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**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

The Honorable Roger M. Young, Sr., Circuit Court Judge

Appellate Case No.: 2021-001439

Case No. 2019-CP-10-01379

Liam Wallis, .....Appellant,

-v-

The Boeing Company, Anthony Timms and Monica Williams, ..... Respondents.

**FINAL BRIEF OF RESPONDENT**

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January 10, 2023

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## **COUNTER STATEMENT OF ISSUES ON APPEAL**

1. Did the Circuit Court correctly dismiss Plaintiff's cause of action for wrongful termination in violation of public policy on the grounds that Plaintiff had a statutory remedy under the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century ("AIR21")?
2. Did the Circuit Court correctly dismiss Plaintiff's cause of action for wrongful termination in violation of public policy because Plaintiff failed to sufficiently plead his termination contravened a clear mandate of public policy?

## **COUNTER STATEMENT OF THE CASE**

Appellant Liam Wallis ("Plaintiff") filed his initial Complaint in the Court of Common Pleas in Charleston County on March 18, 2019, alleging three causes of action: (1) wrongful discharge in violation of public policy as to Respondent The Boeing Company ("Boeing"); (2) civil conspiracy as to Monica Williams ("Williams") and Anthony Timms ("Timms") (collectively with Boeing, "Defendants"); and (3) failure to pay wages as to Boeing.<sup>1</sup> On April 16, 2019, Defendants removed the lawsuit to the United States District Court for the District of South Carolina based upon federal question jurisdiction. Plaintiff responded by filing a Notice of Motion and Motion to Remand to State Court on April 18, 2019; however, Plaintiff then withdrew the motion pursuant to a Notice of Withdrawal of Motion to Remand to State Court filed on April 22, 2019.

On May 1, 2019, Plaintiff filed an Amended Complaint in the District Court adding factual allegations related to his existing causes of action. By Order dated October 7, 2019, the District Court remanded the case to state court, claiming it lacked subject matter jurisdiction. On October

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<sup>1</sup> Although this lawsuit was initially filed against Boeing, Williams, and Timms, Plaintiff's wrongful termination in violation of public policy claim was only asserted against Boeing, making Boeing the only Respondent for purposes of this appeal. As such, Boeing assumes that Plaintiff's reference to Boeing, Williams, and Timms as the "Respondents" in his Notice of Appeal and Initial Brief, is a scrivener's error.

11, 2019, following remand of the case to state court, Defendants filed a Notice of Motion and Motion to Dismiss Plaintiff's Causes of Action for Wrongful Termination in Violation of Public Policy and Civil Conspiracy, and thereafter, filed a Memorandum in Support of the Motion on February 24, 2020. A hearing was held on February 27, 2020, before the Honorable Perry M. Buckner, III.<sup>2</sup> On March 19, 2020, the Court issued an Order denying Defendants' Motion to Dismiss.

On March 26, 2020, Defendants filed a Motion to Reconsider, Alter, or Amend Order Denying Defendant's Motion to Dismiss, arguing Plaintiff's claim was legally improper because he already had a federal statutory remedy and because Plaintiff failed to articulate any violation of South Carolina public policy with respect to his termination. Plaintiff filed a Return opposing this Motion; however, after review of the Motion and Return, the Court issued an Order on April 23, 2020, granting Boeing's Motion to Reconsider as to Plaintiff's wrongful termination in violation of public policy cause of action and dismissed the claim.

On May 4, 2020, Plaintiff filed a Rule 59 Motion to Reconsider the April 23, 2020 Order, which Boeing opposed. On November 9, 2021, the Honorable Roger M. Young, Sr. issued an Order Denying Plaintiff's Motion to Reconsider Order Granting Boeing's Motion to Dismiss Plaintiff's cause of action for wrongful termination in violation of public policy.

Thereafter, Plaintiff appealed to this Court by Notice of Appeal dated December 2, 2021.

### **COUNTER STATEMENT OF THE FACTS**

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<sup>2</sup> Defendants' Motion and Plaintiff's arguments in response encompassed the allegations contained in the Amended Complaint filed in the United States District Court prior to the case being remanded to state court. At the hearing on Defendants' Motion, the Court accepted the Amended Complaint as the controlling pleading in this case. (R. p. 296, line 1-p. 297, line 2).

Plaintiff makes the following material allegations in his Amended Complaint pertaining to his wrongful termination in violation of public policy cause of action: Plaintiff worked for Boeing as a quality assurance conformity manager (“QACM”) from April of 2011 until June 15, 2017. (R. p. 71, ¶ 8, p. 75, ¶ 41).<sup>3</sup> QACMs are tasked with inspecting aircraft for compliance with Boeing’s internal engineering and safety specifications. (Id., ¶ 13); (R. p. 71, ¶ 13). Any non-conformity found by a QACM is referred to as a “finding” and must be documented, as do all repairs and subsequent inspections. (Id. at ¶ 14).

In or about August 2016, Plaintiff went on a medical leave of absence. (R. p. 71, ¶ 17, p. 72, ¶ 18). Immediately prior to his leave, Williams became the direct supervisor for all QACMs, including Plaintiff. (R. p. 71, ¶ 19). After a five-month leave of absence, Plaintiff returned from medical leave on January 20, 2017. (Id., ¶ 20). When Plaintiff returned to work, he was allegedly constantly followed and observed by Williams. (Id., ¶¶ 21 and 22). Plaintiff also purportedly witnessed a backlog of non-conformities (“findings”) on the aircraft that needed to be inspected by the QACMs, fixed, and then given final sign-off by the QACMs. (Id., ¶ 22). According to Plaintiff, after making an inquiry regarding the backlog, Plaintiff’s colleagues informed him that once Williams was promoted, “all Boeing policies and procedures were disregarded and they were not willing to sign their names on documents containing all the shortcuts on the safety inspections of the planes they were building that were initiated by Monica Williams and Anthony Timms.” (Id., ¶ 23).

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<sup>3</sup> Respondent believes that Appellant’s Amended Record on Appeal failed to correct the deficiency described in this Court’s Deficiency Letter dated December 13, 2022. Nevertheless, Respondent is citing to Appellant’s latest Amended Record on Appeal, received by this Court on December 14, 2022.

Specifically, Plaintiff asserts while he was on leave, “Boeing systematically engaged in the following:

- a. ‘Goldplating,’ which is repeating a test until it is successful and then having the records show that the test was successful on the first attempt;
- b. Knowingly using out of date engineering specifications;
- c. Knowingly using uncertified technicians to perform maintenance and repairs;
- d. Violating the internal Boeing policy and procedures that were put in place to achieve final approval of each stage of the production and make the plane saleable;
- e. Disabling the automated system that notified all pertinent employees of mandatory inspections of newly manufactured aircraft; and
- f. Submitting conformities without documented repairs.”

(R. pp. 72-73, ¶ 24). Plaintiff alleges when he confronted Williams about “all the Boeing policy violations and safety concerns he [had] discovered,” Williams and Timms told him not to write up any findings of non-conformity without first receiving permission from them. (R. p. 73, ¶ 25).

Plaintiff also avers he complained to Timms about Williams supposedly removing documents from his desk and treating him harshly for documenting his findings of non-conformity. (Id., ¶ 28). In response, Timms allegedly told Plaintiff he had already helped Boeing secure “all the training to qualify for certifications that [Boeing] needed,” so Boeing “didn’t need [Plaintiff] anymore” and Plaintiff “would never be getting any more raises or promotions.” (Id., ¶ 29). The following day, Williams purportedly informed Plaintiff he needed to start looking for another job. (Id., ¶ 30).

Plaintiff also claims that during his absence, a required inspection on the first barrel from Boeing’s new enclave oven had not been performed. (R. p. 74, ¶ 33). Plaintiff contends he immediately worked on providing a report regarding the missing inspection, and in doing so discovered “the barrel was manufactured using obsolete engineering, all subsequent barrels were

manufactured using obsolete engineering, undocumented repairs were made to the barrels, and a fictitious QACM signed off on the repairs.” (Id., ¶¶ 33 and 34). Plaintiff allegedly brought these “non-conformities with Boeing’s engineering specifications” to “management’s attention,” and the investigation was pulled from Plaintiff and reassigned to Williams. (Id., ¶ 35). Plaintiff allegedly “feared that there was an escapement of all barrels produced in the new enclave oven, meaning that non-conforming aircraft barrels were being used to manufacture aircraft that were making their way into the fleet of aircraft used to transport passengers and freight.” (Id., ¶ 36).

Thereafter, Plaintiff purportedly gave Boeing an ultimatum, demanding that management comply with Boeing’s policies and “self-report the escapement as required.” (Id., ¶ 37). He asserts that following this demand, Human Resources informed him that Boeing would no longer honor his medical restrictions, and he was placed on a leave of absence. (Id., ¶ 38). Plaintiff had his doctor lift the restrictions, and he returned to work a week later. (R. p. 75, ¶ 39). Upon his return, Plaintiff contends his “every action” was scrutinized by Williams and Timms in an attempt to find some justification for his termination. (Id., ¶ 40).

Plaintiff alleges he was wrongfully terminated on June 15, 2017, “in retaliation for complying with Boeing’s safety and engineering policies and regulations rather than acquiescing to Boeing’s policy of concealing non-conformities in the planes they were selling. (Id., ¶¶ 41 and 53). Plaintiff complains, “Boeing sacrificed compliance with their own policies and regulations put in place for the protection of the public in exchange for the expedited completion of aircraft and profit from the sale of those aircraft.” (Id., ¶ 42). According to Plaintiff, Boeing purportedly confronted him with the dilemma of choosing to maintain his livelihood by cooperating in Boeing’s alleged scheme of concealing non-conformities or complying with Boeing’s established

safety specifications and protecting the public that relies upon that compliance for their safety in air travel. (*Id.*, ¶ 43).

### **STANDARD OF REVIEW**

When reviewing the dismissal of an action pursuant to Rule 12(b)(6), SCRPC, the appellate court reviews the case *de novo* and applies the same standard of review as the trial court. *McNeil v. S.C. Dep't of Corr.*, 404 S.C. 186, 190–91, 743 S.E.2d 843, 846 (Ct. App. 2013), citing *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007). “In considering a motion to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action, the trial court must base its ruling solely on allegations set forth in the complaint.” *Id.* Construing the complaint in a light most favorable to the non-moving party, the question before the appellate court is whether the “facts alleged and the inferences reasonably deducible from the pleadings would entitle the plaintiff to relief on any theory of the case.” *Hotel & Motel Holdings, LLC v. BJC Enters, LLC*, 414 S.C. 635, 650, 780 S.E.2d 263, 271 (Ct. App. 2015), citing *Rydde v. Morris*, 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009). If such facts and inferences do not entitle the plaintiff to relief on any theory of the case, dismissal pursuant to Rule 12(b)(6), SCRPC is proper. *Id.*

### **ARUGMENT**

#### **I. THE CIRCUIT COURT CORRECTLY DISMISSED PLAINTIFF’S CAUSE OF ACTION FOR WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY BECAUSE THE WENDELL H. FORD AVIATION INVESTMENT AND REFORM ACT FOR THE 21ST CENTURY (“AIR21”) PROVIDES PLAINTIFF WITH AN EXISTING FEDERAL STATUTORY REMEDY.**

South Carolina has a strong policy favoring at-will employment. *Prescott v. Farmers Tel. Coop., Inc.*, 335 S.C. 330, 335, 516 S.E.2d 923, 925 (1999). As a general rule, absent a contractual provision to the contrary, an employee may be terminated at any time for any reason or no reason, with or without cause. *Taghivand v. Rite Aid Corp.*, 411 S.C. 240, 243, 768 S.E.2d 385, 386 (2015),

*citing Barron v. Labor Finders of S.C.*, 393 S.C. 609, 614, 713 S.E.2d 634, 636 (2011). In 1985, the South Carolina Supreme Court recognized a narrow exception to the at-will employment doctrine, allowing a discharged employee to bring a cause of action in tort for wrongful termination in certain limited situations where the termination itself violates a “clear mandate of public policy.” *Taghivand* 411 S.C. at 243, 768 S.E.2d at 387, *citing Ludwick v. This Minute of Carolina, Inc.*, 287 S.C. 219, 225, 337 S.E.2d 213, 216 (1985).

Our state appellate courts have narrowly circumscribed this common law claim, and unequivocally rejected its use in instances where a plaintiff already has an existing statutory remedy for his alleged wrongful termination. The South Carolina Supreme Court first established this limitation in *Epps v. Clarendon Cnty.*, a case in which a former employee alleged wrongful discharge in violation of his constitutional rights of free speech and association. 304 S.C. 424, 405 S.E.2d 386 (1991). Recognizing that a public employee, even one employed at-will, can state a claim under Title 42 U.S.C. § 1983 for violation of his First Amendment rights, the court held the public policy exception to the doctrine of employment at-will does not extend to situations where an employee has an existing statutory remedy for the alleged wrongful termination. *Id.* at 405; *see also, Dockins v. Ingles Mkts, Inc.*, 306 S.C. 496, 498, 413 S.E.2d 18, 19 (1992) (holding plaintiff who alleged she had been discharged in retaliation for making a complaint that her employer failed to pay wages for hours worked in violation of the Fair Labor Standards Act could not maintain a cause of action for wrongful discharge because she had a statutory right and remedy under the FLSA.); *Campbell v. Bi-Lo*, 301 S.C. 448, 392 S.E.2d 477 (Ct. App. 1990) (explaining when “a statute creates a substantive right and provides a remedy for infringement of that right, the plaintiff is limited to that statutory remedy”).

For this reason, “the *Ludwick* exception [to at-will employment] is not designed to overlap an employee’s statutory or contractual rights to challenge a discharge, but rather to provide a remedy for a clear violation of public policy *where no other reasonable means of redress exists.*” *Stiles v. American Gen. Life Ins. Co.*, 335 S.C. 222, 227, 516 S.E.2d 449, 452 (1999) (emphasis added). Thus, the existence of a statutory remedy precludes a wrongful termination claim, regardless of whether the statute arises under state or federal law. *Dockins*, 306 S.C. at 498, 413 S.E.2d at 19. Because Plaintiff had a viable remedy available to him under the federal occupational health and safety laws, he cannot state a claim for wrongful termination under South Carolina law for a violation of this same, overlapping public policy.

A. **AIR21 Provides Plaintiff an Exclusive Statutory Remedy, Which Bars His Common Law Claim for Wrongful Termination in Violation of Public Policy.**

The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (“AIR21”) is a federal law that gives an air carrier employee, or former employee, the right to file a complaint with the Secretary of Labor if he believes he has been discharged or discriminated against for providing information to his employer relating to any violation or alleged violation of any order, regulation, or standard of the Federal Aviation Administration (“FAA”) or any other provision of Federal law relating to air carrier safety. Because Plaintiff was an air carrier employee, as defined under the statute, and the substance of his alleged complaints involve aircraft safety issues, he had an existing remedy under AIR21.

1. ***Plaintiff is an air carrier contractor employee under AIR21 and should have filed a complaint with the Department of Labor.***

At the outset, AIR21 provides Plaintiff a remedy because as an air carrier contractor employee, he fell squarely within the ambit of the statute’s coverage. Specifically, AIR21 provides:

*No air carrier or contractor or subcontractor of an air carrier may discharge an employee or otherwise discriminate against an employee* with respect to compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee) --

(1) provided, caused to be provided, or is about to provide (with any knowledge of the employer) or cause to be *provided to the employer or Federal Government information relating to any violation or alleged violation of any order, regulation, or standard of the Federal Aviation Administration or any other provision of Federal law relating to air carrier safety* under this subtitle or any other law of the United States . . . .

49 U.S.C. § 42121(a)(1) (emphasis added). A plain reading of AIR21 demonstrates Plaintiff is among the class of individuals whom the statute seeks to protect. The statute’s broad reach expressly *includes* employees of air carrier contractors who lodge internal airplane safety complaints directly with their employers—just as Plaintiff did here. *Id.*

In such instances, AIR21 sets forth a detailed complaint procedure for use by employees via the United States Department of Labor’s Occupational Safety and Health Administration (“OSHA”):

(b) Department of Labor complaint procedure—

(1) Filing and notification.--*A person who believes that he or she has been discharged or otherwise discriminated against* by any person in violation of subsection (a) may, not later than 90 days after the date on which such violation occurs, *file* (or have any person file on his or her behalf) *a complaint with the Secretary of Labor alleging such discharge or discrimination*. Upon receipt of such a complaint, the Secretary of Labor shall notify, in writing, the person named in the complaint and the Administrator of the Federal Aviation Administration of the filing of the complaint, of the allegations contained in the complaint, of the substance of evidence supporting the complaint, and of the opportunities that will be afforded to such person under paragraph (2).

49 U.S.C. § 42121(b)(1) (emphasis added).<sup>4</sup> For air carrier contractor employees, like Plaintiff, who are allegedly discharged as a result of internal air safety reports, AIR21’s complaint procedure

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<sup>4</sup> The statute also delineates the remedies available to aggrieved employees. 49 U.S.C. § 42121(b)(3)(B); *see also*, 29 C.F.R. § 1979.104 (outlining investigation procedure for AIR21 complaints).

is the only appropriate mechanism to redress the purported harm. Plaintiff's failure to take advantage of such reporting processes does not give rise to a claim under South Carolina common law for wrongful termination. *Dixon v. Boeing Co.*, No. CV22001356BHHMGB, 2020 WL 9211161, at \*4 (D.S.C. May 11, 2020), *report and recommendation adopted*, No. CV 2:20-1356-BHH, 2021 WL 837479 (D.S.C. Mar. 5, 2021) (dismissing wrongful termination claim under South Carolina law premised on internal aircraft safety complaints because "AIR21 clearly provides a reasonable means of redress—it does not matter that filing a complaint is voluntary and optional").

**2. Plaintiff's alleged air safety complaints trigger AIR21 coverage.**

Plaintiff's wrongful termination claim is also barred because his internal complains to Boeing implicate aircraft safety issues, all of which fall directly under AIR21. In his Brief, Plaintiff argues AIR21 is not a viable remedy because his "Amended Complaint is replete with concerns about violations of Boeing's safety procedures, but does not allege any violations of Federal Aviation Administration requirements or federal law related to air carrier safety." (Plaintiff's Brief, p. 8). Plaintiff's position presupposes that a pleading's deliberate omission of any reference to the statute that affords a remedy automatically means no such remedy exists. However, well-established jurisprudence does not support Plaintiff's contention, demonstrating instead that allegations of air safety complaints, even those devoid of specific reference to the FAA, are subject to AIR21's coverage.

In *Hobek v. Boeing Co.*, the plaintiff asserted a claim of wrongful termination in violation of public policy, contending his termination was unlawful "because he reported Safety and Quality issues regarding the aircraft produced by the Defendant," and informed Boeing that its interpretation of quality documents was "incorrect and needed to be corrected to follow the law,"

all of which “were significant [because] the Safety of the planes being produced by the Charleston facility were directly affected.” No. 2:16-CV-3840-RMG-MGB, 2017 WL 9250342, at \*4 (D.S.C. June 8, 2017), *report and recommendation adopted*, No. 2:16-CV-3840-RMG, 2017 WL 3085856 (D.S.C. July 20, 2017). The District Court correctly dismissed this cause of action at the 12(b)(6) stage, finding Plaintiff’s generalized allegations were sufficient to trigger a statutory remedy under AIR21 because by “the plain language of the statute, AIR21 provides a statutory remedy for individuals who were retaliated against for providing information to their employer that related to any violation or alleged violation of any order, regulation, or standard of the Federal Aviation Administration or any other provision of Federal law relating to air carrier safety . . .” *Id.* Thus, Hobek’s internal complaints—all of which encompassed aircraft quality and safety concerns—were subject to AIR21 coverage, despite no specific reference to the FAA in Hobek’s pleading.

Similarly, in *Migliaccio v. Boeing Co.*, the Circuit Court dismissed Plaintiff’s wrongful termination in violation of public policy claim premised on air safety-related complaints. Case No. 2019-CP-10-04197 (Charleston County Court of Common Pleas, March 31, 2020). Although Migliaccio attempted to argue he never engaged in protected activity under AIR21 because “he was merely doing his job” as a Flight Readiness Technician Inspector, the Circuit Court rejected this contention, holding his “allegations clearly fall within the scope of AIR21” because “AIR21 includes employees lodging internal airplane safety complaints directly with their employers, as alleged by [Migliaccio] in this lawsuit.” *Id.*, \*7-8; *see also, Lugo v. Boeing Co.*, No. 2:19-CV-2995-RMG, 2020 WL 495336, at \*3 (D.S.C. Jan. 30, 2020) (dismissing wrongful termination in violation of public policy claim where the internal reports submitted by plaintiff dealt specifically with air carrier safety issues, which afforded plaintiff a statutory remedy under AIR21, barring his

claim as a matter of law).<sup>5</sup>

Here, the Amended Complaint provides a detailed list of purported safety violations Plaintiff reported during his employment, all of which relate to violations or alleged violations of FAA regulations or other provisions of federal law relating to air carrier safety. 49 U.S.C. § 42121(a)(1):

- a. ‘Goldplating,’ which is repeating a test until it is successful and then having the records show that the test was successful on the first attempt. *See* 14 C.F.R. §§ 21.2(a)(2) (prohibiting false or misleading statements on any record or report that is kept, made, or used to show compliance to the FAA); 21.137(e) (requiring specific inspection and testing procedures for products); 21.137(g) (requiring specific procedures for documenting inspections and testing of products);
- b. Knowingly using out of date engineering specifications.<sup>6</sup> *See* 14 C.F.R. §§ 21.137(a) (outlining procedures for use of current, correct, and approved design data); 21.137(d) (requiring procedures for controlling manufacturing processes to ensure products comply with approved designs);
- c. Knowingly using uncertified technicians to perform maintenance and repairs.<sup>7</sup> *See* 14 C.F.R. §§ 21.137(h) (requiring that only authorized individuals make determinations regarding nonconforming products); 21.135(a)(2) (noting FAA must be provided with documentation verifying the responsibilities and authority of individuals responsible for quality management); 147, Appendix B (outlining the requirements to obtain an aircraft maintenance technician certification); 147,

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<sup>5</sup> In furtherance of his appeal, Plaintiff argues that because he never specifically alleged he complained about safety violations under the FAA, the Circuit Court improperly relied on *Lugo*. According to Plaintiff, *Lugo* is dissimilar because the District Court found Lugo engaged in protected activity under AIR21 since “[Lugo’s] complaint alleged the reporting of safety conditions that violated [FAA] regulations.” (Plaintiff’s Brief, p. 8). However, Lugo did *not* specifically allege he reported FAA violations, but rather, asserted he was wrongfully terminated in violation of public policy for making “internal safety complaints” to his employer regarding “lighting, failure to conduct more stringent walkthroughs, and tool accountability.” *Id.* at \*3. Thus, like Plaintiff, Lugo made internal reports of alleged aircraft safety issues that automatically give rise to AIR21 coverage.

<sup>6</sup> Plaintiff contends barrels were being manufactured using obsolete engineering. (R. p. 74, ¶ 34). These same regulations apply to this purported FAA violation.

<sup>7</sup> Plaintiff alleges fictitious QACMs signed off on repairs. (R. p. 74, ¶ 34). These same regulations apply to this purported FAA violation, as well as 14 C.F.R. § 21.2(a)(2) (prohibiting false or misleading statements on any record or report that is kept, made, or used to show compliance to the FAA).

Appendix C (outlining the requirements to obtain an FAA-approved airframe certification);

- d. Violating the internal Boeing policy and procedures that were put in place to achieve final approval of each stage of the production and make the plane saleable. *See* 14 C.F.R. §§ 21.138 (requiring the creation of a manual for FAA approval that describes the applicable quality system); 21.2(a)(2) (prohibiting false or misleading statements on any record or report that is kept, made, or used to show compliance to the FAA); 21.137(g) (requiring specific procedures for documenting inspections and testing of products);
- e. Disabling the automated system that notified all pertinent employees of mandatory inspections of newly manufactured aircraft. *See* 14 C.F.R. §§ 21.137(e) (requiring specific inspection and testing procedures for products); 21.137(g) (requiring specific procedures for documenting inspections and testing of products); and
- f. Submitting conformities without documented repairs.<sup>8</sup> *See* 14 C.F.R. § 21.137(h) (requiring that only authorized individuals make determinations regarding nonconforming products and that procedures be put in place to ensure all nonconformities are identified, documented, evaluated, and segregated); 21.137(i) (requiring implementation of corrective and preventative actions to eliminate the cause of an actual or potential nonconformity to the approve design); 21.137(k) (requiring procedures for identifying the storing, protecting, retrieving, and retaining of quality-related records).<sup>9</sup>

While his own pleading does not specifically mention AIR21 or the FAA by name, Plaintiff's alleged internal reports clearly fall within the ambit of AIR21's protection, as each purported "violation" of safety and quality standards directly correspond to FAA regulations.<sup>10</sup>

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<sup>8</sup> Plaintiff avers undocumented repairs were made to barrels. (R. p. 74, ¶ 34). These same regulations apply to this purported FAA violation.

<sup>9</sup> In his Amended Complaint, Plaintiff contends he "demanded" that Boeing management "self-report this escapement as required." (R. p. 74, ¶ 37). Such reporting of nonconformities is an FAA-regulated action. *See* 14 C.F.R. §§ 21.137(g), (h), (i), (k), and (l).

<sup>10</sup> Plaintiff relies on *Simpson v. United Parcel Service*, ARB Case No.: 06-065 to argue his pleading does not give rise to a statutory remedy under AIR21, claiming his internal complaints did not relate to FAA orders, regulations, or standards. (Plaintiff's Brief, p. 9). However, Plaintiff's safety-related complaints are easily distinguishable from those lodged by Simpson, making the *Simpson* opinion of no value to the Court. Most notably, in her complaint to UPS, Simpson merely indicated she believed the aircraft was "illegal" and "unsafe." *Id.* at 5. When UPS pressed Simpson for more detail, she admitted she did not know the exact problem with the airplane. *Id.* at 6. In dismissing her claim, the Administrative Review Board explained that coverage under AIR21 only applies when the complaint is "specific in relation to a given practice, condition, directive, or event," to show that the complainant "reasonably believe[s] in the existence of a violation." *Id.* at 5. Because

Further, Plaintiff's assertion that he was the target of alleged retaliatory treatment because he refused to disregard safety and quality protocols is an action squarely encompassed within AIR21's stated authority. *Hobek* at \*4 (finding plaintiff's allegation he was terminated for refusing to violate the law by passing an aircraft that did not meet safety and quality standards, clearly fell "within the statutory remedy found in AIR21"); *see also, Dixon*, 2020 WL 9211161, at \*3 (dismissing wrongful termination in violation of public policy claim where plaintiff asserted he never made any complaints falling under AIR21, but his Complaint alleged he was fired for refusing to ignore safety and quality standards, which "fall[s] into the category of information [covered by AIR21]"). In his Amended Complaint, Plaintiff also alleges he was acting to comply with "engineering and safety specifications" to "ensure the safety of the public." (Am. Compl., ¶ 26). Such actions necessarily implicate the FAA because Congress has delegated to the FAA authority to "promote safe flight of civil aircraft in air commerce by prescribing . . . minimal standards required in the interest of safety" for aircraft design, construction, quality of work, and performance. 49 U.S.C. § 44701(a).

Because AIR21's federal statutory scheme provides the exclusive method for Plaintiff to pursue his air carrier safety-related discharge claim, this Court should affirm the Circuit Court's dismissal of Plaintiff's wrongful termination cause of action.

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Simpson's complaints were vague and non-descript, she was not entitled to AIR21 protection. In stark contrast to Simpson, Plaintiff's Amended Complaint provides explicit detail regarding the alleged safety violations he reported, all of which specifically correlate to FAA regulations and demonstrate Plaintiff clearly believed "in the existence of violation." *Id.*; *see R.* p. 72-74, ¶¶ 24, 34, 36-37.

**II. THE CIRCUIT COURT CORRECTLY HELD PLAINTIFF FAILED TO STATE A CAUSE OF ACTION FOR WRONGFUL TERMINATION BECAUSE HIS TERMINATION DID NOT CONTRAVENE A CLEAR MANDATE OF PUBLIC POLICY.**

Plaintiff's cause of action was also properly dismissed by the Circuit Court because he cannot satisfy the second element of his claim: articulation of a clear mandate of public policy. In South Carolina, determining what constitutes public policy is a question of law for the courts. *Barron v. Labor Finders of S.C.*, 393 S.C. 609, 617, 713 S.E.2d 634, 638 (2011). However, because the General Assembly is charged with the creation of public policy, courts are cautioned to "exercise restraint when undertaking the amorphous inquiry of what constitutes public policy." 425 S.C. 513, 520, 823 S.E.2d 224, 228 (Ct. App. 2019) (citing *Taghivand*, 411 S.C. at 244, 768 S.E.2d at 387. ("The primary source of the declaration of the public policy of the state is the General Assembly; the courts assume this prerogative only in the absence of legislative declaration.") (citing *Citizens' Bank v. Heyward*, 135 S.C. 190, 204, 133 S.E. 709, 713 (1925))).

In order prove a claim for wrongful termination, the employee's termination must "contravene a clear mandate of public policy." *Ludwick v. This Minute of Carolina*, 287 S.C. 219, 223. 337 S.E.2d 213, 215 (S.C. 1985). However, because this limited exception to at-will employment is to be very narrowly applied, South Carolina's appellate courts have invoked the public policy exception in only two instances: (1) where an employer requires an employee, as a condition of continued employment, to break the law, and (2) where an employer's termination is itself illegal." *Taghivand*, 411 S.C. at 243, 768 S.E.2d at 387 (citing *Culler v. Blue Ridge Elec. Coop.*, 309 S.C. 243, 422 S.E.2d 91 (1992)); *see also*, *Owens v. Crabtree*, 425 S.C. 513, 520, 823 S.E.2d 224, 228 (Ct. App. 2019) ("Although our supreme court has made clear the [at-will] exception 'is not limited to these situations,' it has not explicitly recognized any others") (citing *Barron*, 393 S.C. at 614, 713 S.E.2d at 637)).

Plaintiff contends he has articulated such a public policy because he was forced to either maintain his livelihood by participating in a “fraudulent” scheme to “conceal non-conformities” or comply with safety specifications to “protect[] the public.” (Am. Compl., ¶ 43). According to Plaintiff, this “public policy” derives from South Carolina’s Constitution. (Plaintiff’s Brief, p. 10, n. 9). However, the Constitutional provision cited by Plaintiff only empowers the General Assembly to create state agencies to protect matters of public concern. *See* S.C. Const. Article XII, § 1 (authorizing the General Assembly to establish agencies to protect the public health, safety, and welfare and to set the limits within which those agencies may operate).

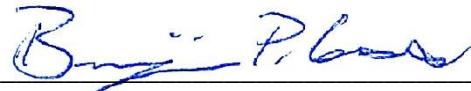
South Carolina’s Constitution does not contain any language guaranteeing Plaintiff protection from termination for internal complaints regarding alleged air carrier safety—nor does any other South Carolina law. *Martin v. Boeing Co.*, No. 2:16-CV-02797-DCN, 2016 WL 7239914, at \*4 (D.S.C. Dec. 15, 2016) (noting plaintiff “failed to point to any source that states the rights of employees to internally complain about alleged violations of FAA regulations constitutes a clear mandate of public policy” of the State of South Carolina); *Desmarais v. Science Research Corp.*, 145 F. Supp. 3d 595, 599 (D.S.C. 2015) (holding South Carolina has no “clear mandate of public policy supporting the rights of employees to internally complain about alleged violations of FAA regulations”); *Greene v. Quest Diagnostics Clinical Labs., Inc.*, 455 F. Supp. 2d 483, 490 (D.S.C. 2006) (finding the plaintiff failed to point to “any law or other source that constitutes a clear public policy supporting the rights of employees to internally report potentially illegal conduct to their superiors.”).

Plaintiff’s inability to identify any clear mandate of South Carolina public policy is fatal to his claim, and the Circuit Court correctly ordered dismissal of Plaintiff’s cause of action.

**CONCLUSION**

For the foregoing reasons, AIR21 provides Plaintiff an exclusive statutory remedy for his air safety complaints and bars his wrongful termination claim as matter of law. Further, there is no South Carolina public policy that supports Plaintiff's right to make internal complaints to his employer regarding FAA-related violations, and Plaintiff's Amended Complaint is devoid of any source of public policy to support his claim. Therefore, Boeing respectfully requests this Court affirm the Circuit Court's April 23, 2020 Order Granting Boeing's 12(b)(6) Motion to Dismiss and affirm the Circuit Court's November 9, 2021 Order Denying Plaintiff's Motion to Reconsider the April 23, 2020 Order.

Respectfully submitted,



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January 10, 2023

ATTORNEY FOR RESPONDENT THE  
BOEING COMPANY

In The Court of Appeals

**RECEIVED**

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

**Jan 10 2023**

**SC Court of Appeals**

Roger M. Young, Sr., Circuit Court Judge

Appellate Case No.: 2021-001439  
Case No. 2019-CP-10-01379

Liam Wallis, .....Appellant,

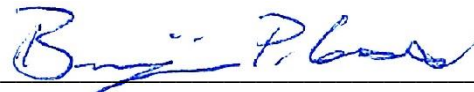
-v-

The Boeing Company, Anthony Timms and Monica Williams, ..... Respondents.

**CERTIFICATE OF COMPLIANCE WITH RULE 211(b)**

I certify that the Final Brief of Respondent The Boeing Company complies with Rule 211(b).

Respectfully submitted,



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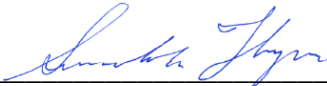
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**PROOF OF SERVICE**

I certify that I have served Respondent's Final Brief upon Appellant by email and by depositing a copy of it in the United States Mail, postage prepaid, on January 10, 2023 addressed to their attorneys of record at their offices as follows:

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