

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Angela Eunice, individually and on)
 behalf of all those similarly situated,)
)
 Plaintiffs,)
)
 v.)
)
 Dan Ellzey, in his official capacity as)
 Executive Director of the South)
 Carolina Department of Employment)
 and Workforce; the South Carolina)
 Department of Employment and)
 Workforce; and the State of South)
 Carolina,)
)
 Defendant.)
 _____)

Civil Action No. 2:21-cv-2010-BHH

ORDER

Plaintiff Angela Eunice (“Plaintiff” or “Eunice”) filed this proposed class action on July 6, 2021, against both Dan Ellzey (“Ellzey”), in his official capacity as Executive Director of the South Carolina Department of Employment, and the South Carolina Department of Employment and Workforce (“SCDEW”) (collectively “Defendants”). In her complaint, Plaintiff seeks injunctive relief and monetary damages based on Defendants’ alleged illegal capping of weekly unemployment benefits at \$326.00, and Plaintiff asserts three claims against Defendants: (1) a claim under 42 U.S.C. § 1983 based on Defendants’ alleged denial of Plaintiff’s rights under the Social Security Act, specifically 42 U.S.C. § 503(a)(1); (2) a claim for unjust enrichment; and (3) a claim for breach of implied contract.

Defendants have moved to transfer venue to the Columbia Division of the District of South Carolina, pursuant to 28 U.S.C. § 1404(a) and Local Civil Rule 3.01 (D.S.C.), and Defendants have moved to dismiss this action pursuant to Rules 12(b)(1) and (6) of the

Federal Rules of Civil Procedure. Plaintiff opposes Defendants' motion to dismiss and to transfer, and the matter has been fully briefed. The Court concludes that a hearing on Defendants' motion is unnecessary. For the reasons set forth herein, the Court denies in part and grants in part Defendants' motion. Specifically, the Court denies Defendants' motion to transfer venue but grants Defendants' motion to dismiss.

BACKGROUND

According to Plaintiffs' complaint, SCDEW has illegally capped the weekly amount of unemployment benefits at \$326.00. Specifically, Plaintiff asserts that the \$326.00 cap was not implemented pursuant to any regulation and that it directly conflicts with South Carolina law on the calculation of unemployment benefits. The South Carolina law upon which Plaintiff relies is entitled "Weekly benefit amount," and it provides as follows:

An insured worker's weekly benefit amount is fifty percent of his weekly average wage, as defined in Section 41-27-140, and the weekly benefit amount, if not a multiple of one dollar, must be computed to the next lower multiple of one dollar. However, no insured worker's weekly benefit amount may be less than forty-two dollars nor greater than sixty-six and two-thirds percent of the statewide average weekly wage most recently computed before the beginning of the individual's benefit year.

S.C. Code Ann. § 41-35-40.

According to Plaintiff, this South Carolina law requires any cap of a claimant's weekly unemployment benefits to be "sixty-six and two-thirds percent of the state wide weekly wage." Plaintiff further asserts that since at least 2000, sixty-six and two-thirds percent of the state wide weekly wage has been greater than \$326.00. (ECF No. 1 ¶ 6.) Moreover, Plaintiff argues that under the formula set forth in § 41-35-40, the maximum benefit of \$326.00 would only apply to a year when the statewide average weekly wage was approximately \$489.05, which has not been the case since 1999. (*Id.* ¶¶ 37-38.)

Plaintiff is a resident of Williamsburg County, South Carolina, who previously worked for Clarios, LLC, which paid certain taxes on the wages it paid to its employees to fund unemployment insurance for the benefit of employees who become unemployed by no fault of their own. According to Plaintiff, she became unemployed on March 22, 2021, and she applied to SCDEW for unemployment benefits on March 31, 2021. Plaintiff alleges that her high quarter earnings during her base period were \$14,642.35, resulting in an average weekly wage of \$1,126.33 for purposes of her benefit calculation under § 41-27-40. (*Id.* ¶¶ 50-53.) Thus, Plaintiff alleges that under § 41-35-40, her weekly unemployment benefit should be capped at \$563.00, but SCDEW limited her to the illegal cap of \$326.00. As a result, Plaintiff alleges that SCDEW is illegally withholding \$237.00 for each week she is entitled to unemployment benefits. (*Id.* ¶¶ 54-56.)

Plaintiff admits that she did not challenge SCDEW's determination of her weekly unemployment benefits through administrative remedies, but she argues that any such challenge would be futile in light of SCDEW's uniform position that the maximum weekly benefit is \$326.00. (*Id.* ¶ 57.) Plaintiff further asserts that exhaustion of administrative remedies is not required prior to filing this suit because SCDEW acted outside its authority in enforcing the illegal \$326.00 cap.

Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiff seeks to bring this action on behalf of herself and as a representative of the following class:

All insured workers, as that term is defined in section 41-27-310, who received unemployment benefits at any time between July 6, 2018, and the date of this complaint, whose weekly benefit as determined under the formula in S.C. Code Ann. § 41-35-40 was greater than \$326.

(*Id.* ¶ 69.)

As previously mentioned, in her complaint, Plaintiff asserts three claims against Defendants: (1) a claim under § 1983 based on Defendants' alleged denial of Plaintiff's rights under 42 U.S.C. § 503(a)(1); (2) a claim for unjust enrichment; and (3) a claim for breach of implied contract. Plaintiff asserts that the Court has federal question subject matter jurisdiction under 28 U.S.C. § 1331 because this action is brought under the federal Social Security Act, 42 U.S.C. § 503(a)(1) and 42 U.S.C. § 1983, and that the Court has supplemental jurisdiction over her state law claims.

DISCUSSION

I. Defendants' Motion to Transfer Venue to the Columbia Division

The Local Civil Rules for the District of South Carolina provide that, with the exception of certain cases not at issue here, “[a]ll civil cases must be assigned to that division of the district: (1) Where any natural defendant resides, where a substantial part of the events or omissions giving rise to the claim occurred, *or* where any corporate/other organization defendant does business relating to the events or omissions alleged.” Local Civil Rule 3.01(A)(1) (D.S.C.) (emphasis added). The Local Rules further provide that: “Any case may be transferred for case management or trial from one division to another division on motion of any party for good cause shown or sua sponte by the court.” Local Civil Rule 3.01(C).

In addition, pursuant to 28 U.S.C. § 1404(a), “[f]or the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought.” When deciding a motion to transfer, courts consider whether a transfer is warranted (1) for the convenience of the parties; (2) for the convenience of the witnesses; and (3) in the interest of justice. *Fairchild*

Semiconductor Corp. v. Nintendo Co., Ltd., 810 F. Supp. 173, 174 (D.S.C. 1992). Although limited by these factors, courts have broad discretion in deciding whether to transfer a case. *Saudi v. Northrop Grumman Corp.*, 427 F.3d 271, 277 (4th Cir. 2005).

In their motion to transfer venue, Defendants assert that the events giving rise to Plaintiff's claims occurred in the Columbia Division, and that because Defendants do business relating to the alleged events or omissions in the Columbia Division, the Court should transfer the action pursuant to Local Civil Rule 3.01(A) and (C) (D.S.C.). Additionally, Defendants assert that the Court should transfer this action to the Columbia Division for the same reasons this Court articulated in *Planned Parenthood S. Atl. v. Baker*, No. 2:18-cv-2078-BHH, 2018 WL 11266889, at *1 (D.S.C. Aug. 15, 2018).

In *Planned Parenthood*, the plaintiffs alleged that the Director of the South Carolina Department of Health and Human Services ("DHHS") violated the Medicaid Act and the Fourteenth Amendment, and this Court granted the defendant's motion to transfer venue from the Charleston Division to the Columbia Division because the Defendant resided in the Columbia Division and because the Court found that the Columbia Division was "where a substantial part of the events or omissions giving rise to the claim occurred." In fact, the Court found that "the events or omissions giving rise to the claim occurred *entirely* in the Columbia Division" because the plaintiffs' claim was based on the Governor's and DHSS's actions there, and the Court further explained that it did not appear that Planned Parenthood's Charleston location was ever enrolled in the Medicaid program at issue. 2018 WL 11266889, at *1-2 (emphasis added).

Here, Defendants assert that, like in *Planned Parenthood*, Plaintiff's claims are based entirely on actions taken by Defendants Ellzey and SCDEW in the Columbia

Division, and Defendants note that Plaintiff does not reside in the Charleston Division. Lastly, Defendants argue that the Court should transfer this action to the Columbia Division in the interest of justice and for the convenience of the witnesses.

In response to Defendants' motion, Plaintiff asserts that assignment of this case to the Charleston Division is proper and that it comports with Local Civil Rule 3.01(A) (D.S.C.). Specifically, Plaintiff contends that a substantial part of the events giving rise to the claims occurred in the Charleston Division because Defendants provided services, including the payment of allegedly illegally capped unemployment benefits, to claimants in the Charleston Division. Additionally, Plaintiff contends that SCDEW "does business relating to the events or omissions alleged," noting that, among other things, Defendants provide allegedly illegally capped unemployment benefits using their address in the Charleston Division and through service centers located in the Charleston Division. Additionally, Plaintiff asserts that the Charleston Division has the highest population of any division in South Carolina and that the tourism, hospitality, and healthcare sectors in the Charleston Division were disproportionately impacted by the COVID-19 pandemic, thereby resulting in large layoffs throughout the Charleston Division and a large number of individuals receiving weekly unemployment benefits. In all, Plaintiff asserts that her claims challenge state action with statewide impacts, and she argues that the Charleston Division is not an inconvenient forum under 28 U.S.C. § 1404.

After review, the Court agrees with Plaintiff that assignment of this case to the Charleston Division is proper and in accordance with Local Civil Rule 3.01(A). The Court finds the facts of this case distinguishable from *Planned Parenthood* because SCDEW actually conducts business in the Charleston Division related to the alleged illegal policy

that Plaintiff challenges, which was not the case in *Planned Parenthood*. Here, Plaintiff complains about Defendants' policy of capping weekly unemployment benefits at \$326.00, and although the policy may have *originated* in the Columbia Division, it is clear that Defendants conduct business related to the policy throughout the state, including in the Charleston Division. Although Plaintiff certainly could have brought this action in the Columbia Division, the Court, in exercising its discretion, does not believe that Defendants have shown good cause to support a transfer to the Columbia Division under Local Civil Rule 3.01(C), or that Defendants have shown that a transfer is warranted (1) for the convenience of the parties; (2) for the convenience of the witnesses; and (3) in the interest of justice under 28 U.S.C. § 1404(a). As such, the Court denies Defendants' motion to transfer venue to the Columbia Division.

II. Defendant's Motion to Dismiss Plaintiff's Complaint

In their motion to dismiss, Defendants assert that Plaintiff's claims are subject to dismissal for myriad reasons. Specifically, Defendants assert that: (1) a state agency (such as SCDEW) and its officials acting in their official capacities (such as Ellzey) are not "persons" under 42 U.S.C. § 1983 for purposes of Plaintiff's claim for money damages; (2) Plaintiff fails to allege the violation of a federal right to state a claim under § 1983, because § 503(a)(1) of the Social Security Act does not create a private right of action, and even if it does, it does not create a private right of action for the type of claim Plaintiff raises, which relates to the *amount* as opposed to the *timing* of unemployment benefits paid to Plaintiff; (3) the Court lacks subject matter jurisdiction over Plaintiff's state law claims because South Carolina law grants exclusive jurisdiction to the SCDEW Appeal Tribunal and Panel over claims relating to unemployment benefits, with appeal rights to the Administrative Law

Court, the South Carolina Court of Appeals, and the South Carolina Supreme Court; (4) Plaintiff's state law claims are subject to dismissal because Plaintiff failure to exhaust her administrative remedies; (5) Plaintiff fails to state a claim for unjust enrichment because she does not allege that Plaintiff conferred a benefit on Defendants, and Plaintiff's unjust enrichment claim fails because Plaintiff has an adequate remedy at law pursuant to S.C. Code Ann. § 41-35-620, *et seq.*; (6) Plaintiff fails to allege the existence of a valid contract to state a claim for breach of implied contract; and (7) all of Plaintiff's claims fail as a matter of law because the \$326.00 cap on weekly unemployment benefits does not violate S.C. Code § 41-35-40.

A. Standards of Review

To the extent Defendants seek dismissal of Plaintiff's state law claims based on the alleged exclusive jurisdiction of the Administrative Law Court and the state appellate courts, Defendants rely on Rule 12(b)(1) of the Federal Rules of Civil Procedure. A Rule 12(b)(1) motion for lack of subject matter jurisdiction raises the fundamental question of whether the Court has jurisdiction to adjudicate the matter before it. Fed. R. Civ. P. 12(b)(1). In determining whether subject matter jurisdiction exists, the Court is to "regard the pleadings' allegations as mere evidence on the issue, and may consider evidence outside the pleadings without converting the proceeding to one for summary judgment." *Richmond, Fredericksburg & Potomac R.R. Co. v. United States*, 945 F.2d 765, 768 (4th Cir. 1991) (citing *Adams v. Bain*, 697 F.2d 1213, 1219 (4th Cir. 1982)). The plaintiff bears the burden of proof on questions of subject matter jurisdiction. See *Evans v. B.F. Perkins Co.*, 166 F.3d 642, 647 (4th Cir. 1999).

With respect to Defendants' remaining grounds for dismissal, they rely on Rule

12(b)(6) of the Federal Rules of Civil Procedure. A motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) examines the legal sufficiency of the facts alleged on the face of a plaintiff's complaint. *Edwards v. City of Goldsboro*, 178 F.3d 231, 243 (4th Cir. 1999). To survive a Rule 12(b)(6) motion, “[f]actual allegations must be enough to raise a right to relief above the speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). The “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 *Twombly*, 550 U.S. at 570). A claim is facially plausible when the factual content allows the court to reasonably infer that the defendant is liable for the misconduct alleged. *Id.* When considering a motion to dismiss, the court must accept as true all of the factual allegations contained in the complaint. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007).

B. Plaintiff’s § 1983 Claim

In their motion to dismiss, Defendants seek dismissal of Plaintiff’s claim for damages under § 1983, alleging that Defendant SCDEW, a state agency, and Defendant Ellzey, an agency official acting in his official capacity, are not “persons” for purposes of a claim for damages under § 1983. Additionally, and more importantly in this Court’s view, Defendants assert that Plaintiff’s § 1983 claim is subject to dismissal in its entirety because Plaintiff does not allege the violation of a federal *right* and instead alleges only the violation of federal law. In support of this argument, Defendants rely on the Supreme Court’s 2002 decision in *Gonzaga Univ. v. Doe*, 536 U.S. 273, 282 (2002), where the Court “reject[ed] the notion that our cases permit anything short of an unambiguously conferred right to support a cause of action brought under § 1983.” *Id.* at 283. In other words, Defendants argue that the federal law upon which Plaintiff relies, § 503(a)(1) of the Social Security Act,

does not create a private right of action for the same reasons that the Supreme Court found no private right of action to exist in *Gonzaga* under the nondisclosure provisions in the Family Educational Rights and Privacy Act of 1974 (“FERPA”).

Defendants also argue that the Supreme Court’s decision in *California Dep’t of Human Resources Dev. v. Java*, 402 U.S. 121 (1971), does not support a finding of a private right of action in this case because the plaintiffs in *Java* did not assert claims pursuant to § 1983 and because the Court never even considered whether § 503(a)(1) created a private right of action under § 1983. Moreover, Defendants assert that *even if* § 503(a)(1) does confer a private right on Plaintiff to support a claim under § 1983, any such right relates only to the state’s “methods of administration” of its unemployment laws and is limited to claims challenging the timeliness of payments under the “when due” clause. (ECF No. 12 at 13 (quoting 42 U.S.C. § 503(a)(1)). According to Defendants, Plaintiff’s claim does not challenge South Carolina’s methods of administration but instead challenges only South Carolina’s *calculation of the amount* of her unemployment benefits under a South Carolina statute.

In response, Plaintiff cites cases from courts around the country and the Fourth Circuit holding that a private right of action exists for violations of § 503(a)(1). Plaintiff argues that Defendants’ reliance on *Gonzaga* is misplaced because it does not mention *Java* or any other case dealing with a private right of action under § 503(a)(1). Plaintiff also opposes Defendants’ argument that any private right of action under § 503(a)(1) is limited to whether benefits are timely paid and does not extend to whether benefits are fully paid, noting that § 503(a)(1) specifically requires states receiving federal funds to provide “methods of administration . . . as are found by the Secretary of Labor to be reasonably

calculated to insure *full* payment of unemployment compensation when due” 42 U.S.C. § 503(a)(1) (emphasis added). According to Plaintiff, § 503(a)(1) “would be meaningless if it allowed enforcement as to timeliness but did not allow challenge due to incomplete payment.” (ECF No. 20 at 18-19.)

In their reply brief, Defendants assert that Plaintiff’s argument that she has a private right of action under § 503(a)(1) to challenge the amount of her unemployment benefits is incompatible with numerous courts’ treatment of the “when due” clause under § 1983, explaining that those courts have found the “when due” clause to govern only the timeliness of unemployment benefits and have found no private right of action for claims that do not challenge the timeliness of payments. Defendants assert that Plaintiff’s arguments completely overlook these cases, and that § 503(a) only imposes requirements on a State’s procedural “methods of administration,” which does not include a state’s standards governing eligibility or the calculation of payments. Defendants further argue that ten of the eleven cases relied on by Plaintiff predate the Supreme Court’s decision in *Gonzaga*, and that the only case that post-dates *Gonzaga* is an unpublished district court opinion that is factually distinguishable. In summary, Defendants argue that Plaintiff’s attempt to enforce the provisions of § 503(a)(1) through a private right of action under § 1983 is incompatible with *Gonzaga*, but that even if a private right of action exists under § 503(a)(1) post-*Gonzaga*, the right is limited to claims challenging the timeliness of payments under the “when due” clause and does not permit Plaintiff to challenge the calculation of the amount of her benefits.

For the reasons set forth below, the Court agrees with Defendants that any private right of action under § 503(a)(1)—to the extent one survives post-*Gonzaga*—is limited to

claims challenging procedural safeguards such as the promptness of payments and does not extend to claims challenging the state's substantive computation of benefits pursuant to the state's law. Therefore, the Court finds that Plaintiff's § 1983 claim fails to allege the violation of a federal right and thus fails to state a plausible claim upon which relief may be granted.

As an initial matter, § 503(a)(1) of the Social Security Act provides, in pertinent part:

The Secretary of Labor shall make no certification for payment to any State unless he finds that the law of such State, approved by the Secretary of Labor under the Federal Unemployment Tax Act, includes provision for—

(1) Such methods of administration (including after January 1, 1940, methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary of Labor shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) *as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due*

42 U.S.C. § 503(a)(1) (emphasis added). As both parties acknowledge in their briefs, the Supreme Court, in decisions that pre-date *Gonzaga*, accepted the existence of a private cause of action to enforce provisions of the Social Security Act, including § 503(a)(1). Specifically, in *Java*, the Court endorsed the right of a claimant to challenge a California statute that delayed the payment of unemployment benefits as being in violation of § 503. As Defendants point out, however, the Court in *Java* did not consider whether § 503(a)(1) created a private right of action under § 1983. Nevertheless, in determining whether the California statute at issue, which suspended the payment of unemployment benefits pending determination of a claimant's appeal, violated § 503(a)(1)'s directive that state unemployment compensation program's "be reasonably calculated to insure full payment of unemployment compensation when due," the Court specifically considered the legislative

history of § 503(a)(1). The Court noted that § 503(a)(1)'s purpose, among other things, "was to give prompt if only partial replacement of wages to the unemployed, to enable workers to 'tide themselves over, until they get back to their old work or find other employment, without having to resort to relief.'" 402 U.S. at 131. The Court found that the legislative history and commentary upon § 503(a)(1) "supports the conclusion that 'when due' was intended to mean at the earliest stage of unemployment that such payments were administratively feasible after giving both the worker and the employer an opportunity to be heard." *Id.*

Following *Java*, courts in the Fourth Circuit recognized a private right of action regarding the payment of unemployment benefits. For example, in *Brown v. Porcher*, the Fourth Circuit Court of Appeals upheld the district court's judgment awarding monetary benefits to claimants who had challenged, as being in violation of 26 U.S.C. § 3304(a)(12), the South Carolina Employment Security Commission's practice of denying women, who are available and able to work, unemployment compensation solely because they left work on account of pregnancy. 660 F.2d 1001, 1003 (4th Cir. 1981). Also, in *Brewer v. Cantrell*, the district court for the Western District of Virginia remarked that "[p]rivate causes of action have regularly been allowed in suits based upon the Social Security Act." 622 F. Supp. 1320 (W.D. Va. 1985), *aff'd without opp.*, 796 F.2d 472 (4th Cir. 1986) (citing *Java*, 402 U.S. 121; *Jenkins v. Bowling*, 691 F.2d 1225, 1228 (7th Cir. 1982); and *Brown*, 660 F.2d 1001).

In addition, following *Java*, courts around the country recognized a private right of action under § 503(a)(1). In *Jenkins v. Bowling*, the Seventh Circuit "regard[ed] the point as too well settled to be questioned by us." 691 F.2d 1225, 1228 (7th Cir. 1982). In *Shaw*

v. Valdez, the Tenth Circuit Court of Appeals, citing *Jenkins* and *Brewer*, noted that a private cause of action was available to enforce the “fair hearing” provision of § 503(a)(3). 819 F.2d 965, 966, n.2 (10th Cir. 1987); *see also Kelly v. Lopeman*, 680 F. Supp. 1101, 1006 (S.D. Ohio 1987) (examining whether a private right of action exists under the fair hearing provision of § 503 and citing cases recognizing a private right of action under § 503), and *Barcia v. Sitkin*, No. Civ.5831(RLC), 2004 WL 691390, at *3, n.11 (S.D.N.Y. March 31, 2004) (noting that the fair hearing provision of § 503(a)(3) grants a private cause of action to enforce those rights).

Likewise, in *Kelly v. Nordberg*, the First Circuit Court of Appeals found that a claimant’s challenge to the Massachusetts Department of Employment and Training’s practice of disqualifying for unemployment benefits individuals who traveled outside the state for the dual purpose of seeking work and engaging in other activities stated a claim for violation of the “when due” clause in § 503(a)(1). 1 F.3d 1231 (table) (1st Cir. 1993) (unpublished). There, the court remarked that “courts have consistently recognized a private right of action for equitable relief to enforce [§ 503(a)(1)].” *Id.* (citing *Java*, *Jenkins*, *Shaw*, *Brewer*, and others). In addition, in *Pennington v. Ward*, the Northern District of Illinois cited *Java*, *Shaw*, and *Kelly* when finding that a private right of action exists under § 1983 to enforce the procedural safeguards set forth in § 503(a). No. 85 C 6327, 1989 WL 6838 (N.D. Ill. June 14, 1989) (explaining that “the ‘when due’ clause obligates states to pay benefits ‘with the greatest promptness that is administratively feasible’”) (quoting 20 C.F.R. § 640.3(a)); *see also Losey v. Roberts*, 570 F. Supp. 1465 (N.D.N.Y. 1983) (recognizing a claim for violation of the “when due” clause).

Plaintiff relies on the above-mentioned cases in opposition to Defendants’ motion.

However, as Defendants point out in their reply, all of these cases aside from *Barcia v. Sitkin* pre-date *Gonzaga*, and *Barcia* is an unpublished decision from the Southern District of New York with no factual similarity to this case.

With respect to the effect of *Gonzaga* on this case, the Court finds instructive the case of *Gann v. Richardson*. 43 F. Supp. 3d 896 (S.D. Ind. 2014). In *Gann*, the plaintiffs alleged that the Indiana Department of Workforce Development violated § 503(a)(1) by suspending their unemployment benefits in the summer without first conducting a hearing. In considering whether § 503 conferred individual rights that may be enforced under § 1983, the court outlined the Supreme Court’s three-part test in *Blessing v. Freestone*, 520 U.S. 329 (1997),¹ and explained that the Supreme Court “affirmed the rigor of this test in *Gonzaga* [], where it held that Section 1983 provides a cause of action for nothing less than an ‘unambiguously conferred’ right.” 43 F. Supp. 3d at 902 (quoting *Gonzaga*, 536 U.S. at 283). The court in *Gann* then explained:

We view it as unlikely that the Seventh Circuit, applying this contemporary understanding, would conclude that the “when due” provision of Section 303(a)(1) either explicitly creates a cause of action or implicitly confers one that may be redressed via 42 U.S.C. § 1983. Section 303(a)(1) was enacted pursuant to the spending clause, and by its terms it confers no individual right, *cf. Bertrand ex rel. Bertrand v. Maram*, 495 F.3d 452, 456 (7th Cir.2007); in fact, the remedy it provides if a state fails to establish a system that adequately pays benefits “when due” is for the Secretary of Labor to

¹ In *Blessing*, the Court outlined a three-part test to determine when a federal statute has conferred individual rights that may be enforced under § 1983:

First, Congress must have intended that the provision in question benefit the plaintiff. Second, the plaintiff must demonstrate that the right assertedly protected by the statute is not so “vague and amorphous” that its enforcement would strain judicial competence. Third, the statute must unambiguously impose a binding obligation on the States. In other words, the provision giving rise to the asserted right must be couched in mandatory, rather than precatory, terms.

520 U.S. 340-41.

withhold funding. See 42 U.S.C. § 503(b). Moreover, even if it were possible to read the statute as conveying a pellucidly clear right upon individual plaintiffs, basic principles of federalism dictate that the Act does not “unambiguously impose a binding obligation on the states.” Cf. *Blessing*, 520 U.S. at 341, 117 S.Ct. 1353.

4 F. Supp. 3d at 902. Nevertheless, the *Gann* court also noted that it was “not free to decide this issue as a matter of first impression,” explaining that “the Supreme Court, in decisions that predated the *Blessing* and *Gonzaga* lines of cases, has accepted the existence of a cause of action to enforce provisions of the Social Security Act, including the ‘when due’ clause.” *Id.* Because the Supreme Court had not repudiated *Java* and similar cases, and because the Seventh Circuit had not applied the more recent changes in § 1983 jurisprudence to overrule its precedent regarding the “when due” clause, the court in *Gann* proceeded as though the plaintiffs had the right to challenge the suspension of their unemployment benefits as being in violation of the “when due” clause, despite the court’s “grave doubt that recent decisions have case on Plaintiffs’ standing to bring suit.” *Id.* at 903-04; see also *Zynda v. Arwood*, 175 F. Supp. 3d 791, 813 (E.D. Mich. 2016) (“While it does appear doubtful that, applying the *Blessing* standard, § 303(a)(1) would be found to create an enforceable right, this court must ‘leav[e] to th[e Supreme] Court the prerogative of overruling its own decisions.’”) (citations omitted).

Here, the Court feels similarly constrained as the court in *Gann*. Stated plainly, because the Supreme Court has never specifically repudiated *Java*, and because the Fourth Circuit has not addressed the effect of the *Blessing* and *Gonzaga* line of cases on its earlier decision that a cause of action to enforce the right created by the “when due” clause is available, the Court will proceed under the conclusion that such a private right exists. See *Zynda*, 175 F. Supp. 3d at 812 (“The Supreme Court has already recognized

that § 303(a)(1) of the Social Security Act does create an enforceable right, [citing *Java*], and this court is in no position to reconsider this question of law.”). Nevertheless, the finding that a private right of action exists under the “when due” clause does not end the Court’s inquiry; rather, the Court still must determine whether Plaintiff’s complaint plausibly alleges a violation of the right created by the “when due” clause.

After an exhaustive review of the relevant case law, including cases that both pre-date and post-date *Gonzaga*, the Court concludes that Plaintiff’s complaint does not allege a violation of the right created by the “when due” clause. Here, Plaintiff does not challenge the timeliness of her payments under § 503(a)(1); nor can it be said that Plaintiff challenges any *administrative* or *procedural* safeguard set forth in § 503. Rather, Plaintiff challenges only the state’s *computation* of her benefits pursuant to state law, relying on § 503(a)(3)’s requirement that a state’s methods of administration “be reasonably calculated to insure *full* payment of unemployment compensation when due.” Importantly, however, the Court is unaware of any authority finding that the statute’s reference to “full” payment in § 503(a)(1) creates a federal right to challenge the *substantive* question of whether the amount of benefits calculated by a state constitutes a “full” payment according to state law. Instead, as the cases considering the “when due” clause all seem to indicate, the plain language of the clause concerns the *procedural* question of whether a state makes full payment of whatever amount of unemployment benefits it has calculated pursuant to state law “at the earliest stage of unemployment that such payments were administratively feasible.” *Java*, 402 U.S. at 131.

Therefore, although *Java* and its progeny recognize a federal right to challenge certain procedural aspects of a state’s payment of benefits under § 503, such as the

timeliness of full payment under § 503(a)(1), Plaintiff's claim challenges only the computation of her unemployment benefits under a South Carolina statute, which is a substantive matter to be decided according to state law. *Cf. Gann*, 43 F. Supp. 3d at 906-07 ("The Social Security Act grants the states 'free rein' to set their own eligibility standards. Those aggrieved by the substantive standards adopted by a state must therefore seek redress through the legislative process rather than the courts.") (internal citation omitted); *see also Weinstein v. Florida Dept. of Econ. Opp.*, 2021 WL 3508529, *2 (N.D. Fl. Jan. 4, 2021) (finding that the plaintiff failed to state a claim for relief under § 503(a) where he was denied unemployment benefits because he did not meet Florida's eligibility requirements). Accordingly, the Court finds that Plaintiff's § 1983 claim fails to allege a violation of the federal right created by the "when due" clause, and the Court grants Defendants' motion to dismiss Plaintiff's § 1983 claim. Having found Plaintiff's sole federal claim subject to dismissal for failure to state a claim, the Court declines to exercise supplemental jurisdiction over Plaintiff's remaining state law claims, and the Court need not reach Defendants' remaining arguments.

CONCLUSION

Based on the foregoing, the Court denies in part and grants in part Defendants' motion (ECF No. 12). Specifically, for the reasons set forth in this order, the Court denies Defendants' motion to transfer venue to the Columbia Division, but the Court grants Defendants' motion to dismiss Plaintiff's complaint.

IT IS SO ORDERED.

/s/Bruce H. Hendricks
United States District Judge

March 10, 2022
Charleston, South Carolina