APPENDIX A

FILED: February 18, 2025

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 24-1803
(3:24-cv-00114-DJN)

ZACHARY C. CROUCH

Plaintiff - Appellant

v.

BRADEN GODDARD; ZEYUN WU

Defendants - Appellees

and

BEN IMPSON; KASHMINDER MEHTA

Defendants

JUDGMENT

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ NWAMAKA ANOWI, CLERK

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 24-1803

ZACHARY C. CROUCH,

Plaintiff - Appellant,

v.

BRADEN GODDARD; ZEYUN WU,

Defendants - Appellees.

and

BEN IMPSON; KASHMINDER MEHTA,

Defendants.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. David J. Novak, District Judge. (3:24-cv-00114-DJN)

Submitted: January 31, 2025 Decided: February 18, 2025

Before KING and AGEE, Circuit Judges, and TRAXLER, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Zachary C. Crouch, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

24

PER CURIAM:

Zachary C. Crouch appeals the district court's order granting Defendants' motion to dismiss Crouch's complaint as barred by Eleventh Amendment immunity and denying his requested injunctive relief as unavailable under the requirements of the Copyright Act, 17 U.S.C. § § 101-810. We have reviewed the record and find no reversible error. Accordingly, we affirm the district court's order. *Crouch v. Goodard*, No. 3:24-cv-00114-DJN (E.D. Va. July 9, 2024). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

APPENDIX B

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

ZACHARY CROUCH,
Plaintiff,

v. Civil No. 3:24cv114 (DJN)

BRADEN GODDARD,
ZEYUN WU,
Defendants.

MEMORANDUM ORDER
(Granting Motion to Dismiss)

This matter comes before the Court on Braden Goddards and Zeyun Wu's (together, "Defendants") Motion to Dismiss for Lack of Jurisdiction, (ECF No. 26 ("Motion")). There, Defendants move the Court to dismiss Zachary Crouch's ("Plaintiff") *Pro Se* Third Amended Complaint, (ECF No. 21 ("TAC")), which alleges that Defendants violated copyright laws and committed fraud by using Plaintiff's Ph.D. thesis data without his permission, on sovereign immunity grounds. Defendants filed their Motion on June 3, 2024, along with a Roseboro Notice, and Plaintiff failed to file a reply or otherwise pursue this action before June 24, 2024, thus rendering it ripe for review. For the reasons that follow, the Court finds that Defendants, who committed the alleged acts while in their capacity as professors at Virginia Commonwealth University ("VCU"), are shielded by sovereign immunity. As such, the Court hereby GRANTS

Defendants' Motion to Dismiss for Lack of Jurisdiction, (ECF No. 26), and DENIES WITHOUT PREJUDICE[1] Plaintiff's claims for damages and injunctive relief.

I. BACKGROUND

The facts of this case are straightforward. Plaintiff was a Ph.D. candidate at VCU who worked alongside Defendants, both of whom are professors that at some point supervised and worked with Plaintiff. (TAC at 2, ¶¶ 1–4.) While working toward his Ph.D., Plaintiff spent considerable time developing his research, which included simulations and code for "MCNP." (*Id.*) While it is unclear what "MCNP" stands for, as neither Plaintiff nor Defendants define the term, it appears to refer to "Monte Carlo N-Particle Transport," which is a research methodology used in computational physics.[2] In any case, Plaintiff contends that after spending significant time developing this code, Defendants took it for their own personal gain. (*Id.* at 2, ¶¶ 2–4.) For instance, Defendant Goddard took code and used it at academic conferences in Vienna, Austria and Washington, D.C., while Defendant Wu used it to further the research of another student. (*Id.* at 2, ¶¶ 2–5.) Plaintiff then alleges that, after Defendant Goddard "had all the simulations and data he needed," he fired Plaintiff in December of 2023. (*Id.*) Since his firing, Defendants have apparently continued to use the data that Plaintiff generated during his time as a Ph.D. candidate. (*Id.*)

For these acts, Plaintiff brings five counts against Defendants, though he does not articulate whether the claims are brought against them in their official or personal capacities. In

---

[1] A dismissal for any defect in subject matter jurisdiction "must be one without prejudice, because a court that lacks jurisdiction has no power to adjudicate and dispose of a claim on the merits." *Ali v. Hogan*, 26 F.4th 587, 600 (4th Cir. 2022).

[2] LOS ALAMOS NATIONAL LABORATORY, *The MCNP Code* (last visited June 27, 2024), https://mcnp.lanl.gov/ [https://perma.cc/V2F5-W6B8].

Count I, he brings a copyright infringement claim under 17 U.S.C. §§ 101–810 against Defendant Goddard for misappropriating the referenced data and using it at a research conference in Vienna, Austria. (*Id.* at 6.) In Counts II and III, he brings the same claim against Defendant Goddard, but for infringement that occurred at a conference in Washington, D.C. and Knoxville, Tennessee, respectively. (*Id.*) Count IV constitutes a copyright claim against Defendant Wu related to his conduct in advising a student to "steal MCNP input files from Plaintiff." (*Id.* at 7.) Count V, titled as "Fraud," runs against both Defendants, and the Court construes this to be a claim for common law fraud against both Defendants based on the allegation that they stole the data produced by Plaintiff for his Ph.D. thesis. (*Id.*) As relief, Plaintiff requests $1,600,000 in damages and an injunction against future misappropriation of Plaintiff's MCNP input and output files, the data retrieved from those files and the manuscripts that Plaintiff created based on that data. (*Id.*)

II. STANDARD OF REVIEW

At this stage, the Court accepts as true the facts set forth in the Third Amended Complaint, (ECF No. 21). *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Moreover, at the motion-to-dismiss stage, the Court may consider both the operative complaint, attachment to the complaint, and those documents not attached to the complaint that "are integral to and explicitly relied upon," provided that their authenticity is not in dispute. *Brown Goldstein Levy LLP v. Fed. Ins. Co.*, 68 F.4th 169, 176 n.5 (4th Cir. 2023); *Halscott Megaro, P.A. v. McCollum*, 66 F.4th 151, 157 (4th Cir. 2023).

In considering a motion to dismiss, the Court views the facts in the light most favorable to the plaintiff. *Mylan Lab'ys, Inc. v. Matkari*, 7 F.3d 1130, 1134 (4th Cir. 1993). Although the law does not require "detailed factual allegations . . . [f]actual allegations must be enough to

raise a right to relief above the speculative level," rendering the claim "plausible on its face" rather than merely "conceivable." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Thus, "naked assertions" of wrongdoing need not be accepted as true, unless they come with some "factual enhancement" that makes those assertions "cross the line [from] possibility to plausibility." *Francis v. Giacomelli*, 588 F.3d 186, 193 (4th Cir. 2009). Moreover, when a plaintiff is proceeding *pro se*, as is the case here, the Court construes the complaint liberally to ensure that potentially meritorious claims survive challenge. *Hughes v. Rowe*, 449 U.S. 5, 9 (1980).

III. DISCUSSION

Defendants move the Court to dismiss the case under Federal Rule of Civil Procedure 12(b)(1), as they contend that sovereign immunity applies to both Defendants and thus divests the Court of subject-matter jurisdiction. (Mot. at 3.) Sovereign immunity applies, according to Defendants, because they constitute agents of VCU — a state agency for purposes of the Eleventh Amendment — and thus, as agents of that agency, likewise stand entitled to the protections of sovereign immunity. (Mot. at 4–5.) The Court begins its analysis by considering whether sovereign immunity applies to this case, given that it only applies to officials when sued in their official capacity. It then turns to considering whether an exception to sovereign immunity applies in this matter. For the reasons that follow, the Court concludes that sovereign immunity applies, as the face of the complaint demonstrates that Defendants have been sued in their official capacity, and that no exception to sovereign immunity stands applicable here. As such, the Court GRANTS Defendants' Motion to Dismiss, (ECF No. 26).

A. Defendants Are Shielded by Sovereign Immunity

To be protected by sovereign immunity, Defendants must be agents of an entity that itself has sovereign immunity, and they must be sued for actions taken in their official rather than unofficial capacities. *Lytle v. Griffith*, 240 F.3d 404, 408 (4th Cir. 2001). For purposes of the Eleventh Amendment, the Court has determined that VCU constitutes a state agency. *Nofsinger v. Virginia Commonwealth Uni.*, 2012 WL 2878608, at *12 (E.D. Va. July 13, 2012), *aff'd*, 523 F. App'x 2014 (4th Cir. 2013); *Herron v. Virginia Commonwealth Univ.*, 366 F. Supp. 2d 355, 363–64 (E.D. Va. 2004). Thus, the dispositive question becomes whether Defendants are being sued in their official capacities as employees of VCU, as Plaintiff's TAC does not articulate in what capacity he has brought suit against Defendants.

Here, Plaintiff does not delineate in what capacity he brings suit, as the TAC does not reference either Defendant's official or personal capacity, and he has failed to file a reply brief that could clarify the TAC. "When a plaintiff does not allege capacity specifically, the court must examine the nature of the plaintiff's claims, the relief sought, and the course of proceedings to determine whether a state official is being sued in a personal capacity." *Biggs v. Meadows*, 66 F.3d 56, 61 (4th Cir. 1995). Generally, three factors are considered in this analysis: (1) the focus of the allegations; (2) the type of damages sought; and (3) the defenses asserted. *Victors v. Kronmiller*, 553 F. Supp. 2d 533, 545 (D. Md. 2008). Thus, the Court is left to determine whether this is an official or personal capacity suit with the information available on the face of the TAC, while keeping in mind the deference afforded to *pro se* litigants. *See White v. White*, 886 F.2d 721, 722–23 (4th Cir. 1989) (holding that *pro se* complaints, however inartfully pleaded, must be held to "less stringent standards than pleadings drafted by attorneys").

The TAC indicates that Plaintiff's suit is one brought against Defendants in their official capacity. First, the thrust of the TAC envisions an official capacity claim, as it references that Defendants, in the course of their obligations as professors, took his research without his permission. (TAC at 2, ¶¶ 2–6.) And after allegedly misappropriating Plaintiff's research, they then apparently passed it off as their own at research conferences and to further the research of other students that they supervised. (*Id.*) These acts fall squarely within Defendants' obligations as professors for VCU. In a pair of attached declarations, both Defendants note that they "regularly attend industry conferences and conventions in [their] professional capacity," (ECF No. 27-1 at 2), and that any "supervision of Plaintiff and other Ph.D.. students enrolled at VCU" was part of their obligations as a VCU professor and faculty member, (ECF No. 27-2 at 2).

However, the relief sought, which includes $1,600,000 in damages collectively and injunctive relief, cuts toward finding that this was intended as a personal capacity suit. Because sovereign immunity bars damages in an official capacity suit, the request for damages is indicative of a personal capacity suit, as "it would have been illogical and futile for [Plaintiff] to sue the defendants in their official capacities and to then request a form of relief that would clearly be unavailable to him in such a suit." *Biggs*, 66 F.3d at 61. Moreover, the request for injunctive relief does not counsel otherwise. Logically, Plaintiff may have intended to bring an official capacity suit only in this respect, as suits for injunctive relief against officials in their officially capacity are "not treated as [an] action against the State," and thus cannot be used against Plaintiff to construe the damages claim as also being brought against Defendants in their official capacity. *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 71 n.10 (1989). The final factor, however, weighs in Defendants' favor, as they perceived this suit as one in their official rather than personal capacity given that they have raised sovereign immunity as a defense.

Given that two of the three factors weigh toward finding that this represents an official-capacity suit, the Court concludes that Plaintiff has sued Defendants in their official capacity.[3] To be sure, the Court recognizes that Plaintiff proceeds *pro se* and the forgiving pleading standards associated with that status, but this does not constitute a case where those standards permit the case to proceed; even if Plaintiff had captioned this case against Defendants in their personal capacity, the Court would still hold that this was in-fact an official-capacity suit. *Accord Amaran v. Virginia State Univ.*, 476 F. Supp. 2d 535, 541 (E.D. Va. 2007) (conferring sovereign immunity on provost for actions taken in relation to his job); *Dillow v. Va. Polytechnic Inst. & State Univ.*, 2023 WL 2320765, at *22–23 (W.D. Va. Mar. 2, 2023) (same, for Virginia Tech official sued for conduct undertaken in their roles as university administrators). This conclusion derives from the fact that the alleged misappropriation was inextricably related to Defendants' official duties, an adverse judgment would in-effect run against the Commonwealth, Defendants' alleged misconduct was not meant to further interests distinct from the Commonwealth's and their conduct was not *ultra vires*. *See Martin v. Wood*, 772 F.3d 192 (4th Cir. 2014) (articulating that when these factors are present, an individual-capacity suit should be construed as an official-capacity suit). If this were not the case, the Eleventh Amendment would become subservient to "elementary mechanics of captions and pleadings." *Lizzi v. Alexander*, 255 F.3d 128, 137 (4th Cir. 2001).

---

[3] Even if Plaintiff intended to bring a suit against Defendants in their personal capacity, it would be futile to grant leave to amend. As the Court reviews *infra* in Section III.B, a prerequisite to a damages claim for copyright infringement is a determination from the Copyright Office that one holds a copyright. *Fourth Est. Pub. Benefit Corp. v. Wall-Street.com, LLC*, 586 U.S. 296, 308 (2019). However, there exists no facts from which the Court could infer that Plaintiff holds a copyright in the at-issue work, and, therefore, he cannot plead a viable claim for damages even in the absence of sovereign immunity.

Thus, regardless of how generously the Court construes Plaintiff's TAC, this suit constitutes one brought against Defendants in their official capacity. Given that Defendants constitute agents of VCU, this suit therefore constitutes a suit against VCU itself, which stands protected by sovereign immunity as it has not waived those protections in this context, nor have they been abrogated by Congress. *Lytle v. Griffith*, 240 F.3d 404, 408 (4th Cir. 2001). Accordingly, the Eleventh Amendment bars Plaintiff's claim for damages.

B. Plaintiff Is Not Entitled to Injunctive Relief

Plaintiff also brings a claim for forward-looking, injunctive relief, which is not barred by sovereign immunity even when the suit is one brought against Defendants in their official capacity. *Ex Parte Young*, 209 U.S. 123, 203–204 (1908). Here, Plaintiff moves the Court to "restrain any further infringement upon the research Plaintiff worked on," which the Court construes to be a request to enjoin ongoing copyright infringement. (TAC at 7.)

The Copyright Act grants the Court broad authority to issue injunctive relief. *Tattoo Art, Inc. v. TAT Intern., LLC*, 794 F. Supp. 2d 634, 661 (E.D. Va. 2011). However, a prerequisite to bringing a claim under the Copyright Act, whether that be for damages or for injunctive relief, is registration of that copyright. *Fourth Est. Pub. Benefit Corp. v. Wall-Street.com, LLC*, 586 U.S. 296, 308 (2019). To be sure, there are some exceptions to the registration requirement, such as for works "consisting of sounds, images, or both." 17 U.S.C. § 411(c). But Plaintiff's research does not fall into this carveout, nor has he provided any indication that he has been granted or denied a copyright from the Copyright Office. As such, the Court denies his claim for injunctive relief, as 17 U.S.C. § 411(a) "requires owners to await action by the Register before filing suit for infringement." *Fourth Est. Pub. Benefit Corp.*, 586 U.S. at 309.

IV. CONCLUSION

For the reasons stated above, the Court hereby GRANTS Defendants' Motion to Dismiss, (ECF No. 26), and DISMISSES WITHOUT PREJUDICE Plaintiff's claims for damages and injunctive relief.

Let the Clerk file a copy of this Order electronically and notify all counsel of record and mail a copy to Plaintiff at his address of record.

It is so ORDERED.

/s/
David J. Novak
United States District Judge

Richmond, Virginia
Date: July 9, 2024