

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Abdul-Malik Ali, Plaintiff vs. City of Cleveland, <i>et al.</i> , Defendants	Case No. 1:17-cv-00634 Judge Solomon Oliver
THIRD AMENDED AND SUPPLEMENTAL COMPLAINT WITH JURY DEMAND	

NATURE OF ACTION

1. This is a civil-rights action brought under 42 U.S.C. § 1983 and 1985(3) for violations of the First and Fourteenth Amendments, as well as under state laws prohibiting intimidation, prohibiting interference with civil rights, and providing a civil cause of action for damages caused by criminal acts. Plaintiff Abdul-Malik Ali, the current Manager of Field Maintenance at Cleveland Hopkins International Airport (the “Airport”), has experienced severe and continual retaliation (including a demotion from his Manager position that lasted for more than two years, until OSHA ordered him reinstated) after communicating with the Federal Aviation Administration (“FAA”) about the Airport’s regular and systematic violations of FAA regulations and standing agreements.
2. Mr. Ali reported the Airport’s failure to requisition sufficient de-icing chemicals to maintain ice-free runways and taxiways, its failure to maintain sufficient, required staffing levels in its Field-Maintenance Department to address snow emergencies, all in violation of 14 CFR

139.313, and, in general, its failure to competently perform its responsibilities to the traveling public to maintain safe conditions at the Airport.

3. The Airport's retaliation against Mr. Ali, which occurred within hours of his having met with the FAA and reported the violations, included demoting him from the position of Manager of Field Maintenance (a position he had held for 15 years), reassigning him to a cramped room near the Airport's baggage-claim area, and assigning him menial and pointless "makework," all of which has caused extreme mental distress, humiliation, and irreparable damage to his reputation.

4. In its final order regarding this matter, the Occupational Health and Safety Administration ("OSHA") determined that Defendants did indeed retaliate against Mr. Ali for communicating safety concerns to the FAA and ordered the City to reinstate him to his former position as Manager of the Airport's Field Maintenance Department. The City did not appeal or object to OSHA's order.

PARTIES

5. Plaintiff Abdul-Malik Ali is a current employee of the City of Cleveland Department of Port Control, which is responsible for operating, among other facilities, the Cleveland Airport System, including Cleveland Hopkins International Airport. Until his demotion on February 18, 2015, Mr. Ali was Manager of the Airport's Field Maintenance Department and was responsible for supervising approximately 75 snow-plow drivers, foremen, and other Field Maintenance employees. Following OSHA's ordered reinstatement on May 23, 2017, Mr. Ali resumed his previous duties as Field Maintenance Manager. He resides in Mayfield Village, Ohio.

6. Defendant City of Cleveland is a municipality located in Cuyahoga County, Ohio. Its government comprises 21 cabinet-level departments, including Port Control. The City employs

or formerly employed the individual Defendants and is vicariously liable for their acts and omissions taken under its customs, policies, or practices.

7. Defendant Ricky D. Smith, Sr. is the former Director of Port Control, and instigated or oversaw many of the retaliatory acts described in this Third Amended Complaint. Smith resigned that position in 2015 and is now the Executive Director of the Maryland Aviation Administration.

8. Defendant Fred Szabo was the Interim Director of Port Control following Ricky Smith's departure, and is currently its Deputy Director. Both individually and in concert with other Defendants, Szabo committed, encouraged, tolerated, and/or failed to prevent or abate various retaliatory acts and omissions against Mr. Ali, and/or has responded to such acts and omissions and to Mr. Ali's complaints so inadequately as to manifest indifference or unreasonableness under the circumstances. He is sued in both his official and personal capacities.

9. Defendant Jeannette Saunders is Chief of Staff for Port Control, with responsibility for human resources and related functions. Both individually and in concert with other Defendants, Saunders committed, encouraged, tolerated, and/or failed to prevent or abate various retaliatory acts and omissions against Mr. Ali, and/or has responded to such acts and omissions and to Mr. Ali's complaints so inadequately as to manifest indifference or unreasonableness under the circumstances. She is sued in both her official and personal capacities.

10. Defendant Eric Turner is a Deputy Commissioner with Port Control and is Mr. Ali's immediate supervisor. Both individually and in concert with other Defendants, Turner committed, encouraged, tolerated, and/or failed to prevent or abate various retaliatory acts and omissions against Mr. Ali, and/or has responded to such acts and omissions and to Mr. Ali's complaints so inadequately as to manifest indifference or unreasonableness under the circumstances. He is sued in both his official and personal capacities.

11. Defendant Edward Rybka is Chief of Regional Development for the City, and is one of the Mayor's chief executives in charge of the Cleveland Airport System. Both individually and in concert with other Defendants, Rybka committed, encouraged, tolerated, and/or failed to prevent or abate various retaliatory acts and omissions against Mr. Ali, and/or has responded to such acts and omissions and to Mr. Ali's complaints so inadequately as to manifest indifference or unreasonableness under the circumstances. He is sued in both his official and personal capacities.

12. Defendant Robert W. Kennedy is the current Director of the Department of Port Control. Both individually and in concert with other Defendants, Kennedy committed, encouraged, tolerated, and, despite opportunity, has failed to prevent or abate the retaliatory acts and omissions performed by other Defendants against Mr. Ali, and/or has responded to such acts and omissions and to Mr. Ali's complaints so inadequately as to manifest indifference or unreasonableness under the circumstances. He is sued in both his official and personal capacities.

JURISDICTION AND VENUE

13. This Court has jurisdiction over this controversy, and venue is appropriately lodged here, as all acts and omissions complained of occurred in this District; Plaintiff Abdul-Malik Ali resides in this District; and all Defendants reside in this District or did so reside at the time such acts and omissions occurred.

FACTS

Background

14. Since the year 2000, and until his demotion on February 19, 2015, Mr. Ali was Manager of Field Maintenance at the Cleveland Hopkins International Airport. In that capacity he oversaw an average of 75 employees and, together with his Department (and subject to certain oversight protocols involving Defendants Smith and/or Szabo, Jeff Gordon, and occasionally others), was responsible for ensuring that the airfield was maintained in a good and safe

operating condition. In the winter months this responsibility included, among other things, snow-removal and runway de-icing operations.

SICP-mandated staffing levels

15. Located as it is in a northern city, the Airport must, to comply with FAA regulations, have in place procedures for preventing the accumulation, and for the timely and efficient removal, of snow and ice from its runways and taxiways during the winter. Such procedures and requirements are set forth in a “Snow and Ice Removal Plan” (SICP), which is part of the Airport Certification Manual or ACM. The SICP governs, among other things, staffing levels to be maintained, and procedures to be followed, during snow events and emergencies. Throughout the summer and fall of 2014, the Airport and the FAA were engaged in discussions to update and make various changes to the SICP. Mr. Ali had no involvement in these discussions.

16. Both in its original and revised form, the SICP used a color-coded system to classify snow events, and mandated different staffing levels for each code, *viz.*:

- a. a snow code of Green occurs when up to one inch of dry or wet snow is forecast, and under the version initially being considered required the deployment of 4 Airport Operations employees and 20 Field Maintenance employees (18 operators and 2 unit leaders);
- b. a snow code of Yellow, issued when between one and four inches of dry or wet snow is predicted, called for 33 Field Maintenance employees (28 operators and 5 unit leaders) in addition to the 4 Airport Operations employees;
- c. a snow code of Red, finally, occurs when more than four inches of dry or wet snow is expected, and called for the deployment of 5 Airport Operations employees and 45 Field Maintenance employees (40 operators and 5 unit leaders).

17. Recognizing the difficulty the Airport would experience in meeting those staffing levels, Manager Robert Fischietto, on November 25, 2014, emailed Michael Stephens at the FAA to seek approval for reduced staffing levels. “We would like to revise the staffing numbers for our Field Maintenance section in relation to our snow codes,” Fischietto explained. “The reductions makes [*sic*] staffing more reasonable, while still being able to accomplish our responsibilities as outlined in the Snow and Ice Control Plan with this change.” Fischietto proposed reducing the number of Field Maintenance employees from 33 to 26 for Yellow-coded snow events, and from 45 to 34 for Red-coded events.

18. The FAA ultimately agreed to the proposed, reduced staffing levels, and the City committed to them. In November 2014, they were formalized in the ACM. The Airport, however, recognized that serious challenges lay ahead. In its December 1, 2014 bi-weekly report, the Airport included a “Snow Season Update” in which it observed that, although the “CLE Snow Team personnel are currently complying with the provisions of the FAA approved CLE Snow and Ice Control Plan which has been developed over the past several months with the FAA,” “[s]taffing levels mandated by the plan require the prompt hiring of Maintenance Seasonal employees currently being processed through the normal hiring process.” The report warned that “[d]elays encountered during this processing could result in FAA sanctions for non-compliance with provisions of the plan.”

Winter woes at the Airport

19. Although no subsequent mention was made of the matter in bi-weekly reports, the Airport routinely flouted staffing requirements. Perhaps not coincidentally, early 2015 proved to be a troublesome time at the Airport. The Airport experienced seven “diversions” (i.e., occasions on which, due to runway conditions, poor visibility, or other factors, aircraft scheduled to land at

Hopkins are re-routed to other airports) on February 4, 2015 alone. Other diversions occurred on January 21; February 1; February 14; February 25; and March 1, 2015.

20. These diversions, as well as other safety-related incidents, were known both to the FAA and to the public. A *Cleveland.com* article reported that “Cleveland Hopkins International Airport is under investigation for 12 safety-related incidents during the past two winters,” but noted that “[t]he Bureau of Transportation Statistics shows 28 diversions from January through March of this year, not the 10 reported by Hopkins.” (Emphasis added.) The article discussed the Airport’s “struggle[] to meet the snowfall staffing standards,” mentioning as an example the Airport’s deployment, on January 5, 2015, of “12 field maintenance employees on the second shift and 14 on the third shift, not the 26 that were supposed to be on each shift.” The article also referred to a “performance indicator” reflecting that, between January 5 and 21, 2015 alone, the Airport “failed” to achieve required staffing levels on seven occasions.

21. Another *Cleveland.com* article, reporting information supplied by then-Airport-spokeswoman Jacqueline Mayo, stated that “[u]nsafe landing conditions forced two flights bound for Cleveland Hopkins International Airport to divert to Columbus on Wednesday [January 21, 2015].” A *19actionnews.com* article noted that, on this date, an aircraft “was diverted due to low visibility and snow removal.” “That’s the same date,” the article continued, “when the runways were only staffed by 15 workers, not the FAA required 26.”

22. In a press release the following day, Defendant Smith disputed the reason for the diversions, blaming poor visibility instead. While the press release did not specifically blame Mayo for furnishing the allegedly bad information, Mayo was reassigned later in January and has since resigned. The *Cleveland.com* article stated that “[i]t was not clear whether [the reassignment] had anything to do with an incident involving plane diversions at Hopkins,” but noted that

“Hopkins has been under recent scrutiny from the Federal Aviation Administration about its staffing levels during snow and ice conditions.”

23. As a concerned citizen, Mr. Ali was acutely aware of, and distressed by, the Airport’s systematic failure to meet required staffing levels, and often communicated his concerns to Airport management. At a February 10, 2015 monthly coordination meeting attended by Defendants Smith, Saunders, Szabo, and Turner, as well as by Jeff Gordon and numerous other management-level employees, Mr. Ali forcefully expressed concern that staffing levels were not being met for the various color codes, but was met with overt hostility. He recalls overhearing Smith, while listening to Mr. Ali’s concerns, commenting to Szabo that he (Smith) was “biting his lip.” (Another employee later joked that “You know, Malik, you’re gonna get moved for this,” alluding to Smith’s reputation for transferring employees with whom he had issues.) Still, there is no indication that Smith or others shared any staffing concerns or data with the FAA.

24. By this time, however, the FAA was growing concerned and perhaps suspicious. On February 12, 2015, the Airport experienced a “Significant MOR Alert” (an airfield incident such as an incursion or, as in this case, “nil braking”). As reported in an FAA summary, a pilot who had been cleared for takeoff experienced “nil braking conditions.” The control tower advised the pilot to “reverse like Frontier, in order to stay, so I don’t know if he’s going to be able to stop.” The pilot, too, reported that “we’re trying to stop here, we just crossed the line,” whereupon the control tower canceled the takeoff clearance.

25. FAA Certification Inspector Michael Stephens emailed Airport officials about the event, requesting “details regarding this incident ... [s]pecifically to the pavement conditions and the snow removal activity that was taking place at this time, *including available staffing.*” (Emphasis added.) FAA Manager of Safety Standards Birke Rhodes was more direct, posing the following questions to the Airport in a separate email: “Was there a reason the airport not [sic] in a snow

alert? Wouldn't a minimal snow event of up to an inch of snow automatically throw the airport into a green alert?"

26. When Defendant Szabo surveyed his team for "the appropriate response" to Rhodes's queries, what he got was an email from Fischietto stating simply that "I believe the forecast was for a 30% chance of less than an inch of snow for the overnight." This prompted Szabo to respond, "Gentlemen: I need a better answer than this to report back to Birke." Fischietto prepared a lengthier, if not "better," response: in addition to providing a fairly detailed chronology of the day's operations, Fischietto represented that "[t]he staffing for the Airport Operations section yesterday was at three starting at 0500 LCL and we did not have a forecast that required a snow code. Field Maintenance staffing starting at 0600 LCL was one Superintendent, two Foreman [*sic*], two acting Foreman [*sic*] and fifteen Drivers."

27. Fischietto's staffing figures were incorrect and misleading. His email provided the number of employees *scheduled* to work as opposed to those actually on site that day. Even if Fischietto's numbers reflected the actual tally, the total fell short of the number required under a Green alert. Mr. Ali was not involved in preparing the Airport's response to the FAA and is unaware of what data or explanation, if any, the Airport may ultimately have provided to the FAA.

28. Mr. Ali recognized, and was concerned about, the Airport's staffing deficiencies but had no authority to rectify the situation. When Defendant Turner became the Deputy Commissioner of Maintenance Operations in February 2015, Mr. Ali advised him by email of the challenges the group faced. He went on in the email to lament the number of new and inexperienced drivers, the loss of veteran drivers, and the number of employees calling off sick or refusing to report to work when a snow emergency is declared.

Mr. Ali blows the whistle.

29. On February 18, 2015, FAA Certification Inspector Michael Stephens arrived in Cleveland to meet with various Airport officials and employees and seek their input on issues of safety and regulatory concern. Mr. Ali was among those employees that Stephens approached. When asked about these issues at their one-on-one meeting, which lasted from about 3:00 to 4:00 p.m., Mr. Ali described what he had observed about the Airport's systematic failure to maintain required staffing levels during snow events. He also turned over several emails, including the February 18 email he had sent to Defendant Turner.

30. Stephens was stunned and dismayed by the information he elicited from Mr. Ali. He shook his head in disbelief and remarked that "I can't believe they've been lying to me this whole time" or words to that effect.

31. Stephens mentioned that, during his inspection earlier that day, the airfield looked good and that no snow was falling. He said he would be returning to the Airport at 3:00 a.m. to observe snow-removal operations. Mr. Ali told him that his foreman, Eugene King, would be on duty for the third shift and that Stephens was welcome to meet with King.

32. Although Mr. Ali is unaware of exactly how and by whom the facts and issues he disclosed to Stephens were shared with other Airport officials, it is apparent that they were. Not only did Defendant Smith issue a directive "reassigning" Mr. Ali within hours of the meeting, but what other officials have told Mr. Ali leaves little doubt about the matter. Shortly afterward, for example, Bob Fischietto approached Mr. Ali and asked him "Man, what did you tell Stephens?! He was asking me all kinds of questions!" and made similar comments implying that the embarrassing information could have come only from Mr. Ali.

The FAA investigates and finds the Airport in violation of safety standards.

33. Following the FAA’s February 18, 2015 visit, and largely as a result of information Mr. Ali then provided, the FAA on March 6, 2015 launched an investigation—Letter of Investigation EIR #2015GL800037—into the Airport’s failure to comply with various requirements of the Snow & Ice Control Plan. The Letter begins by recounting a March 1, 2015 incident in which an aircraft was “unable to clear the runway due to pilot reported conditions,” and requests various documents and information relating to surface conditions and operations on that date.

34. Significantly, however, the Letter also seeks more general information—concerning the January 1, 2015 to March 1, 2015 time period—to enable the FAA to gauge the Airport’s level of compliance with the Snow & Ice Control Plan. Certain of the FAA’s requests bear the unmistakable stamp of Mr. Ali’s input and the troubling information he shared with Stephens. As phrased in the letter, these items are:

* * *

7. Provide a listing of each designated “Green”, “Yellow”, and “Red” snow event at the airport.
8. Provide a breakdown of the number of airport operations and field maintenance personnel staffing assigned for each color code shift designated above.
9. List all “holdover” airport operations and field maintenance personnel for each color code snow deployment.
10. Provide a list of specific field maintenance and airport operations personnel (names), position, whether full time or seasonal, and shift dates assigned.

35. Mr. Ali initiated Case #EWB15580 on March 17, 2015, complaining of the Airport’s failure to comply with the SICP’s required staffing levels. In response, the FAA’s issued a March 27, 2015 letter reporting Mr. Ali’s safety complaint to be “substantiated”:

The FAA’s Office of Airports has completed their investigation of *your* air carrier safety allegations in case #EWB15580. ***The investigation substantiated that a violation of an order, regulation or standard of the FAA related to air carrier safety occurred.*** Accordingly, the FAA is taking appropriate corrective and/or enforcement action. Our office will monitor these actions until complete. ... ***Thank you for bringing this matter to our attention.***

(Emphasis added.)

36. Staffing shortages were not the only issue that, in Mr. Ali's mind, posed a substantial risk to the flying public. In April 2015, Mr. Ali supplemented his FAA reportage with letters and emails relating to the Airport's continual failure to fund the purchase of the de-icing chemical Sodium Formate. Consistent shortages of this chemical were and are responsible for icy, dangerous conditions frequently encountered on the Airport's runways.

37. After concluding these investigations and identifying safety violations, the FAA summoned Director Smith and other Airport officials to a June 25, 2015 meeting in Chicago. In anticipation of that meeting, the FAA sent a June 18 letter to Defendant Smith advising that "our March 1, 2015 investigation revealed that ***systemic issues continue to create safety concerns at CLE***" and directing the Airport to develop, among other things,

- "[a] plan that ensures the SICP [is] being adhered to," which plan "must include, but is not limited to, ***adhering to staffing numbers outlined in the SICP***";
- "[p]rocedures to ensure seasonal employees supporting winter operations at CLE are in place and properly trained prior to the snow removal season";
- "a plan of action to prevent surfaces from reaching levels of NIL."

(Emphasis added.)

38. The FAA's letter also identified as a "critical safety issue" the fact that the Airport's "[snow-removal] equipment acquisition process is not on schedule," that the FAA had "identified an excessive number of SRE equipment that were out of service for an extended periods [sic] of time," and that "CLE SRE Storage areas are insufficient ..."

The Airport retaliates.

39. When his meeting with Inspector Stephens ended at about 4:00 p.m. on February 18, 2015, Mr. Ali headed home. (Had it not been for the meeting, he would have left the Airport at 3:30 p.m., his normal quitting time.) No one had told him to remain at the Airport, it was not

snowing, and conditions on the airfield were good. He was aware of a Work Order Management meeting being held that afternoon, but the meeting was not mandatory and Mr. Ali was not asked or expected to attend.

40. When he arrived home, Mr. Ali placed his city cell phone on his upstairs dresser, went downstairs to watch television, and drank two beers. On checking his cell phone around 6:30 p.m., he discovered a text message from the Operations Department, sent at 5:36 p.m., stating that “Jeff Gordon requests you call him immediately.” Mr. Ali immediately called Operations to find out if everything is okay, and was informed that everything was fine, no snow was falling, there were no airfield incidents, and his crews were doing a good job. Minutes later (at 6:41 p.m.), Mr. Ali was able to reach Jeff Gordon, who told him to return to the Airport immediately. When asked why, Gordon said he did not know, but knew only that Defendant Smith was insisting on it and that Mr. Ali’s job depended on it. Gordon mentioned *nothing* about staffing, about the weather, or about Mr. Ali’s absence from any meeting.

41. Having had two beers, Mr. Ali was reluctant to drive to the Airport. He stated that he would have to call Mayor Frank Jackson’s office to advise that Smith was requiring Mr. Ali to return to the Airport in a city vehicle even after Mr. Ali had had a couple of beers. Gordon asked Mr. Ali not to do that, and when Mr. Ali called him back at 6:43, Gordon advised that Smith did not need him to return that night but was ordering him to appear in the main conference room at 7:30 a.m. the next day.

42. Smith was not present at that meeting on February 19, but Defendants Szabo and Turner, along with Jeff Gordon, were there. They handed Mr. Ali a memorandum, purportedly authored by Smith the evening before (but which Mr. Ali has since learned was a collaborative effort by Defendants Smith, Szabo, and Saunders), advising that, “[e]ffective immediately, you are being reassigned to the position of Assistant to the Deputy Commissioner.” The reassignment

was accompanied, either at that time or thereafter, by a number of other adverse changes to Mr.

Ali's working conditions, among them:

- Mr. Ali was instructed to clear out his office at the Consolidated Maintenance Facility, and was consigned to what he describes as a “mop closet” behind the cab-starter stand across from carousel 11 on the Airport’s baggage-claim level;
- After 13 years of access to a city vehicle with commuter take-home privileges, he was forced to relinquish his city truck;
- He was told to report each Monday at 4 p.m. for a one-on-one meeting with Defendant Turner (which no other acting manager had to do);
- He was told to send a daily log of his activities to Turner, which no other person in his group had to do;
- His security clearance for airfield and swipe access to various locations was drastically reduced;
- He was removed from all Operating and Alert pages, which for years had been sent to his city cell phone;
- He was “uninvited” to all executive-retreat meetings and managers’ meetings;
- He was removed as an administrator for the Airport work-order system known as “WebTMA”;
- His budget and all his requirements contracts were taken away;
- His former position was posted—even after he had notified the City that one of his legal remedies, were he to prevail in his OSHA proceeding, is reinstatement to his former job;
- In May 2015, Defendant Smith witnessed Mr. Ali coming through the bypass checkpoint doors, and thereafter removed him from that system;
- He was only rarely given substantive assignments, but instead received only humiliating “makework,” e.g., counting trashcans and measuring trash levels in cans; and in the first few weeks after his reassignment, he received no assignments at all;
- The Airport began selectively enforcing its supposed “timesheet signature stamp” policy against him;

- The Airport and City continually failed to comply with Mr. Ali's public-records requests regarding safety and retaliation issues, a circumstance that necessitated mandamus litigation before the Supreme Court of Ohio;
- Defendants generally treated Mr. Ali as a pariah.

As explained further below, the retaliation continues to the present.

Mr. Ali's OSHA complaint and the City's pretextual, retaliatory response

43. In or about April 2015, Mr. Ali filed a complaint with OSHA alleging violations, on the City's part, of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (known colloquially as "AIR 21"), which prohibits retaliation against persons who report or complain about air-safety issues.

44. The City prepared and submitted a response to Mr. Ali's OSHA Complaint in which it claimed that its actions against Mr. Ali were not taken in retaliation for anything Mr. Ali may have told Inspector Stephens or for his other whistleblowing activities. Instead, according to the City's response (and consistent with Defendant Smith's February 18 memorandum), Mr. Ali was reassigned because of his "decision [on February 18, 2015] to leave the Airport during an impending snow event, render himself unreachable during a critical period of time, and becoming intoxicated in a manner that disabled him from returning to work during a critical snow event," and also because of "[p]ast challenges associated with Complainant's management and professional behavior." The City's response also asserted that, "[a]s Manager of the Field Maintenance Section, it was Complainant's responsibility to be at the airport managing his Field Maintenance Section throughout the snow event," and that his absence "creat[ed] the very staffing issues he himself is complaining about."

45. These defenses were false, pretextual, constituted further retaliation, and were intended to influence public officials (the OSHA investigator among others) in the performance of their

duties. Nor did the City's defenses "pass the smell test." It is untrue that Mr. Ali was needed or expected to be present at the Airport past his normal quitting time on February 18. As payroll records reflect, Mr. Ali's normal workday for the preceding five years was from 7:00 a.m. to 3:30 p.m. or 6:00 a.m. to 2:30 p.m., and did not include weekends. This schedule varied only during critical snow events (which, as explained below, this was *not*) or, as on February 18, when he was asked to attend an after-hours meeting with the FAA or others. Jeff Gordon and everyone who worked with Mr. Ali in Field Maintenance *knew* that Mr. Ali left work every day at 3:30 p.m., and that he was rarely a party to the regular 4:00 p.m. snow conference unless an ominous forecast warranted his attendance.

46. Particularly on February 18, no reason existed for Mr. Ali to have remained at the Airport after his meeting with Stephens. This is because, at Jeff Gordon's request, Mr. Ali had already arranged to have Field Maintenance fully staffed for the day. Gordon and Szabo wanted to ensure that, at least on this occasion, appropriate color-code numbers would be met, *not because of any impending snow event but because Inspector Stephens would be there to observe*. Mr. Ali learned this while speaking with Gordon and former Deputy Commissioner Jonathan Vrabel early in the day about the need to have a full staff on duty for the second shift (2:00 p.m. to 10:30 p.m.). He accordingly held the entire first shift over on mandatory overtime, an action Gordon approved.

47. Nor was Mr. Ali needed to arrange third-shift staffing. As a matter of practice, regarding staffing and related issues that arise during the day, Jeff Gordon routinely communicated with Timothy Howard, Quartez Lewis (the second-shift superintendent), and/or second-shift foremen Clyde Dunham or Karmen Klein, and did *not* involve Mr. Ali.

48. There was even less of a reason for Mr. Ali to be present after hours on February 18. From about 3:45 until 5:30 p.m., Defendants Smith and Szabo, as well as Jeff Gordon, were already in a Work Order Management Meeting with Tim Howard and Quartez Lewis (both of

them Mr. Ali's superintendents at the time). With Mr. Ali's superintendents already present, the attendance of Mr. Ali, who lacked the independent authority to order overtime or make other staffing changes, would have been entirely unnecessary and redundant. (This is the same reason Robert Henderson, operations manager, was not required to attend. He remarked to Mr. Ali earlier that day that the meeting was not mandatory, and that he would not be attending because two of his superintendents would be there.) It is false to claim, as the City did in its response to Mr. Ali's OSHA complaint, that an additional superintendent had to be called in due to Mr. Ali's absence.

49. Nor did weather conditions on the afternoon of February 18 dictate that Mr. Ali remain at or return to the Airport. In its response, the City repeatedly referred to an "active snow event" and a "declared snow event" (Smith in his memorandum speaks of a "critical snow event") occurring that day. The characterizations were false and misleading. There was no snow falling at the Airport and were no issues on the airfield when Mr. Ali left work shortly after 4:00 p.m. The Airport's Operations Log reports that, as of 7:00 p.m. that day, the forecast had been updated to reflect "[t]otal nighttime snow accum around an inch poss." Even less snow actually fell in the area that evening. Weather records reflect that Cleveland received only 0.5 inches of snow throughout the entire day on February 18. Only 1 inch fell on February 19, all between the hours of 4:30 a.m. and 6:00 a.m. Historically, Mr. Ali has not been asked or expected to remain past his normal working hours under similar, and often worse, weather conditions.

50. Nor, historically, has an employee's temporary unavailability, even during supposedly "critical" events, been considered grounds for reassignment or other disciplinary action. Mr. Ali recalls Defendant Smith's mentioning, during a January 21, 2015 evening phone call concerning the two diversions that had occurred that day, that he had called Jeff Gordon several times that

night with no answer. Mr. Ali is unaware of any disciplinary action having been taken on that occasion or on any of several other, similar occasions.

51. Complaining about the Airport's failure to meet FAA-required staffing levels, on the other hand, is the type of conduct that *has* historically furnished grounds, at least in Defendant Smith's judgment, for reassignment and discipline. Mr. Ali is aware of at least the following instances in which reassignment was the price employees paid for challenging Smith's authority or otherwise "bucking the system":

- Cindy Haney was reassigned to Burke Lakefront Airport after complaining to her councilperson about a position and raise she did not get;
- Melissa Brkich was also reassigned to Burke Lakefront Airport after informing her staff that Defendant Smith wanted to privatize the custodial department;
- Dennis Savas was reassigned from a Deputy Commissioner position to another title after he failed to timely launch the WebTMA Work Order System;
- Ann Yesenko was reassigned to Burke Lakefront Airport after an incident in the accounting department;
- David Johnson was reassigned from a Deputy Commissioner position to third shift in Operations after an undisclosed incident;
- Jacqueline Mayo was demoted after she reported allegedly bad information to the *Plain Dealer* about the January 21, 2015 aircraft diversions.

Defendant Smith's reassignment of Mr. Ali fit a well-known pattern.

52. The City in its response also made a large issue of Mr. Ali's alleged "intoxication" on February 18. Not only was Mr. Ali on his personal time at that hour, but he was not intoxicated and never claimed that he was. He stated only that he had "two beers." As explained above, moreover, Mr. Ali could not have reasonably anticipated that he would be ordered to return to duty at the Airport the evening of February 18. He left the Airport at his normal departure time, with the airfield in good condition, with his Section adequately staffed, with no significant

snowfall either occurring or forecast, and with no one's having instructed him to remain or to be "on call."

53. In its response to the OSHA complaint, the City also attempted to engage in further retaliatory "character assassination," characterizing Mr. Ali's tenure as plagued by performance issues and as comprising a series of progressive and escalating disciplinary measures leading to a "final straw" on February 18. As Mr. Ali demonstrated in his reply to the City's response, these defenses were disingenuous, pretextual, and unsupported by the facts. They are inconsistent, for example, with Mr. Ali's successful annual performance evaluations for the years 2011, 2012, 2013, and 2014; his Section's passing 13 out of 15 annual FAA "Part 139" summer inspections; his Section's passing of 14 out of 15 winter inspections (the exception being 2014, when as explained above the Airport failed systematically to provide the staffing support he needed); and his successful completion of all work orders in the Work Order Management System for the years 2012, 2013, and 2014.

54. The City's response also dredged up, as putative examples of Mr. Ali's alleged "past performance issues," investigations from the years 2004 and 2005 in which Mr. Ali was completely exonerated or that related to different individuals altogether. The pretextual character of the City's response is also exemplified by the City's invocation of an occasion on which Mr. Ali was disciplined for purchasing runway de-icing chemicals without a formal requisition. Mr. Ali is easily able to show that the Airport expressly approved the challenged purchase and that numerous other employees have made similar or more costly "requisitionless" purchases and faced minor or no discipline.

Defendants' further dissembling and fingerpointing at one another

55. On or about September 23, 2015, Defendant Smith, who by then had absconded to become the Maryland Aviation Administration's executive director, told a *Baltimore Sun* reporter

that Mayor Frank Jackson's administration was to blame for staffing problems at Cleveland's airport. As the *Sun* reported, "Smith told The Sun the city required him to accept 35 job cuts at the airport, including some snow removal positions. He said he fought the cuts within the city administration but was overruled."

56. Smith also offered these readily disprovable falsehoods to his new bosses in Maryland. The state's transportation secretary, Pete Rahn, told the *Sun*, "These things that happened I believe were the direct result of the resources he was provided. The lack of resources is not going to be an issue at BWI."

57. On or about September 24, 2015, Cleveland Mayor Frank Jackson's spokesman Dan Williams told the Cleveland *Plain Dealer* that Smith's accusation that the administration had denied Smith's budget requests was "not accurate." He thereafter furnished budget documents to the paper disproving Smith's contention.

58. In truth and in fact, understaffing in Cleveland's Airport Field Maintenance Department was attributable primarily to Defendant Smith's refusal and failure to fill unfilled positions.

59. Despite knowing that Defendant Smith had falsely attempted to shift blame for his mismanagement to Mayor Jackson's administration, Defendants, in particular Szabo, Rybka, and the City, continued their custom, policy, and practice of retaliating against Mr. Ali.

OSHA issues two rulings in Mr. Ali's favor and finds retaliation.

60. On February 13, 2017, OSHA issued a preliminary ruling, which it termed a "due process letter," in Mr. Ali's favor. In its ruling, OSHA "determined there is reasonable cause to believe that the City of Cleveland-Cleveland Hopkins International Airport (Respondent) has violated the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, 49 U.S.C. §42121 (AIR21), and that the preliminary reinstatement of Abdul-Malik Ali (Complainant) to his former position is warranted."

61. OSHA noted that Mr. Ali “engaged in protected activity on a significant number of occasions over the course of a year and a half when he objected to lack of de-icing chemical acquisitions and lack of available staffing to support the Federal Aviation Administration (FAA) mandated Snow and Ice Control Plan (SICP).” OSHA proceeded to identify “four significant instances of protected activity,” including “when Complainant met privately that afternoon [February 18, 2015] with the FAA, informing them of [the] violations ...”

62. OSHA also concluded that “Respondent had sufficient knowledge of Complainant’s protected activity” and that “[t]hese circumstances are sufficient to raise the inference that Complainant’s protected activities were a contributing factor in the decision to remove [Mr. Ali] from his position as the Director of Field Maintenance, officially accuse him of being intoxicated, removal of his benefit of a city vehicle, and relegated to derogatory work all on February 19, 2015.”

63. Although, in its due-process letter, OSHA afforded the City the opportunity to submit any rebuttal evidence within ten days, the City failed to submit any such evidence.

64. On May 23, 2017, OSHA reported that it had completed its investigation and issued its final Findings and Order—also in Mr. Ali’s favor. (The Order is attached and incorporated as Exhibit 1.)

65. After laying out six pages of detailed fact findings, OSHA determined that “[t]here is evidence to support a causal nexus between Complainant’s protected activity and Respondent’s adverse actions.” It found evidence, in particular, that Mr. Ali “was removed from his position and demoted on February 19, 2015, in reprisal for his continued complaints to management and the FAA regarding inadequate staffing.”

66. Explaining its finding, OSHA found that “Respondent made the decision to remove Complainant from his position, demote him, and revoke his privilege to use a City-owned vehicle

mere hours after learning that he had emailed his new supervisor regarding concerns of ongoing violations of FAA regulations, that he had met privately with an FAA inspector regarding these concerns, and that he was planning to participate in an FAA inspection the following morning.”

67. OSHA also found that there was evidence of “animus” and of “disparate treatment.”

68. Concluding, OSHA found that Mr. Ali “has established that his protected activities were a contributing factor in the adverse personnel actions taken against him, and Respondent has failed to establish by clear and convincing evidence that it would have taken the same adverse actions in the absence of Complainant’s protected activity.”

69. OSHA ordered that Mr. Ali be reinstated to his former position with “all rights, responsibilities, seniority, privileges, and benefits that [he] would have enjoyed had he never been reassigned.” It also awarded compensatory damages for both pain and suffering and economic loss. (Mr. Ali is currently appealing, to the Department of Labor’s Office of Administrative Law Judges, the amount of damages OSHA awarded for pain and suffering, which is insufficient to compensate Mr. Ali for the serious emotional distress he suffered at the Airport’s hands, and which is inconsistent with DOL awards in similar cases. Also on appeal is the attorneys’ fees award, which was not up-to-date at the time of the Order.)

The Airport’s continuing safety violations have resulted in hefty fines, but the Airport remained non-compliant for a considerable period of time.

70. Pressure brought to bear on the Airport by the FAA as a result of Mr. Ali’s whistleblowing appears to have made little difference. In September 2015, the FAA levied an unprecedented \$735,000 fine on the Airport for numerous violations, notably including the Field Maintenance staffing shortages to which Mr. Ali had alerted it. In a May 17, 2016 “Settlement Agreement and Order,” the FAA agreed to reduce the fine to \$200,000 subject to the Airport’s satisfactory completion of a detailed list of commitments and performance objectives set forth in

the Order. Notably, the Order contained no liability disclaimer and required the Airport to waive any right to file an administrative or judicial challenge.

71. For at least a year after the FAA's Order, the Airport failed to discharge its obligations under the FAA Order, during which time Field Maintenance remained plagued by staffing shortages and inexperienced plow operators.

72. Then-Field Maintenance Manager Robert Henderson reported the following occurrences on December 30, 2016:

- The airport had to temporarily close due to poor runway conditions, an incident Henderson admits was preventable;
- Radios were on the wrong channels, not working, or missing altogether;
- Airfield-maintenance staff lacked situational awareness;
- Three trucks ran off the runway into a safety area;
- Ramp and runway team employees failed to follow the foreman's instructions;
- Leaders failed to properly direct team members during operations;
- There was an incident involving a fuel pump being damaged due to a lack of leadership focus;
- The ratio of experienced-to-inexperienced personnel during snow operations was a concern;
- Deicing chemicals were not properly applied or were not applied at all when needed.

73. Henderson also reported that the following took place Jan. 10, 2017:

- Airport leadership blundered by failing to apply de-icing chemicals to runways, taxiways, and ramps, even when leaders were on abundant notice by the National Weather Service of an approaching freezing-rain storm;
- This resulted in shutdown of the airport for nearly two hours as well as canceled and delayed flights and landings;
- Airplanes were diverted to other airports.

74. Henderson also lamented his Department's lack of experience, acknowledging that four foremen had no airport experience, and that he and Defendant Turner lacked relevant experience (Turner having been a custodial manager and, before that, a Staples employee).

75. Retaliation and indifference to safety has been the policy at the highest levels across the City government. No one at the City has taken any substantive action to address the rampant culture of retaliation permeating the Airport. Indeed, despite the issue's having been forcefully raised during a September 23, 2015 City Council Transportation Committee meeting with Council President Kevin Kelley and Councilman Martin Keane, neither took any action to address or even investigate these serious allegations, which it is their responsibility under § 46 of the City Charter to do. Mr. Ali was the most knowledgeable person in the room at that meeting, yet Council President Kelley and Councilman Keane went out of their way to cover up for the administration and avoid their oversight responsibilities by failing to call Mr. Ali to testify, despite his availability and willingness to do so. Council President Kelley and Councilman Keane had no interest in learning the truth about or correcting the Airport's FAA safety violations or retaliation against Mr. Ali.

Defendants' retaliation against and shunning of Mr. Ali continues to this day.

76. Defendants have continued to engage in retaliatory behavior to this day.

77. For example, in or about October 2016, one or more Defendants directed the Airport's IT Department to retrieve all emails sent or received by Mr. Ali over the preceding five years. Mr. Ali was singled out for this treatment, which he has learned was intended to develop evidence with which Defendants could accuse him of improper computer use. The effort amounted to no more than a fishing expedition, however, since Mr. Ali's computer use is not different from that of any other Airport employee.

78. On or about October 17, 2016, WOIO Channel 19 sent a public-records request to the Airport seeking records concerning the Airport's staffing-code violations on a number of occasions the previous winter. The FAA also requested a payroll or operations audit concerning the number of employees on duty for all color codes declared the previous winter. These inquiries reflected that, more than a year after receiving an unprecedented fine, the Airport was still out of compliance with FAA-mandated standards.

79. On or about October 18, 2016, Defendant Fred Szabo, then the Acting Port Control Director, met with his executive staff and raised Mr. Ali's name several times in relation to the foregoing FAA and media requests. In the meeting Szabo remarked that "Malik is the leak, a whistleblower, and is suing the city trying to keep his case alive" or words to that effect. Despite his perseverance over Mr. Ali, however, Szabo was wrong that Mr. Ali had anything to do with the WOIO public-records request.

80. Defendant Szabo, with the participation of Defendant Edward Rybka, has also taken active steps to "poison the well" regarding Mr. Ali with the new director, Defendant Robert W. Kennedy.

81. Since starting at the Airport in January 2017, Defendant Kennedy has walked around the Airport and met with a number of Port Control executive and line employees. He has encouraged communication, and has scheduled one-on-one meetings with a wide number of line employees, including custodial workers and maintenance employees. But he has shunned Mr. Ali.

82. Although new to the Port Control directorship, Defendant Kennedy has knowledge of, and has had ample opportunity to address and abate, the retaliatory actions and atmosphere to which Mr. Ali is subject on a daily basis. Despite such knowledge and opportunity, however, Kennedy has failed and refused to intervene in Mr. Ali's situation or otherwise seek to

meaningfully change the Airport's culture of retaliation. If anything, Defendant Kennedy's actions have made the culture of fear worse.

83. At a recent meeting with Field Maintenance personnel, Defendant Kennedy blamed Mr. Ali for the situation in which he finds himself and declared that the Airport has "moved on" from the incident. In this and other meetings, Defendant Kennedy has criticized Mr. Ali for his whistleblowing efforts and for failing to come directly to Kennedy with concerns. It has been Kennedy himself, however, who has made his contemptuous attitude toward Mr. Ali, and his lack of receptivity to Mr. Ali's safety concerns, perfectly clear. Kennedy has, for instance, minimized the importance of the concerns Mr. Ali has raised by claiming in meetings that Mr. Ali's continued expressions of concern are merely efforts to advance his own whistleblower action with OSHA.

84. Defendant Kennedy's behavior has been devastating to Mr. Ali, who had hoped that a new director would at last stand up to and end the City's policy of retaliation against him.

85. More recently, Defendants removed Mr. Ali's name from the Port Control revised (March 2017) organizational chart, where it had prominently appeared for the preceding 15 years. In a nine-page email memorandum directed to all staff including Mr. Ali, Director Kennedy carefully explained the new or continuing roles to be played by each Airport manager but—in an apparent effort to codify and render permanent Mr. Ali's demotion—failed even to mention any role for Mr. Ali. Mr. Ali took deep offense to this apparent effort to "write him out of" the organization, but hoped that it may after all have been a simple oversight on the City's part. Any such hope was dashed two weeks later, however, when Port Control published a further-revised organizational chart from which his name was still missing.

86. Still more recently, on April 21, 2017, the Department's Chief Information Officer formally removed one of Mr. Ali's few remaining administrative responsibilities—receipt and

review of the Airport's "radio reports." These reports, according to the Officer's memorandum, "will now be submitted to Ines Jimenez [who was brand new to the Department's organizational chart] ... Managers will no longer submit these reports to Abdul Malik-Ali."

87. And on or about May 2, 2017, Defendant Kennedy announced to Field Maintenance staff that he was replacing Robert Henderson as Manager of Field Maintenance. But despite knowing the validity of Mr. Ali's complaints to the FAA about safety and complaints to OSHA about retaliation, Defendants Kennedy, Rybka, and the City failed to reinstate Mr. Ali to his position. Indeed they failed even to notify Mr. Ali of the opening, give him a chance to apply, or consider him for the job he had performed with distinction for 15 years and for which he was eminently qualified. He had to learn about Henderson's replacement from others. This was now the second time that Defendants had filled Mr. Ali's former job without affording Mr. Ali an opportunity to apply.

88. Not until its receipt of OSHA's May 23, 2017 final order did the Airport, as it was ordered to do, reinstate Mr. Ali to his former position. The reinstatement was begrudging and beset by logistical and "territorial" issues.

89. After initially granting Mr. Ali "swipe access" to Airport locations where he was required to be, for example, Mr. Ali's access to the by-pass gate was suddenly removed without notice. Upon inquiry, Mr. Ali learned that "someone" had affirmatively removed his access. As recently as January 2018, moreover, Mr. Ali was once again locked out of his office and unable to perform work.

90. To this day, the Airport continues to undermine Mr. Ali's authority to discharge his duties as Airfield Manager. Defendant Eric Turner regularly directs and meets directly with Mr. Ali's foremen and superintendents while leaving Mr. Ali out of the loop. This has produced a

false perception of the appropriate chain of command and is conducive to insubordination, a frequent occurrence since Mr. Ali's reinstatement.

91. On several occasions, Mr. Ali has referred employees for pre-disciplinary hearings for acts of insubordination, improper payments to other employees, and other serious transgressions.

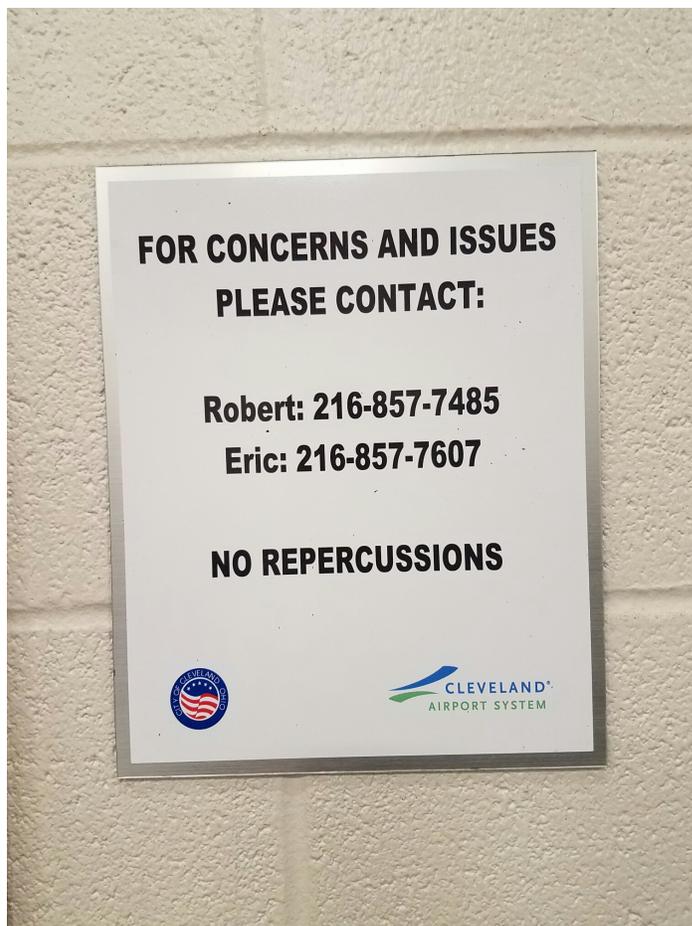
While Mr. Ali's position undeniably gives him the authority "on paper" to recommend employee discipline, and while discipline on the subject occasions was clearly warranted, the Airport, seemingly determined to undermine Mr. Ali's authority, rarely supported Mr. Ali's judgments.

On at least once other occasion, the Airport accused Mr. Ali of holding a pre-disciplinary hearing that never took place.

Defendants foster a culture of retaliation against Mr. Ali and others, and are responsible for the resulting serious loss of morale.

92. Nor has the Airport's culture of retaliation been confined to Mr. Ali. During a recent, recorded meeting with his staff, then-Field-Maintenance Manager Robert Henderson (Mr. Ali's first replacement) warned that, for leakers or anyone "caught associating" with such activity, "the penalties will be great."

93. In an admission of the Airport's well-known culture of retaliation, and in particular of recent, well-publicized retaliatory threats and acts, Defendants recently posted, in several locations where it is likely to be seen by employees of the Airport's Field Maintenance, Building Maintenance, Electrical Maintenance, Custodial Maintenance, and Vehicle Maintenance Departments, a sign (reproduced below) that reads: "FOR CONCERNS AND ISSUES PLEASE CONTACT: Robert [Kennedy] 216-857-7485 [or] Eric [Turner] 216-857-7607 NO REPERCUSSIONS."



94. Presumably, the sign would not include a guarantee of “no repercussions” were there not a widespread, well-founded belief among Airport employees that complaints and expressions of concern are likely to engender retaliation. The sign, moreover, omits to notify employees whom to contact if their concerns and issues are *with* Defendants Kennedy or Turner.

95. The sign, which has recently been removed from all Airport locations, is just one of the many indications of a serious loss of morale, of the chilling effect of the Airport’s culture of retaliation, and of the trepidation Airport employees feel when considering exercising their constitutional rights to report public-safety concerns.

CLAIM 1

FIRST AND FOURTEENTH AMENDMENT RETALIATION UNDER 42 U.S.C. § 1983 (AGAINST ALL DEFENDANTS, AND AGAINST THE INDIVIDUAL DEFENDANTS IN THEIR OFFICIAL AND PERSONAL CAPACITIES)

96. Mr. Ali incorporates all previous allegations.

97. Mr. Ali engaged in various forms of protected speech and conduct as described above.

98. Mr. Ali’s speech and conduct concerned critical matters of public safety and concern. In engaging in such speech and conduct, Mr. Ali was acting not in his capacity as an employee of the Department of Port Control but rather in his capacity as a concerned private citizen.

99. Both individually and in concert with one another, Defendants took adverse actions against Mr. Ali in retaliation for his having engaged in such protected speech and conduct, and in an effort to deter him and others from engaging in such protected speech and conduct in the future.

100. The City and individual Defendants all had actual or constructive knowledge of the retaliatory acts and omissions in which the others had engaged, and yet each condoned, tolerated, and/or encouraged such acts and omissions and/or has responded to Mr. Ali’s

complaints so inadequately as to manifest indifference or unreasonableness under the circumstances.

101. The retaliation included, but is not limited to, the acts described earlier in this Complaint, and continues to this day.

102. The retaliation is and has been sufficiently severe to dissuade a reasonable Airport employee such as Mr. Ali, or any reasonable person, from raising or reporting safety concerns or engaging in other protected conduct.

103. Such adverse actions are and were motivated by Defendants' knowledge or belief that Mr. Ali had engaged, and continues to engage, in protected speech and/or conduct.

104. The retaliatory actions are and were of such a magnitude, and occurred and continue to occur with such regularity, as to deter a person of ordinary firmness from engaging in similar protected speech or conduct.

105. As of at least 2012, it was clearly established that a public official violates an employee's constitutional right to free speech when he or she retaliates against the employee for engaging in protected speech. Any reasonable public official would have known this during the time of the events detailed in this Complaint.

106. Defendants Smith, Szabo, Turner, Gordon, Saunders, Rybka, and Kennedy are or were sufficiently empowered City officials that their acts constitute the customs, policies, and practices of the City.

107. Mr. Ali complained about the retaliation to one or more Defendants, none of whom took any action to abate the retaliation, and each of whom instead encouraged, exacerbated, ratified, and/or tolerated it. As such, these City officials approved, endorsed, and adopted the custom, policy, and practice of retaliating against Mr. Ali and others. The retaliation in this way became the City's custom, practice, and policy.

108. As a direct and proximate result of this unlawful campaign of retaliation, which the City endorsed and adopted as its own unwritten municipal policy, Mr. Ali has suffered and will continue to suffer economic damages for which Defendants are liable, including, but not limited to, loss of promotion opportunities and accompanying increases in salary, wages, and benefits, loss of use of a city vehicle, and other privileges and of employment; as well as non-economic damages, including pain and suffering, emotional distress, embarrassment, humiliation, and loss of reputation.

109. In acting as described in this Complaint, the individual Defendants intentionally, maliciously, wantonly, recklessly, and maliciously violated the First and Fourteenth Amendments of the United States Constitution, and thus are liable for punitive or exemplary damages.

110. In addition to Mr. Ali's economic and non-economic compensatory damages, Defendants are also liable for attorneys' fees and costs, witness fees, expert fees, and any additional legal or equitable relief that this Court deems appropriate.

CLAIM 2

CONSPIRACY TO INTERFERE WITH CIVIL RIGHTS UNDER 42 U.S.C. § 1983 (AGAINST ALL DEFENDANTS, AND AGAINST THE INDIVIDUAL DEFENDANTS IN THEIR OFFICIAL AND PERSONAL CAPACITIES)

111. Mr. Ali incorporates all previous allegations.

112. Defendants entered into and carried out a conspiracy with the specific intent to deprive Mr. Ali of rights guaranteed to all citizens under the First and Fourteenth Amendments to the United States Constitution.

113. Specifically, Defendants agreed, conspired, and worked together to initiate, develop, and execute a plan to retaliate against Mr. Ali on account of his having exercised his rights under the First and Fourteenth Amendments to call attention to and report unsafe conditions at the

Airport. In acting as described in this Complaint, and in taking other retaliatory actions, moreover, Defendants undertook acts in furtherance of their conspiracy.

114. Defendants intentionally, willfully, wantonly, recklessly, and maliciously violated the First and Fourteenth Amendments of the United States Constitution.

115. One or more Defendants committed overt acts in furtherance of the conspiracy, many of which are described above.

116. As a direct and proximate result of Defendants' unlawful conduct, Mr. Ali has suffered and will continue to suffer economic and non-economic damages for which Defendants are liable, including but not limited to loss of promotion opportunities and related economic benefits, as well as emotional distress, pain and suffering, embarrassment, humiliation, and loss of reputation.

117. Title 42, United States Code, section 1983, gives Mr. Ali a cause of action against all conspiring Defendants for the recovery of damages occasioned by such injury and deprivation of rights.

CLAIM 3

INTIMIDATION (USING MATERIALLY FALSE OR FRAUDULENT WRITINGS TO ATTEMPT TO INFLUENCE PUBLIC SERVANTS) UNDER OHIO REV. CODE § 2921.03(A) AND (C) (AGAINST ALL DEFENDANTS, AND AGAINST THE INDIVIDUAL DEFENDANTS IN THEIR OFFICIAL AND PERSONAL CAPACITIES)

118. Mr. Ali incorporates all previous allegations.

119. Defendants, with malicious purpose, in bad faith, and/or in a wanton or reckless manner, created and/or used one or more materially false or fraudulent writings (including the City's response to Mr. Ali's OSHA complaint and the Airport's February 18, 2015 "reassignment" memorandum, which among other things falsely and maliciously accused Mr. Ali of being "intoxicated" and "disabled" from returning to work, and cited non-existent "performance

issues”) in an attempt to influence, intimidate, and/or hinder various public servants in the discharge of such persons’ duties.

120. Such writings were intended to, and did, influence various public servants in the discharge of their duties, including Airport officials charged with implementing the “reassignment” and performing other retaliatory acts; the City of Cleveland Law Department in its evaluation of, and response to, Mr. Ali’s OSHA complaint; OSHA itself in its evaluation and disposition of Mr. Ali’s complaint; and the FAA in determining the extent to which Mr. Ali’s violation reports should be credited.

121. These records were intended to destroy Mr. Ali’s career, to subject him to unwarranted discipline as a public employee, and to cause emotional distress as well as other economic and non-economic injury.

122. Defendants are guilty of Intimidation under R.C. 2921.03.

123. Under R.C. 2921.03(C), Defendants are liable to Mr. Ali for the injury and loss he suffered as a result of Defendants’ bad-faith preparation and use of materially false or fraudulent writings, as well as for reasonable attorneys’ fees, court costs, and other expenses that Mr. Ali has incurred in prosecuting both this civil action and his OSHA complaint.

124. Defendants intentionally, maliciously, wantonly, recklessly, and maliciously violated Ohio Rev. Code § 2921.03, and accordingly are liable to Mr. Ali for punitive or exemplary damages.

CLAIM 4

CIVIL LIABILITY FOR CRIMINAL ACTS UNDER OHIO REV. CODE § 2307.60(A)(1) (AGAINST ALL DEFENDANTS, AND AGAINST THE INDIVIDUAL DEFENDANTS IN THEIR OFFICIAL AND PERSONAL CAPACITIES)

125. Mr. Ali incorporates all previous allegations.

126. As detailed in Claim 3 above, Defendants on one or more occasions committed the offense of Intimidation (i.e., creating and using false writings in attempts to influence public servants in the discharge of their duties) under R.C. 2921.03.

127. Having intentionally deprived Mr. Ali of his rights under the First and Fourteenth Amendments to the United States Constitution, as detailed above, Defendants also committed the offense of Interfering with Civil Rights under Ohio Rev. Code § 2921.45.

128. Both of these offenses, i.e., Intimidation under Ohio Rev. Code § 2921.03 and Interfering with Civil Rights under Ohio Rev. Code § 2921.45, are criminal acts under Ohio law.

129. Mr. Ali suffered economic and non-economic injuries as a result of Defendants' criminal acts.

130. Under Ohio Rev. Code § 2307.60(A)(1), Mr. Ali is entitled to recover, in this civil action, full damages caused by Defendants' commission of these criminal acts, as well as punitive damages and attorneys' fees.

CLAIM 5

CIVIL CONSPIRACY UNDER OHIO COMMON LAW (AGAINST ALL DEFENDANTS, AND AGAINST ALL INDIVIDUAL DEFENDANTS IN THEIR OFFICIAL AND PERSONAL CAPACITIES)

131. Mr. Ali incorporates all previous allegations.

132. Defendants maliciously worked together to injure Mr. Ali by creating and implementing a plan to retaliate against Mr. Ali for his having exercised his First and Fourteenth Amendment rights to bring attention to and report unsafe conditions at the Airport.

133. One or more Defendants, acting in their official and/or personal capacities, committed overt acts in furtherance of the conspiracy, many of which are described above.

134. Defendants acted purposefully and without a reasonable or lawful excuse.

135. As a direct and proximate result of Defendants' unlawful conduct, Mr. Ali has suffered and will continue to suffer economic and non-economic damages for which Defendants are liable, including but not limited to loss of promotion opportunities and other economic damages, as well as emotional distress, pain and suffering, humiliation, embarrassment, and loss of reputation.

PRAYER FOR RELIEF

For the reasons stated above, Mr. Ali respectfully requests the following relief from the Court:

- A. Declare that Defendants' acts and conduct constitute violations of the First and Fourteenth Amendments to the United States Constitution, as well as of 42 U.S.C. § 1983; Ohio Revised Code §§ 2307.60(A)(1), 2921.03, and 2921.45; Ohio civil-conspiracy law, and any other applicable statutory or common law;
- B. Declare that the City is vicariously liable for its employees' acts described above based on the City's custom, policy, and practice of retaliating, permitting retaliation, endorsing retaliation, and/or failing to remedy retaliation against Mr. Ali;
- C. Enter judgment in Mr. Ali's favor on all claims for relief;
- D. Enjoin Defendants from continuing to retaliate against Mr. Ali by encouraging, tolerating, and failing to abate the ongoing retaliation and by engaging in additional acts of retaliation;
- E. Award full compensatory economic and non-economic damages including, but not limited to, damages for pain and suffering, mental anguish, emotional distress, humiliation, embarrassment, and inconvenience that Ali has suffered and is reasonably certain to suffer in the future;

- F. Award punitive and exemplary damages for the individual Defendants' egregious, willful, and malicious conduct;
- G. Award pre- and post-judgment interest at the highest lawful rate;
- H. Award Mr. Ali his reasonable attorneys' fees (including expert fees) and all other costs of suit;
- I. Award all other relief in law or equity, including declaratory and injunctive relief, to which Mr. Ali is entitled and that the Court deems equitable, just, or proper.

JURY DEMAND

Mr. Ali demands a trial by jury on all issues within this Third Amended and Supplemental Complaint.

Respectfully submitted,

/s/ Donald Screen

Subodh Chandra (OH Bar No. 0069233)

Donald Screen (OH Bar No. 0044070)

Patrick Kabat (NY Bar No. 5280730)

THE CHANDRA LAW FIRM LLC

1265 W. 6th St., Suite 400

Cleveland, OH 44113-1326

216.578.1700 Phone

216.578.1800 Fax

Subodh.Chandr@ChandraLaw.com

Donald.Screen@ChandraLaw.com

Patrick.Kabat@ChandraLaw.com

Attorneys for Plaintiff Abdul-Malik Ali

CERTIFICATE OF SERVICE

On June 6, 2018, my office electronically filed this document through the Court's ECF system, which will generate notices to counsel of record for all Defendants.

/s/ Donald Screen _____

Donald Screen

One of Plaintiff Abdul-Malik Ali's attorneys