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

Christopher Green Plaintiff, v. **City of East Liverpool, *et al.*** Defendants.	Case No. 4:23-cv-00445 Judge John R. Adams Magistrate Judge Carmen E. Henderson

PLAINTIFF CHRISTOPHER GREEN'S OPPOSITION TO DEFENDANT CITY OF EAST LIVERPOOL'S 12(F) MOTION TO STRIKE PORTIONS OF PLAINTIFF'S FIRST AMENDED COMPLAINT

Plaintiff Christopher Green respectfully opposes Defendant City of East Liverpool's 12(f) Motion to Strike Portions of Plaintiff's First Amended Complaint. (Def.'s Mot., Doc. 23.) Far from being "unnecessary, unrelated, and scandalous" (*id.* at PageID#237), the challenged paragraphs provide necessary and relevant details to support the claims, consistent with *Twombly* and *Iqbal* pleading standards. If those details are "scandalous," it's because of the nature of Defendants' own conduct. As Green shows below, the allegations about persistent, lawless conduct by City officials include details about the information Green reported to the FBI (which resulted in Green's termination) and about City officials' disparate treatment of Green versus other police officers. As further explained, all of this is relevant to his specific legal claims.

This Court should reject the City's unabashed invitation to become a political and public-relations actor "to protect the integrity of [the city's police department," and to fret about irrelevant considerations like the so-called "national and societal backdrop within which former City police officer Christopher Green filed this lawsuit" or "compromis[ing] public confidence in the City's police department and the court systems serving Columbiana County." Def.'s Mot., Doc. 23,

PageID#237. Federal courts are not municipal press secretaries. If anyone is responsible for compromising public confidence, it's the City and its employees who engaged in and tolerated the shenanigans detailed in the Amended Complaint. Federal courts do not serve to protect Defendants from allegations—only to adjudicate them.

I. Issue Presented

> The plaintiff is the master of the complaint. Motions to strike are disfavored and granted only where the challenged allegations have *no possible relation* or logical connection to the controversy and may cause significant prejudice. The challenged paragraphs are about misconduct Green reported to the FBI and prove the retaliatory motive behind his firing by showing how Green was treated differently than others. Should the Court, despite all this, grant the disfavored motion?

II. Factual and Procedural Background

In January 2021, after witnessing serial acts of misconduct by his fellow East Liverpool police officers, learning of other misconduct, and reporting these acts to his supervisors—only to see no corrective action—Plaintiff Christopher Green reported the wrongdoing to the Federal Bureau of Investigation. Am. Compl., Doc. 3, PageID#94–95. As the Amended Complaint plainly states, he told the FBI about the incidents below, among others:

- "Officers John Headley and Tatgenhorst's scheme to overbill for time worked as school resource officers, resulting in thefts."
- **"Captain Tatgenhorst's scheme to report attendance at K-9 training and being paid for such training that he did not attend, resulting in theft, false reporting, and unconstitutional searches, seizures, arrests, and prosecutions."**
- "Captain Tatgenhorst's false accusation that Green conducted an improper stop, the propriety of which was already confirmed by Captains Wright and Headley."
- "Captain Tatgenhorst's interference and obstruction into the drug investigation of Jacob Boyle, Jordan Fields (Tatgenhorst's nephew), and Fields's wife."
- "Captain Tatgenhorst's complaint against Green concerning Nero's bite during an arrest."
- "Captain Headley and Officer Ramsey's use of excessive force against a handcuffed, detained, and non-threatening individual."

- "Captain Tatgenhorst's interference in the drug investigation of Juan Carlos Sprott (Tatgenhorst's daughter's boyfriend/fiancé)."

Am. Compl., Doc. 3, PageID#82–83; 94–95 (emphasis added).

Following Green's reporting of the misconduct to the FBI, Defendants immediately engaged in a campaign of intimidation and retaliation against him—ultimately causing his termination on June 24, 2021. Am. Compl., Doc. 3. As false bases for Green's termination, Defendants claimed that

(1) Green mishandled the Allen family's domestic-violence/assault incident;

(2) Green's report of misconduct by Defendant Captain Fred Flati was retaliatory;

(3) Green spread rumors about Liverpool Township Police Officer Beau Tatgenhorst (son of Defendant Captain Chad Tatgenhorst); and

(4) Green posted a meme of his new truck with a bumper sticker stating "Admin Leave" on social media.

Am. Compl., Doc. 3, PageID#114–15.

Following his termination, Defendants—including Captain Chad Tatgenhorst—continued to engage in a campaign of intimidation and retaliation against Green. For example, as for Tatgenhorst,

- "Months after Green's termination, in or around November 2021, Defendant Captain Tatgenhorst sent several threatening, intimidating, menacing, coercive, and obscene text messages to Green with the intent to abuse, threaten, and harass Green. Tatgenhorst sent the messages at approximately 12:45 AM."

- "One text message displayed an emoji symbolizing a vagina—meant to slur Green as a 'pussy.' Another text message stated 'ABC,' which is law-enforcement lingo meaning 'Always Be Careful' because there is danger coming. An ensuing text stated, 'good luck.'"

Am. Compl., Doc. 3, PageID#118. Even though Green informed Chief Lane about the texts, Defendant Tatgenhorst wasn't disciplined for his misbehavior. *Id.*

Defendant Tatgenhorst even continued to engage in further criminal acts, like

(1) the incident in which Tatgenhorst turned off the body cameras of officers investigating

his physical abuse of wife and

(2) the incident involving Tatgenhorst threatening his wife.

Am. Compl., Doc. 3, PageID#118–19. Tatgenhorst is under indictment for the body-camera incident. *Id.* Although the charges were later dismissed, Tatgenhorst was arrested and charged for the threat incident. *Id.* Aside from being placed on paid administrative leave, Defendants took no further discipline against Tatgenhorst and he remains entrusted with the job of East Liverpool Police Department captain. *Id.* Yet they ejected Officer Green from the department.

On March 6, 2023, Plaintiff Green filed his Complaint, which was amended and refiled on March 8, 2023. Compl, Doc. 1; Am. Compl., Doc 3. The Amended Complaint makes these claims:

- **Claim 1: First Amendment retaliation** (against Defendants City of East Liverpool, Mayor Greg Bricker, Safety Service Director David Dawson, Captain Fred Flati, Captain Darin Morgan, Captain Chad Tatgenhorst, and Officer Robert Ramsey). Am. Compl, Doc. 3, PageID#119–25.

- **Claims 2–5: Intimidation using a false or fraudulent writing** (against Defendants Officer Robert Ramsey, Captain Fred Flati, Captain Darin Morgan, and Safety Service Director David Dawson, respectively). *Id.* at PageID#126–31.

- **Claims 6–11: Intimidation against attorney, victim, or witness in a criminal case** (against Defendants Officer Robert Ramsey, Captain Fred Flati, Captain Darin Morgan, Captain Chad Tatgenhorst, Safety Service Director David Dawson, and Mayor Greg Bricker, respectively). *Id.* at PageID#131–36.

- **Claims 12–16: Tampering with records** (against Defendants Officer Robert Ramsey, Captain Fred Flati, Captain Darin Morgan, Safety Service Director David Dawson, and Mayor Greg Bricker, respectively). *Id.* at PageID#136–41.

- **Claims 17–20: Tampering with evidence** (against Defendants Officer Robert Ramsey, Captain Fred Flati, Captain Darin Morgan, and Safety Service Director David Dawson, respectively). *Id.* at PageID#142–45.

- **Claim 21: Telecommunications harassment** (against Defendant Captain Chad Tatgenhorst). *Id.* at PageID#145–47.

- **Claims 22–26: Interfering with Civil Rights** (against Defendants Mayor Greg Bricker, Safety Service Director David Dawson, Captain Fred Flati, Captain Darin Morgan, Captain Chad Tatgenhorst, and Officer Robert Ramsey, respectively). *Id.* at PageID#147–51.

- **Claim 27: Fourteenth Amendment violation** (against Defendants City of East Liverpool, Mayor Greg Bricker, Safety Service Director David Dawson, Captain Fred Flati, Captain Darin Morgan, and Captain Chad Tatgenhorst). *Id.* at PageID#151–55.

- **Claim 28: Reckless hiring, training, supervision, discipline, staffing, and retention** (against Defendant City of East Liverpool). *Id.* at PageID#155–56.

As explained below, the allegations Defendants seek to strike relate to these claims.

III. Law and Argument

"[T]he plaintiff is the master of the complaint." *Caterpillar Inc. v. Williams*, 482 U.S. 386, 398–99 (1987). So Defendants irritated by the allegations do not get to dictate what is in it.

A. Motions to strike under Fed. R. Civ. P. 12(f) are disfavored and should be denied unless the challenged allegations have no possible relation or logical connection to the controversy and may cause significant prejudice.

Fed. R. Civ. P. 12(f) provides as follows:

> The court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. The court may act:
>
> (1) on its own; or
>
> (2) on motion made by a party either before responding to the pleading or, if a response is not allowed, within 21 days after being served with the pleading.

Motions to strike "are disfavored and granted only where the allegations are clearly immaterial to the controversy or would prejudice the movant. *Frisby v. Keith D. Weiner & Associates Co., LPA*, 669 F.Supp.2d 863, 865 (N.D. Ohio 2009), citing *Brown & Williamson Tobacco Corp. v. United States,* 201 F.2d 819, 822 (6th Cir. 1953); *see also United States v. Am. Elec. Power Serv. Corp.,* 218 F.Supp.2d 931, 935 (S.D. Ohio 2002); Motions to strike "should be denied unless the challenged allegations have no possible relation or logical connection to the subject matter of the controversy and may cause some form of significant prejudice...." 5C CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE & PROCEDURE § 1382, Westlaw (3d ed. database updated Apr. 2023).

For years, Defendants were content to allow their police officers to engage in repeated acts

of misconduct with a dearth of discipline. When Defendants continued to bury the unchecked misconduct, it became too much for honest-cop Plaintiff Christopher Green to ignore. He reported the misconduct to the FBI. With federal investigation looming, rather than finally address the misconduct, Defendants did what they had done for years: they did more to hide their dirty deeds. Because they couldn't dispute the information Green provided to the FBI, Defendants instead orchestrated a campaign of intimidation and retaliation against him, resulting in his termination. Because they couldn't kill the message, they sought to kill the messenger.

Now, with this lawsuit, Green is fighting back and making public what really happened at Defendants' hands. And Defendants, in turn, are trying to do what they have done for years—hide the truth and keep secret all their misconduct. The only difference is, now, they are trying to use the Court to shield their misdeeds from public scrutiny. Defendant City asks this Court to view each disputed paragraph in a vacuum without considering the *rest* of the Amended Complaint. When the paragraphs are placed in context, Defendant can't show "no possible relation or logical connection" to the controversy's subject matter, much less "significant prejudice."

If, as expected, Green proves that the exercise of his protected free-speech right was a substantial or motivating factor in Defendants' retaliatory conduct, then Defendants will bear the burden of showing that they would have taken their same action even absent Green's protected conduct. *See Mount Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 287 (1977); *Thaddeus-X v. Blatt*, 175 F.3d 378, 399 (6th Cir. 1999). They won't be able to do that if Green shows, as alleged through the challenged paragraphs, that Defendants coddled others who did far worse. As shown below, the paragraphs Defendant City seeks to strike are relevant to the First Amendment–retaliation and other legal claims and show disparate mistreatment of Green compared to the police department's real wrongdoers, who escaped discipline. That disparate treatment proves retaliatory motive and underscores how Defendants' explanations for their conduct toward Green are false.

B. Amended Complaint paragraph 45 about Tatgenhorst's illegal searches and seizures is relevant because it was one category of misconduct Green reported as to the FBI as part of his First Amendment–protected activity and it explains the retaliatory motive for his firing by showing how he was treated differently than others, including Tatgenhorst.

Amended Complaint ¶ 45 alleges as follows:

> Tatgenhorst's illicit behavior went beyond just being paid for work he didn't do, but resulted in a myriad of constitutional violations for improper searches and seizures, false arrest, and faulty prosecutions. His failure to attend the required K-9 training could result in his K-9 being de-certified and jeopardize all his prior searches, arrests, and prosecutions. If criminal-defense counsel came to know of this for their clients where Tatgenhorst's K-9 sniffs led to arrest and conviction, the floodgates would open for reversals of criminal convictions and ensuing civil lawsuits.

Am. Compl., Doc. 3, PageID#88.

Defendant's claim that Green lacks standing to allege this is wrong. Def.'s Mot., Doc. 23, PageID#240. Green isn't claiming that Tatgenhorst's unlawful searches and seizures violated Green's rights. That's not why paragraph 45 is included. It's included because it was one of the serious items of misconduct that Plaintiff Green reported to the FBI as a private citizen engaged in free speech on a matter of public concern—the reporting of which led to his unconstitutional and indeed criminal-under-Ohio-law termination. Am. Compl., Doc. 3, PageID#82–83; 94–95.

And Defendant Tatgenhorst's lengthy history of unfettered misconduct with no discipline provides strong evidence that Green wasn't terminated because he purportedly engaged in some minor misconduct. Rather, he was terminated because he exposed the years-long, ongoing, and serious misconduct within the police department. The information contained in paragraph 45 shows why Green's termination was retaliatory. After all, if Tatgenhorst could violate Defendants' constitutional rights with impunity, then Defendants' purported reasons for going after Green are even more suspect and reflect poorly on all Defendants' credibility. Paragraph 45's allegations also show why Defendant Tatgenhorst specifically was motivated to harm Green and his maliciousness. He was trying to retaliate and diminish Green's credibility.

The City's public-policy argument similarly fails. Offering no legal support, the City appears to be arguing that federal courts should keep allegations of police misconduct secret. This would be radical jurisprudence. Were the City so concerned about its police department's reputation for integrity, it should have imposed discipline when the misconduct occurred and imposed preventive measures afterward. It did neither. Instead, its leaders chose not only to do nothing and cover up the misconduct, but to retaliate against the one of the few straight-arrow cops they had.

Contrary to the City's position, paragraph 45 provides a factual basis for elements of Claim 1 (First Amendment retaliation), Claim 22 (interference with civil rights), and Claim 27 (*Monell* and individual 14th Amendment failure to train and supervise) because reporting this misconduct was part of Green's protected speech to the FBI, Tatgenhorst suspected that, this was a substantial or motivating factor for retaliation against Green, and the City and its supervisors failed to protect him.

Paragraph 45 is also part of the factual basis for Claims 6–11 (intimidation of attorney, victim, or witness in a criminal matter). Under the relevant part of Ohio Rev. Code § 2921.04(A), "… no person shall knowingly attempt to intimidate a witness to a criminal or delinquent act by reason of the person being a witness to that act." (Cleaned up.) Under the relevant part of Ohio Rev. Code § 2921.04(B)(2), "No person, knowingly and… by unlawful threat of harm to any person or property or by unlawful threat to commit any offense or calumny against any person, shall attempt to influence, intimidate, or hinder… A witness to a criminal or delinquent act by reason of the person being a witness to that act." (Cleaned up.) By reporting to the FBI Defendant Tatgenhorst's criminal behavior, including the paragraph 45 allegation, Green is a witness to a criminal act. Thus, paragraph 45 is necessary and relevant, and the Court should not strike it.

Paragraph 45 also helps explain Tatgenhorst's motive behind Claim 21 (civil liability for criminal acts of telecommunications harassment). PageID#145–47. And, for Claim 28 (improper hiring and retention), it helps show how the City's impenitent retention of Tatgenhorst, enabling

him to keep inflicting harm on Green, was improper.

C. Amended Complaint paragraph 252 is relevant because Defendants used the Allen-family incident as an excuse for investigating and terminating Green, when it was Defendant Flati who jeopardized the investigation by violating the Allens' *Giglio* rights—thus proving retaliatory motive.

Amended Complaint ¶ 252 alleges as follows:

> Additionally, the promise of immunity in exchange for their testimony is *Giglio* (impeachment) material against each of these captains. Law enforcement is required to turn over *Giglio* material to every criminal defendant in every case investigated by these captains. But Defendant Captain Flati and the prosecutors never turned over this *Giglio* material to the Allen brothers during their trial—calling into question their convictions.

Am. Compl., Doc. 3, PageID#117.

One of the central reasons Defendants gave for investigating Green and his ensuing termination was the bogus allegation that he mishandled the Allen-family incident. Am. Compl., Doc. 3, PageID#96–101, 103–04, 107, 110, 111–12, 115, 117, 122–23, 128–29, 138–41, 143–45, 148, 150, 152–54. The false allegation that Green somehow mishandled this incident is part of the core factual background supporting the elements of Claims 1, 3, 4, 5, 13, 14, 15, 16, 18, 19, 20, 22, 25, 26, and 27. Paragraph 252 is necessary and relevant to dispute that Green mishandled the incident, by alleging that it was Defendant Captain Flati's *own* failure to disclose his *Giglio* material that jeopardized the Allen conviction, not anything Green did. Green's difference in opinion from Flati's about the Allen incident pales in comparison to Flati's blatant constitutional violation. And Defendants' disparate treatment of Green versus Flati proves retaliatory motive.

Like paragraph 45, paragraph 252 is necessary and relevant to the claims contained in the Amended Complaint and to disprove Defendant's claim that Green mishandled the Allen incident.

D. Amended Complaint paragraphs 256–58, 260, and 262–63 are relevant because they show that Green was treated differently than Tatgenhorst, among others, thus proving retaliatory motive.

Defendants dispute paragraphs 256–58, 260, and 262–63's inclusion in the Amended Complaint alleging Green lacks direct-personal knowledge of the information contained in certain

paragraphs and lacks standing to sue. Personal knowledge is required in pleading. And as with Defendant's argument about paragraph 45, Defendant's lack-of-standing argument is misleading and wrong. Def.'s Mot., Doc. 23, PageID#241. Green isn't suing Defendant Tatgenhorst for Tatgenhorst's commission of these offenses. Rather, he is suing because of the intimidation and retaliation Defendants perpetrated resulting in his unlawful termination. The Amended Complaint sufficiently alleges that the reasons given for Green's termination were retaliatory, false, fraudulent, defamatory, and pretextual—reasons that are inconsistent with the lack of discipline imposed on other officers (like Tatgenhorst), who engaged in far worse misconduct, when Green engaged in no such misconduct. Am. Compl., Doc. 3, PageID#86–88, 91–92, 103, 107, 110–14, 116–19.

1. First incident: Tatgenhorst physically abused his wife and threatened her with a gun and turned off investigating officers' body cameras; East Liverpool police and officials knew all of this and did next to nothing, placing him on paid administrative leave while firing Green.

As to Defendant Captain Tatgenhorst's first incident, the Amended Complaint states:

- "Based on information and belief, in or around March 2022, Defendant Captain Tatgenhorst physically abused his wife. His wife went to ELPD the following day and made a complaint. In addition to the abuse allegation, his wife informed the police that Tatgenhorst had taken her cellphone, which contained evidence of the crimes." Am. Compl., Doc. 3, PageID#118 at ¶ 256.

- "Based on information and belief, later that day, Defendant Captain Tatgenhorst went to his wife's apartment, which is located above the FOP lodge. Tatgenhorst kicked in the door and threatened his wife with a gun. She was able to escape and found an off-duty police officer, who took her to the police station." *Id.* at ¶ 257.

- "Based on information and belief, when the police responded to the FOP lodge, they found Defendant Captain Tatgenhorst with the gun drinking beer. Tatgenhorst turned off the officers' body cameras." *Id.* at ¶ 258.

- At that time, Defendant Captain Tatgenhorst was not disciplined for this incident by East Liverpool. *Id.* at ¶ 259.

Later, Tatgenhorst was indicted, arrested, and is now being prosecuted for this incident. Am. Compl., Doc. 3, PageID#119, at ¶ 263. Already on *paid* administrative leave (for the second incident

described below), Tatgenhorst faced no further employment discipline for being indicted, arrested, and facing prosecution (much less the underlying misconduct), other being permitted to remain on *paid* administrative leave. *Id.*

The stark difference in Defendant's handling of Green's discipline (termination and public ridicule) versus Tatgenhorst's (nothing) helps prove retaliatory motive. And the allegations in paragraphs 256–58, 260, and 262–63 are relevant and necessary to show that.

2. Second incident: Tatgenhorst continued to threaten his wife, was arrested by *another* jurisdiction—not East Liverpool, was placed on paid administrative leave, and after charges were dropped, faced no administrative investigation—while Green was fired.

As to Defendant Tatgenhorst's second incident, the Amended Complaint states:

- Based on information and belief, in the summer of 2022, Defendant Captain Tatgenhorst continued to threaten his wife. An arrest warrant was issued for his arrest in Hancock County—not East Liverpool. Tatgenhorst was arrested and charged with a crime. Am. Compl., Doc. 3, PageID#119, at ¶ 260.

- Defendant Captain Tatgenhorst was placed on paid administrative leave but continues to be employed by ELPD. *Id.* at ¶ 261.

- These charges were dismissed in November 2022, and the ELPD took no further action against Defendant Captain Tatgenhorst. *Id.* at ¶ 262.

Although the charges related to this second incident were dropped, Defendants took no further action to investigate whether the allegations were true, which would warrant disciplining Tatgenhorst. Instead, consistent with the overall theme, Defendants did nothing.

Compare Defendants' failure and refusal to take any action with Tatgenhorst (despite the allegation and ensuing arrest) with the months' long "investigation" of Green and his ensuing termination. Again, the stark difference in Defendants' handling of the discipline of Green (termination and public ridicule) versus Tatgenhorst (nothing) shows retaliatory motive.

E. Striking the challenged allegations is unwarranted not only because it's all relevant but because there is no significant unwarranted prejudice to the City.

Paragraphs 245, 252, 256–58, 260, and 262–63 do not significantly prejudice the City. But striking them would cause Green great hardship. Without these allegations, Green might be denied relevant and overwhelming evidence to support his claims. It is far too early for the Court to implicitly be inviting motions *in limine* and creating disputes about the scope of discovery required for Green—the master of his complaint—to prove his case. And exclusion, now, will just invite further collateral motion practice as the case progresses, like motions to compel testimony and for protective orders on the subjects, and motions *in limine* at trial.

F. Defendant City presents none of the reasons, showings, or legal citations required by the Sixth Circuit's *Shane Group* decision for "removal from public access"—and can't start making those arguments now on reply.

It's one thing to demand that this Court technically *strike* allegations, which as shown above, it should not because everything alleged in the Amended Complaint is relevant to Plaintiff Green's claims. But it's another thing entirely to ask this Court to "remove from public access" the Amended Complaint and original Complaint's allegations to the point that third parties can't even assess the merits of judicial decisions. That's what Defendants, in one throwaway phrase at the end of their motion, ask this Court to do. PageID#243. They fail to cite the demanding legal standards established in *Shane Grp., Inc. v. Blue Cross Blue Shield of Michigan*, 825 F.3d 299 (6th Cir. 2016), the Sixth Circuit's leading and seminal case on placing federal-court records under seal. "The public has a strong interest in obtaining the information contained in the court record." *Shane Grp., Inc.*, 825 F.3d at 305 (citing *Brown & Williamson Tobacco Corp. v. F.T.C.*, 710 F.2d 1165, 1180 (6th Cir. 1983)):

> That interest rests on several grounds. Sometimes, the public's interest is focused primarily upon the litigation's result—whether a right does or does not exist, or a statute is or is not constitutional. In other cases—including "antitrust" cases, *id.* at 1179—the public's interest is focused not only on the result, but also on the conduct giving rise to the case. In those cases, "secrecy insulates the participants, masking impropriety, obscuring incompetence, and concealing corruption." *Id. And in any of these cases, the public is entitled to assess for itself the merits of judicial decisions. Thus, "[t]he public has an interest in ascertaining what evidence and records the District*

Court and this Court have relied upon in reaching our decisions.”

Shane Grp., Inc., 825 F.3d at 305 (emphasis added; internal citations omitted).

As the *Shane Grp.* court observed—in reversing, among other things, a district court's improper decision to place complaint allegations under seal—“the greater the public interest in the litigation's subject matter, the greater the showing necessary to overcome the presumption of access.” *Id.* Here, there's hardly any higher public interest than in allegations about a thoroughly corrupt police department. “The courts have long recognized, therefore, a strong presumption in favor of openness as to court records…. The burden of overcoming that presumption is borne by the party that seeks to seal them…. The burden is a heavy one: Only the most compelling reasons can justify non-disclosure of judicial records. *Id.* (internal citations and quotations omitted; cleaned up). “And even where a party can show a compelling reason why certain documents or portions thereof should be sealed, the seal itself must be narrowly tailored to serve that reason…. The proponent of sealing therefore must analyze in detail, document by document, the propriety of secrecy, providing reasons and legal citations.” *Id.* at 305–06 (citations omitted).

Because the City didn't bother to disclose to this Court *Shane Grp.*'s legal test for sealing court documents (much less argue that standard), offer a reason (much less a “compelling” one) beyond its public-relations protests about its image, and offer legal citations—no sealing is appropriate. The City can't introduce a new argument on reply. *See*, *e.g.*, *McCarthy v. City of Cleveland*, 626 F.3d 280, 286 (6th Cir. 2010). This Court should not accept the dubious invitation to seal complaint allegations and should deny the sealing the City demanded in one citation-free, conclusory phrase at the end of its motion.

G. Defendant City lacks standing to complain on behalf of Defendant Tatgenhorst.

Insofar as Defendant City, the movant, appears to be complaining on nonmovant Defendant Tatgenhorst's behalf, about allegations supporting claims against him personally (like the

civil-liability-for-criminal-acts claims), the City lacks standing. It can show no "concrete and particularized" injury to itself for the claims lodged against Tatgenhorst personally. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338–40 (2016). Image concerns aren't a consideration.

III. Conclusion

With Defendants' rampant misconduct now public, they seek to do what they always have—hide it from public scrutiny, rather than accepting responsibility and holding the wrongdoers accountable. Worse yet, Defendants seek to engage this Court improperly in the business of public-relations management. As shown above, the disputed paragraphs are relevant and necessary to the claims and should not be struck. If details about City employees' misconduct are scandalous or salacious, Defendants brought that on themselves—in a way directly relevant to Green's claims. The City has failed to meet Fed. R. Civ. P. 12(f) and the caselaw's high threshold. They fail to show that there is no possible relation or logical connection to the controversy's subject matter and that the allegations cause significant prejudice.

The Court should thus deny Defendant City of East Liverpool's 12(f) Motion to Strike Portions of Plaintiff's First Amended Complaint. Alternatively, Green respectfully requests the opportunity to amend his complaint to make even clearer, if needed, the allegations and their relation to the claims.

Dated: May 22, 2023

Respectfully submitted,

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