case should not be dismissed for lack of jurisdiction under the Rooker-Feldman doctrine. On March 8, 2017, Plaintiff filed a response to the Show Cause Order, arguing that the Rooker-Feldman doctrine was inapplicable because Plaintiff's claims are "independent" of the previous state court determinations. On March 15, 2017, Defendants filed their response, stating that "plaintiff is attempting to re-litigate

the validity of his license suspension after he was unsuccessful in the state courts" and thus they do not object to the dismissal of this case based on the Rooker-Feldman doctrine. After consideration of the pleadings, the Court finds that the Rooker-Feldman doctrine does not bar this Court's consideration of the Amended Complaint. However, as discussed below, the Court will dismiss Count I of the Amended Complaint for lack of subject matter jurisdiction pursuant to the Eleventh Amendment. The Court will also dismiss Plaintiff's remaining claims (Counts II, III, IV, and V) on the merits. Finally, for the reasons stated below, the Court will deny Plaintiff's Motion for a Preliminary Injunction (Doc. 19).

B. MOTION TO DISMISS

a. Dismissal Based on Jurisdictional Issues

Although Defendants did not move to dismiss this case on jurisdictional grounds, this Court is required to address questions of subject matter jurisdiction "sua sponte," *i.e.*, of its own accord. Nesbit v. Gears Unlimited, Inc., 347 F.3d 72, 76-77 (3d Cir. 2003). In reviewing the Amended Complaint, the Court has identified two jurisdictional bars that potentially apply in this case—the Rooker-Feldman doctrine,[1] and Eleventh Amendment immunity. The Court will discuss each jurisdictional issue in turn.

[1] In their briefing, Defendants argued that "[h]ad plaintiff originally filed this case in Federal Court, Rooker-Feldman abstention would apply." (Doc. 14 at 10, n. 6). Based on Defendants' argument and the Court's initial review of the Amended Complaint, the Court ordered Defendants to show "good cause why this case should not be dismissed for want of subject matter jurisdiction and remanded to state court pursuant to the Rooker-Feldman doctrine." (Doc. 21). However, as discussed below, following further briefing and analysis of the case law, the Court finds that the Rooker-Feldman doctrine does not bar its consideration of Plaintiff's claims.

1. Rooker-Feldman Doctrine

"Under the Rooker-Feldman doctrine, a district court is precluded from entertaining an action, that is, the federal court lacks subject matter jurisdiction, if the relief requested effectively would reverse a state court decision or void its ruling." Taliaferro v. Darby Twp. Zoning Bd., 458 F.3d 181, 192 (3d Cir. 2006). The United States Supreme Court explains that the Rooker-Feldman doctrine deprives the lower federal courts of jurisdiction only in "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 284 (2005). Rooker-Feldman is not implicated "simply because a party attempts to litigate in federal court a matter previously litigated in state court." Id. at 293. If the matter was previously litigated, as long as the "federal plaintiff 'present[s] some independent claim, albeit one that denies a legal conclusion that a state court has reached in a case to which he was a party . . . , then there is jurisdiction and state law determines whether the defendant prevails under principles of preclusion.'" Id.

Clarifying this doctrine, the Court of Appeals for the Third Circuit has held that a federal court lacks jurisdiction only if (1) the federal plaintiff lost in state court; (2) the plaintiff complains of injuries caused by the state-court judgment; (3) the judgment was rendered before the federal suit was filed; and (4) the plaintiff has invited the district court to review and reject the state judgment. Great W. Mining & Mineral Co. v. Fox Rothschild LLP, 615 F.3d 159, 166 (3d Cir. 2010). The Third Circuit has explained that "[t]he second and fourth requirements are the key to determining whether a federal suit presents an independent, non-barred claim." Great

W. Mining, 615 F.3d at 166. The second requirement is best understood as an "inquiry into the source of the plaintiff's injury." Id. Specifically, Rooker-Feldman does not bar a federal plaintiff from bringing claims that complain of "injur[ies] caused by the defendant's actions and not by the state-court judgment." Id. at 167 (further citations omitted). "The critical task is thus to identify those federal suits that profess to complain of injury by a third party, but actually complain of injury "produced by a state-court judgment and not simply ratified, acquiesced in, or left unpunished by it." Id. "A useful guidepost is the timing of the injury, that is, whether the injury complained of in federal court existed prior to the state-court proceedings and thus could not have been 'caused by' those proceedings." Id. The fourth requirement, in turn, "targets [] whether the plaintiff's claims will require appellate review of state-court decisions by the district court." Id. at 169. For instance, a lawsuit seeking "[a] declaration that [a] federal statute was unconstitutional as applied" does not invite a district court's review and rejection of a state court judgment applying that statute. See id. at 168 (citing Adkins v. Rumsfeld, 464 F.3d 456, 460 (4th Cir. 2006)).

Undoubtedly, Plaintiff's Amended Complaint meets the first and third requirements of the Rooker-Feldman doctrine as Plaintiff is a "state-court loser," and the Commonwealth Court issued its judgment before this action was filed. However, Plaintiff's claims are not barred by the Rooker-Feldman doctrine as his alleged injuries were caused not by the state court's decision but rather by Defendants' actions. Specifically, Counts I and III of the Amended Complaint seek declaratory and injunctive relief based on PENNDOT's July 3, 2013 Suspension Notice and the alleged continuing violation of Plaintiff's property right to operate a motor vehicle. Thus, the source of Plaintiff's injury at Counts I and III is Defendants' issuance of the July 3, 2013

Suspension Notice, and not the state court judgment dismissing Plaintiff's suit challenging the validity of that notice. Likewise, Counts IV and V, which seek monetary damages against the individual capacity Defendants pursuant to §1983 and §1985(3), seek redress for alleged misconduct by these Defendants prior to and during the course of the underlying state court proceeding that was, and is, independent of the Commonwealth Court's December 23, 2015 decision. Notably, in Great Western, the Third Circuit explained that a § 1983 claim challenging the *process* of the underlying state proceeding does not constitute a review of the judgment. 615 F.3d at 161. Finally, although Count II challenges the "'jurisdictional' interpretation of 75 Pa. S.C.A.1550(a) and 42 Pa.S.C.A. 5571(b) by the Commonwealth Court of Pennsylvania," (Doc. 12 ¶ 334)—an interpretation that resulted in the Commonwealth Court dismissing Plaintiff's appeal in this case—his request for a declaratory judgment is not barred by the Rooker-Feldman doctrine, as he does not seek a direct reversal of the Commonwealth Court's December 23, 2015 decision relying on those statutes. See id. at 168 (citing Adkins, 464 F.3d at 460). For these reasons, the Rooker-Feldman doctrine does not bar the Court's consideration of this case.

2. Eleventh Amendment Immunity

Although the Rooker-Feldman doctrine does not strip this Court of jurisdiction, the Court finds that it lacks jurisdiction over Count I of the Amended Complaint for another reason – the Eleventh Amendment. Blanciak v. Allegheny Ludlum Corp., 77 F.3d 690, 694 n. 2 (3d Cir. 1996) (the Eleventh Amendment "is a jurisdictional bar which deprives federal courts of subject matter jurisdiction"). The Eleventh Amendment proscribes actions in the federal courts against states and their agencies. Laskaris v. Thornburgh, 661 F.2d 23 (3d Cir. 1981) (Pennsylvania); Mt. Healthy City Board of Ed. v. Doyle, 429 U.S. 274 (1977) (state agencies). Among other

things, the Eleventh Amendment bars all claims in federal court brought against state officials alleging violations of state law. See Pennhurst State School & Hosp. v. Halderman, 465 U.S. 89, 106 (1984). As the United States Supreme Court explained in Pennhurst, "it is difficult to think of a greater intrusion on state sovereignty than when a federal court instructs state officials on how to conform their conduct to state law. Such a result conflicts directly with the principles of federalism that underlie the Eleventh Amendment." Pennhurst, 465 U.S. at 106; see also Pa. Fed'n of Sportsmen's Clubs, Inc. v. Hess, 297 F.3d 310, 325 (3d Cir. 2002) ("Simply put, the Eleventh Amendment prohibits a federal court from considering a claim that a state official violated state law in carrying out his or her official responsibilities."); Alessi by Alessi v. Com. of Pa., Dep't of Pub. Welfare, 893 F.2d 1444, 1457 (3d Cir. 1990) (holding that the Pennhurst doctrine applies equally to claims for injunctive and declaratory relief against state officials for alleged violations of state law); Smolow v. Hafer, 353 F. Supp. 2d 561, 569 (E.D. Pa. 2005) ("In Pennhurst, the Supreme Court held that, consistent with the Eleventh Amendment, a federal court may not grant 'relief against state officials on the basis of state law, whether prospective or retroactive.'").

As an agency of the Commonwealth, PENNDOT is entitled to the same Eleventh Amendment immunity that the Commonwealth enjoys. Warner v. Comm. of Pa., 569 F. App'x 70, 72 (3d Cir. 2014) (affirming dismissal of civil rights claim asserted against PENNDOT on Eleventh Amendment immunity grounds). As noted above, in Count I, Plaintiff seeks a declaratory judgment against PENNDOT and Defendant Templeton, in her official capacity, based on his argument that the July 3, 2013 Suspension Notice violated *state law* at the time it was issued, and thus was null and void. (See Doc. 12 at ¶ 324 ("As of July 3, 2013, the date on

which PENNDOT issued the Suspension Notices to Plaintiff (Exhibits "1" and "2"), both the General Assembly's amendments to Pennsylvania's Vehicle Code in 2003 (Act. No. 24, Senate Bill No. 8 (2003 Pa. Laws 24)) and the Commonwealth Court's controlling decision in Zimmerman v. Commonwealth, Dep't of Transp., 759 A.2d 953 (Pa. Commw. 2000) required that any driver's license suspensions issued to licensees on the basis of AA-DUI and DUI convictions arising out of the same motor vehicle accident merge into a single one-year suspension.")). Because Plaintiff seeks in Count I a declaration that the Defendant state agency and state official violated *state law* when issuing the July 3, 2013 Notice, this Court lacks subject matter jurisdiction over this claim.[2]

b. Dismissal of Remaining Claims on the Merits (Rule 12(b)(6))

Defendants moved to dismiss all counts in the Amended Complaint for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6). (Doc. 13). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007)). When faced with a motion to dismiss, a

[2] The Court further notes that Defendant Templeton enjoys Eleventh Amendment immunity from any suit for money damages. See Betts v. New Castle Youth Dev. Ctr., 621 F.3d 249, 254 (3d Cir. 2010) ("Individual state employees sued in their official capacity are also entitled to Eleventh Amendment immunity because 'official-capacity suits generally represent only another way of pleading an action" against the state.'") (citations omitted). However, as discussed below, in Count III, Plaintiff is seeking prospective injunctive relief against Defendant Templeton for an alleged violation of his federal rights. Accordingly, Plaintiff's claim against Defendant Templeton at Count III is not barred by the Eleventh Amendment. See Ex Parte Young, 209 U.S. 123 (1908); see also Christ the King Manor, Inc. v. Sec'y U.S. Dep't of Health & Human Servs., 730 F.3d 291, 318 (3d Cir. 2013) ("The theory behind Young is that a state officer lacks the authority to enforce an unconstitutional state enactment, and thus the officer is stripped of his official or representative character and becomes subject to the consequences of his individual conduct.") (quotation marks and citation omitted).

court "must accept all of the complaint's well-pleaded facts as true, but may disregard any legal conclusions." Fowler v. UPMC Shadyside, 578 F.3d 203, 210-11 (3d Cir. 2009).

1. Count II: Plaintiff's Request for Declaratory Judgment

In Count II, Plaintiff seeks a declaratory judgment "that Section 1550(a) of the Vehicle Code, 75 Pa. S.C.A. § 1550(a), and Section 5571(b) of the Judicial Code, 42 Pa. S.C.A. § 5571(b), are unconstitutional on their face and as applied." (Doc. 12 ¶ 329). For the reasons below, the Court will deny Plaintiff's request and dismiss this claim.

Section 1550(a) of the Vehicle Code provides:

> (a) General rule.--Any person who has been denied a driver's license, whose driver's license has been canceled, whose commercial driver's license designation has been removed or whose operating privilege has been recalled, suspended, revoked or disqualified by the department shall have the right to appeal to the court vested with jurisdiction of such appeals by or pursuant to Title 42 (relating to judiciary and judicial procedure).

75 Pa. S.C.A. § 1550(a).

Pursuant to Sections 5571(b) of the Pennsylvania Judicial Code, a licensee has 30 days from the mailing date of a notice of suspension to file an appeal with the trial court. 42 Pa.C.S. § 5571(b). Appeals filed beyond the 30–day appeal period are untimely and deprive the trial court of subject matter jurisdiction over the appeals. See Hudson v. Dep't of Transp., Bureau of Driver Licensing, 830 A.2d 594, 598 (Pa. Cmwlth. 2003); Kovalesky v. Com., Dept. of Transp., Bureau of Driver Licensing, 850 A.2d 26, 29 (Pa. Cmwlth. 2004) (explaining that 30-day period to appeal from notice of suspension or revocation of driver's license is jurisdictional; failure to bring an appeal within the statutorily prescribed period precludes common pleas court from exercising subject matter jurisdiction).

Plaintiff claims that the jurisdictional bar imposed by Section 5571(b) is

"unconstitutional" because it makes no provision for late filing "where a governmental agency, such a PENNDOT, and/or PENNDOT's Director, initially takes administrative action against a citizen without any legal authority . . . to take such action" and thereby "condones PENNDOT's Directors and lawyers engaging, and even incentivizes PENNDOT's Directors and lawyers to engage, in material dishonesty and fraud through the issuance and defense of patently illegal but deceptively-worded suspension notices." (Doc. 12 at ¶¶ 334, 341). As an initial matter, the Court finds this argument factually misleading. Based on the Court's research, it appears that the 30-day filing deadline is not—as Plaintiff suggests—absolute. Rather, state courts may permit a licensee to appeal nunc pro tunc where the licensee's failure to timely appeal results from extraordinary circumstances involving fraud or a breakdown in the administrative or judicial process. Kulick v. Dep't of Transp., Bureau of Driver Licensing, 666 A.2d 1148, 1150 (Pa.Cmwlth.1995). Thus, in cases where a plaintiff's late filing is caused by "material dishonesty and fraud" by PENNDOT, as Plaintiff contends occurs, he or she may rely on the "extraordinary circumstances" standard to overcome the procedural bar.

In any case, the Court finds that Pennsylvania's 30-day jurisdictional deadline for filing a notice of appeal is not, either on its face or as applied, unconstitutional. Appellate deadlines generally are jurisdictional in nature. Indeed, the Supreme Court has repeatedly emphasized that the requirement of a timely notice of appeal is "mandatory and jurisdictional." Browder v. Director, Dep't of Corrections, 434 U.S. 257, 264 (1978); Union Pac. R.R. Co. v. Bhd. of Locomotive Eng'rs, 558 U.S. 67, 82 (2009) (stating that "we have reaffirmed the jurisdictional character of the time limitation for filing a notice of appeal"). Furthermore, a 30-day deadline for filing an appeal is standard, see Fed. R. App. P. 4(a)(1)(A), and courts uniformly hold that

30-day filing deadlines are not unconstitutionally short. See, e.g., Kilgore v. Bowersox, 124 F.3d 985, 993 (8th Cir. 1997) (30-day filing deadline contained in state's rule on postconviction proceedings was not unconstitutionally short); Talamantes-Penalver v. I.N.S., 51 F.3d 133 (8th Cir. 1995) (even a 10-day filing deadline for notice of appeal from immigration judge's decision did not violate alien's due process rights). Indeed, Plaintiff's proposition, taken to its logical conclusion, would result in every statute or court rule codifying a 30-day filing deadline being found unconstitutional and require that courts grant litigants an unlimited time to submit a notice of appeal or other document. That is simply not what the Constitution requires. For these reasons, this Court finds that Plaintiff's claims in Count II are wholly without merit.

2. Counts III and IV: Plaintiff's § 1983 Claims

a. PENNDOT is Not a "Person" Under § 1983

At Count III, Plaintiff attempts to bring claims against Defendant PENNDOT pursuant to 42 U.S.C. § 1983. However, PENNDOT is not a "person" subject to suit under 42 U.S.C. § 1983. See Hammonds v. Templeton, 2015 WL 106618, at *3 (W.D. Pa. Jan. 7, 2015), aff'd sub nom ("Neither the Commonwealth nor PennDOT is a 'person' for purposes of § 1983, and therefore neither is amendable to suit under the civil rights statute."); Petsinger v. Pa. Dep't of Transp., 211 F. Supp. 2d 610, 613 (E.D. Pa. 2002); Fitzpatrick v. Pennsylvania Dep't of Transp., 40 F. Supp. 2d 631, 635 n.4 (E.D. Pa. 1999); see also O'Hara v. Ind. Univ. of Pa., 171 F.Supp.2d 490, 495 (W.D. Pa.2001) ("The Commonwealth of Pennsylvania has not waived its immunity in § 1983 civil rights cases and Congress did not abrogate state immunity in general in enacting civil rights legislation, including § 1983."). Accordingly, the Court will dismiss Plaintiff's § 1983 claim against Defendant PENNDOT at Count III.

b. PENNDOT's Attorneys are Immune from Suit

In Count IV, Plaintiff sues five attorneys (Kuhar, Edwards, Smith, Bricknell and Cressler) from PENNDOT's Chief Counsel's office, in connection with their legal representation of PENNDOT in defending against Plaintiff's appeal. Plaintiff's § 1983 claims against these Defendants also must be dismissed because they are entitled to absolute immunity with respect to actions they allegedly took during the course of the state court proceedings. See Elliott v. Dorian, 2007 WL 120031, at *2 (W.D. Pa. Jan. 10, 2007) (citing Buckley v. Fitzsimmons, 509 U.S. 259, 269 (1993)); see also Butz v. Economou, 438 U.S. 478, 512–14 (1978) (extending absolute immunity to government attorneys participating in proceedings before administrative tribunals). Absolute immunity attaches to all actions performed in a "quasi-judicial" role, including "activity taken while in court, such as the presentation of evidence or legal argument, as well as selected out of court behavior 'intimately associated with the judicial phases' of litigation." Safford v. Favata, 2007 WL 570205, at *2 (D. Del. Feb. 20, 2007) (citing Imbler v. Pachtman, 424 U.S. 409 (1976)).

Here, Plaintiff claims that "Kuhar, through lies of omission, sabotaged Plaintiff's statutory appeal by advising Plaintiff prior to the hearing that Kuhar and PENNDOT would consent to the granting of nunc pro tunc relief, and by conscientiously not opposing, during and after the hearing, the granting of the Petition by the trial court," and that "Edwards, Smith, Cressler and Bricknell thereafter torpedoed and sank Plaintiff's appeal by reversing position, mid-case, and claiming that the lower court had 'erred' in granting Plaintiff nunc pro tunc relief." (Doc. 18 at 21-22). Based on these allegations, it is clear that Plaintiff is challenging the *legal arguments* that were made (and not made) by PENNDOT's attorneys regarding the timeliness of

Plaintiff's appeal during the course of the state court proceedings, which are protected by absolute immunity. See Wilson v. Somerset Cty. Prosecutors Office, 2016 WL 1090811, at *8 (D.N.J. Mar. 21, 2016) (holding that prosecutor was "entitled to absolute immunity for the arguments he made in his legal brief . . . because he was advocating for the state's position during the course of Plaintiff's criminal proceedings"). For these reasons, Plaintiff's claims against the attorney Defendants will be dismissed.

c. Plaintiff Fails to Allege a Due Process Violation

Plaintiff's "due process" claims against the remaining defendants (Defendant Templeton at Count III and Defendant Dolan at Count IV) will also be dismissed. Although a person does not have a constitutional right to a driver's license, see Banks v. Bickley, 2005 WL 1138461, at *2 (M.D. Pa. Apr. 27, 2005), "it is clear that once a [driver's] license is bestowed, a person has a real property interest in the license that cannot be taken away without due process." Pascarella v. Swift Transp. Co., Inc., 643 F.Supp.2d 639, 649 (D.N.J. July 14, 2009) (citing Mackey v. Montrym, 443 U.S. 1, 11 (1979)); Muhammad v. Weis, 2009 WL 2525454 (E.D. Pa. Aug. 17, 2009) ("[T]he state must only afford a person due process when suspending or revoking his or her driver's license."). In order to state a claim for deprivation of procedural due process rights under §1983, "a plaintiff must allege that (1) he was deprived of an individual interest that is encompassed within the Fourteenth Amendment's protection of life, liberty, or property, and (2) the procedures available to him did not provide due process of law." Hammonds v. Director, Pennsylvania Bureau of Driver Licensing, 618 Fed. Appx. 740, 742 (3d Cir. 2016) (citing Hill v. Borough of Kutztown, 455 F.3d 225, 233–34 (3d Cir. 2006)).

Plaintiff has not, and cannot, plead facts sufficient to support a claim for violation of his

due process rights. "In order to state a claim for failure to provide due process, a plaintiff must have taken advantage of the processes that are available to him or her, unless those processes are unavailable or patently inadequate." Alvin v. Suzuki, 227 F.3d 107, 116 (3d Cir. 2000). Here, by his own admission, Plaintiff *did not* timely utilize the available process—a civil statutory appeal pursuant to 75 Pa. C.S. § 1550. Pennsylvania courts repeatedly have held that 75 Pa. C.S. § 1550 satisfies the due process guarantees associated with a license suspension. Rutkowski v. Dept. of Trans, 780 A.2d 860, 862 (Pa. Cmwlth. 2001) (citing Harrington v. Com., Dept. of Trans., Bureau of Driver Licensing, 763 A.3d 386 (Pa. 2000)). According to the Commonwealth Court, "[w]hen a person's operating privilege is suspended, he is given due process; he is afforded an appeal to the trial court, pursuant to Section 1550(a) of the Vehicle Code, 75 Pa.C.S. § 1550(a). This is all the process to which Licensees are entitled." Smires v. O'Shell, 126 A.3d 383, 391 (Pa. Cmwlth. 2015).

Here, Plaintiff had available to him an appeals process that fully satisfied the Constitution's due process guarantees but he failed to take advantage of it in a timely manner. Defendants cannot be faulted for his lack of diligence. See Pascarella, 643 F. Supp. 2d at 652–53 ("Plaintiff cannot state a claim for deprivation of due process on the grounds that he was deprived a pre-deprivation hearing, because he did not request a hearing through the administrative procedure made available to him."). Furthermore, as discussed above, the 30-day jurisdictional bar for filing appeals pursuant to § 1550(a) did not, in itself, violate Plaintiff's due process rights. See Sanchez v. Lytle, 166 F.3d 348 (10th Cir. 1998) (explaining that "the limitation period did not deprive Sanchez of his opportunity for federal review; rather Sanchez himself failed to pursue his available remedies in a timely fashion").

For these reasons, Plaintiff cannot state a claim for violation of his due process rights.

d. Plaintiff Fails to Allege an Equal Protection Violation

Plaintiff also fails to allege a violation of the Equal Protection Clause. The Equal Protection Clause of the Fourteenth Amendment provides that no State shall "deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV. In his briefing, Plaintiff argues that Defendants, by issuing him two separate license suspensions for his two DUI offenses, have violated the Equal Protection Clause by discriminating against a class of "licensees, including Plaintiff, convicted of felony and misdemeanor grade DUI offenses arising out of the same accident." (Doc. 18 at 16). Notably, Plaintiff's claim implicates neither a suspect classification nor a fundamental right.[3] See Knight v. State of Ariz., 39 F.3d 1187 (9th Cir. 1994) (holding that "DWI/DUI inmates are not a suspect class"); Doe v. Edgar, 721 F.2d 619, 622 (7th Cir. 1983) ("Nor do we find that twice-convicted DUI offenders constitute a suspect class; that label has been reserved for groups 'saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process.'") (citations omitted). Because Plaintiff's allegations "do not implicate a suspect or quasi-suspect class, the state action here is presumed to be valid and will be upheld if it is 'rationally related to a legitimate state interest.'" Tillman v. Lebanon Cty. Corr. Fac., 221 F.3d 410, 423 (3d. Cir. 2000) (citations omitted).

The Court finds that the Commonwealth of Pennsylvania clearly has a legitimate interest

[3] The Pennsylvania Supreme Court has repeatedly held that driving a motor vehicle is a privilege, not a fundamental right. Commonwealth v. Zimmer, 539 Pa. 548, 559 (1995); Commonwealth v. Yarger, 538 Pa. 329, 335 (1994); Commonwealth v. Funk, 323 Pa. 390, 394 (1936).

in protecting citizens from motorists who have committed prior DUI offenses. See Shalna v. Bensalem Twp. Police Dep't, 1988 WL 71420, at *8 (E.D. Pa. June 30, 1988) ("Certainly the state objective at issue here, prevention of alcohol-related traffic injuries, is legitimate."); Doe, 721 F.2d at 623 ("Drunk driving is related to one-half of the nation's highway fatalities . . . . The Secretary's policy combats a serious problem by removing current repeat offenders from the road deterring potential offenders."). Indeed, courts have upheld far more severe driving restrictions imposed on ex-felons (even ones who did not commit DUI offenses) under rational basis review, including, for instance, a seemingly permanent exclusion for all ex-felons from employment as school bus drivers. See Hill v. Gill, 703 F. Supp. 1034, 1037 (D.R.I. 1989) (stating that "[i]t is difficult to imagine a more legitimate state interest than that of protecting . . . school-age children from the possibility of either physical harm or immoral influences" and that "the selection of school bus drivers directly impacts upon that interest"). Thus, to the extent that PENNDOT treats individuals who have committed DUI offenses differently from other individuals, as Plaintiff alleges it does, such differentiation is not a violation of the Equal Protection Clause.[4]

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[4] The Court notes the Supreme Court of Pennsylvania has rejected the claim that operating privilege suspensions based on DUI convictions violate either a motorist's equal protection or due process rights, finding:

> The mandatory suspension of a driver's license upon conviction for DUI is a collateral civil penalty administratively imposed by [PENNDOT] pursuant to the mandates of the [ ] Vehicle Code not the Crimes Code. Thus, the mandatory suspension is not a direct criminal penalty, but rather, is a civil sanction wholly unrelated to Petitioner's appeal of the criminal conviction to the Superior Court." Commonwealth v. Wolf, 534 Pa. 283, 290, 632 A.2d 864, 867 (1993) (citations omitted) (emphasis in original). **As operating privilege suspensions are collateral civil consequences, not criminal penalties, they do not violate a**

3. Count V: Plaintiff's § 1985(3) Claim

Count V purports to bring a conspiracy claim against the individually-named Defendants under 42 U.S.C. § 1985(3). To state a § 1985(3) Conspiracy Claim, "a plaintiff must allege: (1) a conspiracy; (2) motivated by a racial or class based discriminatory animus designed to deprive, directly or indirectly, any person or class of persons to the equal protection of the laws; (3) an act in furtherance of the conspiracy; and (4) an injury to person or property or the deprivation of any right or privilege of a citizen of the United States." Russo v. Voorhees Twp., 403 F. Supp. 2d 352, 359 (D.N.J. 2005). The Court finds that the Amended Complaint fails to state a claim for conspiracy under § 1985(3) for two reasons.

First, Plaintiff's § 1985(3) claim fails in this case, because "the absence of an underlying § 1983 deprivation of rights precludes a § 1985 conspiracy claim predicated on the same allegations." Rhames v. Sch. Dist. of Philadelphia, 2002 WL 1740760, at *5 (E.D. Pa. July 17, 2002) (citation omitted)..

Second, Plaintiff does not allege any actionable form of "invidious discriminatory animus" against an identifiable class in his Amended Complaint. See Farber v. City of Paterson, 440 F.3d 131, 135 (3d Cir. 2006). "In order to ensure that a § 1985(3) class has an independent identifiable existence, a reasonable person must be able to 'readily determine by means of an objective criterion or set of criteria who is a member of the group and who is not.'" Id. at 136

> **motorist's equal protection or due process rights**, nor does a defendant in a criminal case need to be informed of the collateral consequence for his criminal conduct, as it does not constitute a portion of his or her punishment.

Bell v. Com., Dep't of Transp., Bur. of Driver Licensing, 626 Pa. 270, 292, 96 A.3d 1005, 1019 (2014) (emphasis added).

(quoting Aulson v. Blanchard, 83 F.3d 1, 5 (1st Cir. 1996)). In Bray v. Alexandria Women's Health Clinic, the Supreme Court stated that "the class 'cannot be defined simply as the group of victims of the tortious action,'" or broadly defined "as those seeking to engage in the activity the defendant has interfered with." 506 U.S. 263, 266-67 (1993) (quoting United Bhd. of Carpenters and Joiners of America v. Scott, 463 U.S. 825, 850 (1983) (Blackmun, J., dissenting)).

Here, Plaintiff defines the "class" as individuals licensed to operate a vehicle who have been convicted of felony and misdemeanor DUI offenses arising out of a single accident. (Doc. 12 ¶ 401). As discussed above, this alleged "class" is not a suspect or quasi-suspect class under federal law, and Plaintiff cites to no case law supporting the conclusion that it should be otherwise protected. Bray, 506 U.S. at 269 ("Whatever may be the precise meaning of a 'class' for purposes of Griffin's speculative extension of § 1985(3) beyond race, the term unquestionably connotes something more than a group of individuals who share a desire to engage in conduct that the § 1985(3) defendant disfavors."). For these reasons, Plaintiff's § 1985(3) claim will be dismissed.

C. NO FURTHER AMENDMENT

In civil rights cases, district courts must generally extend plaintiffs an opportunity to amend the complaint before dismissal. Fletcher-Harlee Corp. v. Pote Concrete Contractors, 482 F.3d 247, 253 (3d Cir. 2007). A district court can refuse to permit a curative amendment on grounds of bad faith, undue delay, prejudice, or futility. Alston v. Parker, 363 F.3d 229, 235 (3d Cir. 2004). In this case, because no amendment to the Amended Complaint would allow Plaintiff to state a claim upon which relief may be granted in this Court, amendment would be futile, and thus, the Amended Complaint will be dismissed with prejudice.

D. PRELIMINARY INJUNCTION MOTION

On a motion for a preliminary injunction, a plaintiff bears the burden to show, among other things, "that he is likely to succeed on the merits … ." Ferring Pharms., Inc. v. Watson Pharms., Inc., 765 F.3d 205, 210 (3d Cir. 2014) (citation omitted). Given the Court's holding Plaintiff has failed to state any claim for relief over which this Court has jurisdiction, he necessarily cannot show that he is likely to succeed on the merits. For this reason, Plaintiff's Motion for a Preliminary Injunction (Doc. 19) will be denied.

II. ORDER

For the foregoing reasons, Defendants' Motion to Dismiss (Doc. 13) is GRANTED, and Plaintiff's Motion for Preliminary Injunction (Doc. 19) is DENIED. Plaintiff's Amended Complaint is hereby DISMISSED with prejudice. A judgment order pursuant to Federal Rule of Civil Procedure 58 will follow.

IT IS SO ORDERED.

April 6, 2017

s/Cathy Bissoon
Cathy Bissoon
United States District Judge

cc (via ECF email notification):

All Counsel of Record