

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

<p>ALAN PREDELLA, Plaintiff</p> <p>v.</p> <p>TOWN OF BRAINTREE, BRAINTREE FIREFIGHTERS IAFF, LOCAL 920, JOSEPH SULLIVAN, JAMES O'BRIEN, THOMAS GRACE, and WILLIAM CASH, Defendants</p>	<p>C.A. No.</p>
--	-----------------

**COMPLAINT AND JURY DEMAND**

**PARTIES**

1. Plaintiff Alan Predella (“Plaintiff”) is a resident of Marshfield, Plymouth County, Commonwealth of Massachusetts.
2. Defendant Town of Braintree (“Defendant Braintree”) is a municipal corporation organized under the laws of the Commonwealth of Massachusetts, located in Norfolk County.
3. Defendant Braintree Firefighters, IAFF Defendant Local 920 (“Defendant Local 920” or “the union”) is a labor union certified under Massachusetts General Laws G.L. c. 150E and recognized by Defendant Braintree as the exclusive representative of all permanent employees of the Defendant

Braintree Fire Department and Defendant Braintree Fire Alarm Department.

4. Defendant Joseph Defendant Sullivan (“Defendant Sullivan”) is the Mayor of Braintree, and a resident of Braintree, Norfolk County, Commonwealth of Massachusetts.

5. Defendant James O’Brien (“Defendant O’Brien”) is the Fire Chief of Braintree, and a resident of Braintree, Norfolk County, Commonwealth of Massachusetts.

6. Defendant Thomas Grace (“Defendant Grace”) is employed by Defendant Braintree as a Fire Captain, and is a resident of Braintree, Norfolk County, Commonwealth of Massachusetts.

7. Defendant William Cash (“Defendant Cash”) is the President of Defendant Local 920, and a resident of Weymouth, Norfolk County, Commonwealth of Massachusetts.

## **FACTUAL ALLEGATIONS**

### **Plaintiff’s Date of Hire, Promotion History, and Managerial Structure of the Braintree Fire Department**

8. Defendant Braintree has employed Plaintiff as a firefighter since June 20, 1983.

9. Plaintiff’s date of birth is April 22, 1961.

10. At all times hereto, Plaintiff has met the performance expectations for the positions he has held within the Defendant Braintree Fire Department.

11. Under the current organizational structure of the Defendant Braintree Fire Department, the Fire Department is subject to the direction of control of the Mayor of Braintree, who in turn has the authority to appoint the Braintree Fire Chief.

12. Falling below the Chief, presently, there is a Fire Prevention Deputy Chief, Steven Sawtelle; four “shift” Deputy Chiefs, including Plaintiff, William Sawtelle, Joseph Barker, and Robert Belanger, who are each in charge of one of the four separate “Groups” (know as 1, 2, 3, and 4), which are scheduled in shift intervals to provide 24 hour per day, 365 day a year staffing to the three Braintree fire stations: Headquarters; Highland; and East Braintree.

13. Falling below the Deputy Chiefs are four shift Captains, a Hazmat officer, and a Fire Alarm Assistant Superintendent. At the next level, there are presently approximately 21 Lieutenants, including a Training Officer, Richard Nigrelli.

14. Falling below the Lieutenants are approximately 48 firefighters holding the rank of Private.

15. During his career, Plaintiff has advanced up the ranks of the Braintree Fire Department under its seniority-based promotional provision, which is described in detail below. On or about August 11, 2002, Plaintiff was permanently promoted from Private to Lieutenant; on or about March 21, 2008 he was

permanently promoted from Lieutenant to Captain; on or about June 6, 2013 he was permanently promoted from Captain to Deputy Chief of Group 3.

### **Appointment of Defendant O'Brien as Fire Chief**

16. Defendant O'Brien became Chief on or about May 9, 2013.

17. Defendant O'Brien was appointed Chief by Defendant Sullivan after Chief Kevin Murphy unexpectedly resigned in January 2013.

18. Defendant Sullivan selected Defendant O'Brien, who held the rank of Lieutenant when he applied for the Chief's job, over several candidates with superior qualifications, more experience, and higher ranks. This led a local newspaper to comment at the time Defendant Sullivan announced Defendant O'Brien's appointment that "[t]here has been some head-scratching since [Defendant Sullivan] announced his selection last week of Lt. James Defendant O'Brien as the Braintree Fire Department's newest chief."

19. Prior to the time Defendant Sullivan appointed Defendant O'Brien as Chief, Defendant Sullivan and Defendant O'Brien had had a longstanding personal friendship, which they have maintained while Defendant O'Brien has served as Chief.

20. Prior to the time Defendant Sullivan selected Defendant O'Brien as Chief, Defendant O'Brien and at least one member of Defendant O'Brien's family had provided political support to Defendant Sullivan's election campaigns.

21. Prior to the time Defendant Sullivan selected Defendant O'Brien as Chief, Defendant Grace had established longstanding friendships with Defendant Sullivan and Defendant O'Brien, which he has maintained.

### **Retiring at 80%**

22. Firefighters employed by the Braintree Fire Department are "members" of the Massachusetts Contributory Retirement System ("the retirement system").

23. Upon retiring, members of the retirement system are eligible to receive a "superannuation" retirement allowance, i.e. a pension, paid monthly. G.L. c. 32, § 1, *et seq.* The amount of the pension is based on a formula that is produced by multiplying the member's three highest years of "regular compensation" with factors corresponding to the members' age and years of "creditable service." *See generally*, G.L. c. 32, § 1, *et seq.*

24. Under Massachusetts law, firefighters and other employees in public safety jobs are classified in "Group 4" of the retirement system.

25. Group 4 members can qualify for a maximum pension of up to 80% of their three highest years of regular compensation. The trigger for qualifying for the 80% pension is age. Specifically, the law provides that a Group 4 member qualifies for the 80% pension at age:

- 50 with 40 years of creditable service;

- 51 with 39 years of creditable service;
- 52 with 37 years of creditable service;
- 53 with 35 years of creditable service;
- 54 with 34 years of creditable service; and
- 55 or older with 32 years of creditable service.

26. A Group 4 member cannot qualify for an 80% pension on the basis of creditable service, standing alone. Only members 50 years of age and older can qualify for the 80% pension.

27. Reaching the 80% pension threshold, however, does not require a Massachusetts firefighter to retire.

28. Rather, under Massachusetts law, the mandatory age for the retirement of firefighters is 65. *See* Ch. 415, Acts of 1987.

#### **Defendant Local 920 and Promotion by Seniority**

29. At all times relevant hereto, Defendant Local 920 has been the certified bargaining representative for all firefighters employed by Defendant Braintree, below the rank of Chief, including Deputy Chiefs, Captains, Lieutenants, and Privates.

30. At all times relevant to this action, under the terms of all collective bargaining agreements between Defendant Braintree and Defendant Local 920, the principle of seniority has dictated all departmental promotions in rank.

31. The promotion based on seniority provision in the most recent collective bargaining agreement presently in effect reads as follows:

Whenever a permanent vacancy occurs in any superior officer's position, it shall be filled by the employee with the most seniority in the next lower rank if, in the opinion of the Chief, and the consent of the Mayor, the next lower rank is qualified for the vacancy. For Example (sic): A permanent vacancy in the Deputy Chief's position shall be filled by the most senior Captain; a permanent vacancy in the Captain's position shall be filled by the most senior Lieutenant, and a permanent vacancy in the Lieutenant's position shall be filled by the most senior Private.

32. Under the wage tables of all collective bargaining agreements in place at times relevant to this action, higher rates of base salary have corresponded to higher ranks. For the current fiscal year, for example, the annual base salary for the highest grade for each rank of firefighter is as follows:

- Deputy Chief, \$108,238.57
- Captain, \$96,993.00
- Lieutenant, \$83,341.74
- Private, \$ 70,284.78

### **Seniority and Retiring at 80%**

33. Braintree firefighters want to be promoted in rank because higher ranks offer correspondingly higher pay, prestige, and more favorable working conditions.

34. Moreover, and as explained above, earning higher pay in a higher rank will result in more generous pension benefits under Chapter 32's superannuation formula.

35. Promotional opportunities within the Braintree Fire Department usually arise only when a firefighter in the Lieutenant, Captain, or Deputy Chief rank vacates their position, which is almost always because of retirement.

36. Braintree firefighters are keenly concerned and aware of when firefighters holding higher ranked positions might retire, because under the seniority based promotion system, they are presumptively entitled to a promotion to the next highest rank when they are next in line for the promotion under the seniority list. The interest firefighters have in seeing more senior members depart so they can get pay raises and other benefits creates so much hostility among firefighters that a previous Braintree Fire Chief characterized the Fire Department as a "hate factory."

37. Braintree firefighters pay the closest attention to potential departures in the highest ranked title within Defendant Local 920, Deputy Chief, for the obvious reason that a vacancy in the Deputy Chief title creates a chain reaction of vacancies and promotional opportunities in the Captain and Lieutenant titles below it. Particular antipathy is exhibited toward Deputy Chiefs who have reached 80% maxed out on their pension but who have not retired.

### **Mandatory Retirement after Reaching 80%**

38. As an outgrowth of this antipathy, Defendant O'Brien, Defendant Sullivan, and other town officials, in concert with officials of Defendant Local 920, most notably Defendant Grace, have established a policy, custom, and practice holding that Deputy Chiefs who have "maxed out" in the amount of pension benefit they can receive- because they have, e.g., reached age 53, 54, or 55, and have had three years of Deputy Chief pay- are obligated to retire and collect their pension, so that the firefighters below them on the seniority list can fill their vacancies and get the pay raises, more favorable working conditions, and enhancement of pension payouts that go along with the promotions to higher titles.

39. A number of Braintree firefighters are vocal in their animus toward Deputy Chiefs who maxed out but have not retired, in particular, Defendant Grace.

40. For example, on many occasions, Defendant Grace has stated that because Deputy Chiefs who have maxed out don't have to pay state taxes on their pensions or pay union dues, their pensions substantially equate their salaries, meaning that they cannot justify their continued employment.

41. To illustrate his belief that there is no justification for a Deputy Chief to work if he has reached the age necessary max out, Defendant Grace has commented that if a Deputy Chief entitled to an 80% pension wants to feel like he's working, a fair compromise would be to have him retire, then have the Fire

Department call and wake him from sleep in the early morning hours, as though he were still obligated to respond to fire emergencies.

42. As another example, for close to a year in the 2015-17 timeframe, a dry-erase message board in the upstairs kitchen at Fire Department Headquarters bore in large handwriting this statement: “Time to Go - 0%?” (Exhibit 1.)

43. Members of Defendant Local 920, with the knowledge and consent of Defendant O’Brien, and Defendant Local 920 officials, wrote this message and permitted it to remain on the board for more than a year to coerce once Deputy Chief Daniel McDonnell, to retire (i.e. “time to go”) because he had maxed out.

44. The rhetorical question “0%?” was intended to provide further justification for the Braintree Fire Department’s policy that retirement upon achieving an 80% was mandatory. It is a reference to the 0% wage increase under the collective bargaining agreement then in effect, i.e., “Why would you continue to work when you already have an 80% pension, and are not even getting a pay raise?”

#### **Coercive and Punitive CBA Provisions Illegally Based on Age**

45. To coerce Deputy Chiefs who have maxed out to retire, Defendant Grace, who has served on the union’s negotiating committee for collective bargaining, has succeeded in getting Defendant Braintree to agree to CBA provisions calling for firefighters with 34 or more years of service to forfeit their

rights to longevity payments and sick leave buyback.

46. Both forfeiture provisions were formulated by Defendant Grace and fueled by his animus toward older firefighters who chose not to retire.

***Longevity Payment***

47. With respect to the longevity forfeiture provision, throughout Plaintiff's employment, members of Defendant Local 920 have been eligible to receive annual longevity payments (paid to them on a prorated basis in their biweekly paychecks), based on their years of "continuous service." Since at least July 1, 1995, the amounts of the longevity payments were established as follows:

- | • Years of Service | Amount  |
|--------------------|---------|
| • 10               | \$400   |
| • 15               | \$600   |
| • 20               | \$1,000 |
| • 25               | \$2,000 |

48. With the CBA commencing July 1, 2010, these promised amounts stayed intact, with the exception that, at the urging of Defendant Grace, starting in fiscal year 2013, Defendant Braintree and Defendant Local 920 agreed that longevity payments for employees with 25 years of service would increase to \$3,000, but "[e]ffective June 30, 2011, any member who has attained thirty-four (34) years of service shall cease to be eligible for longevity payments."

***Sick Leave Buyback***

49. Likewise, effective June 30, 2016, once again at the urging of

Defendant Grace, Defendant Braintree and Defendant Local 920 agreed to strip firefighters with more than 34 years of continuous service of their right to sick leave buyback.

50. Summarily, throughout Plaintiff's employment, members of Defendant Local 920 have accumulated paid sick time at a rate of 1 ¼ days per month, with no limit on the amount of sick leave that they might accrue.

51. As an incentive to persuade members of Defendant Local 920 not to use their sick leave, and thereby burden Defendant Braintree with the administrative and financial burdens occasioned by being forced to find and pay replacements to fill their scheduled work shifts, Defendant Braintree and Defendant Local 920 have agreed to buy back the members' unused sick leave upon their retirement ("sick leave buyback").

52. For the CBAs effective July 1, 1995, July 1, 1998, July 2001, the sick leave buyback provision was as follows:

An employee shall, upon normal retirement . . . be entitled to a twenty-five percent (25%) conversion of his accumulated unused sick leave days, based upon one-fifth of his weekly salary, up to a maximum of three thousand dollars (\$3,000). Employees shall be entitled to the following additional payments if their accumulated sick days are at the following levels:

125 sick days - \$500 for a total of \$3,5000  
150 sick days - \$1,000 for a total of \$4,000  
175 sick days - \$1,500 for a total of \$4,5000  
200 sick days - \$2,000 , for a total of \$5,000

The maximum payment under this Section shall be \$5,000 . . .

53. For the agreement effective July 1, 2010, Defendant Braintree and Defendant Local 920 agreed to increase the maximum payout for employees who had accumulated more than 250 days of sick time to \$7,000, but otherwise left this clause unchanged. (Ex. D, 2010-2013 CBA, Article VII, Section 2, Sick Leave Redemption.)

54. On or about June 6, 2014, however, Defendant Braintree and Defendant Local 920 amended the sick leave buyback provision to increase the maximum buyback amounts as follows:

. . . a sick time buyback of twenty-five dollars (\$25) per day starting at 125 days up to 199 days up to 199 days. In the case of a member who has 200 days or more, all days shall be redeemed at the rate of fifty dollars (\$50) with a cap of 250 days.

55. In the same memorandum, however, Defendant Braintree and Defendant Local 920 agreed to a sick leave buyback forfeiture provision, plainly motivated by age. This provision reads as follows:

Effective June 30, 2016, any member who has completed thirty-four (34) years of service shall cease to be eligible for sick leave redemption. (Ex. E, Memorandum of Agreement, no. 9.)

56. Like the longevity payment forfeiture provisions, the sick leave buyback forfeiture provision was specifically aimed at coercing Deputy Chiefs

who had maxed out to retire or to punish them for not retiring, or in Defendant Grace's words, to "get them to leave," and to stop "hanging around."

### **Age-Based Animus Reflected in Recent Proposal**

57. Finally, targeting the Deputy Chiefs, in the most recently proposed memorandum of agreement, effective July 1, 2016, Defendant Braintree and Defendant Local 920 have proposed that "[u]pon completion of 34 years of service members are no longer eligible to sell back vacation time." Before Defendant Braintree and Defendant Local 920 agreed to impose this age-based vacation forfeiture provision, as of January 1, 2015:

all employees with less than 20 years of service could carry over up to one week of vacation time, and sell back up to one week;

all employees with 20 years of service or more could carry over up to one week of vacation time, and sell back up to two weeks.

### **Minimum Manning and Public Safety**

58. During all times relevant to this action, Defendant Braintree and Defendant Local 920 have agreed to minimum manning of 17 firefighters per shift.

59. If any of the 17 firefighters assigned to a shift have to be absent, Defendant Braintree is contractually obligated to "hire back" a replacement to meet the minimum manning level.

60. The purpose of the 17-firefighter minimum manning policy is to

protect the safety of the citizens of Defendant Braintree and the firefighters. It is based on the minimum number of firefighters that through collective bargaining, Defendant Braintree and Defendant Local 920 have agreed are necessary to safely and efficiently operate the fire trucks and other fire apparatus to respond to fire emergencies, and to aid citizens and businesses facing emergencies.

**Newly Appointed Chief Defendant O'Brien Implements Policy  
Permitting Firefighters to be Absent for Personal Reasons During their  
Assigned Shifts**

61. Despite this, in or about May 2013, after Defendant Sullivan had newly appointed him as Chief, Defendant O'Brien convened meetings with the officers (i.e. Deputy Chiefs, Captains, and Lieutenants) of each of the four Groups, at which he announced that even if minimum manning staffing requirements would be violated, he would allow any firefighter assigned to a shift to be away from the station during his assigned shift to take care of personal business, including to do such things as coach sports, attend their children's events, or engage in other personal activities, as long as the firefighter doing personal business brought his radio with him, and had a vehicle available to travel to a fire emergency.

62. Hereinafter, this policy will be referred to as Defendant O'Brien's "Personal Leave Policy ("PLP").

**Newly Appointed Chief Defendant O'Brien Places a Prior Restraint on  
Officers Raising Public Safety Concerns with Braintree Officials**

63. At the same meetings, Defendant O'Brien also gave the officers a preemptive blanket-instruction to keep any objections to the operations of the Braintree Fire Department and his policies "in house," and specifically, to not take them "across the street," by which he meant to officials at Braintree Town Hall, which is located across the street from Fire Department Headquarters.

64. Defendant O'Brien added further that if he found out that any officer had violated his blanket prohibition against discussing concerns about the Braintree Fire Department with Braintree officials or any other third party, he would have them punished by either reporting the offending officer "to Defendant Local 920," and let Defendant Local 920 deal with the officer on its own terms, or deal with the officer who violated his blanket prohibition himself.

**Chief Defendant O'Brien's PLP Meant to Override Chief Murphy's  
Strict Policies**

65. Defendant O'Brien's implementation of the PLP stood in stark contrast to the management style of his predecessor as Chief, Kevin Murphy. Despite previously holding the position as the President of Defendant Local 920 before he became Chief, Murphy exerted strict discipline and control over the Fire Department's operations, including over attendance and firefighter accountability.

66. Murphy's strict enforcement of accountability standards angered certain members of Defendant Local 920, and to retaliate against Murphy for holding them accountable, Defendant Local 920 members made numerous

complaints about Murphy to town officials, creating persistent strife in management-labor relations. Upon information and belief, Murphy resigned because of this discord.

67. Upon information and belief, Defendant Sullivan appointed Defendant O'Brien as Chief, and formulated his PLP to appease Defendant Local 920 members who had objected to Murphy's policy of requiring firefighter accountability.

**Defendant O'Brien's PLP Makes Plaintiff Concerned About Public Safety**

68. Defendant O'Brien's PLP, and other changes he implemented that implicated public safety interests, however, concerned Plaintiff for numerous reasons.

69. For example, Defendant O'Brien's PLP required Plaintiff and the other Deputy Chiefs to verify time sheets for payroll purposes representing that firefighters who were not present during their scheduled shifts performed duties they in fact did not perform.

70. This concerned Plaintiff because he believed making this representation was tantamount to committing payroll fraud.

71. Additionally, in the view of Plaintiff, the absence of firefighters during their scheduled shifts posed safety risks to other firefighters and the public.

72. Obviously, for example, a firefighter who is away from the station on

personal business is not available to respond to emergencies from the station in an emergency vehicle, and cannot arrive at a fire emergency on a timely basis.

73. Moreover, a firefighter using his personal vehicle to respond to an emergency creates an additional public safety risk.

74. Likewise, the Fire Department's emergency vehicles can't be operated safely when absences for personal reasons cause staffing to fall below the contractually mandated minimum manning levels.

75. For example, a "ladder truck" cannot be safely operated with fewer than two firefighters: a driver, and an officer.

76. Likewise, an "engine" cannot be safely operated with fewer than three firefighters: a driver, an officer, and a backstepper.

77. Under Defendant O'Brien's PLP, however, the ladder trucks are frequently operated with just a driver, and engines are frequently operated with just two firefighters, therefore, placing the safety of the public and firefighters in jeopardy.

**Defendant Grace Threatens Plaintiff for Trying to Mitigate Public Safety Issues Caused by Defendant O'Brien's Personal Business Policy**

78. In or around June 2013, soon after Defendant O'Brien implemented his PLP, Plaintiff met with the officers from Group 3 stationed at Headquarters, including Defendant Grace, to voice his safety and personnel accountability concerns in wake of Defendant O'Brien's PLP, and to tell them how he wanted to

operate his Group going forward to mitigate against his concerns.

79. Plaintiff's overriding purpose- and he expressed this at the meeting- was to review accountability and to make sure his Group performed its duties in a manner consistent with promoting the safety of firefighters and citizens of Defendant Braintree.

80. After Plaintiff did this, Defendant Grace responded with hostility, insisting that as Deputy Chief, Plaintiff had no authority to enforce firefighter accountability, but was only in charge of fire suppression and ground operations.

81. Defendant Grace further insisted that he and the other lower ranked officers were exclusively in charge of accountability, that Plaintiff could not interfere with their control, and that if Plaintiff disagreed with this, he should take the matter up with Defendant O'Brien.

82. After Plaintiff disagreed with Defendant Grace, Defendant Grace became angry, began shouting at Plaintiff, and challenged him to "step outside."

83. Two other officers present at the meeting had to restrain Defendant Grace.

**Plaintiff Informs Defendant O'Brien of Defendant Grace's Threat; Informs Defendant O'Brien about His Public Safety Concerns Related to Defendant O'Brien's PLP, and his Concerns over Defendant O'Brien's Decision to End Other Practices Intended to Promote Public Safety**

84. On the next shift, Plaintiff reported Defendant Grace's response to his

directives to Defendant O'Brien.

85. Defendant O'Brien took the side of his longtime personal friend, Defendant Grace, commenting that "[t]hat's the way it's gonna be. These guys (the Lieutenants) will handle the inside decisions, you'll be doing the fire suppression part."

86. Defendant O'Brien also ignored Plaintiff's report that Defendant Grace had been insubordinate and had threatened him, and thereby condoned Defendant Grace's indisputable misconduct.

87. In the same conversation, Plaintiff expressed additional concerns to Defendant O'Brien about concerns he had about the Fire Department's departure from practices that Plaintiff believed jeopardized public safety, including:

88. The cessation of the policy requiring daily radio tests with apparatus and personal portable radios with emergency mayday button capabilities;

89. The Fire Department's failure to train firefighters for the previous three years;

90. The Fire Department's failure to require firefighters to wear proper uniforms or no uniforms at all (despite receiving annual clothing allowances);

91. The Fire Department's failure to make firefighters

check equipment and apparatus at the start of every shift;

92. The Fire Department's failure to make firefighters wear proper protective gear when responding to fire alarms.

93. Defendant O'Brien rejected all of Plaintiff's concerns.

**Defendant O'Brien and Defendant Sullivan Conspire to Make Defendant Grace and another Lieutenant Captains, In Circumvention of Collective Bargaining Mandates, and Plaintiff Objects to the Scheme to a Braintree Official**

94. Subsequently, Plaintiff learned that to help Defendant Grace qualify for a more generous retirement allowance, Defendant O'Brien and Defendant Sullivan had secretly conspired to create two new Captains positions, which would be filled by Defendant Grace and another friend of Defendant O'Brien's, Christopher Johnson.

95. Plaintiff believed in good faith that this scheme was objectionable because creating new positions in the Captain's rank was a mandatory subject of collective bargaining, and should have been presented to the union body for ratification.

96. Plaintiff also believed that the appointment of two new Captains was intended to punish the Deputy Chiefs, because under the collective bargaining agreement, the presence of two additional Captains would limit the Deputy Chiefs

opportunities for overtime.

97. In defiance of Defendant O'Brien's prior restraint on taking concerns to "Town Hall," Plaintiff reported Defendant O'Brien's and Defendant Sullivan's scheme to the attention of Defendant Braintree's Personnel Director, Karen Shanley.

98. Shanley told Plaintiff that Defendant O'Brien and Defendant Sullivan could not create the new Captains positions outside of collective bargaining, and upon information and belief, thereafter contacted Defendant Sullivan and told him that his plan to unilaterally create Captains positions for Defendant Grace and Johnson was impermissible.

99. Defendant Sullivan and Defendant O'Brien knew that Plaintiff objected to Shanley about their scheme and thwarted it, and harbored animus against Plaintiff for doing this.

**Plaintiff Is Victimized by a Series of Adverse Actions Aimed at Coercing Him and other Deputy Chiefs to Retire, or to Retaliate against Him for Opposing Policies Because of his Concerns about Public Safety**

***Denial of Transfers away from Defendant Grace***

100. In or about January 2016, and then again in May and June of 2016, Plaintiff asked Defendant O'Brien to transfer him to a different Group than Group 3, in light of Defendant Grace's hostile actions.

101. Defendant O'Brien departed from his practice of allowing such

requests, and denied them, because he wanted Plaintiff to be subjected to Defendant Grace's hostility, which he knew would interfere with Plaintiff's employment and cause Plaintiff to experience emotional distress.

### **M-1 Position Taken Away from Deputy Chiefs**

102. In or about February of 2016, Defendant Grace moved at a union meeting to eliminate Deputy Chiefs from holding a special M-1 position, which carries a \$3,500 annual stipend, and to instead make the position available for ranks of Captains or below.

103. Departing from practice, Defendant O'Brien implemented Defendant Grace's proposal without entering into a memorandum of agreement with ratification from Defendant Braintree or union officials.

### **Defendant O'Brien Negates Longstanding Practice of Having Deputy Chief's Respond to Out of Town Fires**

104. It is a longstanding practice of the Defendant Braintree Fire Department for a Deputy Chief to be called in to fill in for a Deputy Fire Chief who is forced to respond to an out of town fire. The Deputy Chief called to fill in received "call back pay."

105. In or about May, 2016, after Plaintiff was called in twice in one week to fill in for Deputy Chiefs called to respond to out of town fires, and therefore earned callback pay.

106. To retaliate against Plaintiff, on or about May 19, 2016, just a few

days later, Defendant O'Brien issued a memo stating that the Deputy Chief on duty would no longer be permitted to respond to out of town fires, thereby leaving Braintree firefighters responding to out of town fires without senior leadership, and eliminating the opportunity Deputy Chiefs had for callback pay.

**Defendant O'Brien Assigns Plaintiff  
To Pick Up a Truck to Humiliate Him**

107. In or about June 2016, Defendant O'Brien again departed from practice by requiring Plaintiff to travel to Greenwood Motors in North Attleboro to pick up Tower Ladder 1, where it had been taken for service- a mundane and trivial task never performed by a Deputy/Shift Commander. Defendant O'Brien ordered Plaintiff to perform this task to humiliate and embarrass him.

**Plaintiff Notifies Braintree Officials in Writing That He Will File an  
MCAD Charge, and Recounts the Public Safety Concerns He Previously  
Raised with Defendant O'Brien, and Adverse Actions He Has Suffered  
Because of his Protected Status and Activities**

108. On or about June 30, 2016, Plaintiff presented the letter attached here as Exhibit 2 to Shanley. The letter, which is hereby incorporated by reference, notifies Shanley that Plaintiff intended to file an MCAD charge and workplace violence charge against Defendant O'Brien, and recounts the public safety concerns Plaintiff expressed to Defendant O'Brien when he met him in June 2013, immediately after Defendant Grace had threatened him.

109. The letter also recounts Defendant O'Brien's unjustifiable refusals to

transfer Plaintiff away from Defendant Grace, and the adverse actions of removing the M-1 position away from Deputy Chiefs; of ending the practice requiring Deputy Chiefs to respond to out of town fires; and humiliating Plaintiff by removing him from his command post to pick up a fire truck in North Attleboro, despite the availability of a number of privates to perform this mundane task.

110. Upon information and belief, Defendant O'Brien, Defendant Sullivan, Defendant Grace, and Defendant Cash knew that Plaintiff presented this letter to Shanley.

#### **Plaintiff Files an MCAD Charge**

111. On or about August 16, 2016, Plaintiff filed with the MCAD/EEOC a good faith charge of discrimination against the Defendant Town of Braintree, 16-BEM-02028, alleging that Defendant Braintree, by its agents Defendant Grace and Defendant O'Brien, subjected him to adverse actions because of his age. A copy of the charge is attached as Exhibit 3, and is hereby incorporated by reference.

112. Defendant O'Brien, Defendant Sullivan, Defendant Grace, and Defendant Cash knew that Plaintiff filed his charge of discrimination against Defendant Braintree.

#### **Plaintiff is Expelled from Local 920, and Barred from Details**

113. On Thursday October 20, 2016, Defendant Grace, Defendant O'Brien and Defendant Cash orchestrated the "rescission" of Plaintiff's membership in

Defendant Local 920, which was made effective at a union meeting

114. Defendant Braintree and Defendant Local 920 have agreed to consider Plaintiff ineligible to work outside paid details, established under the collective bargaining agreement now in effect, because Defendant Local 920 rescinded his union membership, despite knowing that there is no legitimate basis to exclude Plaintiff from outside paid details, because Plaintiff, as a matter of law, has remained a member of the bargaining unit, and is fully covered by the collective bargaining agreement for all its provisions.

115. As a result of Defendant Braintree's and Defendant Local 920's conspiracy to deprive Plaintiff of details, Plaintiff has been deprived of outside paid details he otherwise would have been worked.

### **SUBJECT MATTER JURISDICTION**

116. This Court has jurisdiction over this action under 28 U.S.C. § 1331, federal question.

### **COUNT I VIOLATION OF THE ADEA Longevity and Sick Leave Buyback Forfeiture Provisions Disparate Treatment *Plaintiff v. Braintree and Local 920***

117. Plaintiff incorporates by reference all allegations made herein.

118. Under the Age Discrimination in Employment Act, 29 U.S.C. § 623 ("ADEA"), it is unlawful for an employer or labor organization to discriminate

against an individual in any aspect of employment because that individual is 40 years old or older.

119. Defendant Braintree's employment of Plaintiff is subject to the coverage of Age Discrimination in Employment Act, 29 U.S.C. § 623 *et seq.* (the "ADEA").

120. Defendant Local 920's is a labor organization subject to the ADEA's prohibitions against age discrimination. Plaintiff's membership in Defendant Local 920 is subject to the ADEA.

121. Plaintiff has satisfied all prerequisites to suit under the ADEA, as more than 60 days have passed since he filed his charges of discrimination against Defendant Braintree and Defendant Local 920 with EEOC on August 1, 2016 and April 13, 2017, respectively.

122. The ADEA prohibits discrimination in the "compensation, terms, conditions, or privileges of employment" by employers against individuals over the age of forty.

123. Plaintiff is over the age of 40, and therefore his employment by Defendant is subject to the protections of the ADEA.

124. Sick leave buyback, longevity payments, and vacation buyback are forms of compensation made available to employees of the Defendant Braintree Fire Department, and are therefore subject to the coverage of the ADEA's

prohibitions.

125. An agreement to reduce or deprive benefits from older employees, while continuing to make them available to younger employees, intended to encourage premature departure from employment by older workers conflicts with the ADEA's stated purpose to prohibit arbitrary discrimination in employment.

126. Here, Defendant Braintree and Defendant Local 920 purposefully agreed to such provisions, with the longevity and sick leave buyback forfeiture provisions, which they put in place to coerce Plaintiff and similarly situated employees to retire before forfeiting them, or to penalize Plaintiff and similarly situated older workers for not retiring, so that they would vacate their jobs so younger employees could be promoted into their jobs.

127. Indeed, Defendant Grace admitted to the illegal intent behind these provisions, by boasting that the provisions were put in place to force the Deputy Chiefs to retire, that is, to "get them to leave," and to keep them from "hanging around."

128. There is no legitimate business or operational justification for the longevity and sick leave buyback forfeiture provisions. Defendant Braintree and Defendant Local 920 used age as the basis for agreeing to them, in violation of the ADEA.

129. Plaintiff has lost his right to sick leave buyback, longevity pay, and

vacation buyback, and has been harmed injured and damaged as result of Defendants' violation of the ADEA.

**COUNT II**  
**VIOLATION OF THE ADEA**  
**Longevity and Sick Leave Buyback Forfeiture Provisions**  
**Disparate Impact-Facial Discrimination**  
*Plaintiff v. Braintree and Local 920*

130. Plaintiff incorporates by reference all allegations made herein.

131. The longevity and sick leave buyback forfeiture provisions were intentionally designed to coerce Plaintiff and similarly situated employees protected by the ADEA to retire before their mandated retirement ages, or to punish Plaintiff and similarly situated employees for remaining employed by depriving them of benefits, and therefore, to convince to retire.

132. But even if these forfeiture provisions were not intentionally formulated to discriminate on the basis of age, they are facially discriminatory on the basis of age, and therefore unlawful under the ADEA.

133. Any employment practice that adversely affects individuals within the protected age group on the basis of older age is discriminatory unless the practice is justified by a reasonable factor other than age.

134. A reasonable factor other than age ("RFOA") is a non-age factor that is objectively reasonable when viewed from the position of a prudent employer mindful of its responsibilities under the ADEA under like circumstances. Whether

a differentiation is based on reasonable factors other than age must be decided on the basis of all the particular facts and circumstances surrounding each individual situation. To establish the RFOA defense, an employer must show that the employment practice was both reasonably designed to further or achieve a legitimate business purpose and administered in a way that reasonably achieves that purpose in light of the particular facts and circumstances that were known, or should have been known, to the employer.

135. Defendants cannot meet this burden here. Defendants knew when they set 34 years of service as the forfeiture provision for longevity and sick leave buyback that it served no legitimate purpose. Based on the ages and years of service of employees of the Defendant Braintree Fire Department when the forfeiture provisions were implemented, Defendants knew that the forfeiture provision would most adversely affect the older employee of the Defendant Braintree Fire Department, particularly those who had reached the ages necessary to qualify for 80% pensions. Indeed, the forfeiture provisions were calculated to adversely affect the employees holding or about to hold the Deputy Chief title specifically, to coerce them to retire.

136. The forfeiture provisions serve no legitimate business justification.

137. Plaintiff has been harmed injured and damaged as result of the violation of the ADEA.

**COUNT III**  
**VIOLATION OF THE ADEA**  
**Hostile Work Environment**  
***Plaintiff v. Braintree and Local 920***

138. Plaintiff incorporates by reference all allegations made herein.

139. Defendant Braintree and Defendant Local 920, by their agents, have subjected Plaintiff and similarly situated employees to a hostile work environment on the basis of their age.

140. The hostile work environment has consisted of an ongoing and pervasive course of personnel actions, negative remarks, and other hostile treatment directed at firefighters based on their age, including:

141. The adoption of the longevity and sick leave buyback forfeiture provisions, which were intended to make and have made Plaintiff and similarly situated older employees feel unwelcome to be employed;

142. Comments made by Defendant Grace and other firefighters that Plaintiff and similarly situated employees should retire;

143. The comment written on the whiteboard at Headquarters, and permitted to remain for more than a year, stating “Time to Go,” which was aimed at Plaintiff and similarly situated employees;

144. Defendant O'Brien's and Defendant Local 920's agreement- made outside the requirements of collective bargaining- that Plaintiff and other Deputy Chiefs would no longer be eligible for the M-1 position.

145. The hostile work environment substantially interfered with Plaintiff's employment.

146. Defendant O'Brien and Defendant Sullivan have been aware that Plaintiff and similarly situated employees have been subjected to a hostile work environment and have not taken adequate steps to remedy it, but instead have condoned and encouraged it.

147. Plaintiff has been harmed, injured and damaged by Defendants' violation of the law.

**COUNT IV**  
**Massachusetts Whistleblower Law**  
**Adverse Actions**  
***Plaintiff v. Braintree***

148. Plaintiff incorporates by reference all allegations made herein.

149. Defendant Braintree is an employer subject to the provisions of the Massachusetts Whistleblower law, G.L. c. 149, § 185 ("MWL").

150. Plaintiff was Defendant Braintree's "employee" within the meaning of the MWL.

151. It is unlawful for an employer covered by the MWL to take an adverse action against an employee for engaging in activity protected by the MWL, including for “disclos[ing] . . . to a supervisor . . . an activity, policy or practice of the employer . . . that the employee reasonably believes is in violation of a law, or a rule or regulation promulgated pursuant to law, or which the employee reasonably believes poses a risk to public health, safety or the environment.”

152. Such illegal retaliatory actions include those that might have an adverse impact on an employee’s employment, and actions that might have the impact of dissuading a reasonable employee from exercising his rights under the ADA.

153. As set forth above, Plaintiff reasonably believed that policies implemented by Chief Defendant O’Brien posed a risk to public health and safety.

154. As set forth above, Plaintiff brought his objections to these policies to the attention to Defendant Grace in or about May of 2013, and then to Chief Defendant O’Brien’s attention at their meeting in or about May 2013.

155. Plaintiff later reiterated his public safety concerns in his letter to Shanley, dated June 30, 2016, and attached here as Exhibit 3.

156. Defendant, by its agents, took adverse actions against Plaintiff because he engaged in this protected activity under the MLW including, but not limited to, by the following actions:

157. Defendant Grace, by assaulting Plaintiff because Plaintiff sought to abide by the minimum manning policy;

158. Defendant O'Brien, by condoning Defendant Grace's assault, including by not disciplining Defendant Grace for assaulting Plaintiff, and refusing Plaintiff's requests to be transferred away from Defendant Grace;

159. Defendant O'Brien and agents of Defendant Local 920, by taking the M-1 position away from Plaintiff and similarly situated Deputy Chiefs;

160. Defendant O'Brien, by negating the practice of having Plaintiff and similarly situated Deputy Chief's respond to out of town fires, and to fill in for a Deputy Chief required to respond to an out of town fire;

161. Defendant O'Brien, by assigning Plaintiff the task of picking up a truck in North Attleboro;

162. Defendant Cash, by refusing to prepare meals for Plaintiff;

163. Defendant Cash, Defendant Grace, and

Defendant O'Brien, and other agents of Defendant Braintree, by orchestrating Plaintiff's expulsion from the union;

164. Defendant Cash, Defendant Grace, Defendant O'Brien, and other agents of Defendant Braintree, by agreeing to make Plaintiff ineligible for paid details;

165. Plaintiff has been harmed, injured and damaged by Defendants' violation of the MWL.

**COUNT V**  
**Massachusetts Whistleblower Law**  
**Hostile Environment**  
***Plaintiff v. Braintree***

166. Plaintiff incorporates by reference all allegations made herein.

167. By the adverse actions described in the previous Count, Defendant Braintree, by its agents, on a continuous and ongoing basis, subjected Plaintiff to a pervasive course of adverse and hostile actions, as set forth above, because he engaged in activity protected by the MLW.

168. These actions created hostile work environment for Plaintiff that substantially interfered with his employment, in violation of the MLW.

169. Plaintiff has been harmed, injured and damaged by Defendants'

violation of the MLW.

**COUNT VI**  
**Retaliation in Violation of G.L. c. 151B, § 4(4)**  
***Plaintiff v. All Defendants***

170. Plaintiff incorporates by reference all allegations made herein.

171. It is unlawful under G.L. c. 151b, § 4(4) for an employer, a labor organization, or for any other person to take an adverse action against a person in retaliation for engaging in activity protected by G.L. c. 151B.

172. Such illegal retaliatory actions include those that might have an adverse impact on an employee's employment, and actions that might have the impact of dissuading a reasonable employee from exercising her rights under G.L. c. 151B.

173. Plaintiff engaged in activity protected by G.L. c. 151B, § 4(4) by filing an internal charge opposing discriminatory practices with Shanley and a good faith charge of discrimination with the MCAD, in which he identified adverse actions taken against by Defendant Braintree, Defendant O'Brien, and Defendant Grace.

174. Defendant O'Brien, Defendant Grace, Defendant Cash, and other agents of the Defendant Braintree and Defendant Local 920 knew that Plaintiff engaged in this protected activity.

175. To retaliate against Plaintiff for engaging in this protected activity,

Defendants took adverse actions against Plaintiff, including by:

176. the act of Defendant Cash in refusing to cook for Plaintiff;

177. the act of Defendant Local 920, by its agents, in expelling Plaintiff from the Union;

178. the act of Defendant Braintree and Defendant Local 920 in declaring Plaintiff ineligible for paid details.

179. Defendant O'Brien and Defendant Sullivan are aware of these retaliatory actions and have condoned them.

180. Plaintiff has been harmed, injured and damaged by Defendants' illegal actions.

**COUNT VII**  
**Retaliatory Hostile Environment in Violation of G.L. c. 151B**  
***Plaintiff v. All Defendants***

181. Plaintiff incorporates by reference all allegations made herein.

182. By the adverse actions described in the previous Count and elsewhere in this Complaint, Defendant Braintree, by its agents, on a continuous and ongoing basis, subjected Plaintiff to a pervasive course of adverse and hostile actions, as set forth above, because he engaged in activity protected by G.L. c. 151B.

183. These actions created hostile work environment for Plaintiff that

substantially interfered with his employment, in violation of G.L. c. 151B.

184. Plaintiff has been harmed, injured and damaged by Defendants' violation of G.L. c. 151B.

**COUNT VIII**  
**Retaliation in Violation of 29 U.S.C. § 623(d)**  
***Plaintiff v. All Defendants***

185. Plaintiff incorporates by reference all allegations made herein.

186. It is unlawful under 29 U.S.C. § 623(d) for an employer, a labor organization, or for any other person to take an adverse action against a person in retaliation for engaging in activity protected by the ADEA.

187. Such illegal retaliatory actions include those that might have an adverse impact on an employee's employment, and actions that might have the impact of dissuading a reasonable employee from exercising her rights under the ADEA.

188. Plaintiff engaged in activity protected by the ADEA by filing an internal charge opposing discriminatory practices with Shanley and a good faith charge of discrimination with the EEOC, in which he identified adverse actions taken against him by Defendant Braintree, Defendant O'Brien, and Defendant Grace.

189. Defendant O'Brien, Defendant Grace, Defendant Cash, and other agents of the Defendant Braintree and Defendant Local 920 knew that Plaintiff

engaged in this protected activity.

190. To retaliate against Plaintiff for engaging in this protected activity, Defendants took adverse actions against Plaintiff, including by:

191. the act of Defendant Cash in refusing to cook for Plaintiff;

192. the act of Defendant Local 920, by its agents, in expelling Plaintiff from the Union;

193. the act of Defendant Braintree and Defendant Local 920 in declaring Plaintiff ineligible for paid details.

194. Plaintiff has been harmed, injured and damaged by Defendants' illegal actions.

**COUNT IX**  
**Retaliatory Hostile Environment in Violation of ADEA**  
***Plaintiff v. All Defendants***

195. Plaintiff incorporates by reference all allegations made herein.

196. By the adverse actions described in the previous Count and elsewhere in this Complaint, Defendant Braintree, by its agents, on a continuous and ongoing basis, subjected Plaintiff to a pervasive course of adverse and hostile actions, as set forth above, because he engaged in activity protected by the ADEA.

197. These actions created hostile work environment for Plaintiff that

substantially interfered with his employment, in violation of the ADEA.

198. Plaintiff has been harmed, injured and damaged by Defendants' violation of the ADEA.

**COUNT X**  
**First Amendment and 42 U.S.C. § 1983**  
**Defendant O'Brien's Policy of Placing a**  
**Prior Restraint on Speaking Out on Matters of Public Concern**  
*Plaintiff v. Braintree and O'Brien*

199. Plaintiff incorporates by reference all allegations made herein.

200. Under 42 U.S.C. § 1983, it is unlawful for any person, under color of law, to deprive any other person of any rights, privileges, or immunities secured by the United States Constitution.

201. It is a clear, unmistakable, and established principle under the First Amendment of the United States Constitution that a public employee has the right to speak out as a citizen on a matter of public concern.

202. Speech is a matter of public concern if it relates to political, social, or other community concerns.

203. When he took over as Chief in May 2013, Defendant O'Brien implemented a policy, which remains in effect, prohibiting Plaintiff and similarly situated officers from expressing any concerns they might have about any of the Fire Department's policies to any third party, including Defendant Braintree officials, and threatened the officers with reprisal if they strayed from his demand

that the expression of any such concerns be kept “in house.”

204. Defendant O’Brien’s restraint on speaking out on concerns about the Fire Department’s policies necessarily covers speech on matters of public concern, because the operations and policies of the Braintree Fire Department directly impact on the public safety of the citizens of Defendant Braintree and public safety personnel employed by Defendant Braintree.

205. To illustrate this, Defendant O’Brien’s restraint was in part aimed at prohibiting Plaintiff and the other officers from revealing to Braintree citizens or officials his PLP, which placed the safety of firefighters and citizens in jeopardy, and permitted firefighters to be paid while pursuing personal business.

206. The interest of the citizens of Defendant Braintree and Defendant Braintree officials in ensuring that employees of Defendant Braintree are actually providing services for work for which they are paid, are present to meet minimum manning standards, make timely responses to fire emergencies, and safely operate fire apparatus are of obvious public concern.

207. Defendant O’Brien implemented his policy prohibiting Plaintiff and his other officers from speaking out against his PLP, because it is so outrageous, he knew it would be condemned by Defendant Braintree citizens and Defendant Braintree officials.

208. By his conduct, therefore, Defendant O’Brien, acting under the color

of state law, knowingly and willfully violated Plaintiff's and similarly situated officers' clearly established rights under the First Amendment to speak out on a matter of public concern.

209. Because of Defendant O'Brien's blatant, knowing, deliberate, and malicious violation of Plaintiff's First Amendment rights, Defendant O'Brien is not entitled to any form of immunity for his violation of Plaintiff's First Amendment rights. Rather, he is liable as an individual for all damages Plaintiff and similarly situated employees have suffered as a consequence of his illegal conduct.

210. By his conduct, Defendant O'Brien acted both as an individual and as a policy maker for Defendant Braintree. As Fire Chief, Defendant O'Brien had final authority over all aspects of Plaintiff's and the other officers' employment. Defendant O'Brien had this final authority because Defendant Braintree vested him with it. Defendant O'Brien's personnel actions are not subject to approval or reversal by any other appointed or elected official of Defendant Braintree. Defendant O'Brien's illegally motivated adverse actions were thus a policy of Defendant Braintree, making Defendant Braintree liable for them.

211. By the foregoing acts, therefore, Defendant O'Brien and Defendant Braintree have violated Plaintiff's rights under the First Amendment and 42 U.S.C. § 1983, and are liable for all damages Plaintiff has suffered as a result.

**COUNT XI**  
**First Amendment and 42 U.S.C. § 1983**  
**Retaliation for Engaging in Activity Protected by the First Amendment**  
***Plaintiff v. Braintree and O'Brien***

212. Plaintiff incorporates by reference all allegations made herein.

213. Under 42 U.S.C. § 1983, it is unlawful for any person, under color of law, to deprive any other person of any rights, privileges, or immunities secured by the United States Constitution.

214. It is a clear, unmistakable, and established principle under the First Amendment of the United States Constitution that a public employee has the right to speak out as a citizen on a matter of public concern.

215. Speech is a matter of public concern if it relates to political, social, or other community concerns.

216. As set forth above, Plaintiff engaged in activity protected by the First Amendment when he spoke out to both Defendant O'Brien and Shanley about his concerns that Defendant O'Brien's policies jeopardized public safety, or were otherwise contrary to the public interest.

217. Defendant O'Brien, acting under the color of state law, knowingly and willfully violated Plaintiff's clearly established rights under the First Amendment to speak out on a matter of public concern, by taking the adverse actions against him described above, and condoning the other adverse actions described above, about which he was aware, including:

218. Condoning Defendant Grace's threat toward Plaintiff, including by not disciplining Defendant Grace for threatening Plaintiff, and refusing Plaintiff's requests to be transferred away from Defendant Grace, to humiliate Plaintiff and undermine his authority;

219. Removing the M-1 position away from Plaintiff and similarly situated Deputy Chiefs;

220. Negating the practice of having Plaintiff and similarly situated Deputy Chiefs respond to out of town fires, and to fill in for a Deputy Chief required to respond to an out of town fire;

221. Assigning Plaintiff the task of picking up a truck in North Attleboro;

222. Agreeing to make Plaintiff ineligible for paid details.

223. Because of Defendant O'Brien's blatant, knowing, deliberate, and malicious violation of Plaintiff's First Amendment rights, Defendant O'Brien is not entitled to any form of immunity for his violation of Plaintiff's First Amendment rights. Rather, he is liable as an individual for all damages Plaintiff and similarly situated employees have suffered as a consequence of his illegal

conduct.

224. By his conduct, Defendant O'Brien acted both as an individual and as a policy maker for Defendant Braintree. As Fire Chief, Defendant O'Brien had final authority over all aspects of Plaintiff's and the other officers' employment. Defendant O'Brien had this final authority because Defendant Braintree vested him with it. Defendant O'Brien's personnel actions are not subject to approval or reversal by any other appointed or elected official of Defendant Braintree. Defendant O'Brien's illegally motivated adverse actions were thus a policy of Defendant Braintree, making Defendant Braintree liable for them.

225. By the foregoing acts, therefore, Defendant O'Brien and Defendant Braintree have violated Plaintiff's rights under the First Amendment and 42 U.S.C. § 1983, and are liable for all damages Plaintiff has suffered as a result.

226. Plaintiff has suffered harm, injury, and damages as a result of Defendants' violation of his rights.

**COUNT XII**  
**Violation of Massachusetts Wage Act- Sick Leave Buyback Forfeiture**  
**Declaratory Relief**  
*Plaintiff v. Braintree and Sullivan*

227. Plaintiff incorporates by reference all allegations made herein.

228. The accumulated sick leave Plaintiff and similarly situated employees earned under the sick leave incentive are wages within the meaning of G.L. c. 149, § 148 ("the Massachusetts Wage Act").

229. Under the Wage Act, an employer cannot enter into any agreement which calls for the forfeiture of earned wages.

230. Rights under the Massachusetts Wage Act are distinct, independent statutory rights that cannot be waived by a public employer and public employee through collective bargaining or otherwise, and can be enforced judicially, even if the right to receive a give wage in incorporated in a collective bargaining agreement.

231. An actual controversy has arisen between Defendant Braintree and Plaintiff as to whether under the Wage Act, Defendant can lawfully extinguish his accumulated sick time because he remains employed after the completion of his 34<sup>th</sup> year of employment.

232. Plaintiff seeks a declaration judgment that Defendant Braintree cannot extinguish all the sick leave Plaintiff accumulated based on Defendant Braintree's buyback promise.

233. Plaintiff has satisfied all prerequisites to suit under G.L. c. 149, § 148 and § 150. (Exhibit 4.)

### **PRAYER FOR RELIEF**

WHEREFORE, the Plaintiff requests that this Court enter a judgment:

(a) awarding him back pay, front pay, damages for emotional distress, compensatory and punitive damages, attorney's fees, treble

damages, and liquidated damages as provided by the ADEA, G.L. c. 151B, the MWL, 42 U.S.C. § 1983, and any other applicable law;

(b) declaring that the longevity and sick leave forfeiture provisions in Defendant Braintree's and Defendant Local 920's collective bargaining agreement are illegal under the ADEA;

(c) declaring that sick leave forfeiture provision in the collective bargaining agreement between Defendant Braintree and Defendant Local 920 is unlawful under G.L. c. 149, § 148 and Massachusetts common law;

(d) granting such other and further relief as this Court deems necessary and proper.

### **JURY DEMAND**

PLAINTIFF DEMANDS A TRIAL BY JURY.

Respectfully submitted,

PLAINTIFF ALAN PREDELLA

By his attorney,

s/Daniel W. Rice

Daniel W. Rice, BBO # 559269

Glynn, Landry & Rice, LLP

25 Braintree Hill Office Park, Suite 408

Braintree, Massachusetts 02184

(781) 964-8377 (mobile)

(781) 356-1388 (office)

daniel.rice@glhrlaw.com

Dated: