

ORIGINAL

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COURT OF CLAIMS
OF OHIO

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IN THE OHIO COURT OF CLAIMS

**Nathan C. Hall, MD, PhD
1115 Old Post Circle
Garnet Valley, PA 19060**

Plaintiff,

v.

**The Ohio State University
Wexner Medical Center
650 Ackerman Road
Columbus, OH 43218,**

Defendant.

**Case No.
Judge**

2015-00038

**PLAINTIFF NATHAN C. HALL'S FIRST
AMENDED COMPLAINT**

NATURE OF CLAIMS

Now comes Plaintiff Nathan C. Hall, MD, PhD ("Plaintiff" or "Dr. Hall"), by and through the undersigned counsel, and for his Complaint states as follows:

1. This action is brought against Defendant The Ohio State University Wexner Medical Center ("OSU" or the "Wexner Medical Center"), an arm of the State of Ohio, and, should he not be entitled to immunity, Richard D. White, MD ("Dr. White."), Chairman of the Department of Radiology within OSU's College of Medicine. The action arises out of:

- a. OSU's illegal and discriminatory treatment of Dr. Hall based on his age, as well as its retaliation against Dr. Hall for engaging in protected activity under The Age Discrimination in Employment Act ("ADEA") of 1967, 29 U.S.C. § 621 *et seq.*;
- b. OSU's and, to the extent that his conduct was outside the scope of his employment or was based upon malice, bad faith, or recklessness, Dr. White's illegal and discriminatory treatment of Dr. Hall based on his age, in violation of Ohio Revised Code ("R.C.") § 4112.14(A);

ON COMPUTER

- c. Assuming, *arguendo*, Dr. Hall did not have a contractually protected interest in his position as Division Chief of Nuclear Medicine and Molecular Imaging, OSU's and, to the extent that his conduct was outside the scope of his employment or was based upon malice, bad faith, or recklessness, Dr. White's discharge of Dr. Hall from the Division Chief of Nuclear Medicine and Molecular Imaging position in violation of clear public policy;
- d. OSU's breach of the July 2011 Physician Employment Agreement (the "2011 Agreement"); and
- e. OSU's and, to the extent that his conduct was outside the scope of his employment or was based upon malice, bad faith, or recklessness, Dr. White's constructive discharge of Dr. Hall from OSU.

2. Dr. Hall alleges claims against OSU to the extent permissible under the Eleventh Amendment to the U.S. Constitution and where the state of Ohio has consented to being sued for damages.

PARTIES

3. Nathan C. Hall, MD, PhD, is a Pennsylvania resident living at 1115 Old Post Circle, Garnet Valley, PA 19060. At all other times material to this Amended Complaint, Dr. Hall resided at 1001 Eckard Road, Centerburg, OH 43011.

4. Dr. Hall served as Division Chief of Nuclear Medicine and Molecular Imaging in OSU's College of Medicine's Department of Radiology (the "Department") from 2006 to 2014. Dr. Hall was a Tenure Track Clinical Science Pathway faculty member throughout his employment in the Department.

5. At all times material to this Complaint, Dr. Hall was over 40 years-old. Dr. Hall was born January 21, 1969. Dr. Hall was 41 when Dr. White became Chairman of the Department of Radiology in 2010. Dr. Hall is currently 45 years-old.

6. At all times material to this Complaint, The Ohio State University Medical Center is a division of the Ohio State University, a federal and state assisted institution of higher education that operates through its officers and employees. Both OSU and Wexner Medical Center employ more than 20 employees, qualifying each as an “employer” under 42 U.S.C. § 2000e(b), 29 U.S.C. § 630, and R.C. § 4112.01(A)(2).

7. At all times material to this Complaint, Dr. White acted as the Chairman of the Department of Radiology in OSU’s College of Medicine. OSU is a state actor and has empowered Dr. White to take administrative action against Dr. Hall under color of state law.

JURISDICTION

8. This action arises under the Age Discrimination in Employment Act of 1967, 29 U.S.C. § 621 *et seq.*; R.C. §§ 4112.14(A); Ohio tort law, contract law, and common law.

9. Plaintiff dually filed an administrative complaint within the United States Equal Employment Opportunity Commission (“EEOC”) and the Ohio Civil Rights Commission (“OCRC”); however, Plaintiff’s only purpose in filing the administrative complaint was to receive a right to sue letter. Plaintiff had no intention of initiating an administrative investigation. True and accurate copies of Plaintiff’s EEOC/OCRC documents demonstrating this intent are attached as Exhibit A. Plaintiff received a Right to Sue letter from the EEOC on or near October 30, 2014.

10. This Court has jurisdiction over this action by virtue of R.C. 2743.02, wherein the state of Ohio waived its immunity from liability and consented to suit in the Court of Claims. This Court has jurisdiction to determine whether Dr. White is entitled to immunity, as he is a person who was serving an appointed position, and was employed by the state, at the time the allegations below took place. Dr. White is therefore an “officer or employee” of the state pursuant to R.C. § 109.36.

11. All claims arose in Franklin County where at all times material to this Complaint the Defendants resided and/or committed the acts giving rise to this action.

GENERAL FACTUAL ALLEGATIONS

A. Dr. Hall Arrives at OSU and Meets, if Not Exceeds, Expectations.

12. In 2004, Dr. Hall entered into an agreement with OSU to become an Assistant Professor in the Clinical Science Tenure Track in the Department of Radiology.

13. At that time, and in the six years that followed, the Department’s expectations of Dr. Hall were clear: Dr. Hall was to meet the obligations established in his employment agreement, the Department’s Appointment, Promotion & Tenure (“AP&T”) document, and the College of Medicine’s Policy on Salary Recovery.

14. The AP&T document, in its current form, outlines four career tracks available to faculty members in the Department: Tenure, Clinical, Research, and Auxiliary/Adjunct. The Tenure Track is the only means by which a Radiology faculty member can achieve Tenure status. Faculty members on the Tenure Track are placed either on the Basic Science (usually PhD) or Clinical Science (usually MD) pathway. The “Clinical Science Pathway is specifically designed for clinically trained faculty deployed with [\leq] 40% funded release time devoted to competitive

national grant-supported research predicated on adequate ongoing extramural self-funding, while [≥] 60% time is spent on clinical, educational, and/or administrative activities.”¹ The probationary period for reaching Tenure status under the Clinical Science Pathway is 11 years. Failure to achieve Tenure within this time frame may result in the faculty member’s discharge from OSU. A true and accurate copy of the AP&T document is attached as Exhibit B.

15. The College of Medicine Policy on Salary Recovery provides additional requirements: Recently hired faculty at the assistant professor level must “recover 25% of their salary within three years, and 50% within 6 years.” New tenure track clinical faculty are provided 2 days per week (40% of a faculty member’s Full Time Equivalent, or “FTE”) for academic/research activities and provide clinical services 3 days per week (60% FTE). They are expected to recover 25% of the academic portion of their salary (10% FTE) within three years, and 50% of the academic portion of their salary (20% FTE) within 6 years. These calculations are based on the NIH salary cap which was at or about \$179,700 during the timeframe in question. A true and accurate copy of the College of Medicine’s Policy on Salary Recovery is attached as Exhibit C.

16. From 2004 to 2010, Dr. Hall consistently met and/or exceeded the productivity expectations set forth in his employment agreement, the Department’s AP&T document, and the College of Medicine’s Policy on Salary Recovery. As a result, Dr. Hall regularly received positive performance evaluations from his superiors in the Department and was promoted to Division Chief of Nuclear Medicine and Molecular Imaging in 2006. Dr. Hall received a second promotion, to Associate Professor, in the summer of 2011, wherein he was also granted tenure based on his academic achievements and national visibility.

¹ The attached version of the AP&T document erroneously transposes the “less than” and “greater than” symbols. The correct symbols are provided in brackets.

17. In July 2011, Dr. Hall entered into another employment agreement with OSU. Section 1.1 of the 2011 Agreement states: "The Ohio State University hereby employs [Dr. Hall] and [Dr. Hall] hereby accepts employment as a physician with an appointment within the Senior Administrative and Professional staff of the University." The 2011 Agreement provides for a term from July 1, 2011 through June 30, 2014. Section 3 of the 2011 Agreement provides the terms of Dr. Hall's compensation. Subsection 3.1 provides Dr. Hall's base salary calculation, which consists of a Clinical Services Salary, an Academic Services Salary, and a \$50,000.00 salary as Division Chief of Nuclear Medicine. A true and accurate copy of the 2011 Agreement is attached as Exhibit D.

18. Section 3.2 of the 2011 Agreement guarantees Dr. Hall other benefits, including "up to eight thousand dollars (\$8,000) per fiscal year ... to cover the reasonable costs of [attending Continuing Medical Education events], including fees and travel expenses, subject to the University's travel policies."

19. Section 3.3 of the 2011 Agreement outlines OSU's additional productivity expectations: "[I]t is expected that [Dr. Hall] will be clinically productive for [Dr. Hall's] patient care services, as measured by Work Relative Value Units ("WVRUs") at 5,192 wRVUs annually (433 monthly)...." That section also provides that, in the event Dr. Hall falls short of OSU's wRVU expectations, the Department Chair may, within a 30 day period, "jointly develop a plan to increase [Dr. Hall's] wRVUs." Section 3.3 then provides that, should Dr. Hall again fail to satisfy OSU's productivity requirements, OSU's only remedy is to reduce Dr. Hall's Clinical Services Salary.

20. Under Dr. Hall's leadership, the Department saw drastic improvements as to both the size and quality of the Nuclear Medicine and Molecular Imaging Division. Dr. Hall:

a. Ushered in new technologies (including 4 SPECT/CT scanners) and clinical diagnostic scanning services (including, but not limited to, Amyvid, Datscan, NaF bone scans, FDG viability, and Lymphoseek);

b. Initiated and developed an ACGME accredited Nuclear Medicine residency program;

c. Initiated and developed an ACGME accredited Nuclear Radiology fellowship program;

d. Initiated and developed an advanced hybrid molecular imaging fellowship program;

e. Developed an in-house PET/CT program—one of the most efficient in the country—which increased the number of studies per year tenfold;

f. Developed a successful multidisciplinary research program centered on hybrid molecular imaging quantification and intra and perioperative imaging techniques, which has gained international recognition and visibility;

g. Maintained an average of at least 40% FTE extramural funding—the maximum permitted—over a seven year period;

h. Published over 50 peer-reviewed scientific papers;

i. Helped manage the Imaging Core Lab clinical trials associated with the National Institute of Health and National Cancer Institute; and

j. Held numerous committee positions, including, but not limited to:

- i. Executive Committee of the American Board of Science and Nuclear Medicine;
- ii. Co-Director of the Imaging Care Lab for the National Institute of Health and National Cancer Institute; and
- iii. Vice Chair of the Imaging Committee for the Alliance for Clinical Trials in Oncology and SWOG of National Cancer Institute.

B. Dr. White's Appointment as Department Chair and the Unclear Expectations that Followed.

21. As mentioned above, in 2010, Dr. White was appointed by the College of Medicine to be the Chair of the Department of Radiology—the position immediately superior to that held by Dr. Hall. Almost immediately, the environment within the Department began to change for the worse.

22. In each of his annual performance evaluations conducted prior to Dr. White's appointment, Dr. Hall was given positive evaluations by previous chairs of the Department. Yet, once Dr. White assumed the position of Department Chair, Dr. Hall never again received a positive review—even when he met the productivity requirements established in the, 2011 Agreement, the Department's AP&T document, and the College of Medicine's Policy on Salary Recovery.

23. Dr. White's appointment as Department Chair ushered in additional arbitrary and unidentifiable (and unattainable) productivity demands for Dr. Hall's position in contravention of his employment agreements, the Department's AP&T document, and the College of Medicine's Policy on Salary Recovery. Despite the fact that Dr. Hall had met the requirements provided in the foregoing documents and policies, Dr. White consistently criticized Dr. Hall for failing to

meet his personal expectations. For a period of approximately two years, these “expectations” remained unclear to Dr. Hall, and would frequently change from conversation to conversation throughout numerous meetings between Dr. White, Dr. Hall, and other members of the Department.

24. Dr. White did have one clear demand: he expected Dr. Hall to bring into the University an amount no less than 100% of the cost of his (Dr. Hall’s) salary plus benefits. None of Dr. Hall’s employment agreements with OSU required him to recover the total cost of his salary plus benefits, nor did the Department’s AP&T document or the College of Medicine’s Policy on Salary Recovery. Indeed, Dr. White’s sudden arbitrary expectation that Dr. Hall recover the cost of his salary plus benefits directly conflicts with the expectations established in the written agreements and policies provided by OSU.

25. In Dr. Hall’s 2012 review, Dr. White presented documents which allegedly demonstrated that Dr. Hall did not meet the Department’s expectations with regard to clinical productivity. Dr. White claimed that Dr. Hall failed to meet the Department’s expectations despite the fact that Dr. Hall produced 77% of the expected contracted Relative Value Units (“RVUs”) while also maintaining approximately 40% FTE funding. Had Dr. White reduced Dr. Hall’s contracted RVU expectations by the above-mentioned 40%—as he was supposed to do—he would have realized that Dr. Hall was performing at 128% of the Department’s clinical productivity expectations. These documents also gave no credit to Dr. Hall for extramural grant funding.

26. Over the course of the next year, and in his 2013 evaluation, Dr. Hall sought to clarify the Department’s expectations of him, given the conflict created by the language in the 2011

Agreement, the College of Medicine's Policy on Salary Recovery, the Department's AP&T document, his previous positive evaluations, and Dr. White's additional demand that Dr. Hall recover the total cost of his salary plus benefits. Rather than provide a clear metric by which Dr. Hall could assess his productivity under Dr. White's new regime, Dr. White only reiterated that Dr. Hall was not meeting the Department's expectations. Meanwhile, Dr. Hall's clinical productivity for the 2013 fiscal year was 60% that of a full time clinical FTE, i.e., exactly what is expected under the departmental guidelines for tenure track clinical faculty. In FY2014, Dr. Hall sought to meet 100% clinical FTE RVU requirements (assuming Dr. Hall's non-tenure track, full time clinical track, productivity expectations) and was on pace to do so at the time of his termination as Division Chief.

27. Despite Dr. White's criticism, from 2007 to 2014, Dr. Hall's funded research ranged anywhere from approximately 25% to approximately 65% of his FTE. From 2008 to 2014, Dr. Hall's funded research exceeded 40% of his FTE, meaning more than 100% of Dr. Hall's academic time during that period was fully funded. The Department only required that 50% of academic time be funded after six years with the Department. At no point from 2007 to 2014 did Dr. Hall's FTE funded research ever fall below the 50% threshold established by the Department.

C. Dr. White Engages in Blatant Age Discrimination and Harassment.

28. In Dr. Hall's June 2013 evaluation, Dr. White made clear that he was asking all Tenure Track faculty members over 40 years-old to consider voluntarily coming off the tenure track to "get ahead" on the clinical track. Despite Dr. Hall's posturing, it was clear to Dr. Hall and others

that, for tenure-track faculty over 40, the alternative to not “voluntarily” coming off the tenure track was termination.

29. Dr. White sought to justify this blatant act of age discrimination by stating that the Department could not afford to pay senior faculty, or as he put it, “seasoned veterans,” in the manner it had been for nearly a decade. Faculty members under 40 years-old were not given this treatment. As explained by Dr. White, the Department was more willing to provide financial support to younger faculty members because they are “at a different phase of ... life,” and are the kind of “young bucks” the Department is willing to support. Accordingly, upon information and belief, Dr. White did not require younger faculty members to recover 100% of their salary plus benefits. This unwritten expectation applied only to “seasoned veterans” over forty years old.

30. Dr. White reiterated this improper—and illegal—position on numerous occasions. During a December 6, 2013 meeting, Dr. White again stated that “the only guys [he is] going to support are the guys that are early [in their careers,] just starting out to jumpstart their career.”

31. Dr. White attempted to justify his position as a matter of “career development”—a necessary correlation to age—and cost to the University. Yet Dr. White’s own words demonstrate that discrimination underlies both attempted justifications: “You guys are at different levels of career development. I am willing, for the guys that just arrived to the best of my ability, to jumpstart their careers to a successful track. You’re a seasoned veteran. I have to approach you guys differently.... You guys should be up and running. You can buy freedom but otherwise if the monies are not there I can’t afford the seasoned veterans the same flexibility.” Ironically, Dr. Hall had “bought his freedom” by fully funding 100% of his research time; however, he was not given credit for this purchase.

32. Following Dr. Hall's 2012 and 2013 evaluations, Dr. Hall repeatedly sought to clarify OSU's and Dr. White's expectations, as well as the reasons behind the disproportionate enforcement of Dr. White's policy that faculty members recover 100% of their salary plus benefits. Yet, for a reason unknown to Dr. Hall, this appeared to frustrate Dr. White. Months of harassment followed. This harassment consisted, in part, of:

a. Dr. White confronting Dr. Hall on numerous occasions, accusing him of circumventing the chain of command and shedding a negative light on the department;

b. Dr. White blaming Dr. Hall for the mistakes of other faculty and staff, over whom Dr. Hall had no authority or responsibility to oversee; including, for example, the nuclear pharmacy, which is not even within the Department. Dr. White failed to produce an organizational chart to support his assertions that Dr. Hall was in any way responsible for these mistakes; and

c. Dr. White urging Dr. Hall to step down from his position as Division Chief to "save himself the embarrassment" of being terminated from the position and accusing him of inappropriate activities in the presence of Dr. Robert Bornstein ("Dr. Bornstein"), Vice Dean for Academic Affairs.

33. Dr. White has engaged in discrimination of this manner before. In *Wilke v. University of Florida*, Case No. 1 D 06-5414 (1st Dist. Ct. App.), Dr. White was accused of conduct similar to that alleged here when he held a leadership position at the University of Florida. In *Wilke*, the parties entered into a settlement agreement.

34. In *Ersoy v. Ohio State University Medical Center*, Dr. White—while at OSU—was again accused of conduct similar to that alleged here. In *Ersoy*, the parties entered into a settlement agreement.

D. Dr. Hall Files a Discrimination and Harassment Complaint Against Dr. White and Dr. White Retaliates.

35. In December 2013, after years of failing to meet Dr. White’s unclear expectations, being forced to recover the cost of his own salary plus benefits (a requirement not applicable to younger faculty members), being given little alternative but to forfeit his Tenure Track position based solely upon his age, and enduring Dr. White’s many subsequent confrontations and accusations, Dr. Hall filed a discrimination and harassment complaint against Dr. White with OSU’s Office of Human Resources (“OSU HR”).

36. Almost immediately, Dr. White’s hostility toward Dr. Hall increased:

a. In February 2014, Dr. Hall sought clarification from Dr. White with respect to faculty pathways in light of Dr. White’s decision to ask all faculty members over 40 years-old to remove themselves from the Tenure Track to “get ahead” on the clinical track. Dr. White ignored Dr. Hall’s inquiry entirely.

b. In March 2014, Dr. White approached numerous staff and faculty members within the Department to discuss old “allegations” of an inappropriate sexual relationship, in violation of OSU’s Sexual Harassment Policy, between Dr. Hall and a female staff member within the Department of Radiology.² In 2011—almost three years before Dr. White’s questioning—an individual in the Department had filed a complaint with OSU HR, accusing Dr. Hall and the female staff member of having an inappropriate sexual relationship in

² The female staff member’s name has been omitted to protect her identity and reputation.

violation of OSU policy; however, Dr. Hall has never engaged in such a relationship. The 2011 complaint makes no reference to any specific act of impropriety and, revealingly, makes numerous references to what the complainant believed were unfair raises and promotions received by the female staff member. OSU HR did not find that Dr. Hall violated any OSU policy. Yet—three years after this baseless complaint—Dr. White attempted to justify his inquiries by stating that numerous unnamed individuals within the Department had complained about an alleged sexual relationship in violation of OSU policy. When Dr. Hall approached his colleagues in the Department to ask about their encounters with Dr. White, each stated that it was Dr. White—not the individual—who initiated the conversation regarding the alleged sexual relationship. One colleague even noted Dr. White’s appearance of having a “vendetta” against Dr. Hall.

c. Also in March 2014, Dr. White began to exclude Dr. Hall from meetings which he would otherwise have been entitled, if not required, to attend. On March 4, 2014, Dr. White excluded Dr. Hall from a Department meeting pertaining to Siemens technology and the new James Center Hospital, and instead requested that Dr. Chadwick L. Wright (“Dr. Wright”) attend—a faculty member directly under Dr. Hall’s supervision and one of the individuals previously described by Dr. White as one of the “young bucks” the Department is willing to support. Dr. White informed Dr. Wright that he excluded Dr. Hall from the meeting because Dr. Hall had “dropped the ball in the past,” and because he had a “conflict of interest” given Dr. Hall’s past collaborative efforts with Philips, a Siemens competitor. Dr. White provided no specific instance of when Dr. Hall had “dropped the ball in the past.”

Moreover, Dr. Hall had previously worked extensively with Siemens; Dr. White did not have any concern regarding a conflict of interest on that occasion.

d. Again in March 2014, Dr. Hall requested to use Professional Expense Reimbursement Allowance (“PERA”) funds to attend the annual Society of Nuclear Medicine and Molecular Imaging event regarding Computer Assisted Radiology and Surgery (“CARS”). Dr. White denied Dr. Hall the use of PERA funds for the event. Indeed, upon information and belief, Dr. White unilaterally stripped all faculty members of the \$8,000 PERA allowance guaranteed in the Department’s employment contracts and pooled the funds into an account that only he controlled. In the nine years prior, Dr. Hall had never once been denied the use of PERA funds. Meanwhile, Dr. White reimbursed Dr. Wright (a “young buck”) for his expenses related to the same CARS meeting.

37. Finally on April 4, after months of retaliation following Dr. Hall’s filing of a discrimination and harassment complaint with OSU HR, Dr. White terminated Dr. Hall from the position of Division Chief of Nuclear Medicine and Molecular Imaging. Dr. White was provided with no advance written notice of the termination as required by the 2011 Agreement; rather, Dr. White handed Dr. Hall a written notice of his termination during the termination meeting itself. Dr. White cited only two reasons for Dr. Hall’s termination. First, Dr. White stated that Dr. Hall failed to “cast a positive shadow” on OSU, the Department, and his division. Second, Dr. White stated that Dr. Hall underrepresented the Division of Nuclear Medicine and Molecular Imaging and put his own self-interest above the faculty “in ways quite disruptive to departmental function and bothersome to [his] peers.” Once again, Dr. White did not cite any specific conduct warranting Dr. Hall’s termination from the Division Chief position.

38. The bases provided by Dr. White for Dr. Hall's termination are false and a pretext for retaliation and harassment. First, in the nearly ten years Dr. Hall was employed by OSU, Dr. Hall never failed to "cast a positive shadow" on the Department or the University—if that phrase can even be afforded a definition. Dr. Hall represented OSU with distinction both nationally and internationally. Second, Dr. Hall never underrepresented his division or put his own interests before those of other faculty; to the contrary, Dr. Hall frequently put the interests of faculty members within his division first by asking that Dr. White clarify the expectations of the Department with respect to those faculty members on the Clinical Science Tenure Track. When pressed for an explanation, the only other reason Dr. White provided in support of Dr. Hall's termination as Division Chief was that Dr. Hall had previously recorded conversations between Dr. Hall and Dr. White and that Dr. Hall had an "outburst" in a section chief leadership meeting. Dr. Hall only ever recorded his interactions with Dr. White after Dr. White began engaging in blatant age discrimination, harassment, and retaliation. Further, while Dr. Hall certainly spoke at the meeting in question, his comments can in no way be reasonably defined as an "outburst."

39. After Dr. Hall was terminated from the Division Chief of Nuclear Medicine and Molecular Imaging position, the Department filled the position with a substantially younger individual, Dr. Mona Natwa, MD, in her early thirties and without a fraction of Dr. Hall's experience and expertise.

E. OSU HR's Internal Investigations Fail to Rectify Dr. White's Blatant Discrimination, Harassment, and Retaliation.

40. In a case report dated March 11, 2014, OSU HR presented its findings with respect to Dr. Hall's initial discrimination and harassment complaint, as well as its findings with respect to a complaint filed the same month by Dr. Hall pertaining to Dr. White's subsequent retaliation.

In the course of its investigation, OSU HR interviewed only six individuals: Dr. Hall, Dr. White, Dr. Bornstein, the female staff member accused of being involved in a sexual relationship with Dr. Hall, and two unnamed witnesses from the Department. After such a meager investigation, it should come as no surprise that OSU HR found that its evidence did not substantiate Dr. Hall's discrimination and harassment claim, and that there was insufficient evidence to support his retaliation claim. However, with respect to the latter, OSU HR did note that "Dr. White's prompting of conversation concerning the allegation of an inappropriate relationship between Dr. Hall and [the female in the Department] has the appearance of being inappropriate."

41. Unhappy with OSU's investigation, unable to continue working in a hostile work environment wherein he was subject to unlawful age discrimination, harassment, and retaliation, and fearful of imminent termination, Dr. Hall felt that he had no other option but to resign from OSU entirely. He submitted his resignation in August 2014.

FIRST CLAIM FOR RELIEF
(Discrimination and Retaliation in Violation of the ADEA)

42. Plaintiff includes by reference paragraphs 1–41 as if fully incorporated herein.

43. At all times relevant to this Complaint, Dr. Hall was over 40 years-old. He is therefore protected by the provisions of the Age Discrimination in Employment Act, 29 U.S.C. § 621 *et seq.*

44. The aforesaid actions of OSU and its agents in discriminating against and harassing Dr. Hall, including, but not limited to, creating a hostile work environment, subjecting Dr. Hall to unclear and unfair productivity standards, including a requirement, not contained in any written agreement or policy, that Dr. Hall recover the entirety of his salary plus benefits, omitting Dr. Hall from meetings central to his duties, denying Dr. Hall use of PERA funds, fabricating an

investigation into a three year-old complaint of a sexual relationship in violation of OSU's policies, and terminating Dr. Hall's position as Division Chief of Nuclear Medicine and Molecular Imaging were all undertaken to attempt to force Dr. Hall to resign from his position of Division Chief or cease being an employee of OSU altogether, and were undertaken because of Dr. Hall's age and/or because he opposed OSU's illegal acts of age discrimination, all in violation of the ADEA.

45. All of OSU's acts of discrimination and retaliation in violation of the ADEA were willful and intentional.

46. Dr. Hall has satisfied all of the procedural and administrative prerequisites to suit as set forth in 29 U.S.C. §§ 626(d) and 633(b).

47. As a direct and proximate result of the OSU's discrimination and retaliation against Dr. Hall on the basis of his age and opposition to age discrimination, Dr. Hall has suffered severe and substantial damages, including lost earnings, lost career and educational opportunities, litigation expenses including attorneys' fees, loss of reputation, humiliation, embarrassment, mental and emotional anguish and distress, and other compensatory and punitive damages, in an amount to be determined by the court.

SECOND CLAIM FOR RELIEF
(Age Discrimination in Violation of R.C. § 4112.14(A))

48. Plaintiff includes by reference paragraphs 1–47 as if fully incorporated herein.

49. Dr. Hall, in his early to mid-forties during the relevant time period, was physically capable of performing the duties and responsibilities required under the 2011 Agreement, including acting as the Division Chief of the Division of Nuclear Medicine and Molecular Imaging.

50. OSU and/or Dr. White created an additional' unwritten policy that applied disproportionately, if at all, to the "young bucks" in the Department of Radiology. This same policy, to the extent its expectations can be identified, applied in full force to Dr. Hall and other "seasoned veterans" in the Department, all over 40 years-old. By creating a vague policy and enforcing it in this manner, OSU and/or Dr. White created a mechanism through which it and/or he could justify the removal of older faculty members from Tenure Track and other positions. There was no just cause to terminate Dr. Hall from the Division Chief position. The reasons OSU and/or Dr. White provided for Dr. Hall's termination are baseless and, in reality, Dr. Hall was terminated as a result of OSU's and/or Dr. White's discriminatory enforcement of the unwritten policy that was in contravention of the Department's AP&T document, the College of Medicine's Policy on Salary Recovery, and the 2011 Agreement.

51. OSU and/or Dr. White openly showed favoritism toward "young bucks" in the Department, enforced the policy requiring faculty members to recover 100% of their salary plus benefits disproportionately to the disadvantage of older faculty members, then harassed older faculty members for failing to meet this and other standards. In discriminating against Dr. Hall on the basis of age, OSU and/or Dr. White acted with malicious purpose, in bad faith, and in a wanton or reckless manner.

52. Dr. Hall was replaced as Division Chief of Nuclear Medicine and Molecular Imaging by a substantially younger individual, Dr. Mona Natwa, MD, who, upon information and belief, is in her early thirties.

53. As a direct and proximate result of OSU's and/or Dr. White's discrimination against Dr. Hall on the basis of his age, Dr. Hall has suffered severe and substantial damages, including lost

earnings, lost career and educational opportunities, litigation expenses including attorneys' fees, loss of reputation, humiliation, embarrassment, mental and emotional anguish and distress, and other compensatory and punitive damages, in an amount to be determined by a jury and a court.

THIRD CLAIM FOR RELIEF
(Wrongful Discharge in Violation of Public Policy)

54. Plaintiff includes by reference paragraphs 1–53 as if fully incorporated herein.

55. Assuming *arguendo* that Dr. Hall did not have a contractual right to his position as Division Chief of Nuclear Medicine and Molecular Imaging, OSU and/or Dr. White discharged Dr. Hall from the position in violation of clear public policy.

56. OSU and/or Dr. White violated numerous public policies by engaging in the conduct at issue. These include, but are not limited to, a clear public policy disfavoring the creation of a hostile work environment and retaliation against an individual for engaging in a protected activity, *see* 29 U.S.C. § 623(d), 42 U.S.C. § 2000e-3(a), and favoring the protection and sanctity of contracts.

57. Dr. Hall was terminated because, among other reasons, he complained to OSU HR regarding OSU's and/or Dr. White's creation of a hostile work environment conducive to discrimination and harassment. Moreover, Dr. Hall was terminated in violation of the 2011 Agreement. Therefore, his termination related to and jeopardized the public policies stated above. Dr. Hall is also entitled to relief based upon a claim of wrongful discharge in violation of public policy to the extent he has failed to establish an element of any of the claims set forth in this Complaint.

58. Neither OSU nor Dr. White had an overriding business justification for Dr. Hall's termination as Division Chief. Indeed, neither OSU nor Dr. White had an overriding business

justification for the creation, much less the discriminatory enforcement, of the policy on salary recovery. As stated above, Dr. White previously referred to Dr. Hall as one of the best, if not the best, division chiefs in the Department. Moreover, even if the policy on salary recovery is a legitimate business justification for Dr. Hall's termination, OSU and/or Dr. White did not rely on the policy as a reason for demoting Dr. Hall. Rather, OSU and/or Dr. White provided baseless justifications pertaining to Dr. Hall's self-interest and alleged failure to "cast a positive shadow" on the Department.

59. As a direct and proximate result of OSU's and/or Dr. White's wrongful discharge in violation of public policy, Dr. Hall has suffered severe and substantial damages, including lost earnings, lost career and educational opportunities, litigation expenses including attorneys' fees, loss of reputation, humiliation, embarrassment, mental and emotional anguish and distress, and other compensatory and punitive damages, in an amount to be determined by the court.

FOURTH CLAIM FOR RELIEF
(Breach of Contract)

60. Plaintiff includes by reference paragraphs 1–59 as if fully incorporated herein.

61. On the date of his termination as Division Chief in April 2014, the terms of Dr. Hall's employment with OSU were defined by the July 2011 Physician Employment Agreement.

62. Dr. Hall performed all of the obligations required by the 2011 Agreement. Moreover, Dr. Hall did not engage in any conduct that constitutes a breach or default of the 2011 Agreement's terms.

63. As detailed in paragraphs 17–20, a significant component of Dr. Hall's salary—and OSU's part of the bargain under the 2011 Agreement—was the \$50,000.00 he received annually in exchange for his services as Division Chief of Nuclear Medicine and Molecular Imaging. Per

the terms of the 2011 Agreement, if OSU was unsatisfied with Dr. Hall's performance under the Agreement, its only recourse was to coordinate with Dr. Hall to develop a plan for increasing Dr. Hall's productivity. If Dr. Hall somehow failed to meet the terms of any such plan, OSU was only capable of reducing Dr. Hall's Clinical Services Salary. Yet, without any clear metric, plan, or even idea as to how Dr. Hall could possibly meet OSU's expectations, OSU terminated Dr. Hall's position as Division Chief without providing advance written notice as required by the 2011 Agreement. Prior to Dr. Hall's termination as Division Chief, OSU also denied Dr. Hall the ability to recover the reasonable costs of attendance for Continuing Medical Education events.

64. As a direct and proximate result of OSU's breach of contract, Dr. Hall has sustained economic damages in an amount to be determined by the court.

FIFTH CLAIM FOR RELIEF
(Constructive Discharge)

65. Plaintiff includes by reference paragraphs 1-64 as if fully incorporated herein.

66. Put briefly, OSU and/or Dr. White (1) routinely expressed preference for younger faculty members by not requiring them to recover 100% of their salary plus benefits and granting them professional expense funding that was denied to Dr. Hall; (2) repeatedly referred to Dr. Hall and other older faculty members as "seasoned veterans" and younger faculty members as "young bucks"; (3) gave Dr. Hall negative evaluations even when he met or exceeded OSU's standards; (4) humiliated Dr. Hall by asking his peers for information relating to a three year-old complaint of a sexual relationship allegedly involving Dr. Hall; (5) tarnished Dr. Hall's reputation by telling his peers, without basis, that he has "dropped the ball in the past"; and (6)

terminated Dr. Hall from one of his several positions at OSU, resulting in a \$50,000 loss in annual income.

67. In or near August 2012, Dr. Hall served as a witness in an investigation by OSU HR into the conduct of another faculty member at OSU. As part of that investigation, Dr. Hall spoke with Kate Dillingham, an OSU HR representative for the College of Medicine. Ms. Dillingham asked Dr. Hall questions regarding the work environment in the Department. When Dr. Hall shared his complaints about OSU and/or Dr. White's policies, Ms. Dillingham responded by suggesting that it would be in Dr. Hall's best interest to begin looking for employment somewhere else.

68. In or near October of 2013, Dr. Hall met with Dr. Joanna Groden, Vice Dean of the College of Medicine, and Dr. Michael Caligiuri, CEO of the James Cancer Hospital, to discuss Dr. Hall's ongoing employment with OSU. In both meetings, Dr. Hall stated that he did not want to leave the Department of Radiology, but that OSU's and/or Dr. White's policies and conduct gave him no other option. In both meetings, Dr. Hall and Drs. Groden and Caligiuri sought to brainstorm solutions which would allow Dr. Hall to remain a faculty member at OSU.

69. As OSU's and/or Dr. White's harassment escalated, Dr. Hall's stress increased. As a direct result of the work environment created by OSU and/or Dr. White, Dr. Hall was forced to undergo significant psychiatric treatment. This treatment included a regimen of, among other prescriptions, Prozac, Lorazepam, Clonazepam, Maxalt, Wellbutrin, and Omeprazole.

70. OSU's and/or Dr. White's mistreatment and harassment continued despite Dr. Hall's filing of a complaint with OSU HR and informing his superiors within the College of Medicine of OSU's and/or Dr. White's conduct. Indeed, OSU's and/or Dr. White's mistreatment and

harassment increased following these actions. In the nine month period beginning with Dr. Hall's complaint to OSU HR and ending with his resigning from all of his positions at OSU, neither OSU nor Dr. White took any steps to remedy the negative environment detailed above.

71. In light of OSU's and/or Dr. White's discrimination, harassment, and consistently poor evaluations of his performance, Dr. Hall reasonably believed that termination from his academic and clinical positions was imminent—regardless of their inclusion within any OSU employment agreement.

72. Upon information and belief, any reasonable person would have resigned rather than continue working under the policies and environment created by OSU and/or Dr. White.

73. As a direct and proximate result of OSU's and/or Dr. White's constructive discharge, Dr. Hall has suffered severe and substantial damages, including lost earnings, lost career and educational opportunities, litigation expenses including attorneys' fees, loss of reputation, humiliation, embarrassment, mental and emotional anguish and distress, and other compensatory and punitive damages, in an amount to be determined by the court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Nathan C. Hall, MD, PhD respectfully requests that this Court:

A. Declare that OSU has breached the July 2011 Agreement and that it violated the Age Discrimination in Employment Act of 1967, 29 U.S.C. § 621 *et seq.* and R.C. § 4112.14(A);

B. Award back pay, front pay, and/or any benefits Plaintiff would have enjoyed had OSU not breached the July 2011 Agreement or had it and/or Dr. White not discriminated and retaliated against Dr. Hall on the basis of age;

C. Award Plaintiff liquidated and consequential damages for economic loss he has suffered as a proximate result of OSU's and/or Dr. White's conduct;

D. Award Plaintiff compensation for past and future pecuniary losses resulting from OSU's and/or Dr. White's unlawful conduct and decisions, including compensatory and punitive damages for humiliation, damage to reputation, mental and emotional distress, and pain and suffering that Dr. Hall experienced and endured as a result of OSU's and/or Dr. White's conduct, including wrongful termination and constructive discharge, in an amount in to be determined by the Court;

E. Award Plaintiff punitive damages for malicious and reckless conduct against OSU and/or Dr. White in an amount in excess of One Million Dollars;

F. Award Plaintiff pre- and post-judgment interest on all sums awarded;

G. Award Plaintiff the costs incurred in this action and reasonable attorneys' fees; and

H. Grant such other legal and equitable relief as is necessary and proper.

Respectfully submitted,

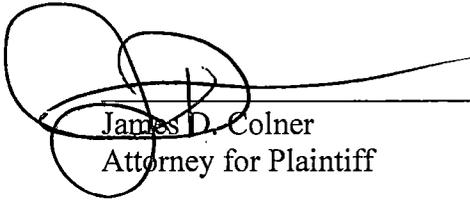


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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of Amended Complaint was served, via certified U.S. Mail return receipt requested, upon the following counsel this 5th day of February, 2015.

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