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IN THE OHIO COURT OF CLAIMS
STATE OF OHIO

DAVID A. BENTKOWSKI)	CASE NO. 2014-00651
)	
Plaintiff,)	JUDGE PATRICK M. McGRATH
)	
vs.)	
)	
OHIO LOTTERY COMMISSION,)	
)	
Defendant.)	

**PLAINTIFF, DAVID A. BENKOWSKI'S AFFIDAVIT IN SUPPORT OF HIS
OPPOSITION TO THE OHIO LOTTERY COMMISSION'S
MOTION FOR SUMMARY JUDGMENT**

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STATE OF OHIO)
)
COUNTY OF CUYAHOGA) ss. AFFIDAVIT

David A. Bentkowski, after being duly sworn according to law, swears and states as follows:

1. I am the Plaintiff in Case No. 2014-00651 in the Court of Claims of Ohio.
2. I have personal knowledge of the facts set forth herein and am competent to testify to these facts.
3. Unless expressly stated otherwise, I have personal knowledge that the documents referenced herein are authentic and are true and complete copies of the originals thereof.\
4. I am 43 years old and reside in Seven Hills, Ohio. I am an attorney-at-law. I currently work as an adjunct faculty member at Cleveland State University where I teach in the Monte Ahuja College of Business. I also provide consulting services to Safe for Home Products, LLC, a manufacturer of sleep products such as mattresses, pillows, and other bedding.
5. I am a former mayor of the City of Seven Hills. I was elected to that position in November 2003 and took office on December 10, 2003. I was re-elected to that position in November 2007 and took office on December 10, 2007. I served in that position until October 11, 2011, when I resigned to take a labor relations job at the Ohio Lottery Commission. (The Commission required me to resign my position as mayor as a condition of my employment.)
6. Prior to becoming mayor of Seven Hills, I was a Seven Hills councilman from 1995 to 1999. I was also appointed to fill a council-at-large vacancy in 2003. I was re-elected in November 2011 to a council-at-large position in Seven Hills, for which I took office on December 10, 2011 and served until December 10, 2013. I did not run for office after that and I am no longer a public official in Seven Hills.
7. The City of Seven Hills has term-limits for the position of mayor. A candidate can only serve two four-year terms. As I was in my second term of office, I had three options including 1.) Go to the ballot in an effort to remove term-limits; 2.) Run for a different Seven Hills elected position other than mayor, or 3.) Leave Seven Hills office and/or find other employment.
8. My chances for overturning term-limits would have been favorable given that I was re-elected to my second term in office with 82% of the vote and had considerable resident support.
9. As part of this decision, I began researching potential jobs for which I might apply should I choose to leave office. I had almost two-decades of Public Employees Retirement Service ("PERS") pension credit in Ohio so it was important for me to consider public positions to

continue to build on my retirement. I also consider myself a committed public official and wanted to see if there was another position in government where I could continue to serve the people of Ohio with my various professional talents.

10. I reached out to some former elected official friends for guidance and to see if they were aware of any job leads. In particular, I reached out to former State Senator Gary Suhadolnik and former Ohio House of Representatives member James Trakas. They agreed to let me know of any job leads within state government that they discovered.
11. On November 2, 2010, John Kasich was elected Governor of Ohio. I did not aggressively campaign for Governor Kasich. The extent of my assistance to him was that as a Republican mayor in Cuyahoga County, I agreed to appear at one endorsement event for him in Brecksville, Ohio, where the local Republican mayors announced they were supporting him. This one event is all I did to assist his campaign.
12. I did have prior dealings with Governor Kasich. In 1999, I was the Director of Government Affairs for the Cleveland Area Board of Realtors® (“CABOR”). At the time, Mr. Kasich was a member of the United States House of Representatives and was running for President of the United States for the 2000 election.
13. Representative Kasich solicited me as the Director of Governmental Affairs for CABOR to host for him a fundraising dinner to assist his Presidential campaign. I did not know him and had never met him, however, I thought he was a good candidate favorable to Realtor® issues and was excited at the prospect of an Ohio candidate winning the Presidency.
14. I convinced the various Realtor® committees, such as the Legislative Committee and RPAC Committee to host an event where our members could network with Representative Kasich.
15. My boss at the time, Carla Roehl, was concerned about having this fundraising event for Representative Kasich because there were media reports that his Presidential campaign was floundering and that he would drop out of the race. My boss questioned me repeatedly stating, “Are you sure he is not dropping out? If he does, it falls on you.”
16. Representative Kasich repeatedly told me he was not dropping out and that I could trust him.
17. The CABOR Board had the event for Representative Kasich at a local restaurant. To the best of my recollection, the event raised the Kasich for president committee close to \$10,000 through the various member donations.
18. Literally, within a few days of collecting the money in July of 1999, Representative Kasich announced he was dropping out of the race for President. My boss was furious and embarrassed and this led to a souring of my position with the Board and I was eventually terminated.

19. From this episode, I still had Governor Kasich's personal cell phone and email information which would become relevant regarding my 2010/2011 job search.
20. Once Governor Kasich took office, I really began to ramp up my employment search regarding state jobs. My wife and I attended an Inauguration party in Cleveland where I saw the Governor and told him of my interest in working for Ohio. I also attended an Inauguration party in Columbus where I again saw the Governor and expressed my interest in working for Ohio. He advised me to forward his team my resume.
21. As a result of those meetings, I forwarded my resume to multiple people. I sent it to the Governor via his personal email. I applied for various jobs that were listed on the State of Ohio website. I forwarded my resume to key contacts like Mr. Trakas and Mr. Suhadolnik that might pass along my resume to officials they knew that might be hiring.
22. On January 21, 2011, Governor Kasich hired Mr. Trakas to a position in his cabinet, serving as a director of a state agency. Mr. Trakas was one of only a few people from the Cleveland/Northeast Ohio area that were hired to such a high ranking position with the Governor.
23. Mr. Trakas explained in detail to me how the Governor's hirings would work. Namely, Cuyahoga County Republican Chairman Rob Frost and Ohio Lottery Commissioner Patrick ("Pat") McDonald, two Republican operatives in Northeast Ohio, would funnel to the Governor's Columbus team potential candidates for various state positions. I was told since the Governor didn't know all of these people, he would turn to the local party leaders and operatives for recommendations on who to place.
24. As a member of the Governor's cabinet, Mr. Trakas was also someone that would play a role in advancing candidates. Mr. Trakas was also the former head of the Cuyahoga County Republican Party and is hugely influential in Cuyahoga County Republican politics.
25. Mr. Trakas informed me the real person that did the hiring for Northeast Ohio was the Governor's "right-hand" man Jai Chabria. Mr. Chabria's official title is Senior Advisor to the Governor and he previously worked with the Governor at the private firm Lehman Brothers.
26. Mr. Trakas gave me Mr. Chabria's private contact information, advised him of my interest, and spoke highly of my candidacy to him.
27. I spoke with Mr. Chabria who informed me that he would keep me in mind for various positions. When I would see a position that matched my qualifications on the State of Ohio website, I would advise Mr. Chabria that I would be interested in that position. Over the first half of 2011, we spoke several times regarding various positions. At all times, from multiple sources, it was made clear to me that Mr. Chabria – and Mr. Chabria alone – was responsible for "greenlighting" the hire of people like me and assigning them to various positions. I also believe he was instrumental in discharging me, although I was not able to

take his deposition because he falsely told the Court he had not involvement when it is clear he had such involvement.

28. During this time frame, Mr. Suhadolnik and Mr. Trakas continued to try and help me find a position. As former colleagues of theirs would land at various state agencies, they would encourage me to apply with those agencies. For example, years ago, I was the Executive Director of a paving association so they both encouraged me to apply with the Ohio Department of Transportation. I am an Ohio attorney so I was encouraged to apply for a law position at the Ohio Department of Commerce, where Mr. Suhadolnik was the former Director, and at the Ohio Attorney General's Office, where Mr. Trakas had a relationship with Randi Ostry, someone from Northeast Ohio that was appointed to a high-ranking position in the Attorney General's Cleveland Office. Those various opportunities did not pan out.
29. Around May of 2011, Mr. Suhadolnik introduced me to Mr. Pat McDonald. Mr. Suhadolnik was a very good friend of Mr. McDonald's. I did not know Mr. McDonald at all. Again, I was told that he was a "kingpin" for Northeast Ohio and that along with Mr. Frost, they helped funnel who was considered for positions by Mr. Chabria.
30. In June of 2011, Mr. McDonald advised me that there was a position that matched my qualifications at the Board of Elections. Mr. McDonald is both a full-time employee of the Board of Elections and a member of the Ohio Lottery Commission as a Commissioner. I applied for the position at his urging, interviewed, but did not receive the job. A true copy of documents supporting this statement are part of the McDonald deposition Exhibit 26, a true copy of which is attached hereto and marked Exhibit A.
31. As the summer dragged on, I began to feel I was getting the run-around. I didn't really know Mr. McDonald or Mr. Chabria. I had applied for positions for over six-month and I had decisions to make regarding Seven Hills. I was going to run for City Council in November of 2011 to help my city with the transition. I wanted to keep serving and I wanted to share my eight years of experience with the new mayor as a councilman.
32. In July of 2011, I was also considering running for the Ohio House of Representatives or the Ohio Senate. Regarding the Ohio Senate seat, Senator Tom Patton had been mentioned as an official being looked at regarding the Cuyahoga County Public Corruption scandal and as a popular local mayor, I would be a possible candidate to replace him should trouble had found him. Representative Marlene Anielski was from small Walton Hills so in a head-to-head matchup, I was confident I would be able to give her a good election battle.
33. I saw Representative Anielski at the Seven Hills Home Days on July 29, 2011. I told her, "Marlene, you know I think you are great, but I am thinking about running against you for State Representative." I made these comments in front of several people including my assistant, Chris Matthews.

34. A shocked Representative Anielski asked why. I explained to her that I was committed to still serving Ohio and that I needed to make some life decisions and that I had been applying for state jobs for six months and was getting nowhere.
35. Representative Anielski said, "I will talk to Rob Frost and see what is going on." Following this interaction, Mr. Frost and Mr. McDonald ramped up their efforts on my behalf because they were told by Representative Anielski that I was considering running for office against either her or Senator Patton.
36. On July 30, 2011, I was married. On July 31, 2011, I left for Europe for 23-days on my honeymoon.
37. After I returned from my honeymoon, I received a Facebook message from Mr. McDonald on September 19, 2011, stating "David – what are you up to? I was thinking about you for a job at the Ohio Lottery ... How is everything?" This email is part of Exhibit 26 to the McDonald deposition and is part of Exhibit A to this Affidavit.
38. I had never applied at the Lottery and had no idea what positions were open. I didn't even know the Lottery had a labor relations officer position.
39. I said I was interested and Mr. McDonald responded "There are many jobs that need to be filled in my perspective but the one that the GOVERNOR'S OFFICE (emphasis added) have (sic) approved is in Human Resources as our Labor Relations Officer. I think you would be great. Any thoughts on that industry? See, McDonald Exhibit 26 which is Exhibit A to this Affidavit.
40. As stated, all throughout this process, I was repeatedly informed how hiring was the purview of the Governor's Office and Mr. Chabria (McDonald Trp. Page 27 Line 10 to Page 29 Line 11). I was repeatedly told this by Mr. McDonald, Mr. Trakas, and Mr. Frost. This is verified by the attached taped conversation I had with Jim Trakas prior to being hired.
41. Mr. Frost even advised me how he once received a call from the Governor's Office telling him he needed to find them an African-American female judicial candidate because the Governor's Office was taking heat for a lack of diversity in their appointments. He was trying to explain to me how it wasn't his fault my hire was moving so slow. I was quite taken aback that the hiring decisions in the State of Ohio apparently were being motivated by a person's race and public perceptions. I felt the citizens would be outraged to hear Mr. Frost discuss how the Governor would hire a black candidate for no other reason than appeasing public outcry.
42. Mr. McDonald and I discussed the position and he advised me that he would "call the Director (of the Ohio Lottery) in the morning. This is part of McDonald Exhibit 26 which is Exhibit A to this Affidavit.

43. It was my belief that I would be leaving my political career in exchange for a new state employment career. Mr. McDonald, Mr. Frost and Mr. Trakas and I had discussed how important my PERS pension was to me and that I needed to secure three "high" years of pension. My position of mayor only paid \$14,000 per year and those would have been my "high" years for pension tabulation (McDonald Trp. Page 26 Line 7-18).
44. All of these people knew that if I was going to leave politics that it would have to be for a full-time job where I could have a legitimate career and earn a legitimate, full-time, PERS qualifying salary (McDonald Trp. Page 26 Line 7-18). It was a condition of me leaving political office. Had I run for a different political position, such as State Representative or State Senator, those position also had attractive salaries around \$60,000. Even Ms. Popadiuk testified that she knew how important the pension was to my career choice (Popadiuk Trp. Page 45 Line 9-19).
45. Politically, I knew that if I agreed to leave office early to take an employment appointment from the Governor that my political career would be over. To the voters, I would have failed to fulfill my entire tenure as mayor and I would be viewed as receiving a patronage appointment. Make no mistake about it, I was only willing to take these career ending political hits based on the promise of "at least" a three-year employment position.
46. My instincts were correct. When I left being mayor early to work at the Lottery, I was vilified in the media. Columnist Mark Naymik of *the Plain Dealer* wrote multiple articles skewering me and portraying me in this negative manner that I anticipated. Exhibits 23 and 29 to the McDonald Deposition are examples and they are attached hereto and marked Exhibits C and D respectively.
47. Mr. McDonald instructed me on submitting my resume and told me "I have a call into Gov's office on it by the way. . . (Exhibit A). During my hiring process and after, Mr. McDonald would repeatedly take credit for my hire, at one point even texting me "You are going to owe me big dude" This is verified in Exhibit 27 to the McDonald deposition and that exhibit is attached hereto and marked Exhibit B. This exhibit is a verbatim listing of text messages received and sent to McDonald.
48. On September 21, 2011, I had breakfast with Mr. McDonald and Mr. Frost at 8:00 a.m. I was scheduled to meet with Lottery Director Dennis Berg at 10:00 a.m. At the breakfast meeting, Mr. McDonald and Mr. Frost both explained to me that if I was given the job at the lottery, I had to be a good "foot soldier" and that I had to be at their beck-and-call to help the Governor and the Republican Party.
49. More precisely, I was promised that as long as I was a "good soldier" that I would have my job at the lottery "at least" as long as the Governor was in office and that I could secure my three "high" years of pension. At the time of my hire, the Governor, the person that appointed me, would still have over three years left in office plus the prospect of re-election.

50. For me, this promise of three years of working at the lottery would tabulate to almost \$1 million dollars for me over the life of my pension. The \$1-million-dollar figure comes from assigning me a pension formula of 66% of \$60,000 over 30 years versus what I had at the time, 66% of \$14,000 over 30 years. It amounts to just over \$910,000 and given my fairly young age and potential to retire in my 50s - my pension could be even greater if based on 35 years or 45 years. My calculation assumed I would stay in government and achieve 30 years of service.
51. These dollar amounts were a significant consideration for me and we discussed these points thoroughly and the promise of three years at this position from the Governor was the deciding factor in me taking the job. It was essentially a million-dollar promise by the Governor and million-dollar reliance on my part. As the record clearly demonstrates, I was willing to do whatever the Governor and Mr. Chabria wanted regarding my political office. See, Exhibit A and B. They alone, as a condition of my hire, determined that I would resign mayor and still run for council.
52. Although I was a Republican, I was never very active in party politics. I did some events and sought some endorsements, but I was certainly not a workhorse for the party. I focused my efforts on helping my city and making my voters happy. It was clear after this meeting that I was expected to do much more for Governor Kasich.
53. These suggestions were offensive to me. I felt I should get the job because of my qualifications. I believe I was and am a skilled lawyer with 14 years of experience. I had been a twice-elected mayor in charge of a \$9 million budget and over 100 employees. I stated I would do my best at the position and that I would help the Governor as much as possible.
54. After my hire, I was repeatedly directed to do various activities for Governor Kasich. For example, I had to recruit people to attend Governor Kasich's rally for Senate Bill 5. They were expecting a thin crowd and I was charged with getting people to attend since it was in my backyard of Independence. I successfully had 40 friends and family show up. See, Exhibit A.
55. Mr. McDonald would also call me about various Lottery positions that were posted as he tried to gain information about them to recruit more candidates in his favor. See Exhibits A and B.
56. Mr. McDonald and Mr. Frost informed me that my meeting with Mr. Berg and Lottery Human Resource Director Liz Popadiuk was just a courtesy for them. He explained to me how Mr. Berg and Ms. Popadiuk really don't have a say in the matter. Both Mr. Berg and Ms. Popadiuk were also appointments of the Governor. He explained to me how they were "puppets" that had to do whatever they were told or lose their jobs. Mr. Berg had just become interim director of the lottery and was hoping to be appointed permanently so he was not about to challenge his boss, Governor Kasich, on any matter. Ms. Popadiuk testified that Mr. Berg told her to hire me (Popadiuk Trp. Page 13 Line 3).

57. While an employee of the Lottery, I witnessed this many times. I would be in Ms. Popadiuk's office and she would candidly tell me how "ticked off" she would get when she would get a call from Columbus or Mr. McDonald telling her she had to hire someone. She told me the history of her hire; how it was political thanks to her father; and how she "played the game" and lasted so long with different administrations for both political parties because she just did what they told her.
58. Throughout this whole hiring process, it appeared to me from my correspondence with Mr. McDonald, Mr. Trakas and Mr. Frost that Mr. Berg and Ms. Popadiuk were, at best, peripherally involved in my hiring and that the person who arranged to hire me was Governor Kasich through Mr. Chabria. See Exhibits A and B and McDonald Trp. Page 27 Line 10 to Page 29 Line 11.
59. This was consistent with the fact that massive firings occurred after the Governor took office. There was a newspaper story about it and it included descriptions of the terminations of Ms. Popadiuk's close friend, then Lottery Chief Legal Counsel Pam DeGeeter and her other friend, Mr. William Newsome, the person I eventually replaced as Labor Relations Officer.
60. For a higher-level position like mine, the Governor's office even has to "sign off" on the new hire, as demonstrated by a memo from HR employee Dave Hewitt produced by the Ohio Lottery Commission in discovery and Bates-stamped with Lottery 252554 (Exhibit E to this Affidavit).
61. Mr. Trakas explained to me a situation where when the Governor first took over, some Lottery people like Ms. Popadiuk were trying to hire some new people. Mr. Chabria became annoyed at the situation because some of these employees getting hired had not helped the Governor and he "shut down" the hirings completely taking them over. No important position was to be filled without his involvement and blessing. This is evidence on a Facebook message from Jim Trakas which is attached hereto and marked Exhibit F.
62. On September 25, 2011, while following-up about the position, Mr. McDonald again told me he had a "call into Cols" and then "Just got a text from Jai for me to call him early next week to discuss. So there you have it." See, Exhibit A.
63. While I was talking to Mr. McDonald about the lottery position, he informed me how he and Mr. Chabria would decide what would happen regarding my political future. See Exhibits A and B. In September of 2011, I was still the mayor of Seven Hills. My term did not end until December 2011. Also, I had already filed petitions to be a candidate on the ballot as a councilman-at-large for the November 2011 election.
64. The various text transcripts demonstrate clearly that it was Mr. Chabria, in conjunction with Mr. McDonald, that were going to direct me and control me regarding my tenure in office. There was no doubt my getting the Lottery job was contingent on me doing whatever they said. See, Exhibit B.

65. On September 27, 2011, Mr. McDonald texted me "Waiting to connect with Liz. Told Dennis I want u hired but still thinking through Mayor/Council thing. I am thinking to have u resign as Mayor but still be able to run for Council. It is a nonpartisan race right?" See, Exhibit E. Mr. McDonald was very interested in who would get the position of mayor if I resigned to take the lottery job. He wanted to make sure it was someone good to the Republican Party.
66. Ultimately, Mr. Chabria and Mr. McDonald agreed that I had to resign as mayor but that I could still run for city council. Mr. McDonald even texted me "Just heard back from Jai and he likes the direction I recommended. Will sign off with Berg tonight and they will be calling in the morning." See Exhibit B.
67. Once again demonstrating that Mr. Berg and Ms. Popadiuk were irrelevant to my hiring, Mr. McDonald again texted me stating "I just called Dennis and told him I approve of everything and to go ahead with the offer." See, Exhibit E.
68. On September 29, 2011, after I texted Mr. McDonald I had still not heard from Mr. Berg, Mr. McDonald texted "I just called him and told him I want closure on this today. See, Exhibit B.
69. On October 10, 2011, as a condition of my hire as directed to me by Mr. Chabria via Mr. McDonald, I resigned as mayor of Seven Hills. On October 11, 2011, I worked my first day for the Lottery as a Labor Relations Officer 3. Of the various labor relations officer positions throughout the State of Ohio, the highest ranking is a "Labor Relations Officer 3."
70. While working in this position, as I met other Labor Relations Officers from across the state, I learned that I was easily one of the most qualified candidates to hold the position. As a lawyer and long-term public official, I had worked on countless union contracts, dealt with many discipline and contract related issues, and been involved in executive level dealings right on point with the position that other state employees had never done.
71. On October 13, 2011, *Plain Dealer* Reporter Mark Naymik, did indeed, lambast me about leaving office and taking this position in a column titled "Former mayor wins Kasich lottery." Mr. Naymik wrote: "He has Gov. John Kasich to thank for a sweet deal. Bentkowski, who endorsed Kasich's gubernatorial bid last year, will get \$58,000 a year to be a "labor relations officer 3. Kasich fired the Democrat who held the position as part of his house cleaning in January. It's the very position that, as auditor, Lt. Gov. Mary Taylor said should be eliminated." See, Exhibit C.
72. Mr. Naymik and I have a long history together of his unfairly attacking me. He wrote the story to make it look like this was some payoff for my endorsement of Governor Kasich (As described, I barely did anything for Kasich and he had previously cost me my CABOR job.)

73. The "sweet deal" Mr. Naymik accused me of getting was offensive to me. I was an experienced attorney and public official that sought to use his extensive training to help the State of Ohio for a modest wage of \$58,000.00 per year.
74. Finally, Mr. Naymik's statement that Lt. Gov. Mary Taylor said the position should be eliminated is also not completely accurate. The position of labor relations officer is specifically called for in the union contracts and its existence entitles union employees and management certain bargained for rights. What Lt. Gov. Taylor was suggesting was that perhaps the work could be absorbed elsewhere, such as by the legal department but assuredly, the functions of the position could not go away.
75. Mr. Naymik's article also referenced subject matter relating to criminal complaints I had initiated beginning in 2009. At the time of this article, the existence and details of those criminal complaints were not known to Mr. Naymik. Again, his portrayal of my actions regarding these matters was unfair and unflattering but since the matters were part of an ongoing investigation, I could not more properly defend myself or my reputation in his story. See, Exhibit C.
76. After this article appeared, I received a phone call from Mr. Trakas. He left me a phone message that I have saved that references how I had to call him immediately because there was fallout from the article. A true copy of this recording is attached hereto. He advised me that the Governor was not amused that I was in the paper and causing him embarrassment. He described how Scott Milburn, another key deputy of the Governor's, called Mr. Trakas about me and expressed his concern over the article. According to Mr. Trakas, the article and my hire were brought up at the Governor's Senior Staff meeting.
77. In no uncertain terms, it was made clear to me by Mr. Trakas that I better "de-escalate" the situation. The message to me was clear during this initial phone call and subsequent phone calls that if I was ever in the paper again for any reason or in any way caused the Governor any embarrassment that I would be fired. See, audio recording.
78. I tried to explain to Mr. Trakas that I didn't ask for this; that I did not want to be in the paper; and that there was much more to the situation. I explained to Mr. Trakas how I believed there were crimes taking place in Seven Hills and that I had already reported them and that I very well could be in the paper again someday as a result of the reporting actions I had already taken. See, audio recording.
79. Mr. Trakas, a friend, again made it clear that whatever the story was, the Governor had no loyalty to me and that he wasn't about to burn any political capital by being linked to me after he appointed me. See, audio recording.
80. Mr. Trakas also informed me how Mr. Berg and Ms. Popadiuk never wanted to hire me in the first place but had to because I was put at the Lottery by the Governor. The entire record of evidence of my hire easily demonstrates that I was hired only because of the Governor and Mr. Chabria and that all of these other players didn't have the authority. See Exhibits A and B.

81. In addition, I did not know Mr. Berg or Ms. Popadiuk when I started working at the Lottery. I had never met them and had no idea who they were. However, Mr. Berg and Ms. Popadiuk both believed that I was a political crony of the Governor's as reported by Mr. Naymik. All they knew was that I was a former Republican mayor appointed to the Labor Relations Officer position where the Governor had previously fired the Democratic employee that held the position just months earlier.
82. They knew that Mr. McDonald and Mr. Chabria directed them to hire me ... even though I had never previously sought out a Lottery position. See, Exhibits A and B.
83. After I started working, Ms. Popadiuk would repeatedly reference my relationship with the Governor. She knew I went to various political events of the Governor's. She would make comments that intimated I was "close" with the Governor. Above my desk, the only picture I had hanging was a giant "16x20" picture of the Governor, my wife and me from the Inauguration events. I also had two more pictures of the Governor on my bulletin board – one of me and the Governor from 1999 at the fundraising dinner I threw him and a picture of the Governor with my mother.
84. The point is, Ms. Popadiuk and Mr. Berg would never think in a million years that they could ever fire me without the Governor's blessing. In their minds, I was the Governor's "buddy" and they had best behave around me. In fact, Mr. Trakas told me how after Mr. Berg was forced to hire me by Columbus, Mr. Berg complained to Mr. McDonald asking him, "Am I the Director or not." It appears to me that Mr. Berg believed that I may be a candidate slotted at the Lottery to replace him as Director or that I was put at the Lottery to keep tabs on the Lottery for the Governor.
85. Indeed, Mr. Berg was so consumed with this potential, that he directed me to not put any ideas in writing for him because if he failed to get to them, and they were a public record, he might look bad for dropping the ball. I advised Mr. McDonald of this in our text messages. See Exhibit B.
86. After that initial Mr. Naymik story, I knew I better be perfect in my Lottery position because the whole state was watching. I worked as hard as I have ever worked at a job at the lottery.
87. After that initial story, I even sent Ms. Popadiuk an email stating "I talked with some Columbus folks yesterday and I know my game plan – keep quiet, stay out of the headlines, and just work really hard at this job. This document is Lottery Commission Exhibit No. 251660 and is Exhibit G to this Affidavit). I genuinely wanted Ms. Popadiuk, my new boss, to know that this was a career for me and very important for me and that Columbus was directing my actions. This snapshot in time letter demonstrates clearly how Columbus had contacted me and gave me the warning that I better stay out of the paper.
88. I never missed work unless for a pre-approved event like a doctor's visit. I was never late. I purposely made sure I turned my computer on before my start time and right at my end time so there was a record of me being at my desk. I was as friendly and supportive as

possible to everyone. Most important, I immediately and professionally completed every single assignment given to me. I was the "perfect" employee because I knew I was being watched and that my job, potentially meaning a million dollars to me, was in play. (Popadiuk Trp. Page 55 Line 3 to Page 56 Line 5).

89. During her deposition, Ms. Popadiuk attempted to manufacture some bogus reasons for my termination. Any reasons that she offered for my termination or examples of poor performance are completely false, made-up, unsupported by any evidence, and in direct conflict with my evidence in the record. Despite her vile efforts, the fact remains there is not one negative "anything" in my file. I was never disciplined. I was never orally or in writing reprimanded. I was never scolded. I was never accused of violating a work rule. I was never sent an email expressing concern over performance. I never had documents I created extensively edited. I successfully "prosecuted" any discipline matter assigned to me. The list goes on and on. But, again, Ms. Popadiuk and the Lottery cannot demonstrate one documented example of me failing in any capacity (Popadiuk Trp. Page 44 Line 9-21).
90. Ms. Popadiuk spent a lot of time in her deposition claiming she would frequently advise me of poor performance orally. This is a total lie; in fact, this never happened.
91. Ironically, as the Labor Relations Officer, I was the very person responsible for drafting, reviewing, and enforcing Lottery policies and rules across the State of Ohio for the Lottery. Despite being in the position of the Lottery's "disciplinarian" I was well liked and respected by both management and employees. The Lottery did not produce one witness or document where any Lottery employee had anything negative to say about me. The handful of people that Ms. Popadiuk referenced were actually people that I got along with great and that had only positive interactions with me, such as Mr. Drlik, Mr. Green, Mr. Schervish, etc. I do not know of one employee that ever complained about me or expressed concern over my performance.
92. My emails, text messages, and performance accomplishments actually demonstrate I was an exemplary employee. The hundreds of text messages between me and Ms. Popadiuk demonstrate that she liked me and the job I was doing. There is nothing negative in any of our correspondences.
93. Ms. Popadiuk is the Director of Human Resources. It is Lottery policy that she reviews me twice as part of my initial probationary period. The Lottery policy calls for the employee, me, to first complete a self-evaluation at 90 days and also at 180 days. I successfully completed these evaluations on January 3, 2012 and April 9, 2012, respectively. A true copy of these evaluations are Exhibit H to this Affidavit.
94. For the January 3, 2012 mid-probationary report, I scored myself a 95/Outstanding. For the April 9, 2012, final-probationary report, I scored myself a 95/Outstanding (Exhibit H). When I submitted these reports to Ms. Popadiuk, she told me I was doing an "excellent job" and at each juncture, she started giving me more assignments and responsibilities.

95. It was her sole duty and responsibility to review me as she was my direct supervisor. She was supposed to take my evaluations and supply me with her own evaluations. She never completed those evaluations. In fact, she failed to complete any evaluations in the department as she was supposed to do. These are not supposed to be optional for Ms. Popadiuk. It is absurd that the head of Human Resources would fail in this manner. The evaluation forms themselves even spell out on the first page her responsibility to complete these reviews (Exhibit H; Popadiuk Trp. Page 21 Line 6 to Page 25 Line 14).
96. The reason these evaluations are so important for Ms. Popadiuk to complete is because employee's "step-raises" or in my case, ability to come off probation, are supposed to be contingent on them (Popadiuk Trp. Page 41 Line 9 to Page 42 Line 18).
97. At one point I asked Ms. Popadiuk if she had gotten to my review and she said, "You're doing great ... that's all you need to know. You are coming off probation."
98. At the various intervals, I did indeed receive my step raise and I also did come off probation (Popadiuk Trp. Page 41 Line 9 to Page 42 Line 18). There have been other Lottery employees that did not survive their probationary period due to poor performance.
99. At both 90 days and 180 days, if I was in fact a bad employee, Ms. Popadiuk could have fired me and not even let me off probation. That's not what happened. Instead, she told me I was great, I got my step raise, came off probation, and was given growing responsibilities (Popadiuk Trp. Page 41 Line 9 to Page 42 Line 18).
100. On September 25, 2012, complying with Lottery policy, I completed my self-evaluation for my Annual review. I gave myself a 96/Outstanding (Exhibit H). Once again, Ms. Popadiuk failed in her job and did not provide me a written review response. Instead, she again told me what a "wonderful" employee I was. We had an in person meeting where she said because I was doing so well, she really wanted to give me even more responsibilities. I will later discuss in this document the undeniable expansion of my duties and access.
101. I am aware that other Lottery employees did complete self-evaluations and were then reviewed by Ms. Popadiuk in conjunction with their supervisors. I am aware that there are multiple employees that received poor scores in the 50' and 60s range that are still employed by the Lottery. My scores were 95, 95 and 96 and I was terminated.
102. On March 28, 2012, I completed my first training seminar for the Ohio Collective Bargaining Academy. I then completed 15 more training days in Columbus, making the long trip for each class and successfully completing all class requirements of the program by October of 2012. This was a spectacular accomplishment compared with many other state employees that never take the classes or who take years to complete the training. I did this because I wanted to demonstrate my abilities and willingness to work hard and grow in my position (Popadiuk Trp. Page 49 Line 7 to Page 53 Line 1).

103. At all stages, Ms. Popadiuk authorized all aspects of these trainings including me being away from the office, traveling, and the expense of the courses. Ms. Popadiuk repeatedly referenced my Lottery "career" and discussed how she had done these courses and that completing them would help me advance (Popadiuk Trp. Page 49 Line 7 to Page 53 Line 1).
104. Even though Lottery employees are allowed to have outside employment as long as there are no conflicts, I closed up my lobbying/consulting business and didn't accept new clients again based on this promise of a long career at the Lottery. See Lottery Commission Doc. Nos. 253283-253284, 253312 which are Exhibits I and J to this Affidavit.
105. All employees that worked for Ms. Popadiuk in the Human Resources department were required to submit bi-weekly reports. I never missed submitting a report and never received any negative feedback regarding my reports (Exhibit K). I never received any guidance or criticism that I was not completing assignments, that my work product was light, etc. During her deposition, Ms. Popadiuk could not point to one scenario where in writing – such as a text or email or report – where she ever expressed displeasure over my work product. Not one!
106. Instead, Ms. Popadiuk repeatedly told me what a great job I was doing, made positive comments about my work in emails or discussions, and most important, accepted and/or signed off on everything I did.
107. Ms. Popadiuk was my sole supervisor and sole person that assigned me work. Literally, every single thing I did she reviewed, accepted and signed off on. During deposition when she claimed she didn't like my writing style that is an absurd claim because almost everything I wrote she accepted with nominal or no changes. There are no documents she could provide that show her dramatically altering something I had written because my writings were top notch.
108. Further, many of my tasks involved writing documents for her that she would send out under her signature. Again, in every case, she took what I wrote, approved it, signed it as hers, and sent it out with little changes. The reality is I am a prolific writer and communicator and Ms. Popadiuk told me so. She would repeatedly have me write documents for her because she liked my style and as a lawyer, I could help her avoid writing something inappropriate.
109. In May of 2012, at the urging and with the approval of Ms. Popadiuk, I enrolled in the Human Resources/Labor Relations graduate school program at the Monte Ahuja College of Business at Cleveland State University. I was already a law school graduate in 1996 from Cleveland-Marshall College of Law at the same university.
110. Ms. Popadiuk encouraged me to take the same graduate school program she had taken and repeatedly discussed my "new career" and how this course work would assist me in serving her at the Lottery for a long time.

111. Over the summer and fall terms of 2012, I completed five different courses in the program and received five grades of A, for a 4.0 grade point average. At the time, I had completed Labor Law, Employment Law, Leadership and Management and Organizational Behavior courses.
112. I hadn't been in school since 1996 – 16 years ago. Going back to school was the last thing I wanted to do but I did so based upon these promises of a long career and because Ms. Popadiuk expressed how important it was for me to get this training for my long Lottery career. Going back to school was a major burden for me. I was working full-time, I had a new wife that was also in professional school, I had a storm issue with my house that required a new roof, etc. I also was embarrassed that I was in my 40s going back to school with a bunch of 20-something kids. I had to answer questions like “Weren't you the mayor” and “Aren't you a lawyer, why are you here?”
113. Based upon Ms. Popadiuk's assurances about my long Lottery career, I still did all of this and spent thousands of dollars of my own money on tuition, fees, books, and other school related items. The State of Ohio, based on Ms. Popadiuk's approval of my courses and certification that these courses were needed and related to my job, also spent thousands of dollars on my tuition.
114. After being terminated, I decided to finish the master's degree, at even greater expense to myself, because if I didn't, all of the money I had spent would have been a complete waste. I was forced to pay the full amount of my remaining, very expensive grad school classes. I completed the entire program in spring of 2015 and graduated with a 3.9 GPA.
115. I demonstrated such competence in the subject matter that upon my termination from the Lottery, I was hired by Cleveland State to serve as an adjunct professor teaching Labor Law at the Monte Ahuja College of Business and Administrative Law at the Cleveland-Marshall College of Law. I currently teach three Business Law courses. My administrators are thrilled with my performance. I receive some of the departments' highest rated student reviews, and my hope is that I rise to the level of full-time lecturer. The fact is I know these subjects in and out and that is what made me such a qualified Lottery employee.
116. During the summer of 2012, as I approached my one-year anniversary, my existence at the Lottery was as positive as ever. In fact, not only did Ms. Popadiuk tell me what a great job I was doing, she stated, “I really want to expand your role. We have so much going on with the racinos coming that I want to give you a bunch of tasks that I am currently doing so you can help me.”
117. As the next large batch of points demonstrates, Ms. Popadiuk said she loved my performance and was giving me a larger role at the agency. These are obvious indices of ongoing, long-term employment.
118. In the summer of 2012, the Lottery was having issues with employee Jim Zimmerman and given my vast experience, Ms. Popadiuk made a decision to have all grievances go directly to me at Step 3 – skipping any Step 1 or Step 2 meetings with other supervisors. She did

this because I was capable and she didn't want any management reps to muck up the process. She trusted my abilities and wanted everything to come right to me.

119. In June of 2012, Ms. Popadiuk authorized me to start receiving the statewide arbitration summaries giving me access to important cases from across the state (Popadiuk Trp. Page 46 Line 17 to Page 47 Line 22)
120. On July 1, 2012, I became eligible for employee health insurance and Ms. Popadiuk directed Stefanie Zackary to work with me to assist me in securing all of my benefits. This was only possible to me because I was approved to come off probation and complete one year of service. I enrolled in the Ohio Med PPO-MMO (Exhibit L).
121. On July 10, 2012, Ms. Popadiuk gave me some computer information regarding Epic Software. She was expanding my access to privileged, sensitive employee materials because my role was being expanded (Exhibit M).
122. On July 18, 2012, I participated in the Healthways Health Screening Process, my first step in the Lottery ongoing program to improve employee health (Exhibit M).
123. In the late summer and early fall of 2012, I was playing a very active role in helping the Lottery deal with key issues relating to the Lottery installing Video Lottery Terminals at various racetracks across the state. I was dealing with issues such as part-time security personnel becoming full-time at Scioto Downs.
124. These new VLT machines – and the new casino openings –were going to be staggered over a few years. This meant all kinds of new issues for the Lottery and the union and my position was as important as ever.
125. In July of 2012, Ms. Popadiuk had me work on a new class plan for delivery workers (Lottery Doc. No. 252140, Exhibit O to this Affidavit).
126. On August 23, 2012, I sought approval from Ms. Popadiuk to take a final batch of OCB classes in September and October to complete my training. If I was failing to perform in any way, she certainly wouldn't have approved this new expanse of training at such a late juncture (Lottery Doc. No. 251890, Exhibit P to this Affidavit).
127. On August 24th, 2012, Ms. Popadiuk had me participate in the DAS Human Resource Division Quarterly Webinar to learn what was taking place statewide for my expanded role (Exhibit Q).
128. On August 28th, 2012, Ms. Popadiuk filled out an Access Request Form again requesting expanded computer access for me. Specifically, she said "Please give David Bentkowski Admin/View Ability to View All Employee Timesheets/Leave Requests." She signed it on August 30, 2012. This was a large project Ms. Popadiuk was giving me. I was supposed to start "reigning in" employees that were having issues regarding their leave requests/balances. Ms. Popadiuk told me how this was going to be a "huge project" she

wanted me to work on in the coming year (Exhibit R). (Popadiuk Trp. Page 47 Line 23 to Page 49 Line 6).

129. I am very concerned that in the Lottery produced version of this document, it mysteriously doesn't have Ms. Popadiuk's key directive the way my version does (Lottery Doc. No. 254008, Exhibit S to this Affidavit). This is a key piece of evidence where the Lottery has put forth a version that omits Ms. Popadiuk's expansion of my responsibilities.
130. She told me that I was going to spend a lot of time getting new training with Marianne Heine on the OAKS system. She gave me this very sensitive computer access so I could access these confidential employee materials. She also gave me OCB grievance database access in OAKS again expanding my abilities and duties (Lottery Doc. No. 251880, Exhibit T to this Affidavit). Ms. Popadiuk and I were the only two people in the office that had such access demonstrating my importance in the department. Ms. Popadiuk referred to me as her "Number 2 in command" when she was out of the office.
131. Ms. Popadiuk told me she was also expanding my responsibilities because Dave Hewitt, another department employee, was thinking about taking a job in HR at the airport. If Mr. Hewitt left, I would desperately need to do all his tasks and fill the void.
132. In September of 2012, Ms. Popadiuk had me sign up to use the Pay My Provider/Wage Works Ohio system to pay for my parking at the Crittendon Court Garage. This was Ms. Popadiuk's garage and she is the person that informed me how to sign up for the tax benefits. On October 29, 2012, I received confirmation from the State of Ohio that my December 2012 payment had been made for access to the garage (Exhibit U).
133. On September 27, 2012, Ms. Popadiuk took me to "2012 Developments in EEO Law" – a seminar at the law firm of Calfee Halter & Griswold. She told me she took me to the event because I was getting an expanded role and she wanted me to learn new developments about EEO law (Exhibit V).
134. Ms. Popadiuk picked me up from the Lottery that morning and drove me to the event. While we were stuck in traffic, she broke down crying and started telling me about her personal life. In particular, she started talking about her ex-husband, Lottery employee Roman Popadiuk, and his relationship with another Lottery employee. She tearfully told me that Mr. Popadiuk referred to his new partner as "the love of his life" and she lamented her failed marriage. She made disparaging comments about Mr. Popadiuk and how she had to "raise the kids." I tried to offer supportive comments but also felt the comments about Mr. Popadiuk, a Lottery employee, were inappropriate (Popadiuk Trp. Page 56 Line 22 to Page 58 Line 8).
135. On October 11, 2012 Ms. Zackary assisted me in signing up for dental and vision benefits now that I had completed one year of service. Ms. Popadiuk approved me doing this (Lottery Doc. No. 251632, Exhibit W to this Affidavit).

136. During October 22-26, 2012, Ms. Popadiuk directed me and approved me to attend Arbitration School in Columbus as part of the State of Ohio's training program (Exhibit 12). Completing this Arb school was the final piece of the puzzle for me to graduate from the State's Collective Bargaining Academy. This training, coupled with my experience as a lawyer, mayor, and in conjunction with the 15 other OCB training classes I took, made me an incredibly qualified Labor Relations Officer, not to mention my CLE training as a lawyer and life and business experiences.
137. Ms. Popadiuk repeatedly told me she was authorizing these expenses and courses for me because I was doing "so well" and because she had big projects in store for me at the Lottery.
138. I was so committed to professional development and being a valuable resource at the Lottery I volunteered to take the Certified Professional Manager's Program. Ms. Popadiuk said it was a great idea and I could do it once I finished OCB.
139. When I came off my initial probationary period of 180 days, Ms. Popadiuk allowed me to work 4-ten-hour days so I could more easily attend school. This is a special perk given only to high performing employees. Ms. Popadiuk has denied many employees from doing this schedule and has removed the option from employees that get a bad performance evaluation or are in disciplinary trouble. She would never have allowed me to do this flex shift if I wasn't excelling in my position (Exhibit X) (Popadiuk Depo Page 95 Line 4-20).
140. On Nov. 2, 2012, Lottery Assistant General Counsel Aaron Schmidt sent Ms. Popadiuk and me an email asking for my assistance. Mr. Schmidt, a new lawyer and Lottery employee, repeatedly engaged me as a fellow lawyer to capitalize on my experience in the legal areas of HR and labor. At all times, Ms. Popadiuk approved me working with Mr. Schmidt and I became a valuable resource for him. My work with Mr. Schmidt is routinely mentioned in my bi-weekly reports and Ms. Popadiuk repeatedly asked me to use my legal background to help Mr. Schmidt (Exhibit Y) (Popadiuk Depo Page 54 Line 9-25).
141. I had helped Mr. Schmidt update the employee work rules, disciplinary procedures, and employee handbook. Mr. Schmidt and I were actually working on these projects and new issues relating to the new racinos at the time of my firing.
142. On November 8, 2012, I attended a CLE training course with Ms. Popadiuk's blessing entitled "How to Handle Intense Emotional Situations and Clients." She wanted me to attend this course because as Labor Relations Officer, I was dealing with some habitual, problem employees that were engaged in angry conflict. I also received permission to at another CLE class involving Ethics Training on November 14, 2012 (Exhibit Z).
143. On November 8, 2012, Popadiuk emailed me stating:

We are going to 'decentralize' the shift 2 payments to the employees entitled (by contract definition). You will be responsible for drafting an internal procedure that will be shared with affected employees, supervisors and managers. As you are in

training today, off Friday and Monday is a holiday, we will meet briefly on Tuesday to discuss the particulars.

(Lottery Doc. Nos. 253473-253474, Exhibit AA to this Affidavit)

144. On November 9, 2012, Ms. Popadiuk submitted her week ending November 9th report to Mr. Berg and as one of her update items, she discussed how I will be issuing a report about the Zimmerman matter next week. (Lottery Doc. Nos. 252275-252276, Exhibit BB to this Affidavit.)
145. On November 11, 2012, with Ms. Popadiuk's support, I worked at the Fabulous Food Show as a Lottery employee – manning the booth and running the PLINKO Spin and Win game to thousands of show attendees. As part of this volunteering, I was to be awarded Comp Time. This was earned time that would allow me to take off of work in the future – treated like a paid vacation day (Lottery 251855-251856).
146. So, as late as November 8, 2012, November 9, 2012, and November 11, 2012, I wasn't going anywhere and had multiple projects on the horizon. I was a great employee that was more important than ever to the department.
147. In addition to the above, I will quickly list some other major items I was working on or had just been working on that demonstrate my importance to the department. I was in charge of handling the Zimmerman mediation in November or December; I was handling the Mike Bush Discipline; the Kaufman grievance; A smoking policy after the Pam Strickland incident; Reducing the call center staff; The Scioto Downs call-off procedures); Multiple new issues resulting from the October 12, 2012 Labor Management Meeting; Enforcing float policies and sick leave policies, and much more.
148. On Sunday, October 21, 2012, I called Ms. Popadiuk at home and informed her that I may be the subject of a coming Plain Dealer article written by Mr. Naymik – a second nasty article about me. I explained to her in great detail how I had been a victim of various crimes like menacing by stalking and identity theft – and that I was still working with law enforcement such as the FBI and the Ohio Ethics Commission regarding those matters (Popadiuk Depo Page 82 Line 14 to Page 85 Line 12; See Audio recording attached hereto).
149. Ms. Popadiuk offered me supportive concern telling me that what was done to me was “awful” and “insane” (See audio recording attached hereto).
150. I told Ms. Popadiuk I was telling her this because I didn't want any negative publicity or story to cost my job. I explained to her how I was fulfilling my legal obligations as a lawyer and mayor in working with law enforcement (See audio recording attached hereto).
151. I also told her that I really wasn't in the position to defend myself in the paper or publicly because these were still open, ongoing investigations (See, audio recording attached hereto)

152. Even though I had my suspicions, the fact was, I did not absolutely know the identity of those harassing me and stealing my identity. They very easily could have been related to the Lottery.
153. One of the people I believed was involved in the harassment was Matt Trafis. Mr. Trafis is good friends with former Parma Mayor Dean DePiero and served as his legislative aide in Columbus. Mr. Trafis is also good friends with and active in the Democratic Party with current Parma Mayor Tim DeGeeter and former Lottery Chief Legal Counsel Pam DeGeeter, his wife. Mrs. DeGeeter lost her job with the Lottery because she was a political supporter of former Governor Ted Strickland and not new Governor Kasich. In fact, Governor Kasich fired Mrs. DeGeeter when he took office. As far as I knew, at this time, Mr. Trafis was my harasser and it may have had some relation/connection to current or former Lottery employees. (Popadiuk Trp. Page 93 Line 9 to Page 94 Line 11).
154. At the end of our call, which I tape recorded, Ms. Popadiuk told me that she had to talk to Mr. Berg about this. At no point during this call, or previously, did Ms. Popadiuk ever tell me my job was in jeopardy or that I wasn't performing. In fact, it was the opposite.
155. On the following morning, as I drove to Columbus for training, I spoke with Mr. McDonald. Like Ms. Popadiuk, I advised him of what was happening. He told me that this spelled "big-trouble" for me and that he would have to discuss it immediately with the Governor's Office. He was clearly very upset by the news. I tried to explain to him, like Ms. Popadiuk, that I was doing my legal responsibility and still working with law enforcement. He said it didn't matter and that the Governor made it clear that if I was in the paper in an embarrassing way, I would be done. I pleaded with him to assist me and convey to the Governor's Office that it would be improper to take action against me and that these crimes were first being reported back in 2009 and that they were just coming to the surface now. He told me he would make some calls.
156. I also called Mr. Trakas and referenced my call with Mr. McDonald and referenced how upset Mr. McDonald was. In great detail, I walked Mr. Trakas through everything. I was very nervous about losing my career over this. I had done nothing wrong. I begged Mr. Trakas to talk to the Governor's people and make sure they didn't fire me. I explained how it would be improper for them to do so. Mr. Trakas was supportive, but as a friend, also was candid in telling me that this was not good for me. He also pledged to make some calls. (See, audio recording attached hereto.)
157. It is important that I put all of these people, connected to the Lottery and Governor, on notice. I was genuinely concerned about losing my job ... advised everyone of such ... and also advised and cautioned everyone that firing me would be illegal and improper. I just wanted to keep my job and not face any type of retaliation. That had been my mantra from day one ... work really hard, stay out of trouble or the paper, and keep my new career that was so financially important to me. I didn't ask for any of this mess. All of these various people had direct knowledge that I had reported crimes, what aspects and policies required me to report those crimes, and that I was still engaged with law enforcement agencies in

- pursuing the matters. I advised all of them that any negative employment action against me would be improper.
158. On October 24, 2012, I sent Ms. Popadiuk a letter after the story about me appeared in the *Plain Dealer*, again informing her that I was legally obligated to report crimes and that I did not want the negative news coverage of those actions to cost me my job (Lottery Doc. No. 254860, Exhibit DD to this affidavit).
 159. On October 29, 2012, I sent to Ms. Popadiuk, Mr. Berg, and Lottery Chief Legal Counsel Larry Miltner a five-page letter outlining what was happening regarding the criminal activity I had reported. I also explained the circumstances revolving the negative coverage about me in the *Cleveland Plain Dealer* (Exhibit EE).
 160. This letter explicitly details how I believed crimes were taking place and that I had been working with law enforcement on those matters. I also advise them that I was working with the FBI and the Ohio Ethics Commission about those potential crimes (Exhibit EE).
 161. I also specifically advised them that I was reporting crimes in conjunction with Ohio Revised Code 2921.22 and the Seven Hills Charter at Section IV-5 9 (Exhibit EE).
 162. As the Labor Relations Officer, an attorney, and a long-term elected official, I was well aware that an employee such as myself had legal obligations to follow the law and report these types of crimes. Failure to do so could cost me my job, my position as an office holder, my law license, etc.
 163. On the final page of the letter, I spell out clearly my concern that my involvement in reporting these crimes should not lead to any employment action against me at the Lottery (Exhibit EE).
 164. On November 12, 2012, the Lottery was closed for Veteran's Day.
 165. On November 13, 2012, I was called into a meeting with Ms. Popadiuk, Mr. Berg and Security Guard Jack O'Donnell. I was terminated at this meeting. I immediately cautioned everyone that this was a retaliatory, illegal dismissal. Ms. Popadiuk attempted to have me sign various documents, trying to barter my waiver of litigation in exchange for a severance package. I declined and again advised all present parties that my termination was illegal. I did not sign any exit documents and immediately walked to my attorney's office, located across the street.
 166. On November 13, 2012, I received a letter about my termination from Mr. Berg.
 167. On November 14, 2012, I received various exit materials from the Lottery.
 168. I signed up for unemployment compensation and the Lottery did not challenge or demonstrate in any way that I was fired for cause.

169. Ms. Popadiuk even testified that before I was terminated, she was summoned into a meeting with Mr. Berg and Mr. McDonald. She had no idea why Mr. McDonald was present. He was there because he was delivering the message from the Governor's Office to terminate me. Why else would Mr. McDonald be at a meeting about my termination? He was not my boss. He did not assign me work. We had no day-to-day Lottery interaction. Ms. Popadiuk testifying that he was at the meeting where she learned I would be fired demonstrates clearly that the order came from or was approved by the Governor's Office (Popadiuk Trp. Page 59 Line 23 to Page 61 Line 1).
170. After I was fired from the Lottery, Ms. Popadiuk emailed Mr. Long from the Columbus Office of Collective Bargaining. This is someone that I worked a lot with – he was sort of the liaison above my position giving guidance. He was responsible for helping the Lottery with labor matters. Mr. Long had no idea I was going to be fired and seemed surprised when told by Ms. Popadiuk. Ms. Popadiuk failing to give Mr. Long a heads-up about my firing demonstrates that she didn't pull the trigger, she was told to do so by the Governor's Office (Lottery Doc. No. 252377; Exhibit FF attached hereto).
171. After I was terminated, I called Mr. Trakas, told him I was terminated, and told him he needed to quickly talk to the Governor's Office and tell them that this was a big mistake. I explained to him how this was an illegal firing and how I didn't want to cause trouble for the Governor or the party. But, when news of my firing hit the papers, it would be bad for everyone. I also told him I would be forced to pursue litigation because this public firing would ruin my career. He said he would call the Governor's Office.
172. Mr. Trakas called me back after speaking to his contacts in the Governor's Office and confirmed that, indeed, I was fired because I was in the paper a second time and that the coverage of me was unflattering for the Governor. I tried to explain to him that that was illegal. He tried to talk me out of litigation. He explained to me how his brother, Bruce Trakas, had been fired under a similar circumstance and because he was an at-will employee, he lost and could be fired for any reason. I repeatedly tried to explain to Mr. Trakas the public policy exception. He was sympathetic; kept confirming that what was done to me was horrible and wrong; but that I didn't want to take on these guys. He told me how they had endless money to fight me and ruin my reputation. I told him I was a man of principal and would fight until my last penny because what these people did was wrong and this type of behavior was bad for the country.
173. He wished me luck and again reiterated that he felt for me and that what was being done to me was horrible wrong.
174. As stated, it is clear to me that Ms. Popadiuk did not have the authority to fire me by herself in November of 2012. After the second newspaper article, it is obvious that she was either directed to fire me by the Governor's office or given the authority to fire me, which she would have chosen to do given my documenting her improper and illegal actions as HR Director.

175. During my year of employment, I tried to be as nice and supportive of Ms. Popadiuk as possible because she technically was my direct supervisor. I wasn't interested in upsetting her and our text messages and emails reveal a very friendly, positive working relationship.
176. In an effort to build a strong relationship with her, I even called her "Chief." One day someone in the office was discussing nicknames so I said we should call her "Chief" because she was our fearless leader. She loved it and even texted me how much she loved it. As you can see, virtually every correspondence with her I address her as Chief.
177. However, despite my desire to just fit in, have a nice career, secure my three "high" years, and advance, Ms. Popadiuk's performance immediately caught my attention.
178. On my grandmother's grave, I testify under oath that I have never witnessed a more unprofessional, inappropriate employee. Her actions were literally shocking to me.
179. Ms. Popadiuk would repeatedly come to work late yet get away with it because her secretary Kathy Marshall would cover for her. During her own deposition, she even admitted how carefree she is with her schedule and start times. It would infuriate me ... she would often come into work 30, 40 or 50 minutes late; drop off some bags and then head outside to Starbucks to go get her morning coffee. To me, this was a theft of state time and something that no other Lottery employee could get away with other than the Director of Human Resources. (Popadiuk Trp. Page 96 Line 25 to Page 98 Line 20).
180. I initially struggled with what to do because I was new and this was my boss. Early on, I wasn't 100% sure what she was up to. I didn't know if she had meetings off campus or some other valid excuse or if she would properly adjust her time. Eventually, near the Fall of 2012, I felt it was getting ridiculous and started trying to track it.
181. I witnessed Ms. Popadiuk make countless personal phone calls during the day. She would never use her Lottery phone. Instead, she would use her personal cell phone. These calls were obnoxious. I distinctly remember her making a 15-minute phone call to a grocery store/baker about cupcakes for her child during the middle of a staff meeting. Our entire department, myself included, was sitting around a conference table during our staff meeting for 15-minutes waiting for the boss to finish ordering cupcakes.
182. This irked me because Ms. Popadiuk had sought serious discipline action against a Lottery employee for doing the same thing – making personal phone calls on Lottery time. This employee received a three-day suspension and a last chance agreement for doing the exact same thing as Ms. Popadiuk.
183. Repeatedly, I would see employees under Ms. Popadiuk's control violating various policies. Ms. Marshall would repeatedly print off color recipes and visit non-work related sites on her Lottery computer throughout the day. I would often find the recipes on the copier. Mr. Hewitt, another employee, would frequently visit sports related sites throughout the day. Some of these activities are captured on the Lottery's iPrism Internet Reports which show sites visited on the computer.

184. I gently raised these issues with Ms. Popadiuk, not wanting to be too aggressive since she was my boss, and she scoffed them off and said she gives her employees a lot of slack.
185. Ms. Popadiuk would repeatedly post pictures of her children on Facebook during work hours. She even stopped a staff meeting once acknowledging she was distracted saying, "Sorry, I keep posting pics of my kids to Facebook. See audio recording attached hereto.
186. I never engaged in any of these types of behaviors and only used my Lottery equipment for Lottery business.
187. I was deeply troubled by the inconsistency in Ms. Popadiuk's pursuit of discipline. She would describe for me how she wanted some employees fired for various activities, yet I would see other employees survive despite more egregious activities. I will list some of these incidents without naming the employees to protect their identities. I can identify them if need be – most of their disciplinary matters are covered in the supplied materials. I just didn't feel the need to reveal their identities here since my affidavit is the one likely to be reviewed by the media.
188. I was told that before I arrived at the Lottery, there was a big scandal called "Porngate" that involved various Lottery employees in the IT department using Lottery equipment to view pornographic images. Some of the employees involved in those policy violations were still employed at the Lottery. I tried to reconcile that with how Ms. Popadiuk seemed much more aggressive in pursuing other employees that did much less.
189. As mentioned, Ms. Popadiuk aggressively wanted me to pursue and discipline an employee in the call center, an African-American, for making over 300 personal phone calls in one month while at work. The volume of these calls was confirmed via an Inspector General's investigation. The investigation also demonstrated that other people in the department had made as many as 150 personal calls during the same time frame. Ms. Popadiuk only wanted me to pursue discipline against this one employee. I advised her, "Be careful, if you are going after (Employee X), someone might want to see the personal calls you are making." She replied, "I'm the boss ... I can call whoever I want."
190. Ms. Popadiuk once told me she wanted to fire this employee because "she always looked whacked out on drugs all the time." She also made other offensive comments related to this employee's race calling her "ghetto" and "hood". She told me how as much as she wanted to, she couldn't just fire her because she was "black" and "in the union" and had to "build a case against her." I told her the comments were inappropriate and tried to focus on the matter at hand because I was directed to handle the case.
191. A review of this employee's file demonstrates that for most of her career, she was a good employee with little discipline. Only after she landed on Ms. Popadiuk's "radar" did she suddenly start having a "case" built up against her. In 2011 and 2012, she started getting flagged for multiple violations and Ms. Popadiuk instructed her supervisors to give her a really low performance rating. I do not know whatever happened to this employee – she was still an employee when I was terminated.

192. There was another African-American female, I believe aged in her 70s, that was a Lottery sales rep. She literally ran down an Amish buggy from behind – destroying the buggy and severely injuring the horse. She did not lose her job over this. Once again, her file looks similar to the other African-American employees. After years of very little discipline, there was a spike in her reprimands and problems. Just like the other employee, Ms. Popadiuk stated she wanted this older employee “gone” and that once again – she had to “build a case against her.” This employee was facing a bunch of discipline when she agreed to retire in October of 2012. Ms. Popadiuk was successful in forcing her out the door.
193. The two managers in the call center were also both African Americans with long careers at the Lottery. While discussing an employee once in a meeting, these two employees casually discussed how various workers in the call center watch videos when they are not busy. They were also the supervisors of the employees making hundreds of personal phone calls just a few desks away from them. Again, nothing happened to them. Ms. Popadiuk described them as “a joke” and that the “whole department was a joke” and she ultimately got one of these managers to also retire instead of face discipline. See audio recording attached hereto.
194. The point is, these four African-American employees were clearly treated differently than everyone else. In each case, Ms. Popadiuk stated she wanted them and but was cautious about getting sued for discrimination. Instead, she “papered their file” and started building cases against them and successfully, to my knowledge, was able to force two of the employees to leave via retirement instead of facing discipline and forced a third employee to sign a last chance agreement.
195. For me, these scenarios are troubling for many reasons including when I ponder that I was wrongfully terminated for following a public policy and fulfilling my legal obligations in reporting crimes.
196. Since Ms. Popadiuk was my boss, I had to tread very carefully in questioning and reporting her actions. I did caution her about her actions multiple times but tried to do so in a manner that wouldn’t cause her to retaliate quickly against me. These scenarios happened over long periods of time so there would be peaks and valleys of my concerns.
197. I also did start documenting her actions. At some point during my employment, I genuinely felt she had crossed a line and that I needed to do something about it to protect these employees and even me. I felt she was a sitting duck for a discrimination lawsuit and was being thorough in documenting these items at a minimum to protect myself. I knew that if I was going to “make a move” against her, I needed a lot of examples and a lock-tite case. If I moved and didn’t have the “goods” – she would then work against me.
198. Conversely, out-of-the-blue, Ms. Popadiuk had no problem firing someone she identified as “gay” out of Southern Ohio. This person was a male that I did not know. Unsolicited, during a meeting, Ms. Popadiuk announced he was “gay” in a derogatory tone. She referred to him as a “faggot”. I do not remember his name or on what alleged grounds she fired him.

199. There was another white male that was repeatedly in trouble and facing discipline. This employee had apparent anger issues and even lashed out during a disciplinary meeting. Ms. Popadiuk stated that it “was her dream” to walk him out of the building. As this employee crept closer to the termination line, he advised Ms. Popadiuk that he had a medical condition – diabetes – and his imbalances were causing his poor performance and missteps.
200. Ms. Popadiuk mocked his medical claim in front of staff and claimed he was just using that as an excuse to justify his poor performance. At a random meeting, while this diabetes claim was being discussed, Ms. Popadiuk, unsolicited, revealed that an Ohio government employee known to our office also had diabetes. See audio recording attached hereto. I was blown away that she would so carelessly reveal an employee’s private, personal medical condition for no valid department reason.
201. In general, I believe Ms. Popadiuk has an agenda mostly against white males. She would aggressively try and surround herself with younger female workers in the department. She described how they made her feel “hip” to have “young girlfriends.” She was close friends with two such young female employees in the department, Ms. Zackary and Shanika Hardaway. They would frequently discuss social matters at work like dating and their favorite television shows.
202. Almost every staff meeting started with Ms. Popadiuk and “the girls” wasting 15 minutes talking about what happened on the television shows “Revenge” and “The Good Wife” – Ms. Popadiuk would discuss how she wanted to come back in her next life as “Kalinda” – a sassy, no-nonsense character on The Good Wife that was always beating and sticking it to the men on the show, outsmarting them.
203. Right before I was terminated, Ms. Popadiuk pushed to hire Ms. Hardaway full-time. Ms. Hardaway was only 24 or so and just out of college and with her full-time job, would be making close to what I was making ... a lawyer with 16 years of experience. Make no mistake about it, I think Ms. Hardaway is great. She is a smart, hard-worker and deserved her hire and position. However, I equally didn’t deserve to be wrongfully terminated.
204. As described, I do believe Ms. Popadiuk also had an agenda against some of the African-American employees but was very slow and careful in pursuing them for fear of getting sued.
205. Ms. Popadiuk repeatedly would reveal her “dirty laundry” regarding her ex-husband, Lottery IT Employee Roman Popadiuk. Everyone in the office knew the whole story because she would always be talking about it. I felt the discussion was inappropriate because Mr. Popadiuk was an employee.
206. One day, Ms. Popadiuk put a stack of files on my desk and told me to read them. I did as was instructed. When finished, I asked her what the issue was and why she had me read the files. She laughed and said, “Oh, I just wanted to have you read all the juicy gossip.” The files contained salacious descriptions of Lottery employees involved in various

romances that were brought up in connection to a discipline matter before my arrival. These were not pending matters and absent Ms. Popadiuk directing me to read these files, I would have never known anything about those employees, who they were sleeping with, etc.

207. Ms. Popadiuk would routinely gossip about employees including me. I once found a gossipy email about me she had printed off between her and Mr. Long. It was dated March 29, 2012. As part of our discovery, we asked for Ms. Popadiuk's emails and they were not provided. In fact, the Lottery, Ms. Popadiuk, and Mr. McDonald did not provide one text or email message where I was discussed in any negative manner. If I was such a bad employee, surely there would be at least one message from Ms. Popadiuk to someone about me my performance.
208. Ms. Popadiuk would repeatedly make offensive comments about Mr. Berg and Mr. Berg's assistant Tracy Konesky. Whenever she would have some issue with them, often after she was at a meeting with them or had some interaction with them, she would storm back into our office calling Mr. Berg or Ms. Konesky "stupid" or "clueless." One of her favorite phrases was "Dennis (Mr. Berg) is an idiot." Our office was on the first floor ... the others were on the fourth floor. It is as if she felt safety to spout off once she hit our level. She would frequently make fun of Ms. Konesky's blonde hair calling her a "ditz."
209. Ms. Popadiuk took the staff to a Christmas lunch and bought alcohol for those that wanted it and had drinks herself and then returned to work. On one side of the coin, this was just a Christmas lunch. On the other side of the coin, technically, other Lottery employees had been disciplined for drinking on the job.
210. I was the Lottery floor monitor and I expressed concern that the building did not have enough defibrillators after Lottery employee Peggy Shea died of cardiac arrest in the cafeteria. I advised Ms. Popadiuk that she should advise Mr. Berg about this issue.
211. I also expressed concern to Ms. Popadiuk about the safety of female employees after Governor Kasich removed the full-time security of highway patrol from the premises to save money. I knew that young, female employees like Ms. Zackary were often working flex shifts and were in the building until late at night by themselves. I told her she should advise Mr. Berg.
212. The point of all of this is simple: Over time, despite my best efforts to fly low on the radar and just do a good job, it became obvious to me that Ms. Popadiuk had crossed the line and that she was not fit to be the head of human resources. This is the unique situation where I really had no one that I could report Ms. Popadiuk to because of her position. She was clearly very close with Mr. Berg. Even though she mocked him, she knew the two of them were a "team" and they were united in the fact that they never wanted me hired in the first place but had to hire me because of the Governor.
213. Likewise, Ms. Popadiuk was very close with Chief Legal Counsel Larry Miltner. Mr. Miltner is a very nice, casual, laid-back man and absent me having a large amount of evidence, he would not go after Ms. Popadiuk if I raised concerns. If I contacted the

Inspector General's Office, it was my understanding that they would simply turn the matter over to Mr. Miltner, again creating the situation where it could get back to Ms. Popadiuk and she could retaliate against me. I have ultimately reported the theft of time issue to the Inspector General and just as I worried, they turned it over to the Lottery. I have no knowledge if anything ever happened as a result.

214. I tried addressing most of these issues with Ms. Popadiuk. I tried to give her sound advice, or reign in her comments, or even highlight for her the legalities of some of her actions. I walked that fine line of trying to improve and document the situation without upsetting my boss and having her turn against me. I even began taping some of our discussions. The reality is I was in the process of reporting these violations because I was in the process of properly documenting them. The extent of my detail, as demonstrated here, confirms this.
215. I believe my firing was ordered by the Governor's office for my reporting of criminal activity because he was embarrassed to be associated with me in the negative news articles. In the alternate, the Governor's office, in light of the second article, gave Ms. Popadiuk the "green light" to fire me which she did because she sensed I was growing upset with and documenting her actions and she was faced with the risk that I would expose her.
216. All of the documents and recordings attached to this Affidavit are true and complete copies of original documents authored by me, received by me from the stated writers, or represent true and complete portions of deposition transcripts in this case.

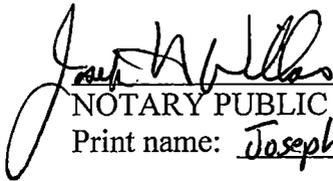
Affiant further sayeth naught.

Cleveland, Ohio



DAVID A. BENTKOWSKI

SWORN TO AND SUBSCRIBED before me, a Notary Public in and for the State of Ohio by the above Affiant, a person known to me and pursuant to law, on this 1st day of October 2015.



NOTARY PUBLIC
Print name: Joseph H. Wilkes

Commission expires: March 9, 2020

