

# DSK Law

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EST. 1976

January 8, 2024

Mr. Marc Crail  
Vice Mayor  
City of Mount Dora  
510 N. Baker Street  
Mount Dora, FL 32757

## **Re: Mr. Patrick Comiskey**

Dear Vice Mayor Crail:

The Firm of DSK Law was retained to conduct an internal investigation into allegations concerning Mr. Patrick Comiskey, the City Manager of the City of Mount Dora. I was charged with the responsibility of investigating the internal complaint filed by the Interim Human Resources Director, Kimberly Helfant and any other violations that I gleaned or discovered during the investigation. Moreover, I was charged with making recommendations.<sup>1</sup>

A summary of the interviews follows, and the transcripts are attached as **Composite Exhibit "A"**.

### **Kimberly Helfant:**

I interviewed Ms. Helfant on August 7, 2023. She is the interim Human Resources Director. Ms. Helfant has been employed by the City, in various roles, over the last eleven (11) years. Patrick Comiskey became the City Manager in November 2021.

Sharon Kraynik served as the Human Resources Director until January of 2023. Ms. Helfant said that she made numerous attempts to confer with City Manager Comiskey to discuss whether she would be named the Interim Human Resources Director and to discuss her role upon Ms. Kraynik's departure. She said that she texted and emailed him; yet he ignored her communications. Ms. Helfant said that she would set meetings with City Manager Comiskey to discuss his plans for the Human Resources Department and

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<sup>1</sup> This Report was amended, solely, to correct a citation on pg. 28.

he would cancel the meetings. In January 2023, the City Manager posted the Human Resources Director position for hire.

On or about February 8, 2023, Ms. Helfant attended a seminar and while off-site she received a telephone call from Kenneth Hargroves, an employee in the Human Resources Department. Mr. Hargroves told her that Merry Lovern (the Executive Assistant to the City Manager) had argued with members of the Human Resources Department. *See* Helfant (August 7, 2023) Depo. Tr. 6:18-25; 7-9.

Later in the day, Ms. Helfant returned to the office and Mr. Hargroves and Marisol Saldana reported that Ms. Lovern came to the Human Resources Department to express her displeasure with Ms. Natasha Vega. She was angry because Ms. Vega, the benefits specialist, had gone to City Manager Comiskey directly to have him sign a document. Ms. Lovern was angry that Ms. Vega had circumvented her. Ms. Saldana witnessed Ms. Lovern say that if anyone else circumvented her, she would “break their hand.” *Id.* at 10:7-21.

Ms. Helfant met with the City Manager in the evening of February 8, 2023, and she reported what her staff told her about Ms. Lovern. Ms. Helfant said that she met with the City Manager for approximately three (3) hours. She told the City Manager that Ms. Lovern was often “unprofessional.” She recounted an incident where Ms. Lovern had recorded her interaction with a citizen and replayed the recording to members of the Human Resources Department. Ms. Lovern seemed proud that she was frustrating the citizen who was calling the City as part of a mass effort to inquire into various public records. Ms. Helfant referred to this group as the “First Amendment Auditors.” Ms. Helfant said that everyone was shocked at Ms. Lovern’s antagonistic behavior towards the citizen and shocked that Ms. Lovern thought that her behavior was funny. *Id.* at 14:15-25; 15:1-24.

Ms. Helfant further told the City Manager that Ms. Lovern, on more than one occasion, came over to the Human Resources Department to loudly express her disagreement with someone who had been promoted. The City Manager spoke little during their meeting. He took notes and Ms. Helfant is unaware of any disciplinary or remedial action imposed against Ms. Lovern in response to her conduct. *Id.* at 18:12-21

Ms. Helfant said that during the City Council meeting on May 16, 2023, Mayor Crissy Stile, moved for the City Manager to resign and she cited a number of alleged deficiencies. The Council members concluded the meeting with an agreement that the Human Resources Department would conduct a survey of the City Manager to include all people who reported directly to him. *Id.* at 46:16-19.

On June 1, 2023, Ms. Helfant received an email from Mr. Hargroves regarding an email from the City Manager informing him of new hiring procedures. A true and correct copy of the May 30, 2023, email is attached as **Exhibit “B”**. Ms. Helfant said that prior to the May 30, 2023, email, neither the City Manager nor Ms. Lovern were involved in the hiring process.

Ms. Helfant said that on June 7, 2023, a fellow employee, Angela “Angie” Smith, lodged a complaint with the Human Resources Department. Her complaint involved numerous allegations and components. One of her allegations was that the Interim Police Chief, Michael Gibson, was sharing sensitive law enforcement operations information with the City Manager concerning a potential protest event to be held in the City.<sup>2</sup> The information shared was alleged to have included, but was not limited to, police tactics, stationing of law enforcement, etc. It was later determined that one of the organizers of the protest was in fact the City Manager’s wife, Jane Comiskey. Ms. Helfant believed that once Mrs. Comiskey’s involvement in the protest became known that the sharing of information between the Interim Police Chief and the City Manager ceased. *Id.* at 108:6-25.

Ms. Helfant initiated an investigation of Ms. Smith’s allegations, which included the interview of fellow employee, Jessie Tallent. Mr. Tallent believed that he was being retaliated against by Mr. Comiskey because he was a witness in Ms. Smith’s allegations. *Id.* at 88:3-15; 89:1-1.

On June 15, 2023, Ms. Helfant received an email from the City Manager directing her to focus all of her attention on completing the survey of his performance and that she is not to initiate any investigations without his approval. A true and correct copy of June 15, 2023, email is attached hereto as **Exhibit “C”**. *Id.* at 82:24-25; 83:1-22.

On the same day, Misty Sommer contacted Ms. Helfant, telling her that she wanted to amend her survey. Ms. Helfant and Mr. Hargroves met with Ms. Sommer at a local coffee shop and Ms. Sommer told them that she wanted to amend the survey to give the City Manager higher scores. She did in fact amend her survey. Ms. Sommer then came to see Ms. Helfant a second time that day and indicated that Ms. Lovern was overheard saying that she would do what she could to uncover the identity of each person’s survey. Ms. Sommer was concerned that her anonymous survey would be uncovered and was concerned for her job. *Id.* at 89:5-12, 17-23; 90:1-9; 91:6-13.

Ms. Jeanann Hand, the City Clerk, also expressed concerns due to Ms. Lovern’s comments that she would uncover and identify the survey participants. Ms. Hand asked Ms. Helfant to amend her survey and she did amend her survey. Ms. Helfant kept the original and amended surveys of Ms. Sommer and Ms. Hand. A true and correct copy of amended surveys are attached hereto as **Exhibit “D”**. *Id.* at 93:13-23.

Ms. Helfant said that she was contacted by Marilyn Douglas in June 20023, as she was dropping off the surveys to council members and Ms. Douglas told Ms. Helfant that the City Manager did not want the City Attorney to review multi-year contracts and that he wanted all language removed which would permit the City Attorney to review multi-year contracts. Ms. Douglas expressed concern about the City Manager’s request. *Id.* at 102:16-15.

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<sup>2</sup> An investigation into the sharing of intel between Interim Chief Gibson and Mr. Comiskey is outside the scope of my investigation and I did not investigate the same.

On June 16, 2023, Ms. Helfant spoke with Councilman Dennis Dawson and asked him what she should do about the pending investigation involving the City Manager and Interim Police Chief due to the City Manager's order not to proceed with investigations absent his approval. She told Councilman Dawson that she believed she was being retaliated against by the City Manager. *Id.* at 106:1-21; 107:17-19.

Ms. Helfant believed that the City Manager blamed her for some of the Mayor's stated reasons for wanting him to resign. By way of example, Ms. Helfant was aware that the City Manager sought to have his wife participate in an interview panel to hire the communications coordinator. The Mayor made mention of Mrs. Comiskey's involvement in the hiring process as one of her reasons for wanting the City Manager to resign. When the City Manager heard this, Ms. Helfant said that the City Manager looked at her. *Id.* 111:20-25.

Ms. Helfant said that Councilman Nate Walker later apologized for putting Ms. Helfant in that position and he expressed doubts that she would be hired as the permanent Human Resources Director. *Id.* at 114:11-21.

Ms. Helfant said that on June 23, 2023, the City Manager requested that she turn over all of the Human Resources' investigation files. She told the City Manager that the files were in her physical possession. To wit, the City Manager scheduled a meeting with her on June 26, 2023, at 8:00am for her to deliver the files to him and discuss the pending investigations. *Id.* at 122:6-9.

Ms. Helfant was accompanied by Mr. Hargroves at the June 26, 2023, meeting. When they arrived, Ms. Misty Sommer was present and the City Manager told Mr. Hargroves that he could not attend the meeting. Ms. Helfant requested that Mr. Hargroves remain since he was involved in the investigation process. *Id.* at 123:12-25; 124-128

During the meeting Ms. Helfant discussed an investigation concerning a camp counselor and then generally told the City Manager that she was conducting an investigation involving him. The City Manager told her that she was not to worry about that investigation [involving him] because he was going to get someone else to conduct that investigation. He further told Ms. Helfant that she would not be involved in the collective bargaining negotiations with the union and that she was not to contact the City Attorney if she had legal questions. *Id.*

Ms. Helfant told me that she became certified as a negotiator at the behest of the City and that the Human Resources Director had previously participated in and led negotiations, including Sharon Kraynik, the previous Human Resources Director. *Id.* at 128:8-11; 129:3-21.

At some point in the meeting, the City Manager, again, directed Mr. Hargroves to leave the meeting. Ms. Helfant was clear that she wanted Mr. Hargroves to stay. The City Manager asked her if she was refusing to meet with her boss at which time, Mr. Hargroves left the meeting. Upon his leaving (Ms. Sommer remained the entire time), the City Manager asked Ms. Helfant who directed her to initiate an investigation into Ms. Lovern.

Ms. Helfant stated that a survey on the City Manager included comments about Ms. Lovern and allegations about her conduct. Ms. Helfant indicated that no one had directed her to seek comments concerning Ms. Lovern, but that employees had naturally chosen to comment on how Ms. Lovern's conduct negatively impacted on their experiences with the City Manager's office. The City Manager asked the question more than once and Ms. Helfant gave the same answer that no one directed her to investigate Ms. Lovern. *Id.* at 139:5-25; 140-142:1-18. Ms. Helfant said she felt she was being interrogated and found the interaction intimidating. *Id.* When she said she did not feel comfortable continuing with the conversation, he finally allowed her to leave. *Id.*

The City Manager later contacted Ms. Angela "Angie" Smith to inform her that various attorneys had been retained to investigate different components of her complaint. Ms. Helfant, in turn, contacted the City Council to inform them that the City Manager had retained legal counsel to investigate matters traditionally covered by the Human Resources Department, including the investigation concerning the City Manager. *Id.* at 133:4-16

Ms. Helfant filed an internal complaint to the Mayor and City Manager on July 6, 2023. A true and correct copy is attached hereto as **Exhibit "E"**.

On July 18, 2023, according to Ms. Helfant, the City Council was not receptive to the City Manager's decision to bring in legal counsel to investigate other pending matters. *Id.* at 171:7-15.

Ms. Helfant said that City Directors began to complain that the hiring process had slowed down substantially since the City Manager took over the process. The City Manager had required that applications for full-time positions be forwarded to him and Ms. Lovern for processing (he altered the parameters to no longer include part-time positions). The City Manager was now involved in selecting applicants, negotiating pay rates and negotiating offer letters. Human Resources, in turn, could not take any action to hire applicants until they heard back from the City Manager. The City Manager's responses to move forward with applicants often took weeks and sometimes months. *Id.* at 142:19-25; 143:1-10.

By way of example, Ms. Sommer sought to hire an employee in her Department (Brittany Holler). The City Manager approved the hire, but the applicant desired to negotiate her pay and the City Manager was informed of this on June 21, 2023. Typically, this process would be handled by Human Resources. Ms. Sommer was tasked by the City Manager to prepare the offer letter; a task typically completed by Mr. Hargroves in Human Resources. As of July 26, 2023, the City was still working on finalizing Ms. Holler's hire with the City. *Id.* at 143:11-25; 144:1-25; 145:1-24; 146-147.

In another matter, an employee sought an internal transfer on July 14, 2023. As of August 3, 2023, the transfer had not been completed and as a result the employee resigned. *Id.* at 149:17-25; 150:1-16.

Ms. Helfant said that the City Manager played favorites and would promptly respond to emails to hire employees for the City Library and the contrast in his response times was glaring. *Id.* at 143:6-10.

Ms. Helfant complained that overall, the City Manager fails to respond to her emails concerning City business. On June 28, 2023, she contacted the City Manager about settling a case involving a “trip and fall” on a City sidewalk. The case was set to go to mediation. A week later the City Manager responded, asking where the sidewalk was located. Ms. Helfant responded and received no further response from the City Manager. *Id.* at 159:18-25; 160:1-20.

On July 5, 2023, an employee of the City Library, Amber Stofferahn, contacted Ms. Helfant to file a complaint. Ms. Helfant contacted the City Manager and informed him of the complaint, since she was prohibited from conducting investigations. The City Manager has not responded, and Ms. Helfant does not know what to tell the employee or others seeking her assistance.

On July 12, 2023, she emailed the City Manager her concerns and matrix regarding the City’s pay scale, and she still has not received a response from the City Manager.

On July 27, 2023, she contacted the City Manager to settle a worker’s compensation claim. The City Manager finally responded on the eve of mediation. *Id.* at 162:6-20.

Next, Ms. Helfant complained that Jason Marlar was appointed as the Interim IT Director, absent from any competitive application process. Ms. Helfant said that she has since learned that the former Director, Jim Faulkner, is being retained on a contractual basis to perform duties that Mr. Marlar does not have the skills to complete. *Id.* at 176:16-18.

This year, and for the first time, the City Manager requested to participate in the insurance meeting with the City’s insurance broker, Brown & Brown. Ms. Helfant changed the date of the meeting to July 11, 2023, so that the City Manager could attend. When the City Manager did not show up to the meeting, Ms. Helfant directed Ms. Saldana to call the City Manager to determine when he would be arriving. Ms. Lovern told Ms. Saldana that the City Manager had just left another meeting and he was going to lunch and would not be attending. Ms. Helfant was embarrassed for the City. *Id.* at 165:19-25; 166-177.

Ms. Helfant said that James “Jim” Klein, the City’s Water Treatment Plant Operator, told her that the network connection is inconsistent at the water treatment facility and that it is a public safety issue because the employees cannot receive safety warnings when the network is down. The City Manager is aware of this and has not yet purchased the technology needed to cure this defect. *Id.* at 174:5-14

Ms. Helfant complained that no one had been hired to serve as the permanent Human Resources Director and she believes that her not being hired is in retaliation for her complaint. In August of 2023, Ms. Hand told Ms. Helfant that the City Manager had spoken highly of her and indicated that he viewed her favorably for the Human Resources

Director position. He also indicated that he was aware that she was completing her degree in Human Resources. *Id.* at 110:18-21.

On May 30, 2023, the City Manager directed Mr. Hargroves to submit his top 40 picks for the permanent Human Resources Director position, Mr. Hargroves responded on May 31, 2023, and included Ms. Helfant in the group of qualified applicants. A true and correct copy of May 30 and May 31, 2023, emails are attached as composite **Exhibit “F”**. On July 7, 2023, the day after Ms. Helfant filed her complaint, the City Manager emailed Mr. Hargroves, stating: “Please post the HR Director position again and keep it posted for another 30 days.” A true and correct copy of the July 7, 2023, email is attached hereto as **Exhibit “G”**.

### **Kimberly Helfant (Second Interview):**

I interviewed Ms. Helfant again, per her request on August 14, 2023. Ms. Helfant said that it appears that the City Manager has issues with women, including the Mayor and City Attorney. To that point, Ms. Helfant offered nothing concrete.

Ms. Helfant went on to discuss the manner in which the City Manager’s involvement with hiring has slowed down the process substantially. She said that the City Manager showed preferences for the library’s hires and a friend of Ms. Lovern’s (Jennifer Esquia) in responding promptly to her emails to finalize applications. *See* Helfant (August 14, 2023) Depo. Tr. 15:20-25; 16:1-12.

In one instance, the City Manager, after directing her to refer all hiring to him, asked Wayne Zimmerman to assist in posting an arborist position. Mr. Zimmerman is not an employee of the Human Resources Department and he has no expertise in horticulture. He is the Deputy Electric Utility Director. *Id.* at 3:23-25; 4:1-24; 5:12-22.

### **Kimberly Helfant (Third Interview):**

I interviewed Ms. Helfant a third time, at her request, on September 11, 2023. Ms. Helfant said that Ms. Sommer contacted her on August 15, 2023, and told her (days prior to her interview) that she returned to City Hall in the evening and witnessed Ms. Lovern slamming things and saying, “Cal, Nate and Crissy (City Councilmembers) need to go.” Ms. Lovern was angry that the Councilmembers learned that a meeting to review pending Human Resources applications occurred at the library. Ms. Lovern said the Councilmembers should not have brought it up at a Council meeting and that Ms. Helfant was on the “short list.” *See* Helfant (September 11, 2023) Depo. Tr. 6:12-24.

On September 7, 2023, Ms. Sommer told Ms. Helfant that Ms. Lovern said that she hoped that Councilmember Rolfson broke both of his hips. Councilmember Rolfson recently underwent back surgery and Ms. Lovern said that she hoped that he would break his hip. *Id.* at 11:11-22.

### **Kimberly Helfant (Fourth Interview):**

I interviewed Ms. Helfant, per her request, on September 20, 2023. Ms. Helfant complained that the processing of applications continues to be delayed under the City Manager's authority and control. There has been no response to the promotion of an employee, Peyton Highland. Mark Decosta, Public Works Supervisor, has also requested an update on the hiring of Dakota Fisher. Ms. Douglas is also still awaiting the status on hiring for a purchasing position. *See Helfant (September 30, 2023) Depo. Tr. 10-13.*

Finally, Ms. Helfant said that Mr. Shonk has begun copying her on communications with the City Manager as he feels he is being harassed. Mr. Shonk told her that the City Manager emailed him approximately twenty-seven (27) times in one day, with photos of minor issues. Ms. Helfant said that the barrage of emails is solely to impress upon Mr. Shonk that the City Manager is displeased with him. *Id.* at 18:16-25; 19:1-21.

**Kimberely Helfant (Fifth Interview):**

I interviewed Ms. Helfant on November 6, 2023. I asked Ms. Helfant if she was aware of any rule which prohibited the relatives of a department head (director) from being hired. She said that she was unaware of any such rule. *See Helfant Dep. Tr. (November 6, 2023) 5:4-9.* Ms. Helfant said that Mr. Comiskey never communicated to her that he believed that the hiring of Ms. Shonk was a violation of City Policy. *Id.* at 6:19-25. Ms. Helfant was unsure whether she or Ms. Kraynik hired Ms. Shonk, however, she was certain that Mr. Comiskey never discussed, counseled or otherwise gave any indication that he believed she had violated City Policy by hiring Ms. Shonk. *Id.* at 9:6-18.

I asked Ms. Helfant if she ever told Ms. Lundy that she had initiated an investigation into Ms. Lovern. Ms. Helfant said that she had not. She did, however, contact Ms. Lundy and ask her if she had any comments that she wanted to add to her survey about Ms. Lovern. Ms. Helfant said that she wanted to give everyone an opportunity to provide comments if they wished to do so. *Id.* at 11:10-24. For example, Mr. George Marek, Public Works Director, said that he had no comments to add concerning Ms. Lovern. *Id.* at 12:3-7.

**Kenneth Hargroves:**

I interviewed Mr. Hargroves on August 10, 2023. He is the Human Resources Analyst and has been employed with the City for three (3) years. He reports to Ms. Helfant, the Interim Human Resources Director. Mr. Hargroves said that he was "close" to filing his own whistleblower's complaint against the City Manager. *See Hargroves (August 10, 2023) Depo. Tr. 9:2-14*

Mr. Hargroves said that on February 8, 2023, he and Ms. Natasha Vega were in their shared office space, when Ms. Lovern came in and he could tell that Ms. Lovern was angry about something. He overheard Ms. Lovern say: "No, I'm serious." Ms. Lovern was angry that Ms. Vega had approached the City Manager directly to get his signature on a benefits form. Ms. Saldana later told Mr. Hargroves that Ms. Lovern said that the next person who tries to go around her, Ms. Lovern would "break their hand." *Id.* at 7-8.



Mr. Hargroves was present when Ms. Lovern came to the Human Resources Department to share an audio recording between herself and a First Amendment Auditor. Ms. Lovern was noticeably happy with her ability to antagonize and frustrate the caller. Ms. Lovern was laughing and no one else in the group found her behavior funny. *Id.* at 16:20-25; 17:1-25; 18:1-25;

On another occasion, Ms. Lovern came to then Human Resources Director, Sharon Kraynik, and while handing in a personnel action form (“PAF”) form for George Marek, Ms. Lovern loudly said, “another employee who does nothing is getting a promotion.” Mr. Marek had just been promoted to Public Works Director. Ms. Lovern did not mention Mr. Marek by name. *Id.* at 56; 57:1-10.

When considering a Puerto Rican applicant, Mr. Hargroves said he took offense that the City Manager indicated that Ms. Vega should sit on an interview panel because she is also Puerto Rican. He told the City Manager that he thought Ms. Vega is highly competent, but that she should not be invited onto a panel just because she is Puerto Rican. Mr. Hargroves noticed a change in his relationship with the City Manager thereafter. He no longer felt that the City Manager was favorable towards him. However, after May 16, 2023, after Councilmembers directed the Human Resources Department to conduct a survey of the City Manager, their working relationship deteriorated. *Id.* at 11-13:1-7.

On May 30, 2023, the City Manager sent an email setting forth his new hiring procedure, which placed the City Manager as a participant in all hiring. The City Manager did not explain why he wanted to alter the process. The City Manager later clarified his policy to require his involvement in all full-time hires. Previously, the City Manager only provided input in hires for Director and upper-level positions. Mr. Hargroves said that the City Manager’s inclusion in all full-time hiring slowed down the hiring process substantially. *Id.* at 30:1-25; 31:1-11.

By way of example, Ms. Helfant sent an email to the City Manager to hire an applicant, Tannia Jett, on June 12, 2023. A final offer letter was not approved until July 7, 2023. In the interim, the Deputy Director of Planning contacted Human Resources for an update. There was little they could tell him, as they were awaiting responses from the City Manager or Ms. Lovern. Mr. Hargroves provided a number of emails where responses were sought from the City Manager’s office to finalize hiring employees only to not receive responses until weeks later. A true and correct copy of email concerning applicants and responses is attached hereto as Composite **Exhibit “H”**.

In comparison, when emails were sent to hire employees for the City Library, the City Manager’s office responded within days. A true and correct copy of June 29, 2023, email is attached as **Exhibit “I”**.

The City Manager sent an email a few weeks after the survey was imposed by the Councilmembers, wherein, the City Manager directed Ms. Helfant to focus, solely, on the survey and prohibited her from initiating any investigations. It became apparent that the

City Manager was seeking to retain outside counsel to conduct investigations. A true and correct copy of attorney invoice is attached as **Exhibit “J”**.

The City Manager was made aware of the complaints filed by employees such as Angela Smith and Amber Stofferahn (employed in the library), but due to his directive not to initiate investigations, the Human Resources Department did not take any action.

On June 15, 2023, Ms. Sommer met with Ms. Helfant and Mr. Hargroves and on two separate occasions during the day amended her survey in favor of the City Manager. Ms. Sommer said that Ms. Lovern said that she would do what she could to find the identify the anonymous survey participants. Ms. Lovern’s comment had affected Ms. Sommer and made her want to alter her survey scores of the City Manager to those which were more favorable. Ms. Hand also asked to amend her survey scores to be more favorable. Ms. Hand said that Ms. Lovern said she would uncover the identity of the anonymous participants. *Id.* at 41:2-25; 42-44.

The survey dated June, 15, 2023, was published to the Mayor and City Council. The anonymous surveys were attached and reflected that two of the surveys were amended. Notes reflecting the survey participants’ comments concerning Ms. Lovern were also attached to the report. A true and correct copy of Interview Report and Surveys is attached hereto as **Exhibit “K”**.

On June 23, 2023, the City Manager called a meeting to discuss pending investigations. Ms. Helfant requested that Mr. Hargroves accompany her to the meeting with the City Manager because Mr. Hargroves had assisted her in conducting investigations. When the City Manager saw him, he said, “Kenny’s not needed.” He noticed that Ms. Sommer, the Economic Development Director, was present and he was unsure why she was there to discuss pending investigations. During that meeting the City Manager made clear he would find someone else to investigate the allegations that were pending against him. They discussed other pending investigations as well.

The City Manager then said, “Kenny, you’re not needed for this next part.” Ms. Helfant said she wanted him to stay. The City Manager asked Ms. Helfant if she was refusing to meet with him. Mr. Hargroves left. Approximately fifteen (15) minutes later, Mr. Hargroves was called back into the meeting. When he arrived, Ms. Helfant was gone and Ms. Sommer and the City Manager remained. The City Manager proceeded to ask Mr. Hargroves who directed him to initiate the investigation into Ms. Lovern. Mr. Hargroves said that the survey was anonymous and he would not give any names; however, no one directed him to initiate an investigation into Ms. Lovern. Rather, Ms. Lovern’s conduct was raised by many as having negatively impacted their experience with the City Manager’s office. The City Manager asked Mr. Hargroves again who was responsible for initiating the investigation into Ms. Lovern and at one point, insinuated that it was the Human Resources Department that was responsible. Mr. Hargroves, again, said that Ms. Lovern’s negative conduct was raised by the survey participants. Mr. Hargroves provided his notes from that meeting, attached hereto as **Exhibit “L”**. *Id.* at 83:14-25; 84-86. Mr. Hargroves said, “[a]nd I kid you not, he probably asked the same question five or six

times, asking who initiated the – the complaints and investigation against Merry Lovern[.]” *Id.* at 86:8-11.

On May 30, 2023, the City Manager directed Mr. Hargroves to send him the top applicants to fill the permanent Human Resources Director position. Mr. Hargroves promptly responded and included Ms. Helfant on that list of qualified applicants for consideration. Ms. Helfant filed her internal complaint against the City Manager on July 6, 2023, and on July 7, 2023, the City Manager emailed Mr. Hargroves to repost the Human Resources Director position. Mr. Hargroves said that it became clear that the City Manager was no longer considering Ms. Helfant for the Human Resources Director position. *Id.* at 94:7-17; 96:1-5.

**Kenneth Hargroves (Second Interview):**

I interviewed Mr. Hargroves a second time, at his request, on September 5, 2023. Mr. Hargroves said that Ms. Lovern organized a Human Resources Director application review panel, which was to be attended by Cathy Lundy, George Marek, and Sharon Kraynik. He and Ms. Helfant were not made aware that the panel had been impaneled and was meeting at the City Library.

Mr. Hargroves said that the City Manager continues to be nonresponsive to his emails. The City Manager charged Wayne Zimmerman, an electrician, to assist in hiring an arborist. The City Manager then changed the job title for the arborist position and on August 24, 2023, Mr. Hargroves emailed the City Manager concerning the changes. The City Manager did not respond. A true and correct copy of the email is attached hereto as **Exhibit “M”**.

According to Mr. Hargroves, there remains a delay in processing applications since the City Manager has assumed responsibilities for hiring. Mr. Shonk has been waiting for several weeks to hire park specialists. The difference in what has been offered to the park specialist and what the employees countered with is approximately fifty-five cents (\$0.55). *See* Hargroves Depo Tr. (September 5, 2023) 13:10-25; 14:1-11

Brittany Haller’s application has been pending since on or about June 16, 2023. *See* Hargroves Depo Tr. (September 5, 2023) 16:16-25; 17:1-17. Mr. Hargroves emailed Ms. Lovern August 11, 2023, for an update and Ms. Lovern did not respond until August 16, 2023. The City Manager ultimately approved the offer letter, making a minor change on August 25, 2023. *Id.* at 18:25; 19:1-7. A true and correct copy of email exchange is attached hereto as **Composite Exhibit “N”**.

Additionally, Mr. Shonk, Ley Vedder, John Miles and Mr. Decosta have complained of the delays in hiring staff for their departments and Deputy Chief Matt Lauer has been waiting to hire two (2) employees for some time. *Id.* at 31:24-25; 32:1-20; 36:1-10.

Applicants applying for the library and an acquaintance of Ms. Lovern (Jennifer Esquia) were processed and hired much faster than other applicants. On August 9, 2023, Ms. Lovern received an email to process Ms. Esquia and Ms. Lovern responded to finalize her

application the following day. Ms. Esquia indicated in her interview that she and Ms. Lovern were friends. *Id.* at 55:7-25.

In comparison, on August 29, 2023, Mr. Hargroves emailed Ms. Lovern asking for a status on a number of pending applicants or new hires and there was no response. A true and correct copy of the email is attached hereto as **Exhibit “O”**.

Mr. Hargroves said that he was told that Councilmember Cataldo asked Mr. Adam Sumner if Ms. Helfant was responsible for the delays in hiring employees. Mr. Sumner relayed the conversation to Mr. Hargroves. Mr. Sumner told Councilmember Cataldo that it was in fact the City Manager who was responsible for hiring delays.

Mr. Hargroves said that the Human Resources Department is not involved in many personnel decisions. For example, his department was not included in the promotion of Mr. James Klein. Mr. Hargroves received a PAF on August 24, 2023, from the City Manager’s office after the decision was already made, which included a new pay rate. Likewise, Human Resources received a PAF, not having been included nor consulted, to increase Richard Shepard’s hourly rate from \$30.00 to \$36.00 an hour. The PAF was fraught with errors in the job title and the hourly rates. There was no justification for the raise, according to Mr. Hargroves because Mr. Shepard had just received a raise earlier in 2023. A true and correct copy of the email is attached hereto as **Exhibit “P”**. *Id.* at 19:24-25; 20:1-18; 21:14-25; 25:1-23.

Mr. Hargroves said Section 4.1(B) of City Policy requires that the Human Resources Department be involved in processing new hire offers.

Next, Mr. Hargroves complained that the City Manager’s assumption of investigatory powers from Human Resources is contrary to Sections 3.2 and 3.3 of City Policy. Notwithstanding the City Manager’s assumption of investigatory powers, Mr. Hargroves complained that the City Manager was not processing nor investigating complaints. Angela Smith, Amber Stofferahn and Wilbert Joseph are examples of complaints received by Human Resources and forwarded to the City Manager, per his direction, and they have not been investigated. Ms. Stofferahn’s complaint was forwarded to the City Manager on or about July 5, 2023. *Id.* at 39:10-25; 40:1-21.

**Kenneth Hargroves (Third Interview):**

I interviewed Mr. Hargroves a third time, per his request, on September 11, 2023. Mr. Hargroves said that after our last interview on September 5, 2023, he learned of a meeting to review the conflict resolution vendor’s credentials. There was no posting of the meeting. He went to the meeting and was met there by Mayor Stile. The City Manager seemed surprised by their presence at the meeting. *See* Hargroves (September 11, 2023) Depo. Tr. 4:8-22; 7:7-16.

At the September 7, 2023, City Council meeting, Councilmember Rolfson asked about the delays in filling positions, and he inquired as to why it was necessary to await a permanent Human Resources Director to fill positions. The City Manager seemed to infer that

positions were unfilled due to the need to improve recruitment. Mr. Hargroves said that that is incorrect and not an issue because the Human Resources Department recruits directly with City Departments. *Id.* at 8:15-25; 9:1-23.

Mr. Hargroves said that he feels that he is “putting his neck on the line” by coming forward to speak with me. *Id.* at 19:3-9.

### **Kenneth Hargroves (Fourth Interview):**

I interviewed Mr. Hargroves, per his request, on September 20, 2023. Mr. Hargroves complained that many applications remain unprocessed. For example, the purchasing coordinator position has been pending since August 29, 2023. Ms. Lovern responded on September 6, 2023, that Mr. Comiskey had agreed to hire the applicant. The same day Mr. Hargroves sent over the PAF and offer letter to finalize hiring. Mr. Hargroves said he still had not received a response, approving the PAF and hiring letter. See Hargroves Depo. Tr. (September 20, 2023) 6:4-16.

Mr. Hargroves said that the City Manager, however, has pushed to hasten the hiring of a new City Attorney and to hire a permanent Human Resources Director.

### **Jeanann Hand:**<sup>3</sup>

I interviewed Ms. Hand on August 10, 2023.<sup>4</sup> Ms. Hand is the City Clerk and she has been employed by the City, in various capacities, for approximately three (3) years.

Ms. Hand said that the City Manager, in the past, made favorable comments about Ms. Helfant and in or about April 2023, he insinuated that upon her completing her schooling that she would be qualified for the Human Resources Director position. Mr. Comiskey said that he was waiting for her to finish school and “that it seemed like he would be looking at her for that position...” See Hand Depo. Tr. 6:10-17; 7:2-5. Ms. Hand walked away from that conversation with the City Manager happy for Ms. Helfant, as she believed she would be given a shot at the position.

After the survey of the City Manager was initiated, she overheard the City Manager express disagreement with the survey being anonymous. Ms. Hand also said that she was present when Ms. Lovern made it known that she could uncover the identity of those who submitted anonymous surveys. Ms. Lovern made the comment several times at different times. *Id.* at 10:10-15. On at least one occasion when Ms. Lovern made the comment that the identity of survey participants could be determined, Mr. Comiskey was present. *Id.* at 10:18-25. The City Manager said nothing to discourage Ms. Lovern’s comments. Ms. Lovern’s comments led her to amend her survey responses, improving her scores in favor

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<sup>3</sup> Ms. Hand swore in Kimberly Helfant, placing her under oath, at the start of her interview. Once it was determined that Ms. Hand may be a witness, she was removed from any involvement in swearing in witnesses.

<sup>4</sup> In the recording of the interview, I erroneously state “October 10, 2023”. The correction of August 10, 2023, is reflected in the transcript.

of the City Manager. I asked Ms. Hand if Ms. Lovern's comments made her nervous. She said that it did and "[she] went back and softened things up a lot when I sent back and adjusted my answers." *Id.* at 16:3-15.

I read the comments made by survey participants<sup>5</sup> concerning Ms. Lovern, which included:

- Merry in one word is vindictive.
- Merry tries to operate in the capacity of the Assistant City Manager.
- Merry is a huge problem, she has been given too much control.
- Merry treats Jeanann very poorly, she has no respect for her.

Ms. Hand agreed with the accuracy of the above stated comments about Ms. Lovern. Ms. Hand was noticeably sad when I asked her if she agreed that Ms. Lovern had treated her poorly. *Id.* at 19:1-12.

Ms. Hand concluded her interview by saying she wanted to add that she was "disappointed" with the turn in the City Manager's office and "the turn of the tide against the people in the human resources, especially Kim and Kenny, because it seemed like they were very admired by him and respected by him and then all of a sudden they're on the - - the bad list because of this survey that happened." *Id.* at 22:11-20.

### **Jeanann Hand (Second Interview):**

I interviewed Ms. Hand a second time, at her request, on September 5, 2023. Ms. Hand said that she is feeling intimidated by Ms. Lovern, as it has become clear that Ms. Lovern is viewing all of her emails. Ms. Sommer informed Ms. Hand in or about June 2023 that Ms. Lovern was discussing one of Ms. Hand's emails. Ms. Sommer said that Ms. Lovern has said "they better remember who their boss is." *See Hand (September 5, 2023) Depo.* Tr.5: 14-25; 6:1.

Ms. Hand said that there is a computer program called, "Barracuda," which allows designated users access to all City emails. As the City Clerk, Ms. Hand said that she utilizes the program to respond to public records requests. Ms. Lovern was provided with access to Barracuda by the City Manager. Ms. Hand said that she was unsure why Ms. Lovern would have such access. Ms. Hand said that she had overheard the City Manager ask Ms. Lovern to look up City emails.

Ms. Hand said that a few weeks ago she took a photo of Ms. Lovern working on a private laptop and sent the photo to herself. Ms. Hand believed that Ms. Lovern was working on a non-City issued laptop. It was obvious that the laptop, which was smaller than a city issued laptop, was set up at Ms. Lovern's workstation. Later, the City Manager contacted the City Attorney and asked when employees were instructed to take photos of other

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<sup>5</sup> Ms. Helfant indicated that the decision was made to re-write the comments so that the handwriting of the participants could not be matched to further protect the anonymity of the participants.

employees. Ms. Hand said that it was then that she knew that her emails were being viewed. *Id.* at 8:17-25; 9:1-11.

Finally, Ms. Hand said that it appears that the reviews of applications for the permanent Human Resources Director has ramped up since the investigation was initiated. She is unsure of the reasoning. *Id.* at 16:6-11.

**Misty Sommer:**

I interviewed Ms. Sommer on August 14, 2023. Ms. Sommer is the Director of Economic Development and Public Information. She has been employed with the City since 2014.

Ms. Sommer recalled that the City Manager asked her to sit in on a meeting with Ms. Helfant and Mr. Hargroves. *See* Misty Sommer Depo. Tr. (August 14, 1023) 4:15-20. This was the first time that she sat in on a meeting involving Human Resources matters. The City Manager told her that there were going to be some uncomfortable questions being asked. The meeting was held in the City Manager's office and they were joined by Ms. Helfant and Mr. Hargroves. *See* Sommer Depo. Tr. (August 14, 2023) 6:1-12.

The City Manager promptly asked Mr. Hargroves to leave his office and Ms. Helfant asked that he stay since they would be discussing investigations. The discussion turned to an investigation involving a camp counselor and there was mention that Human Resources had contacted the Director of the Camp and the investigation was making progress.

Ms. Helfant said that there was an allegation against the City Manager. The City Manager requested details and Ms. Helfant said she did not feel comfortable going into details. The City Manager told Ms. Helfant the investigation into his matter would be investigated by a "labor attorney." *Id.* at 8:8-16.

The City Manager then asked Mr. Hargroves to leave his office. Ms. Helfant was hesitant to have Mr. Hargroves leave. The City Manager asked Ms. Helfant if she was refusing to meet with him. Ultimately, Mr. Hargroves left the room. The City Manager asked Ms. Helfant why she took so long to let him know about the investigation into the camp counselor. Ms. Helfant responded that she learned of the incident late in the evening, the Friday prior to their meeting, and then the City was closed for the Juneteenth holiday.

The City Manager told Ms. Helfant that she was no longer to be involved in union negotiations on behalf of the City. The City Manager proceeded to ask Ms. Helfant who directed her to initiate a complaint against Ms. Lovern as part of the survey. Ms. Helfant said that no one directed her to initiate a complaint, but instead the comments flowed naturally from the participants in the survey. The City Manager asked again and again Ms. Helfant said that no one directed her to initiate a complaint against Ms. Lovern. *Id.* at 10:2-15.

The City Manager concluded by telling Ms. Helfant that she was to direct legal questions to him and he would get her answers. Ms. Helfant left the meeting. *Id.* at 11:16-20.

The City Manager then brought Mr. Hargroves back into his office to meet with himself and Ms. Sommer. The City Manager then asked Mr. Hargroves who directed him to initiate the investigation into Ms. Lovern. Mr. Hargroves indicated that no one directed him to initiate an investigation into Ms. Lovern; but rather that comments concerning Ms. Lovern flowed from the participants in the survey. *Id.* at 15:5-14. Mr. Comiskey was not concerned with the investigation into the camp counselor. Ms. Sommer said, Mr. Comiskey “strictly wanted to know who authorized the investigation into Ms. Lovern. *Id.*

Once everyone left the room except for the City Manager and Ms. Sommer, the City Manager said that he believed that Mayor Stile and City Attorney Sutphen were responsible for initiating an investigation into Ms. Lovern. He did not believe that Ms. Helfant’s response was truthful. The City Manager also said that he had previously told Ms. Helfant that she would not be participating in union negotiations, and this was not the first time that she had heard of this. *Id.* at 14:2-7.

Ms. Sommer said that the City Manager made comments aloud that he disagreed with the survey being handwritten. He also believed that the survey should have been provided in advance to give the participants more time. *Id.* at 17:1-5.

Ms. Sommer said that she amended her survey the first time due to her having reflected on her responses and she amended her survey the second time in direct response to Ms. Lovern having said that she intended to find the identities of the participants. Ms. Lovern said that Mr. Comiskey had the right to know who said what in the survey. *Id.* 17:14-24. Ms. Sommer said that she did not want her professional relationship with the City Manager to be negatively impacted by the ratings that she gave him in her survey. *Id.* at 19: 11-15.

Ms. Sommer said that she reviewed the comments made by employees concerning Ms. Lovern and while Ms. Lovern’s behavior was not always poor, there were days when one had to walk on eggshells to work with her. Ms. Sommer said: “Some days we get along great, and then some days she [Ms. Lovern] just seems very angry or unhappy with her job.” *Id.* 24:23-25; 25:1-9. “[S]ome days, you know, I feel like I can’t approach her without having my head bit off.” *Id.*

### **Misty Sommer (Second Interview):**

I interviewed Ms. Sommer a second time on October 30, 2023. I asked Ms. Sommer if Ms. Lovern ever told her that Ms. Helfant was on the “short list” of applicants being considered for the permanent Human Resources Director position and she said that Ms. Lovern had made that statement to her. *See Sommer Depo. Tr. (October 30, 2023) 9:20-23; 10:5-9.*

Ms. Sommer also said that Ms. Lovern was upset that Councilman Rolfson had spoken about Ms. Lovern at a Council meeting and Ms. Lovern said that she hoped that he would break his hips or knees (Ms. Sommer could not recall which one). Councilman Rolfson had recently had surgery and she thought that Ms. Lovern’s comment was particularly mean. *See Sommer Depo. Tr. (October 30, 2023) 3:1-22.* Ms. Sommer thought Ms.



Lovern's comments were "pretty brutal." *Id.* at 4:1-5. Ms. Sommer said sometime after the survey was released that Ms. Lovern told her that the City would pay for ruining her career. *Id.* at 5:12-17.

Ms. Sommer closed by saying that she thought it unfair that Ms. Helfant and Mr. Hargroves were being blamed for the negative comments made about Ms. Lovern as part of the survey. Ms. Sommer said that people had made similar complaints to her about Ms. Lovern in the past and she knew that the sentiments expressed in the survey were similar to those that she had received. Ms. Sommer said, "...I know that that was really hard for Merry to read, you know, again, I—I people have said that to me about her, so I know people feel that way. And again, I've experienced some of it." *Id.* at 16:13-23.

### **Natasha Vega:**

I interviewed Ms. Vega on August 14, 2023. She serves as the City's Benefits Specialist and reports to Ms. Helfant. Ms. Vega shares her office space with Mr. Hargroves.

In February 2023, she went to the City Manager's office to follow up on a form that needed the City Manager's signature. She happened to see the City Manager standing by Ms. Lovern's desk. Ms. Lovern was at her desk. Ms. Vega saw the form on Ms. Lovern's desk, in clear sight, and pointed out the form for the City Manager's signature. He signed the form and as she is leaving Ms. Lovern said to her, "[d]on't do that again." *See Vega Depo. Tr.* 4:25; 5:1-7; 6:4-13. Ms. Vega explained that it was a "time crunch" to get the form signed. *Id.* at 7:12-13.

The following day, Ms. Lovern came to the Human Resources Department and said to Ms. Vega, "What you did yesterday...don't do it again." Ms. Lovern went on to say that she needs copies of everything that the City Manager signs and forbade Ms. Vega to go behind her back again. Ms. Lovern was angry and said it was her job to protect the City Manager. *Id.* 8:24-25.

Ms. Vega offered Ms. Lovern the original form to deescalate the situation. Mr. Hargroves also tried to step in to calm Ms. Lovern down. Ms. Lovern said, "fuck it!" and walked out. *Id.* at 10:25; 11:1-8.

Ms. Lovern later apologized, however, Ms. Vega learned from Ms. Marisol Saldana, that Ms. Lovern said to her that if anyone else goes behind her back to get a signature from Mr. Comiskey that she will break their fingers. *Id.* 9:15-20.

Ms. Vega went outside to get some air, as she was upset about Ms. Lovern's behavior. While outside, she saw the City Manager and she recounted exactly what Ms. Lovern had done. The City Manager asked that she excuse Ms. Lovern's behavior because Ms. Lovern was having a few rough days.

Next, Ms. Vega said that she was present when Ms. Lovern came over to the Human Resources Department to share her audio recording of a citizen affiliated with the First Amendment Auditors. Ms. Lovern thought her recording of her agitating the citizen was funny. Ms. Vega, Ms. Helfant and Mr. Hargroves were all present. *Id.* at 15:7-25; 16:1-8.

**Marisol Saldana:**

I interviewed Ms. Saldana on August 14, 2023. She is the Administrative Coordinator for the Human Resources Department, and she reports to Ms. Helfant. She has been employed by the City since March of 2021.

Ms. Saldana recounted an incident after George Marek was promoted. The Human Resources staff were having a meeting when Ms. Lovern came in their area very abruptly. She could be heard expressing displeasure with Mr. Marek having been promoted. Ms. Lovern was bringing over Mr. Marek's PAF form to finalize his promotion. Ms. Lovern was waiving the PAF form, saying she could not believe that he was being promoted. Ms. Kraynik took Ms. Lovern into her office to apparently calm her down. Their staff meeting was put on hold until Ms. Kraynik was able to speak with Ms. Lovern. The staff ended the meeting as Ms. Kraynik was tending to Ms. Lovern. *See Saldano Depo. Tr. 6:6-24; 7:1-22; 9:15-24.*

Ms. Lovern also expressed displeasure with Adam Sumner having been promoted. Ms. Lovern passed Ms. Saldana's desk and said that she could not believe that he was promoted. Ms. Saldana said that she thought that Ms. Lovern was speaking of Mr. Sumner as that was the only promotion being processed at the time. Ms. Lovern did not mention him by name.

When I inquired into Ms. Lovern's comment about "breaking hands", Ms. Saldana confirmed that Ms. Lovern said the same. She said that Ms. Lovern came over to her desk in February 2023. Ms. Lovern was looking for Ms. Helfant. Ms. Lovern took candy from Ms. Saldana's desk and began to comment that every document that the City Manager signs needs to come through her. Ms. Saldana was confused as to the nexus of these comments. Ms. Lovern went on to say that she needs to be involved in all documents and if anyone else takes documents directly to the City Manager that she "would break their hands." Ms. Lovern said she was tired of people going around her. Ms. Lovern was visibly upset and agitated. Ms. Saldana was clear that Ms. Lovern was not joking. *Id. at 16:1-25; 17:1-25; 18:19-24.*

Ms. Saldana said that she sat quietly so as to not further encourage Ms. Lovern's aggressiveness. Ms. Saldana told Ms. Helfant what occurred when Ms. Helfant returned from a conference, which was the same day. *See Saldano Depo. Tr. 20:11-24.*

Next, Ms. Saldana said that she was present when Ms. Lovern came to her desk area to share her audio recording of a First Amendment Auditors participant. Ms. Lovern was proud of her behavior, saying "you have to treat them like they treat you." Ms. Lovern was clearly trying to agitate the caller, interjecting with arbitrary comments such as, "I like books too." The call went on for approximately two (2) minutes. *Id. at 23:2-25; 24:1-21.*

Ms. Saldana said that she was tasked with calling Ms. Lovern after the City Manager failed to appear at an insurance broker's meeting. Ms. Lovern told Ms. Saldana that the City Manager was not going to appear at the meeting, as he was going to lunch. Ms. Lovern directed her to get the insurance broker's business card. Ms. Saldana was aware that the meeting was rescheduled so that the City Manager could appear. *Id.* at 28:2-18; 30:4-25.

Ms. Saldana said that the City Manager's involvement in the hiring process has slowed matters down substantially. She does the background checks when offers are made and has noticed the longer duration to complete matters. She has noticed that employees for the library are hired at a faster pace. *Id.* at 34:7-24; 36:6-17.

### **Troy Shonk:**

I interviewed Mr. Shonk on August 21, 2023. He has been employed by the City for over five (5) years. He is the Director of Parks and Recreation. Mr. Shonk complained that the City Manager has retaliated against him because of his survey scores of the City Manager. Mr. Shonk said that his comments on his survey made it easy to determine his identity because his comments focused on matters specific to parks and recreation. See Shonk (August 21, 2023) Depo. Tr. 5:19-25; 17:8-18.

Mr. Shonk learned from Ms. Hand that Ms. Lovern had made it clear that she intended to uncover the identity of the survey participants. *Id.* at 68:6-20. As an aside, Mr. Shonk said that Ms. Lovern is rude and is part of the problem with the City Manager's office. She is rude not only to employees, but to citizens. He recounted overhearing Ms. Lovern speaking to First Amendment Auditors who had called the City. She hung up on people and laughed at them. *Id.* at 71:4-20. Mr. Shonk said the First Amendment Auditors initiated their protest after Kathy Lundy, head of the City Library, requested that a man be removed from the Library and was dishonest with the City Police when making her complaint. Citizens learned of her falsehoods and protests ensued. Ms. Lundy was not disciplined. *Id.*

Mr. Shonk complained that the City Manager became overly critical of his department, sending him photographs of uncut blades of grass, minor trash, etc. A true and correct copy of emails from the City Manager are attached hereto as **Composite Exhibit "Q"**.

Mr. Shonk said that he was removed from the playground project at Triangle Elementary, despite having been involved with the project from its inception, including in the negotiation of the contract between the School Board and the City. Mr. Shonk had objected to the City Manager wanting to approve changes to the playground plans without having those changes reviewed by an engineer, which he said was a requirement. The City Manager wanted to save money by not having the changes reviewed by an engineer. Mr. Shonk learned from a school official that he was no longer on the project. *Id.* at 17:25; 18:1-12; 20:5-12.

Weeks ago, the City Manager moved Chris Carson, the Special Events Coordinator and subordinate to Mr. Shonk to City Hall over Mr. Shonk's objection and there appeared to

be no reason for the relocation. Mr. Shonk must now go to City Hall a few times a day to speak with Mr. Carson. *Id.* at 12-23; 37:7-12.

As further evidence of removal of his duties, Mr. Shonk pointed to the City Manager's decision to terminate a camp counselor (a seasonal employee of Parks and Recreation) even though Mr. Shonk said there was no evidence to support his termination. A teenage female camper made an accusation that the camp counselor acted inappropriately, however, there was no support for the allegation and the child's parents thought the matter had been blown out of proportion. The City Manager fired the employee, saying he was "seasonal." *Id.* at 25:16-25.

The City Manager does not respond to Mr. Shonk's emails, and the City Manager has delayed his hiring of employees since he became involved in the hiring process. One position has been in the pipeline awaiting an offer for one month; the other has been pending for three weeks. Bradley Mays resigned awaiting a transfer from Parks Specialist to Public Works Maintenance. *Id.* at 44:9-17.

Outside of his allegations of retaliation, Mr. Shonk complained that in March 2022, the City Manager approved the hiring of an Administrative Coordinator. Ms. Niquisha Jackson was interviewed and hired, to wit, the City Manager changed his mind on filling the position and a call was made to Ms. Jackson to withdraw the offer of employment. *Id.* at 24:7-22; 26:4-25; 27:1-8.

As the Parks and Recreation Director, Mr. Shonk oversaw the City's after-care program and camp. In years prior, the after-care program and City's Summer Camp were located at Round Lake, a local school. In early 2023, Mr. Shonk began to hear rumors that Round Lake intended to take over its own after-care program, cancelling its agreement with the City. As a consequence of the termination, the City would no longer be able to use Round Lake's facilities for its Summer Camp.

Mr. Shonk sought confirmation of the rumor from the principal of Round Lake and received no response. Weeks prior to the start of the City's Summer Camp, in which parents had pre-registered their children (approximately 250 children), the principal of Round Lake informed Mr. Shonk that the school had given the City Manager notice that the agreement was being cancelled as early as March 1, 2023. Mr. Shonk and his staff, having learned of the cancellation, had only weeks to find a new location for the City's Summer Camp. To this day, the City Manager has not spoken of nor acknowledged that he received notice of cancellation from Round Lake. A true and correct copy of the Letter of Cancellation is attached hereto as **Exhibit "R"**. Mr. Shonk said had they not found a new location for the Summer Camp, the parents would have been left with no arrangements for their children and the City would have been required to refund the fees paid to the City. *Id.* at 59:20-25; 60-64.

Mr. Shonk believes that his proposed budget items were removed by the City Manager, including, but not limited to, his request for a \$7,200.00 shed. Ms. Arnetta Barton, the Budget Director, has expressed concerns regarding the handling of the budget requests

but offered him no specifics. He has observed Ms. Barton crying after meetings with the City Manager and he feels bad for her. *Id.* at 65:15-17.

Mr. Shonk said it appears that Ms. Helfant is no longer a candidate for the permanent Human Resources Director. Mr. Shonk asked the City Manager that he be allowed to sit on the interview panel for the Human Resources Director. His department is one of the largest and he thought he could add to the process. The City Manager did not respond to his request. *Id.* at 75:12-15; 77:9-17.

**Troy Shonk (Second Interview):**

I interviewed Mr. Shonk a second time on September 11, 2023, at his request. Mr. Shonk said that he is concerned with acts of retaliation against him and his Department (Parks and Recreation) since I last interviewed him. Mr. Shonk said that many employees feel stressed due to the City Manager. *See* Shonk (September 11, 2023) Depo. Tr. 3:1-22.

Mr. Shonk said that he rarely sees the City Manager and relies on their one-on-one meetings, however, the City Manager schedules meetings with Mr. Shonk and then schedules other meetings to take place at the same time. Mr. Shonk has been dealing with a citizen seeking to sell his family's cemetery plot. The City Manager has not responded to Mr. Shonk's request to intervene. *Id.* at 21:4-25; 22:1-24.

Mr. Shonk said that his department is responsible for maintaining over 300 acres and the City Manager has begun sending him an inordinate number of emails detailing minor maintenance issues. The City Manager has not filled the positions that he has requested, yet he is contacting Mr. Shonk to remedy minor maintenance issues. *Id.* at 11:5-25; 12:1-12; 15:6-22; 15:16-18.

Mr. Shonk said he loves his job, but he would rather resign than continue to work for the City Manager. *Id.* at 28:8-15.

**Troy Shonk (Third Interview):**

I interviewed Mr. Shonk, per his request, on September 20, 2023. Mr. Shonk complained that the City Manager is harassing him and his department. On September 19, 2023, the City Manager emailed him approximately twenty-seven (27) times regarding minute matters. However, when Mr. Shonk emailed the City Manager seeking clarification, the City Manager did not respond. A true and correct copy of emails attached as **Composite Exhibit "S"**.

Mr. Shonk said the City's Manager's barrage of emails is stressful for him and his staff. On the one hand, the City Manager is demanding immediate responses to pieces of trash and on the other hand, the City Manager has not filled much needed positions. *See* Shonk (September 20, 2023) Depo. Tr. 3:22-25; 4:1-23.

**Marilyn Douglas:**

I interviewed Ms. Douglas on August 21, 2023. She is the City's Purchasing Manager and has been employed by the City since 2018. Ms. Douglas said that approximately five (5)

weeks ago she attended a meeting with Ms. Barton, Ms. Lovern, and the City Manager. During this meeting, the City Manager said that he no longer wanted the City Attorney to review multi-year vendor contracts. *See Douglas Depo. Tr. 5:6-9.* “He didn’t say how he was going to address, because I did point out that legal was—you know, needed to look at things and sign off – you know, for legal sufficiency.” *Id.* at 5:10-13. Ms. Douglas said that the City Attorney had to review these contracts for legal sufficiency. The City Manager did not explain why he wished to remove the City Attorney from the review process, nor did he offer an alternative procedure to review contracts.

The existing purchasing policy, according to Ms. Douglas, requires the City Attorney to review all contracts, but the City Manager has been focused on removing the City Attorney from the review of multi-year contracts. According to Ms. Douglas, said changes would have to go before the City Council for approval. *Id.* at 7:1-22.

The City Manager has also told her that he does not agree with having to bring emergency expenditures before the City Council for approval. He believes their involvement to be a hinderance and interference with his day-to-day duties. The City Manager has said that he wants to limit the City Council’s involvement in budgetary decisions. When I inquired why the City Manager raised this issue with her, she said that she did not know, as she had no control over that decision or process. With that said, Ms. Douglas said that she is concerned about any loosening of the purchase policy. *Id.* at 12:4-25; 13:1-13.

Ms. Douglas said that the City Manager told Ms. Barton to sit in during the budget meeting with City Council and to only nod and not offer or volunteer any information to the City Council. *Id.* at 11:15-24.

As to the budget, Ms. Douglas is concerned about whether the City Manager understands the budget process. He has asked that Ms. Douglas suggest Florida Statutes for his review. She has sent him statutes to review, but she is unsure if he has read them. The City Manager appears to be averse to rules. Ms. Douglas said that having reviewed the budget she is certain that some departments are struggling and Parks and Recreation is one such department. *Id.* at 40:8-22.

Ms. Douglas expressed concerns over the City Manager’s direct communications with vendors, which have the potential to create conflicts in the bidding process. If too much information is shared with a vendor prior to or during a pending bid, that vendor would be prohibited from participating in the bid. *Id.* at 16:23-25; 17:1-25

By way of example, there is a bid to place a kiosk in downtown Mount Dora. The contractor (Fayden) was told that it could sub-contract out the technology portion of the project with a company named SteamRoller. The City Manager then directed Jason Marlar to survey other potential vendors to determine if he could locate a less expensive sub-contractor. Fayden’s cost proposal had already been approved. *Id.* at 20:3-8.

While contacting potential subcontractors was not illegal, the City Manager was creating a potential issue if the City chose to deviate from the CMAR process. In that event, these conversations that Mr. Marlar had would have equated to a solicitation and those

surveyed vendors may be prohibited from submitting a bid due to having received too much information, including the pricing of the existing subcontractor (SteamRoller). *Id.* at 21:12-21.

Mr. Marlar told Ms. Douglas that he did not feel comfortable with the City Manager's direction that he interview potential subcontractors and he was at a loss in how to address the City Manager, as he disagreed with the appropriateness of the task he had been directed to perform. *Id.* at 29:4-20.

Ms. Douglas said that she has noticed a delay in the City's hiring process. *Id.* at 29:1-3. Mr. Marlar is still not the permanent IT Director even though he has been announced as the same. Mr. Marlar expressed pressure to submit to the City Manager's direction to interview potential subcontractors because position as permanent IT Director is in limbo. *Id.* at 30:12-19.

Finally, the City Council voted to hire a conflict services professional to assist the City Manager in improving his relationship with staff. Councilmember Dawson and the City Manager assisted in drafting the scope of services to be posted. The City Manager submitted a draft of the scope of services, which had many changes including changing the focus from the City Manager to the relationship between the City Manager and the City Councilmembers. Language allowing the professional to speak with staff was removed. The final version for the posting came from the City Manager's office and she is unsure if Councilmember Dawson saw the changes. *Id.* at 35: 21-23. A true and correct copy of versions of scope of services is attached hereto as Composite **Exhibit "T"**.

**Adam W. Sumner:**

I interviewed Adam Sumner on August 21, 2023. He is employed as the City's Deputy Planning Director and has been employed by the City since in or about 2017. *See* Sumner Depo. Tr. 4:5-9.

Mr. Sumner repeatedly made mention that he believed that his job was in jeopardy by coming forward to speak with me about the City Manager. Mr. Sumner said that he has worked in government for over twenty-three (23) years and has never felt the pressure of being retaliated against for doing his job as he has under the present City Manager. He described the environment as "toxic". Mr. Sumner said that the City cannot move forward with Mr. Comiskey as the City Manager. *Id.* at 23:14-24.

Mr. Sumner described the City Manager as being "calculated" in his retaliatory conduct towards City employees. By way of example, Mr. Sumner said that the City Manager retaliated against former Interim Fire Chief Ricard Loewer because the Interim Chief disagreed with the City Manager's opinion that an additional fire station was unnecessary. Mr. Sumner perceived that said disagreement resulted in the Interim Chief not being hired as the permanent Fire Chief. *Id.* at 5:3-24.

Mr. Sumner also believed that the City Manager's decision not to hire Ms. Helfant as the permanent Human Resources Director was further evidence of the City Manager's pattern of retaliatory behavior. *Id.* at 6:11-19.

Mr. Sumner expressed concern over the City Manager's decision making, stating that the City Manager has been dilatory in making hiring decisions after having removed said authority from Ms. Helfant. Mr. Sumner attempted to hire Tannia Jett, who he described as a "perfect" applicant for a code enforcement position. Ms. Jett had nineteen years of experience. Ms. Jett received almost perfect scores from the interview panel. The City Manager continued to delay her hiring, at one point seeking to interview Ms. Jett himself and then backing down from that decision to interview her. *Id.* at 6:20-25; 7:1-25; 8:1-1-2.

The City Manager wanted Mr. Sumner to spend money from his CRA budget on a street sweeper, which Ms. Sumner believed was improper because the expenditure was not approved in the budget and CRA monies were limited to expenditures benefiting the CRA. Mr. Sumner felt the need to stand his ground. On another occasion, Mr. Comiskey directed staff to hire privately owned trolley cars. Mr. Shonk was directed to work on the project and Mr. Sumner had to explain to Mr. Shonk that the trolley service had to be bid. *Id.* at 10:12-23.

The City Manager's decisions were of further concern after Mr. Sumner learned that the City Manager directed Ms. Douglas not to consult the City Attorney concerning City contracts to save money. *Id.* at 8:8-18.

Next, Mr. Sumner opined that the City Manager behaved improperly in securing a vendor for an information kiosk in downtown Mount Dora. Of first concern, Mr. Sumner said that he was vocal with the City Manager that the proposed cost for the kiosk project exceeded the CRA budget. *Id.* at 12:1-21. A true and correct copy of email exchange is attached hereto as **Exhibit "U"**. Moreover, Mr. Sumner was concerned that the City was paying the subcontractor to develop the technology. *Id.* 19:13-18.

Despite Mr. Sumner's advice, the City Manager directed Ms. Douglas and Mr. Sumner to move ahead with the project. The City Manager placed the approval of the project on the August 15, 2023, City Council Agenda for approval. Mr. Comiskey then pulled the matter from the agenda. *Id.* at 20:13-16.

At some point, the City Manager and Councilman Doug Bryant called Mr. Sumner on the telephone. The call was unanticipated. On that call the City Manager acted as if he was unaware of Mr. Sumner's previous forewarnings to not approve the kiosk project due to its costs. The City Manager behaved on the call as if Mr. Sumner had done something wrong when Mr. Sumner had little to do with the project being approved. *Id.* at 20:17-25; 21:1-4.

Mr. Sumner said that he later spoke with the Interim IT Director, Jason Marlar and Mr. Marlar was concerned that the City Manager had directed him to seek another subcontractor for the kiosk; potentially violating the City's purchasing policy. Mr. Marlar



was concerned that the City Manager had caused him to corrupt the bid process by having him interview potential vendors to get pricing. In doing so, these vendors would likely be conflicted out if they wanted to bid for the project. *Id.* at 27:1-20. Mr. Sumner said: “ I was befuddled when Mr. Marlar called and asked how much money we had to spend and how to move forward with this project. And I’m going, it’s a subcontractor for our contractor. It’s on the contractor to hire the sub.” *Id.* at 12:21-25; 13:1.

Of issue to Mr. Sumner was also the City Manager’s handling of parking lot, which was shared with the local church. Mr. Sumner said that the City has had an agreement with First United Methodist Church for over twenty-five (25) years wherein the church allows the City to use its parking and in return the City maintains a retaining wall. In 2023, the City and the church extended the agreement and upon drafting the new agreement, the provision which called for the City to maintain the wall was mistakenly left out. Everyone, including the City Manager, were in agreement that the provision was removed in error. With that said, the City Manager has refused to approve amending the agreement to include the provision. According to Mr. Sumner, the City Manager’s refusal to amend the agreement has caused unnecessary distrust with a long-standing partner of the City. The issue has been outstanding with no definitive resolution since February 2023. There is also concern that the retaining wall is in disrepair, presenting a potential liability. *Id.* at 34:22-25; 35-37.

Finally, Mr. Sumner said that the amount of access which certain citizens have to the City Manager is unsettling. Mr. Josh Hemmingway resides in Mount Dora and he is disrespectful to Councilmembers and staff; yet he and the City Manager spend an inordinate amount of time together. *Id.* at 51:2-16.

**Christopher Carson:**

I interviewed Chris Carson on August 21, 2023. He has been employed by the City for approximately twelve (12) years and he serves as the Cultural and Special Events Manager. He reports to Mr. Shonk. Mr. Carson said that the City Manager has not built relationships with staff.

Mr. Carson said that he previously worked out of Simpson House and the City Manager, with no explanation, directed that he be moved to City Hall. Mr. Carson sees no reason for him to work out of City Hall and since relocating the reasoning has become less apparent, as he has had no contact with the City Manager since being forced to change his work area.

Mr. Carson oversees the City’s events and has made it known that he needs more assistance, to no avail. No one has been hired to assist him.

**Megan Mathews:**

I interviewed Megan Mathews on August 22, 2023. She is employed as the Youth and Family Supervisor, overseeing after-school care, summer camps, and youth programs. She has been employed by the City for five (5) years and she reports to Mr. Shonk.

In years prior, Ms. Mathews had authority to sign smaller contracts, primarily for field trips. The City Manager removed said authority from her this year and directed that all such contracts go before him for approval. Ms. Mathews then spent weeks sending contracts to the City Manager to approve field trips for summer camp and the City Manager did not respond. Ms. Mathews was on the verge of losing spaces for the field trips. A true and correct copy of emails from Ms. Mathews to Ms. Lovern, beginning January 26, 2023, through March 9, 2023 (Mr. Comiskey was copied, beginning February 14, 2023), are attached hereto as **Composite Exhibit “V”**. See Matthews Depo. Tr. 8:5-24

Ms. Matthews said that the City has run an aftercare program for several years and there was a rumor in early 2023 that Round Lake was becoming a charter school and would be taking over the aftercare program. Mr. Shonk reached out to the school principal several times for confirmation and did not receive a response. In terminating the aftercare program agreement with the City, the City would be unable to operate its Summer Camp from Round Lake. A true and correct copy of emails, dated February 22, March 2, and March 29, 2023, are attached hereto as **Composite Exhibit “W”**.

The school principal then informed Mr. Shonk that she sent a letter to the City Manager in March informing him the aftercare program agreement with the City was being terminated. The City Manager never informed her or Mr. Shonk. They were left with less than eight (8) weeks' notice to find a new location for the City's Summer Camp. To date, the City Manager has not acknowledged that he was notified of the termination of the agreement. *Id.* at 14-16.

Finally, Ms. Mathews complained that the City Manager caused the firing of a college student, employed seasonally as a camp counselor because a minor attendee complained that the counselor was weird. The attendee had no evidence that anything improper occurred. No evidence supported any sanction of the counselor, and the parents of the attendee did not want to proceed with an investigation. According to Ms. Mathews, the City Manager over their recommendation and that of Ms. Helfant, terminated the counselor, saying he was seasonal and not worth the risk. A true and correct copy of June 21, 2023, email and response from parents attached hereto as **Composite Exhibit “X”**. *Id.* at 26:2-13.

**Jason Marlar:**

I interviewed Mr. Jason Marlar on August 22, 2023. He has been employed with the City for nine (9) years. He is the Interim IT Director. Mr. Marlar said that he has had little interaction with the City Manager. He spoke with the City Manager briefly and was told that he was being promoted to Interim IT Director. The former IT Director, Jim Faulkner, recommended Mr. Marlar to take over as part of his succession plan.

There was no competitive process in promoting Mr. Marlar to Interim IT Director. While Mr. Marlar has been named the IT Director, his promotion has not been formalized. He received an offer letter, which he countered, and no PAF form has been submitted to

Human Resources, thus formalizing his promotion. Mr. Marlar said that he is in limbo. He has been awaiting a response to his counteroffer since August 14, 2023. See Marlar Depo. Tr. 9:1-25; 10:14-15.

Mr. Marlar said that the City Manager charged him with the responsibility of surveying potential vendors to provide pricing technology for the kiosk. The City Manager wanted him to determine if the existing subcontractor's pricing was excessive. I asked, "So if the City Manager asked you to see if the price was excessive, is it reasonable then to understand you have to ask people for pricing to figure out if the price is excessive." Mr. Marlar, responded, "Correct." *Id.* at 15:16-22.

He later learned from Ms. Douglas, however, that if the project was rebid that his conversations with vendors would prohibit those vendors from bidding on the project. The City Manager had not discussed such risks with him, and he was left feeling that he had muddied the RFP process. At the time that the City Manager directed Mr. Marlar to interview new vendors, the City Manager had not told him that the pricing for the kiosk had already been approved by the City Manager. Mr. Marlar said he was given a limited view of the issue by the City Manager, and he felt like he was between "a rock and a hard place." *Id.* at 17:8-15; 18:1-9. It was not until much later that Mr. Marlar saw the email between Mr. Sumner and Mr. Comiskey, directing the team to move forward with the kiosk project despite Ms. Sumner's concerns over the costs.

Mr. Marlar said that he feels that the City Manager put him in a predicament and has said nothing about it since. Mr. Marlar has shared with Mr. Comiskey proof of concepts he received from other companies. He relayed to Mr. Comiskey some of the costs quoted from other companies. *Id.* 30:1-5.

Mr. Marlar further stated that the Chamber of Commerce President, Rachel O'Ryan, was present when he met with vendors, but he could not explain why.

**Arnetta Barton:**

I interviewed Ms. Barton on September 5, 2023. She is the City's Budget Director, and she reports directly to the City Manager. Ms. Barton said that the City Manager manipulates people and tries to get people to agree with him. She said she has left meetings with him in tears because she is frustrated. He is a hinderance to her performing her job duties.

Ms. Barton said that the City Manager is unnecessarily sarcastic. On one occasion Ms. Douglas emailed the City Manager to get his approval to purchase generators. The City Manager responded on June 7, 2023, asking: "Did you get Sherry's approval to accept delivery?" A true and correct copy is attached hereto as **Exhibit "Y."** Ms. Barton said that the purchase of generators did not involve the former City Attorney Sherry Sutphen and it was an obvious dig at Ms. Sutphen.

Ms. Barton said that the City Manager has no respect for her time and is often late to meetings (with no explanation) or ill prepared. On or about August 9, 2023, the City Manager fell asleep during a meeting with a vendor. *Id.* at 15:1-9.

Ms. Barton became very emotional and was crying during her interview. She expressed concerns about being retaliated against for providing information. We concluded the interview with plans to reschedule to give Ms. Barton an opportunity to compose herself.

**Arneta Barton (Second Interview):**

I interviewed Arneta Barton on September 11, 2023. Ms. Barton has been employed by the City for over two (2) years. She described the City Manager as having poor leadership skills and engaging in unethical behavior. His behavior has worsened since the Mayor moved for his resignation at the Council meeting in May of 2023.

Since the motion for his resignation, the City Manager refuses to sign documents. For example, the City is self-insured and the City Manager refused to sign the insurance documents and instead put the execution of the self-insurance documents on the City Council Agenda for approval. Doing so, however, put the City past the deadline to implement the self-insurance policy, thus making the City potentially liable for claims occurring prior to the policy taking effect. The Human Resources Director would typically complete the form, but the City Manager had removed Ms. Helfant from such duties.

Ms. Barton described the City Manager as failing to foster teamwork and acting to create discord. Ms. Barton said that the City Manager purposefully gives staff different tasks of the same project, without their knowledge and pitting staff against each other when each comes to different conclusions. He does not encourage collaboration. By way of example, the City Manager removed Mr. Shonk from a park project at Triangle Elementary and gave the project to Mr. Marek. *See Barton Depo. Tr. (September 11, 2023) 32:10-16.* Mr. Comiskey also removed projects from Chet Cramer and gave those projects to Mr. Marek for completion. *Id.* at 31:18-25.

On or about July 7, 2023, the City Manager told Ms. Barton that she was not to speak during the budget meeting with the City Councilmembers. She was to sit...smile...and nod her head. The budget workshop meeting was on or about July 10, 2023. *Id.* at 27:2-25.

Ms. Barton said that this year's budget has been applied disparately, with favoritism shown to the library and public works in the allocation of dollars. The City Manager directed all Departments to cut their budget by ten percent. The library, however, was not required to do so. Public works received ninety percent of discretionary funds and Parks & Recreation (Troy Shonk's Department) requested a \$7,500.00 shed and the City Manager denied the request. *Id.* at 31:2-17. A true and correct copy of email is attached hereto as **Exhibit "Z"**.

At Director meetings there is no discussion of goals and those who should be involved in decision making are left out. For example, the City Manager did not include the Fire Department in discussions regarding the need for Fire Stations.

The City Manager is often late and unprepared for meetings. On or about August 9, 2023, he showed up for a meeting with a consultant, thirty minutes late and he fell asleep during

the presentation. The City Manager walked out of the meeting at some point and did not return. *Id.* at 13:10; 14:10-25; 15:1-9.

Ms. Barton said that the City Manager does not respect the bidding process and has little understanding of the rules. At the same time, he discouraged staff from seeking advice from Ms. Sutphen, the former City Attorney. The City Manager said that he did not want Ms. Sutphen to be consulted on multi-year vendor contracts. On July 5, 2023, the City Manager directed Ms. Barton to set up a purchasing meeting and to invite Ms. Douglas, the City Manager, and Ms. Lovern, but not to include Ms. Sutphen. *Id.* at 59:22-25; 60:1-20.

According to Ms. Barton, the City Manager prefers local vendors, and he also tries to avoid putting out bids. The City is seeking a new City Attorney and instead of posting a bid, the City Manager directed staff to issue a letter of intent to shorten the process.

In the same vein, the City Council approved the hiring of a conflict resolution specialist, and the City Manager was to work with Councilmember Dawson to create the parameters for the bid. The City Manager made changes to the versions of the post, and she overheard the City Manager tell Ms. Douglas that the changes did not need to go to Councilmember Dawson because the City Manager knew where the Councilman stood.

Ms. Barton said that the City Manager has asked Ms. Douglas to sign invoices, which is improper. One person should not have control over multiple tasks to avoid fraud. Ms. Douglas inputs vendors into the system and thus to protect the City, she should not also be responsible for signing invoices. Ms. Barton has overheard the City Manager ask Ms. Lovern if certain invoices are okay to sign. Ms. Barton feels that the City Manager has delegated some of his roles to Ms. Lovern and in turn has allowed her to create a barrier between himself and staff. Ms. Barton has also observed Ms. Lovern looking up other employees' emails.

On or about May 22, 2023, Ms. Lovern came to Ms. Barton's office to demand who was speaking to the City's Mayor and that she and the City Manager would get to the bottom of it. *Id.* at 58:11-17.

The City Manager has made it known that he does not like the former City Attorney, Sherry Sutphen. The City Manager has said that his assistant, Ms. Lovern knows more than Ms. Sutphen. *Id.* at 60:3-7; 12-20.

With regard to City resident Mr. Hemmingway, the City Manager has included him in his dispute with Ms. Sutphen. She overheard Mr. Hemmingway telling the City Manager that he invited another citizen, Mr. James Homich (he is also an attorney), to a public meeting to berate Ms. Sutphen. The City Manager laughed in response to Mr. Hemmingway's comment. *Id.* at 8:2-21; 9:13-16; 10-11:1-8.

Ms. Barton said that the City Manager has favorite residents, which have superior access to the City Manager, especially Mr. Hemmingway. In July of 2023 during her weekly meeting with the City Manager, Mr. Hemmingway walked into their meeting and took a

seat. Mr. Hemmingway was very comfortable walking in and sitting in on a City meeting. On one such interaction, the City Manager and Mr. Hemmingway were alluding to Ms. Helfant's retaliation complaint and the City Manager went on to tell Mr. Hemmingway that he does not retaliate against employees, but rather he is a "strong manager." *Id.* at 6:19-25; 7:1-3.

Ms. Barton described a pattern of retaliation by the City Manager, stating that Mr. Chet Kramer disagreed with the City Manager at a Council meeting and the City Manager began removing his projects for approval. Ms. Helfant oversaw the survey of the City Manager and certain job functions have been removed from her.

The City in turn has suffered as a direct result of said retaliation. Positions are not being filled in a timely manner, as that hiring process has been removed from the Human Resources Department. Ms. Barton said, that the City is "in chaos". *Id.* at 62:1-2.

**Richard Loewer:**

I interviewed Richard Loewer, the City's Deputy Fire Chief, on September 11, 2023. Mr. Loewer said that he has been employed by the City for eighteen (18) years. He previously served as the Interim Fire Chief. Deputy Chief Loewer was the Interim Fire Chief for two (2) years; six (6) months of that time was prior to the City Manager having been hired. He remained the Interim Fire Chief for another year and a half. *See* Loewer Depo. Tr. 11:8-11.

Deputy Chief Loewer said that his difference of opinion on whether to close a Fire Station seemed to impact the City Manager's decision to permanently appoint him Fire Chief. *Id.* at 13:1-4, 21-25.

Deputy Chief Loewer said that the City Manager micromanaged the Fire Department, but the City Manager had no fire rescue experience that he was aware of. By way of example, in 2022, the City Manager directed Mr. Loewer to modify staffing on fire trucks and the placement of gear on fire trucks. Deputy Chief Loewer explained to the City Manager that there was no reason to place primary gear on one truck and back-up gear on another truck. The City Manager offered no support for his directions. *Id.* at 27:7-8

Deputy Chief Loewer said that he tried to build a relationship with the City Manager, to no avail. During Hurricane Ian in 2022, the City Manager and other employees were on-duty for twenty-four (24) hours. Deputy Chief Loewer invited the City Manager to tour the City for damage, with the hopes that they could improve their relationship. Deputy Chief Loewer said that the City Manager rebuffed all requests to spend time with him. *Id.* at 32:4-21.

Deputy Chief Loewer said that the City Manager inundates him with menial tasks, including, the City Manager following up on whether the fire hoses were tested, requesting to set meetings to discuss training hours and training records. When the Deputy Chief responded to the City Manager's request for information, the City Manager

would not respond. All the while, he has never received a formal performance evaluation. He has yet to receive goals from the City Manager.

Deputy Chief Loewer said that he worked from home recently because his son was ill. The City Manager emailed him, telling him to take appropriate leave despite a past practice of allowing department heads to work from home when needed. Deputy Loewer responded by taking entire the day off. *Id.* at 47:9-25; 48:1-4.

**Rita Meade:**

I interviewed Ms. Rita Meade on September 15, 2023. Ms. Meade is the City's Finance Director. She has been employed by the City for over two (2) years. As Finance Director, Ms. Meade reports directly to the City Manager. Ms. Meade said that while she does not have any concerns with regard to the City Manager, she said that he lacks clear direction, and he is often late to meetings or misses them all together.

Ms. Meade does not recall the City Manager falling asleep at a meeting, but she said that he will often get up and leave meetings with no explanation. Ms. Meade said, "it's a frustration." For example, the City Manager was scheduled to attend a meeting with a financial advisor vendor for the City in June of 2023 and he did not show up. *See* Meade Depo. Tr. 24:16-21.

Ms. Meade said that the Finance Department is in need of staff and she has mentioned it to the City Manager several times, with no response from him. He changed the subject the last time she raised the issue with him. Ms. Meade said that she is highly stressed and does not think she will last "under this system." She is in need of an employee to fill a position in billing and finance. *Id.* at 1-3; 17:1-6.

The City Manager rolled his eyes when mention was made of Ms. Sutphen reviewing a City contract. Ms. Meade said that she perceived from the City Manager that Ms. Sutphen is not part "of the team." The City Manager has requested that the Finance Department draft resolutions instead of seeking advice from Ms. Sutphen. *Id.* at 22:9-14; 24:9-15.

**Interim Police Chief Michael T. Gibson:**

I interviewed Interim Chief Gibson (herein after referred to as "Chief") on September 15, 2023. He has served as the Interim Police Chief since May 2022. He said that he believes that the City Manager has kept him in the "Interim" role to control him and that his speaking with me will not end well for him. He is still receiving Deputy Chief pay.

Chief Gibson said that he has served in law enforcement for twenty (20) years, and he thinks that his career is coming to an end. There have been four Police Chiefs in 4 1/2 years.

In or about June 2022, Chief Gibson said he received intel of a potential demonstration in response to the United States Supreme Court's overturning of *Roe v. Wade*. In response the Police Department began to collect data intelligence related to the demonstration so as to respond to criminal activity. The City Manager was kept in the loop, receiving

sensitive information regarding the demonstration, including the threat analysis. The Chief was planning for a law enforcement response to the demonstrators and also the counterdemonstrators.

Prior to the demonstration, the Chief received a text message from the City Manager stating to limit the number of police officers at the demonstration and that the City Manager and Chief could handle the demonstration. The City Manager reasoned that adding additional officers would be “counterproductive.” Chief Gibson did not protest Mr. Comiskey’s suggestion. A true and correct copy of texts messages between Chief Gibson and Mr. Comiskey are attached hereto as **Composite Exhibit “AA”**.

The Chief informed the City Manager that their analyst had made contact with the protest organizers on social media, but the organizers had not been identified. Subsequently, Chief Gibson learned that the protest was rescheduled for a later date.

Around that time, Chief Gibson had a conversation with City employee, Vershurn Ford, discussing the protest. Mr. Ford was responsible for the City’s publicity and media. Mr. Ford told Chief Gibson that “Jane was planning another demonstration.” At the time he did not know who “Jane” was. Mr. Ford told the Chief that “Jane” was the City Manager’s wife. That was the first time that he learned that the City Manager’s wife was involved with the demonstration. He was “floored”. See Chief Gibson Depo. Tr. 20:6-25; 21:1:10. According to Chief Gibson, Mr. Comiskey knew the entire time that intel was being shared with him that it was his own wife that was organizing and participating in the demonstration and Mr. Comiskey never said a word to the Chief disclosing this information.

The Chief said that the entire time that the City Manager was receiving intel and plans were being made by law enforcement to prepare for the demonstration, the City Manager said nothing. Mr. Comiskey did not inform the Chief of his conflict. He did not ask to not be included in the intel. He did not assist the Chief in determining what was best public safety response for the City, which the Chief believes was the City Manager’s primary duty.

The Chief said that he believes that it was Mrs. Comiskey’s involvement with the demonstration which led the City Manager to request a decreased presence of officers at the demonstration. He does not trust the City Manager and will never trust him because of the City Manager’s withholding of information leading up to the demonstration. He put demonstrators and officers at risk. Chief Gibson said, “I understand that I can never ever trust Patrick with sensitive law enforcement intelligence from that moment forward. And I never have.” *Id.* at 24:3-6. To this day, Mr. Comiskey has not mentioned his wife’s involvement in the demonstration. *Id.* at 26:6-8.

Chief Gibson said that the crime analyst responsible for collecting intel for the demonstration was Jesse Tallent and soon after the demonstration, the City Manager began to come after Officer Tallent, seeking to eliminate his position. The Chief believes that it was directly related to Mr. Tallent’s role in collecting information as the crime analyst. *Id.* at 27-31.



First, the City Manager began by telling the Chief that having a crime analyst was unnecessary because there was not enough crime in the City. The Chief said he knew that the City Manager was retaliating against Mr. Tallent (a certified crime analyst), as the purpose of a crime analyst is to avoid crime. Next, the City Manager wanted Mr. Tallent to move to the fiscal department and the Chief agreed to retain him as an employee. The Chief continued, however, to use Mr. Tallent, unbeknownst to the City Manager, for crime analyst duties. *Id.*

The City Manager continued to focus his sights on Mr. Tallent and the Chief said he hid Mr. Tallent in a number of positions to protect him from the City Manager. The City Manager then contacted the Chief and told him that if Mr. Tallent wanted a position with the City that he was going to have to become a sworn officer and complete the Police Academy. Mr. Tallent decided to resign and went to work as a crime analyst in another municipality. The City of Mount Dora is currently without a crime analyst. The Chief said, "we need help." *Id.* at 54:8.

The Chief said that the City Manager has made many decisions, which he believes are detrimental to the City and the Police Department, including but not limited to:

- Terminating the School Resource Officers at Round Lake Elementary School.
- Speaking against software for cameras for First Responders.
- Lobbying to withdraw from accreditation for Police Department.
- Prohibiting community outreach and Holiday gifts to the underserved from Police Department, stating outreach is the job of the church.
- Failing to fill positions in the Police Department. There is funding for 45 Officers and 11 remain unfilled.
- Retaliating against staff, including, but not limited to Ms. Helfant. The City Manager spoke highly of her prior to Ms. Helfant having been directed to conduct the survey.
- The City Manager refused to allow the Chief to give a plaque to Former Chief Meade, thanking him for his service. The City Manager directed Chief Gibson to bring the plaque to him.

### **James Klein:**

I interviewed Mr. James Klein on September 15, 2023. He is the Water Treatment Plant Chief and he has been employed by the City for approximately five (5) years. He was previously employed by the City from 2008-2016 and returned in or about 2018. Mr. Klein has been working since March 2023 to restore transmission at Water Treatment No. 2. The radios have failed and without radios there is no way for him to get notice of emergencies at the plant. He has spoken to both his direct supervisor, George Marek, and the City Manager to inform them that the transmission is inoperable. The matter remains unresolved. He is unsure if the City Manager has received all the necessary information to make a decision. Since July there have been steps taken towards installing fiberoptics.

### **Mayor Chrissy Stile:**

I interviewed Mayor Chrissy Stile on September 20, 2023. She is the Mayor of the City of Mount Dora. She was elected soon after the City Manager was hired.

Mayor Stile said that on May 16, 2023, she made a motion for the City Manager's resignation after she received information from numerous employees that he had created an unsustainable work environment.

Mayor Stile said that her experience with the City Manager has been negative. Mayor Stile said that the City Manager repeatedly ignores her emails, her requests for information, requests for updates, etc. When she asked the City Manager why he ignored her, he shrugged his shoulders. A true and correct copy of emails attached hereto as Composite **Exhibit "BB"**. See Stile Depo. Tr. 11:18-25; 8:1-8.

Not only does the City Manager not respond to her, but according to the Mayor, Ms. Douglas was directed not to respond to her request for updates concerning the conflicts resolution vendor. Ms. Douglas did not mention the City Manager by name. *Id.* at 30:11-25.

The Mayor said that the City Manager was absent when he was most needed. By way of example, the Mayor pointed to a disagreement between Lake County and the City regarding the implementation of a Safe Place Decal (perceived by some as an initiative to solely support of LGBTQ+ community). The City Manager was invisible in responding to media inquiries and offering a stance for the City. In November 2022 there was a sewer main break at Sullivan Ranch and the City Manager was in Georgia. He had not informed staff of his departure. Likewise, in December 2022 there was a double homicide in the City and staff were searching for the City Manager to respond to the media. He was nowhere to be found. *Id.* at 24-25.

The Mayor complained that the City Manager violated City procedures in making an unauthorized expenditure. He did not get Council approval before he approved a \$310,000.00 expenditure for a street sweeper. Then he tried to place the expenditure on the consent agenda. The Mayor requested emails concerning the street sweeper expenditure and Ms. Hand told her that the City Manager told her that if she wanted the emails then she had to submit a public records request. *Id.* at 33:7-21.

The Mayor said that Angela Smith filed an internal complaint and Ms. Smith contacted the Mayor days for her interview for a status on the investigation, which is now in the City Manager's hands. *Id.* at 55:3-6.

### **Councilman John Cataldo:**

I interviewed Mr. Cataldo, per his request, on September 20, 2023. Mr. Cataldo requested to ask me questions such as the legal definition of "retaliation." I referred Mr. Cataldo to the City Attorney. Councilman Cataldo did provide me with an email from Ms. Lundy. A true and correct copy is attached hereto as **Exhibit "CC"**. Mr. Cataldo also said that he

spoke with Ms. Lundy, Mr. Marek, Jim Faulkner, Misty Sommer, Merry Lovern and Chris Carson and none of them had negative responses concerning the City Manager.

**Councilman Cal Rolfson:**

I interviewed Councilman Rolfson, per his request, on September 20, 2023. Councilman Rolfson said that he was a staunch supporter of the City Manager, however, his recent behavior has made him question his viability to serve as the City Manager.

Councilman Rolfson has received numerous calls from department heads and key staff concerning the City Manager's behavior and he has listened with the understanding that the Council sets policy and the City Manager runs the day-to-day affairs, however, matters have become concerning. Department heads have reported to him that they are frightened to come forward in fear of losing their jobs and even fear using the City computers. These statements changed things for him.

Councilman Rolfson spoke with employees, including, but not limited to, Mr. Shonk, Ms. Helfant, Ms. Barton, Interim Chief Gibson, Ms. Hand, Ms. Sommer and Mr. Sumner, and they each mentioned concerns with the City Manager's behavior. Many agreed that the City Manager was arrogant and passively aggressive. Councilman Rolfson said that individually many of the concerns were minor, but when considered in their totality..."something was wrong." *See* Rolfson Depo. Tr. 10:7-25; 11-12.

By way of example, Mr. Shonk complained of the City Manager authorizing him to hire an applicant and once the offer was extended the City Manager withdrew his permission to hire the applicant. Mr. Shonk was embarrassed for himself, the applicant, and the City.

Employees have complained that the City Manager is not accessible, and they must go through Ms. Lovern, who has been given an unreasonable amount of authority over the City Manager's business and interactions with staff. *Id.* at 17:8-14.

Councilman Rolfson observed the City Manager fall asleep at the Florida League of Cities event. Several people saw him asleep and mentioned it to the Councilman. The event was at 12:00pm. *Id.* at 18:10-11.

Councilman Rolfson said that Ms. Helfant has been waiting several months to determine if she will be made the permanent Human Resources Director. Since Ms. Helfant filed her internal complaint against the City Manager, he has been steadfast in hiring the permanent Human Resources Director, which has the appearance of impropriety given Ms. Helfant's pending complaint.

Councilman Rolfson said that Ms. Barton has told him that there are numerous unfilled positions; approximately 40. These positions were authorized over a year ago. Approximately 12 of these vacancies are in the Police Department. When he asked the City Manager about the vacancies, the City Manager responded that they would do better

once a new Human Resources Director was hired...This made no sense to him. He asked the City Manager, "Is this your reason?" The City Manager said, "Yes." The City Manager never explained why he overtook the role of hiring and processing applications. Nor did he explain why he removed the investigatory authority over internal complaints from the Human Resources Department. *Id.* at 22:8-18; 24:20-24

Finally, Councilman Rolfson said that the City Manager was hasty to rid of Ms. Sutphen as the City Attorney, which included his ignoring the Council's direction to issue a RFP. Instead, the City Manager used a Letter of Intent to speed up the process, resulting in only two candidates responding. Next, the City Manager failed to secure authority from the City Council before he approved a large expenditure for a street sweeper. *Id.* at 52:10-22.

### **Merry Lovern:**

I interviewed Merry Lovern on October 31, 2023.<sup>6</sup> Ms. Lovern serves as the Executive Assistant to Mr. Comiskey. She was also the Executive Assistant to former City Manager,

Ms. Lovern said that she believed that the former City Attorney Ms. Sutphen and others were part of a campaign, which led to the separation of former City Manager Robin Hayes. She believed that Ms. Sutphen wanted her to be terminated when Ms. Hayes left the City. She did not trust Ms. Sutphen and believed her to be conniving. Ms. Lovern was critical of Ms. Sutphen's work product, saying she found errors in it. *See* Lovern (October 31, 2023) Depo. Tr. 11:4-23; 12:1-24

Ms. Lovern said that she sat down with Mr. Comiskey when he was hired and she told him who "the players" were in the City. She told Mr. Comiskey that she did not trust Ms. Sutphen and forewarned him that he could be subject to attacks. *Id.* at 14:4-21.

Ms. Lovern said that the application process was removed from the Human Resources Department and transferred to the City Manager's office because Ms. Helfant engaged in a number of violations. Specifically, Ms. Helfant had hired Mr. Troy Shonk's wife (Meghan Shonk, which she believed was a violation of City Policy) in February 2023. When I inquired why the City Manager waited until May 2023; months after Mrs. Shonk was hired to remove the hiring process from Ms. Helfant and create a new hiring procedure, she said that the City Manager was slow to act. *Id.* at 18:7-23.

Ms. Lovern said that the City Manager spoke to her about Ms. Helfant's performance deficiencies. She acknowledged that Ms. Helfant was not counseled, reprimanded or otherwise sanctioned by the City Manager for any of these alleged deficiencies. *Id.* at 19:9-15; 21:7-14.

Ms. Lovern also said that Ms. Helfant failed to keep the City Manager apprised of her hiring decisions or investigations. Ms. Lovern admitted, however, to not having sat in on meetings between Ms. Helfant and the City Manager.

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<sup>6</sup> I interviewed Ms. Lovern a second time on November 6, 2024, due to the recorder not capturing her full responses.

Ms. Lovern said that she received a call from Ms. Lundy and Ms. Lundy told her that Ms. Helfant was “expanding the investigation” to include Ms. Lovern. Ms. Lundy referred to the survey as an investigation as if they were one of the same. *Id.* at 32-33.

Ms. Lovern also said that “people” were calling her and telling her that Ms. Helfant was asking questions about Ms. Lovern. When I asked Ms. Lovern to identify these people, she said that she could only recall Jim Faulkner as being someone who told her that Ms. Helfant asked him about Ms. Lovern. *Id.* at 33:17-25.

Ms. Lovern said that the reason why the City Manager removed Ms. Helfant’s ability to conduct investigations into internal complaints was due to the City Manager’s belief that an investigation was being expanded into Ms. Lovern. The City Manager removed the authority to conduct internal investigations from Ms. Helfant to protect Ms. Lovern from being investigated. Ms. Lovern said that Ms. Helfant had not suffered a loss in pay as a result of these tasks being removed from her. *Id.* at 35:5-15.

Ms. Lovern denied ever having said that she would “break fingers” or any similar comments, in response to Ms. Vega having gone to the City Manager directly to get his signature on a form. She said that she was calm in telling the Human Resources Department that she needed to see all documents signed by the City Manager. She in fact could not understand why Ms. Vega and Mr. Hargroves were receiving her comments so abruptly. *See Lovern* (November 6, 2023) Depo. Tr. 18:5-10.

Ms. Lovern said that she recorded citizens associated with the First Amendment Auditors, possibly on her phone and shared her recordings with Ms. Helfant and others in the Human Resources Department. She admitted that she did not have consent from the caller(s) to record the conversation. She did not recall her demeanor in the recordings, saying that it was a rough time for City employees, as some of the callers threatened violence. She was unaware of anyone else who had recorded the callers. *See Lovern* (November 6, 2023) Depo. Tr. 8:1-22; 9:1-12, 14-22.

Ms. Lovern and I reviewed some of the comments made about her as part of the survey. Ms. Lovern said that she did not believe that employees made those comments about her. She said that she believed that Ms. Helfant created those comments or prompted employees to make negative comments about her. Ms. Lovern had no evidence of this. *Id.* 22:4-12,

Ms. Lovern said that she believed that people made negative comments about her because it was “in vogue” to speak negatively of her in order to gain points with Mayor Stile. *Id.* at 22:16-25; 23:1-6.

With regard to the length of time in which applications went unprocessed by the City Manager, Ms. Lovern said that her role was to send the documents of the top applicants from the Human Resources Department to the City Manager for his consideration. We reviewed an email exchange between herself and Mr. Hargroves, dated August 16, 2023. Ms. Lovern could not explain the delays in processing applications for various positions. By way of example, I asked Ms. Lovern what led to the delay in finalizing Ms. Heller’s

June 16, 2023, application. Ms. Lovern responded that Ms. Heller made a counteroffer. When I inquired why a counteroffer would have resulted in an offer letter not being “prepared” until August 16, 2023, Ms. Lovern had no response.

Next, Ms. Lovern said that she worked with Jennifer Esquia years ago when they both worked for the City of Apopka. She learned after Ms. Esquia after she made it on short list for the position. Ms. Lovern responded to finalize Ms. Esquia’s application for hire within a day or so. *Id.* at 25:1-15.

I asked Ms. Lovern whether looking back, she could appreciate and accept any of the comments made by employees in response to the survey. Ms. Lovern said that none of the behaviors attributed to her were accurate. Ms. Lovern denied having said to anyone that she would uncover the identity of the survey participants. *Id.* at 19:14-19; 22:4-17.

Ms. Lovern said that she has never been counseled, reprimanded or otherwise disciplined by the City Manager.

**City Manager Patrick Comiskey:**

Before I summarize the interview with the City Manager, it is of some importance that I set forth the long journey to conducting Mr. Comiskey’s interview and the difficulty and unreasonable delays in completing said task. On or about September 26, 2023, I contacted City Attorney Patrick Brackins to coordinate Mr. Comiskey’s interview. On September 27, 2023, I received an email from Mr. Brackins indicating that Mr. Comiskey would be unavailable for an interview as he was going out of town for several days. Mr. Brackins wrote, “He [Mr. Comiskey] informed me that he is going out of town tomorrow through I believe October 9. I asked for his availability and recommended he have 4 to 6 hours available. He is available Oct 19-20 and 23-24 beginning at 9:00 a.m.”

I selected the date of October 19, 2023, as this was a date that Mr. Comiskey indicated that he would be available. I received an email from Mr. Brackins on September 27, 2023, confirming Mr. Comiskey’s interview for October 19, 2023, at 11:00am.

The day prior to Mr. Comiskey’s scheduled interview, I contacted Mr. Brackins to confirm Mr. Comiskey’s appearance for his interview on October 19, 2023. Mr. Brackins indicated to me, in a number of communications, that he was unable to reach Mr. Comiskey.

At approximately 2:27pm on October 18, 2023, Mr. Brackins wrote, “Ms. Greene, I’m(sic) emailed and called the City Manager to reconfirm the time and location. I’ve also reached out to Ms. Scott, copying you, and I will call her now. I will let you know as soon as I reconfirm.” I contacted Mr. Brackins via email at 4:45pm, again seeking to confirm Mr. Comiskey’s appearance at his interview. Mr. Brackins responded, via email at 4:47pm “I have not heard from him [Mr. Comiskey], but he did call me while I was in a meeting. Trying him again now. Standby.”

On the morning of October 19, 2023, Mr. Brackins emailed me, writing:

At 7:41 this morning, I received a text from Mr. Comiskey stating: 'Patrick [Brackins], Please advise MS Green [sic] we won't be meeting today and that I will provide her a written response within a week of today.'

I responded that I would let you know. Please let me know if you would like to schedule other interviews. I have informed Mr. Comiskey of my opinion that his refusal to meet with you is a refusal to cooperate with the investigation.'

I did not receive a written response from Mr. Comiskey and I continued to communicate with Mr. Brackins to determine if Mr. Comiskey was going to submit to an interview or provide a written statement.

On October 23, 2023, Mr. Comiskey emailed a letter to me and members of the City Council. Mr. Comiskey changed course and agreed to be interviewed. I offered him numerous dates in November of 2023. He ultimately agreed to December 1, 2023. His interview was held at the law office of Shepard, Smith, Kohlmyer & Hand, P.A., 2300 Maitland Center Pkwy, Ste. 100, Maitland, Florida 32751 before a court reporter. A true and correct copy of email exchanges are attached hereto as **Composite Exhibit "DD"**.

Having reviewed multiple City Council meetings since my selection as the investigator, it has been abundantly clear that the City Council wanted this investigation to be concluded with reasonable promptness. At the August 1, 2023, meeting Councilman Bryant echoed the views of the Council, stating that he wanted this investigation conducted "with haste". Mr. Comiskey's conduct in delaying his interview was contrary to the directive, intent and goal of the Council to complete the investigation in a reasonable and expeditious manner.

Mr. Comiskey said that he has served as the City Manager for Mount Dora for approximately two (2) years. In or about December of 2022, Sharon Kraynik gave notice that she was resigning from her position as the Human Resources Director. Ms. Kraynik departed from the City in early 2023. *See Comiskey Depo. Tr. 7:10-12.*

Mr. Comiskey said that Ms. Kraynik recommended Ms. Helfant for a position within the Human Resources Department upon her departure (the name of the position, he could not recall). Ultimately, he appointed Ms. Helfant the Interim Human Resources Director. Mr. Comiskey said that Ms. Kraynik had not recommended Ms. Helfant as her replacement, which caused him to determine that a competitive process was necessary to select a permanent Human Resources Director. *Id.* at 8:2-5.

Mr. Comiskey said that he spoke with Ms. Helfant and told her that he wanted her to have additional experience and to secure a degree (a four-year degree or master's degree) to be considered for the Human Resources Director position. Ms. Helfant did enroll in college. *Id.* at 13:1-13.

When I asked Ms. Comiskey why Jason Marlar was appointed the permanent IT Director, absent a competitive process, he said that the former IT Director recommended Mr.

Marlar has his replacement (Jim Faulkner). Mr. Comiskey said that he met with Mr. Marlar but had done little independent inquiry once Mr. Faulkner recommended Mr. Marlar as his replacement. *Id.* at 17:11-25.

Mr. Comiskey said that on or about May 16, 2023, Mayor Stile made a motion for his resignation. The motion failed. While Mr. Comiskey was seemingly aware that Council members voted to initiate a survey concerning his performance, he repeatedly said that he was unclear on the parameters or process adopted for conducting the survey. He said he was unsure that it was Ms. Helfant who was charged with the responsibility of overseeing the survey. *Id.* at 19:11-23.

Mr. Comiskey acknowledged having received a copy of the survey results, with the attached notes with comments concerning Ms. Lovern. Mr. Comiskey said that he reviewed the report and read the comments regarding Ms. Lovern, but he gave no credence to the comments about Ms. Lovern and he did not take them seriously. He did not meet with Ms. Lovern to discuss the comments concerning her alleged behavior. *Id.* at 27:1-3; 59:15-25; 61:62:1-4.

### **Altering City Hiring Procedure:**

Next, we reviewed Mr. Comiskey's email to Kenny Hargroves, dated, May 30, 2023, wherein he told Mr. Hargroves that he was implementing a new hiring procedure, such that Human Resources would no longer be responsible for the final selection or processing of applications. I first asked why he did not include or copy Ms. Helfant [the Interim Human Resources Director] on the email. Mr. Comiskey first had no response, but then said it could have been because Ms. Helfant was on vacation and he did not believe in emailing staff when they were on vacation. *Id.* at 22:1-6.

On June 12, 2023, Mr. Comiskey sent an email to Ms. Helfant where he summarized the above referenced changes to the City's hiring procedures. Mr. Comiskey verbally relayed the changes to Ms. Helfant in early June of 2023. A true and correct copy of the email is attached hereto as **Exhibit "EE"**.

I then asked Mr. Comiskey why he altered the hiring procedures, thus removing hiring functions from the Human Resources Department.<sup>7</sup> Mr. Comiskey said that Ms. Helfant had violated City policy Rule 3.07 by hiring Megan Shonk, Troy Shonk's wife. Mr. Comiskey said City Policy prohibits the hiring of a relative of a Department Head. Mr. Shonk is the Director of Parks and Recreation. Mr. Comiskey admitted to having told a number of Council members that Ms. Helfant had violated a City Policy by hiring Mrs. Shonk. Mr. Comiskey said he counseled Ms. Helfant, however, there is no record of it. *Id.* at 24:3-24; 37:1-5.

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<sup>7</sup> Rule 4.1 of the City's Employment Policy & Procedure Reference Guide states: "To ensure that the City's hiring policies are uniformly followed, all candidates for open positions must be hired through the Human Resources Department." Section 4.3 sets forth numerous responsibilities for the Human Resources Department to work with Department Heads, make job offers, establish "appropriate compensation," and complete background checks. See Rule 4.3 (A)-(K).



I reviewed Rule 3.07 of Mount Dora's Employment Policy & Procedure Reference Guide, which states:

No City official, department head, or supervisor may appoint, employ, promote, advance or be influential in any way in the employment of any individual who is a relative, as defined on page 2-3 herein, of a City Official, department head, or supervisor. Further, no relative of an employee hired by the City to fill a position which would cause the current employee to either have jurisdiction over or be subject to the jurisdiction of the relative. (attached hereto as **Exhibit "FF"**)

Under his newly imposed procedure, the Human Resources Department was charged with sending Mr. Comiskey their pick for their top three candidates, with the final selection, offer letter, etc., being performed by the City Manager. Initially, Mr. Comiskey directed that this process would apply to all applicants, but he later modified the procedure to include only applicants for full-time positions. *Id.* at 81:13-21.

I asked Mr. Comiskey to point out what portion of the rule was violated by Ms. Helfant. Mr. Comiskey stuck to this position that Ms. Helfant violated the Rule by hiring Mr. Shonk's wife and not enforcing the rule. Mr. Comiskey then said he believed that Rule 3.07 had been violated by Mr. Shonk due to his having influenced the hiring of his wife. Mr. Comiskey had no evidence to support his position and said that he heard in the past that Mr. Shonk wanted to be on various hiring committees, including the hiring of Ms. Kraynik's replacement for Human Resources Director. Mr. Comiskey never changed his position that Ms. Helfant and Mr. Shonk violated Rule 3.07 even after having read the rule during his interview. *Id.* at 39:18-25; 40:15-21.

I showed Mr. Comiskey Ms. Shonk's application for the customer service position, which was received on January 16, 2023. He was unsure if Ms. Kraynik was still employed as the Human Resources Director when the application was received, to wit, I asked Mr. Comiskey to explain his rationale in telling Council members that Ms. Helfant violated Rule 3.07 when he was unaware if Ms. Kraynik was still the Human Resources Director at the time of Ms. Shonk's hire. Mr. Comiskey said that Ms. Helfant had violated the "spirit" of the Rule.

Mr. Comiskey said that he likely learned of Ms. Shonk's hire when she completed a form to approve her outside employment, attached hereto as **Exhibit "GG"**. This form was signed on February 28, 2023. *Id.* at 49:19-25; 50:1-3.

I then asked Mr. Comiskey to justify the length of time that it took him to finalize the hiring of applicants once he took over the process. We reviewed a number of emails from Mr. Hargroves, requesting status on the hiring of several applicants. By way of example, Ms. Brittany Haller's application was submitted on June 16, 2023, and on August 11, 2023, Mr. Hargroves emailed Ms. Lovern, copying Mr. Comiskey, and asked for a status on hiring her. Mr. Comiskey said the delay was due to her having countered the City's pay offer. I inquired as to why a counteroffer for higher pay would have resulted in a delay of

several months. Mr. Comiskey said he decided to re-open the process once she countered. *Id.* at 87-91.

Mr. Hargroves' August 16, 2023, email lists a number of applicants that were awaiting to be hired. Mr. Comiskey said he could not recall nor explain the delays in hiring the applicants listed in Mr. Hargroves' email. A true and correct copy is attached hereto as **Exhibit "HH"**.

One such applicant was an employee of the City, Bradley Mays, who sought a transfer from one department to another. According to the email dated August 4, 2023, Mr. Mays resigned because of the delays in Mr. Comiskey processing the transfer. Mr. Comiskey could not recall the reason for the delay. A true and correct copy of email is attached hereto as **Exhibit "II"**.

### **Altering Investigation Process:**

Mr. Comiskey acknowledged emailing Ms. Helfant on June 15, 2023, to inform her that she was not to initiate *any* investigations. He reaffirmed his position in a June 27, 2023, email. A true and correct copy is attached hereto as **Exhibit "JJ"**. I reviewed Rules 3.4 and 3.18 with Mr. Comiskey; all of which indicate that the Human Resources Director is responsible for conducting investigations in response to internal complaints of harassment or discrimination.

Mr. Comiskey said that he directed Ms. Helfant not to initiate any investigations because he received a call from Ms. Lovern wherein, she told him that another employee told her that Ms. Helfant had initiated an investigation against Ms. Lovern. Mr. Comiskey did not meet with Ms. Helfant prior to sending the June 15, 2023, email and did not engage in any independent fact finding prior to removing investigation authority from Ms. Helfant. Mr. Comiskey said that there was an issue with another investigation conducted by Ms. Helfant that caused him concern. *Id.* at 47:13-25; 48:1-24.

On or about June 26, 2023, Mr. Comiskey called a meeting with Ms. Helfant, Mr. Hargroves and Ms. Sommer. Mr. Comiskey said that he wanted to discuss all pending investigations and to inquire into why Ms. Lovern was the subject of an investigation. At some point in that meeting, Mr. Comiskey directed Mr. Hargroves to leave the meeting. He then asked Ms. Helfant, who gave her permission to investigate Ms. Lovern, to wit, she told him that no one directed her to investigate Ms. Lovern. Mr. Comiskey told me that he believed that if anyone was responsible for the investigation into Ms. Lovern then it would be Mayor Stile or Former City Attorney Sutphen. *Id.* at 67:20-25; 68-72:1-5.

I asked Mr. Comiskey if he ever told anyone that he believed that Mayor Stile and Ms. Sutphen were responsible for Ms. Helfant having included comments on Ms. Lovern in the survey and he said he did not recall. *Id.* at 72:6-14.

Ms. Helfant summarized their meeting in an email, dated, June 27, 2023, wherein she confirmed that she was instructed: 1) not to initiate any investigations (one of which was an investigation into Mr. Comiskey and Interim Chief Gibson); 2) that she was not to

contact the attorney to ask any questions; 3) that she was not to lead the union negotiations (the Human Resources Director previously led contract negotiations); and that Mr. Comiskey would refer out the investigation into allegations concerning himself and Interim Chief Gibson. Mr. Comiskey did not email or otherwise communicate any disagreement with Ms. Helfant's email summarizing the June 26, 2023, meeting.<sup>8</sup> *Id.* at 82-83:1-13.

Mr. Comiskey was made aware of a number of complaints that had been received by the Human Resources Department at the time that Mr. Comiskey directed Ms. Helfant not to initiate any investigations. By way of example, Angela Smith, an employee of the Police Department, had complained of unfair treatment by the Police Department. Mr. Comiskey said that he was aware of her complaint, but was unsure what steps he had taken to address the complaint once he directed Ms. Helfant not to initiate investigations. Ms. Smith's complaint was initiated in or about June 2023. Mr. Comiskey could not recall a report or conclusions having been issued regarding Ms. Smith's complaint and he pondered aloud as to whether the complaint had been referred to outside legal counsel for resolution. I asked Mr. Comiskey to provide me with any documents evidencing that Ms. Smith's complaint was investigated or otherwise addressed.<sup>9</sup> *Id.* at 53:24-25; 54:1; 55:1-19;

### **Supervision of Merry Lovern:**

Ms. Comiskey said that Ms. Vega told him that Ms. Lovern said that she would "break her hand" if Ms. Vega went directly to Mr. Comiskey for his signature again; thus circumventing Ms. Lovern. Mr. Comiskey said that Ms. Vega was upset about Ms. Lovern's comment. In turn, Mr. Comiskey said that he met with Ms. Lovern and told her that she should not speak that way. Ms. Lovern was not reprimanded in any manner. *Id.* at 76:4-20; 77:9-13

I asked Mr. Comiskey why he did not initiate his own investigation into Ms. Lovern once he had information that she had a propensity for engaging in behaviors that were in line with the comments made about Ms. Lovern in the survey. Again, Mr. Comiskey said that he did not trust the credibility of the survey.

Mr. Comiskey said that he was unaware of the allegation that Ms. Lovern recorded citizens calling the City. *Id.* at 74:15-19; 75:11-23. He said that he was unaware that Ms. Lovern made comments that she would work to uncover the identity of survey participants.<sup>10</sup> Mr.

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<sup>8</sup> Mr. Comiskey said that he had notes from that meeting and I told him that he could provide them to me. Mr. Comiskey later provided his notes of the meeting on December 23, 2023.

<sup>9</sup> On December 23, 2023, Mr. Comiskey later provided emails regarding Ms. Smith's investigation. As stated in greater detail below, the emails provided did not adequately address Mr. Comiskey's handling of Ms. Smith's internal complaint.

<sup>10</sup> I listened to various City Council meetings, in which Mr. Comiskey was present, and concerns regarding Ms. Lovern's statements were raised. By way of example, at the August 1, 2023, meeting Councilman Rolfson said that he was told by members of staff that Ms. Lovern would "do whatever it takes" to find out who the complainers are and report it to the City Manager. Councilman Rolfson went on to say that her comments were in direct conflict with the Council's direction that retaliation would not be tolerated.

Comiskey said he was puzzled as to what impact, if any, Ms. Lovern's comments that she would uncover the identity of survey participants would have on employees. *Id.* at 78:7-24; 79:14-25.

**Additional Allegations:**

Mr. Comiskey acknowledged having recommended that his wife, Jane Lee Comiskey, serve on an interview panel for the communications coordinator position. He believed she would be an asset to the panel. *Id.* at 80:5-19.

He denied having told Ms. Douglas that he did not want Ms. Sutphen to review multi-year vendor contracts, rather, he believed that the rules should be modified to allow him to review certain contracts for the sake of efficiency. *Id.* at 83:14-19

Mr. Comiskey denied having told Mr. Hargroves that Ms. Vega should sit on an interview panel because she and the applicant are Puerto Rican. Instead, Mr. Comiskey said that he wanted to diversify interview panels to reflect the applicant pool. *Id.* at 91:21-25; 92:1-4.

I asked Mr. Comiskey if he was familiar with Round Lake Elementary having terminated their aftercare agreement with the City. He said that he was but said that he did not receive notice of the termination until late March 2023. I showed Mr. Comiskey the letter from Principal Linda Bartberger, dated March 1, 2023, detailing the termination of the aftercare agreement with the City. While the letter is addressed to Mr. Comiskey, he said that did not receive the letter. He later saw the letter, but he could not recall who gave him the letter. *Id.* at 103:23-25; 104:9-23; 105.

Mr. Comiskey could not recall having ever spoken with Mr. Shonk about the termination agreement. When I inquired as to the ramifications of termination on the City's Summer Camp program, Mr. Comiskey seemed unaware that the termination of the aftercare agreement also meant that the City could no longer use the Round Lake school property for the City's Summer Camp. *Id.* at 107:18-25; 108:1-22.

Next, we discussed the RFP to develop and purchase a kiosk in Downtown Mount Dora. We reviewed the email from Mr. Adam Sumner where he raised numerous issues with the subcontractor's price and that the source of funding was problematic. Specifically, Mr. Sumner wrote, in part, on March 14, 2023: "Total cost for the one kiosk is \$211,400.00. We only have \$150,000.00 budgeted and that was intended for 5 kiosks. As such, we need to try another route...Also, SteamRoller has not created this specific technology to date, so we would be funding their research and development cost."

Mr. Comiskey responded to Mr. Sumner's email, directing the team to move ahead with the existing proposal. Later, however, Mr. Comiskey pulled the approval of the proposal from the City Council's Agenda for consideration. When I inquired into why the approval of the RFP was pulled from the Agenda, Mr. Comiskey said that he had spoken to someone (whose name he could not recall) who advised him that the price proposal was too high. Mr. Comiskey could not explain why he did not accept and take into consideration the identical concerns raised by Mr. Sumner. *Id.* at 117:16-25; 118:1-15.

I then asked Mr. Comiskey if he had directed Mr. Marlar to contact other potential vendors to survey their prices on completing the same work that was the subject of the RFP for the kiosk. Mr. Comiskey said that Mr. Marlar “misunderstood” him and that he only requested that Mr. Marlar research similar kiosks projects in other cities. *Id.* at 119:1-23.

Mr. Comiskey denied that he is non-responsive to emails. He said that he is unaware of having missed meetings or having fallen asleep at any meetings. He acknowledged that his busy schedule sometimes requires that he miss meetings. *Id.* at 131:15-16.

Mr. Comiskey did not recall telling the departments to reduce their budgets by 10%, but he recalled denying the Parks and Recreation request for a new shed because the old shed was sufficient. *Id.* at 129:6-10.

Mr. Comiskey denied ever telling Ms. Barton to “smile and nod” when attending a budget meeting with the Council members. *Id.* at 130:23-25; 131:1.

Finally, in response to allegations that Mr. Comiskey ignores Mayor Stile’s emails, Mr. Comiskey admitted to ignoring the Mayor depending on the nature and tone of her emails to him. *Id.* at 148:1-9.

### **Rally in Mount Dora:**

With regard to the potential abortion rally in Mount Dora, Mr. Comiskey said that he spoke with Interim Chief Gibson about the City’s response to intel that an abortion rally was being planned in the City. Mr. Comiskey said he knew that the rally that was being planned to occur in the City was not affiliated with the same group that was the subject of Interim Chief Gibson’s intel. Mr. Comiskey said that he knew this because both his wife and daughter would be participants. *Id.* at 131:17-24.

I asked Mr. Comiskey if he ever disclosed to Interim Chief Gibson that he knew that his wife and daughter were intended participants\planners of the rally. Mr. Comiskey said he thought that everyone knew that his wife was an organizer of the rally, as he believed she signed the permit application for the rally. When asked if he specifically spoke to Interim Chief Gibson about his wife’s participation, he could not point to any conversation. *Id.* at 133:7-25; 134:1-2,16-25; 135:1-6; 136:20-25; 137:10-21.

Next, I showed Mr. Comiskey texts between himself and Interim Chief Gibson wherein Interim Chief Gibson mentioned that he was relying on intel to attempt to ascertain the identity of the rally organizers. Mr. Comiskey did not disclose that Mrs. Comiskey was involved in the demonstration. *Id.* at 138:5-16.

The police department’s crime analyst who worked on gathering intel on the rally was Jessie Tallent. Mr. Comiskey denied having told Interim Chief Gibson that Mr. Talent was required to complete the police academy. He did say, however, that he instructed Interim Chief Gibson that a crime analyst position was not needed due to the City’s low crime rate and that he wanted Mr. Tallent to assist in training instead. Mr. Comiskey did not give a

definitive answer when he was asked if he directed Interim Chief Gibson to rid of the “crime analyst” job title. *Id.* at 139:12-25; 141:14-23; 142:1-25.

### **Retaliation of Troy Shonk:**

In response to allegations that Mr. Comiskey harassed Mr. Shonk by sending him multiple emails, detailing various deficiencies, such as trash on the ground, blades of uncut grass, weeds growing from cracks in the concrete, etc., Mr. Comiskey acknowledged having sent the emails and he indicated that he often walks the City and takes pictures of areas needing improvement. *Id.* at 91-103.

With regard to the allegation that Mr. Comiskey failed to respond to a resident, seeking to sell his family’s burial plot based upon the fair market value, Mr. Comiskey was unsure whether he had responded to the resident as of yet. Mr. Shonk had already informed the resident that the City Ordinance prohibited selling the plot at the fair market value and Mr. Comiskey was charged with contacting the resident to further explain the City’s position. Mr. Comiskey agreed to provide me with evidence that he followed up with the resident. Mr. Comiskey never provided any evidence that he contacted the resident.

### **Vershurn Ford:**

I interviewed Mr. Ford, a former employee of Mount Dora on December 8, 2023, at City Hall. Mr. Ford said that he was employed by the City for four (4) years, with his last day being in March 2023. Mr. Ford was formerly the City’s Public Information Officer (Also known as “PIO”). *See* Ford Depo. Tr. 3:9-14; 4:20-22.

Mr. Ford said that the environment in the City Manager’s office was “toxic”. He said that an employee’s relationship and access to Mr. Comiskey was reliant and dependent on their willingness to “kiss the ring” of Ms. Lovern. *Id.* at 6:13-18; 15:17-25.

Ms. Lovern had access to the barracuda system, which allows her access to all employees’ emails, and it was apparent to him that Ms. Lovern was aware of emails that he sent to Mr. Comiskey. *Id.* at 7:23-25; 8-9:1-6.

In September 2022, Mr. Ford invited his co-workers to his birthday party and he did not invite Ms. Lovern. Mr. Ford was aware of Ms. Lovern’s negative treatment of his co-workers and thought her appearance at the party would make some uncomfortable. Mr. Ford said that initially he had a good relationship with Ms. Lovern, but he began to limit his interactions with her because of her treatment of others. Mr. Ford later learned that Mr. Comiskey raised his decision not to invite Ms. Lovern to his birthday in his rebuttal statement to City Council, which he thought was odd. *Id.* at 16:1-25; 17:1-14; 18-9-24.

Mr. Ford said that when he returned to work after his party that it was readily apparent that Ms. Lovern’s demeanor towards him had changed. She was no longer jovial with him; but rather she became very matter of fact and formal in her conversations with him. In turn, the City Manager was less responsive to him. *Id.*

Mr. Ford was responsible, in part, for creating media releases for the City. Mr. Ford said that the City Manager would often direct him to send his media releases to Ms. Lovern for her approval. Mr. Comiskey seemed to be positioning Ms. Lovern to serve as the Assistant City Manager. He thought it strange that he was being funneled to the City Manager's executive assistant for approval of his work product. *Id.* at 20:8-24.

Mr. Ford said that his disdain for his relationship with the City Manager was due to the City Manager's willingness to give Ms. Lovern so much power such that her like or dislike of employees became determinative of how the City Manager treated his staff. The City Manager's behavior towards employees changed depending on Ms. Lovern's relationship with that employee. *Id.* at 20:25; 21:1-7.

In December of 2022 there was a double homicide in the City and Mr. Ford attempted to reach the City Manager for a full day to prepare media responses. Mr. Ford was working in tandem with Mayor Stile and Interim Chief Gibson. He called Mr. Comiskey for approximately twenty-four hours and called Mr. Comiskey's wife; to no avail. To this day, he does not know why Mr. Comiskey was unavailable. *Id.* at 10:11-25; 11:1-12.

Finally, Mr. Ford recalled having a conversation with Interim Chief Gibson concerning Chief Gibson's concerns about an imminent abortion demonstration in the City. The Police Chief was in the intel and information gathering stage as to the identity of the organizers. Mr. Ford said he recalled that the Chief Gibson indicated that the name of the organizer included the name "revenge" and when he heard the name of the organization from the Chief, he immediately knew that this was the same organization that Mrs. Comiskey was involved in, as she had invited him to some of their events. He immediately told Chief Gibson that Mrs. Comiskey was involved with this group that was organizing he rally. Mr. Ford said that he could tell that this was Chief Gibson's first time hearing that Mrs. Comiskey was involved in the demonstration and that Chief Gibson was shocked by this information. *Id.* at 21:14-25; 22-25.

**Sharon Kraynik:**

I interviewed Ms. Kraynik via Zoom on December 8, 2023. Ms. Kraynik was formerly the Human Resources Director for Mount Dora. Her last day was January 18, 2023. She does not recall reviewing Ms. Shonk's application.

When she submitted her resignation to the City Manager, they discussed her succession and she told the City Manager that the Human Resources Department was filled with hard working individuals, but that they lacked experience. She did not recommend that Ms. Helfant serve as the Interim Human Resources Director. Mr. Comiskey directed Ms. Kraynik to prepare the job posting for the Human Resources Director, which she did. *See Kraynik Depo. Tr.* 6:2-9.

## CONCLUSION AND FINDINGS

### KIMBERLEY HELFANT'S COMPLAINT:

On or about July 6, 2023, Ms. Helfant submitted an internal complaint seeking whistleblower protections pursuant to Section 448.102, Florida Statutes.

Ms. Helfant alleges, in part, that the May 16, 2023, directive by City Council to initiate a survey into the City Manager's management abilities, served as the catalyst for alleged retaliatory conduct.

Florida's Public Sector Whistle-blower's Act states in pertinent part:

**112.3187 Adverse action against employee for disclosing information of specified nature prohibited; employee remedy and relief.—**

(1) SHORT TITLE.—Sections 112.3187-112.31895 may be cited as the "Whistle-blower's Act."

(2) LEGISLATIVE INTENT.—It is the intent of the Legislature to prevent agencies or independent contractors from taking retaliatory action against an employee who reports to an appropriate agency violations of law on the part of a public employer or independent contractor that create a substantial and specific danger to the public's health, safety, or welfare. It is further the intent of the Legislature to prevent agencies or independent contractors from taking retaliatory action against any person who discloses information to an appropriate agency alleging improper use of governmental office, gross waste of funds, or any other abuse or gross neglect of duty on the part of an agency, public officer, or employee.

(3) DEFINITIONS.—As used in this act, unless otherwise specified, the following words or terms shall have the meanings indicated:

(a) "Adverse personnel action" means the discharge, suspension, transfer, or demotion of any employee or the withholding of bonuses, the reduction in salary or benefits, or any other adverse action taken against an employee within the terms and conditions of employment by an agency or independent contractor...

(5) NATURE OF INFORMATION DISCLOSED.—The information disclosed under this section must include:

(a) *Any violation or suspected violation of any federal, state, or local law, rule, or regulation committed by an employee or agent of an agency or independent contractor which creates and presents a substantial and specific danger to the public's health, safety, or welfare.*

(b) *Any act or suspected act of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, suspected or actual Medicaid fraud or abuse, or gross neglect of duty committed by an employee or agent of an agency or independent contractor. [emphasis added]*



Thus, the initial inquiry begins with a determination of whether Ms. Helfant's conduct in facilitating and overseeing in internal survey of the City Manager's direct reports falls under activities protected by the Act. I find that it does not.

According to Councilman Dawson, Ms. Helfant was directed to conduct a "360 assessment" of Mr. Comiskey's managerial and leadership abilities. The survey included evaluation topics, which included, but were not limited to, "Communication," "Interpersonal Skills," and "Problem Solving." I do not find that Ms. Helfant's role as the facilitator of the survey rendered her a complainant under the Act, as the subjects of the survey did not fall under the nature of information protected under 112.3187 (5) of the Act.

In that same vein, I do not find that Mr. Comiskey engaged in violations of Title VII of the Civil Rights Act or Florida's Civil Rights Act for unlawful retaliation. Title VII or the Civil Rights Act and Florida's Civil Rights Act mirror each other in their protections.

Title VII prohibits an employer from retaliating against "any ... employee[ ] ... because [s]he has opposed any practice made an unlawful employment practice" by Title VII, "or because [s]he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under [Title VII]." 42 U.S.C. § 2000e-3(a). The first part of the anti-retaliation provision is known as the "opposition clause" and the second part as the "participation clause." See *E.E.O.C. v. Total Sys. Servs., Inc.*, 221 F.3d 1171, 1174 (11th Cir. 2000). *CBOCS West, Inc. v. Humphries*, 553 U.S. 442, 452-57, 128 S.Ct. 1951, 170 L.Ed.2d 864 (2008); *Standard v. A.B.E.L. Servs., Inc.*, 161 F.3d 1318, 1330 (11th Cir. 1998).

To make a prima facie case for a claim of retaliation under Title VII, a plaintiff must first show (1) that "she engaged in statutorily protected activity," (2) that "she suffered an adverse action," and (3) "that the adverse action was causally related to the protected activity." See *Jefferson v. Sewon Am., Inc.*, 891 F.3d 911, 924 (11th Cir. 2018); *Bryant v. Jones*, 575 F.3d 1281, 1307-08 (11th Cir. 2009). See *Gogel v. Kia Motors Mfg. of Georgia, Inc.*, 967 F.3d 1121, 1134-35 (11th Cir. 2020).

As stated above, I do not find that Ms. Helfant's role as the facilitator of the survey, alone, equated to her opposing any practice made unlawful by Title VII or Florida's Civil Rights Act, or that she was somehow participating in a proceeding, hearing or investigation related to unlawful employment conduct.

My analysis, however, does not end there. Section 15-Disciplinary Action of Mount Dora's Employment Policy & Procedure Reference Guide sets forth levels of offenses, disciplinary actions, etc. Moreover, the City's agreement for employment further adds to the analysis. A true and correct copy of the Agreement is attached hereto as **Exhibit "KK"**.

Ms. Helfant was *directed* by Council members to conduct a survey, assessing Mr. Comiskey's job performance. This direction came from the legislative body of the City of Mount Dora; the same body which Mr. Comiskey reports to. Ms. Helfant did not seek this

task and knowing the same, Mr. Comiskey should have respected Ms. Helfant's role and abstained from any appearance of retaliation against her. He did the exact opposite.

As stated above, while I question whether Ms. Helfant has any protections pursuant to State or Federal law, there is sufficient evidence that Mr. Comiskey took adverse actions against Ms. Helfant because of her role in the survey process.

As an aside, Ms. Helfant questioned whether Mr. Comiskey's decision not to appoint her the permanent Human Resources Director was a retaliatory act. I have no basis to opine on who should be appointed the permanent Human Resources Director. Ms. Kraynik questioned Ms. Helfant's readiness to serve as the Interim Human Resources Director. Mr. Comiskey obviously did not give much weight to Ms. Kraynik's opinion because he appointed Ms. Helfant the Interim Human Resources Director over Ms. Kraynik's recommendation (albeit Ms. Helfant was appointed prior to having facilitated the survey). I also find it suspicious that Mr. Comiskey has ramped up the process to hire a permanent Human Resources Director, while this instant investigation is pending, despite his pattern of leaving employees in the role of Interim Directors for several months and years. With that said, it is not my role to opine whether Ms. Helfant is the best suited candidate.

Next, Mr. Comiskey unequivocally removed substantial hiring procedures from Ms. Helfant and the Human Resources Department, which he explained in his May 30, 2023, email to Mr. Hargroves. As an aside, I find it troubling that Mr. Comiskey did not copy Ms. Helfant, the Interim Human Resources Director, on the email. It was Mr. Hargroves who shared Mr. Comiskey's email with Ms. Helfant on June 1, 2023. Ms. Helfant followed up by asking Ms. Hand to schedule a meeting with Mr. Comiskey so that Ms. Helfant could discuss his changes to the hiring procedures. A true and correct copy of June 6, 2023, email is attached hereto as **Exhibit "LL"**.

I cannot find any event other than the survey which would have caused this sudden decision to remove Ms. Helfant (and the Human Resources Department) from the major role in the hiring process and procedures. To be clear, Section 4 of the City's Policy provides that the Human Resources Director is integrally involved in hiring, negotiating job offers, and preparing offer letters, etc.

When Mr. Comiskey was asked why he initiated the change in hiring procedures on or about May 30, 2023, he answered that Ms. Helfant had hired Ms. Meghan Shonk, the wife of a department head (Troy Shonk) and that that was a violation of Rule 3.07. This is a "red herring." Ms. Shonk submitted her application on or about January 16, 2023. Mr. Comiskey said that he was aware of her hire in February 2023, yet he made no changes to hiring procedure until May 30, 2023 (just days after Ms. Helfant was assigned the project of facilitating the survey). There is no evidence that he counseled or spoke to Ms. Helfant concerning this alleged infraction.

Mr. Comiskey was adamant that Ms. Helfant violated the spirit of Rule 3.07 in hiring a department head's relative and allowing Mr. Shonk to have influence over the hiring of his wife (an allegation he had no evidence of) Interestingly, Mr. Comiskey had no qualms

and thought there was no potential of improper influence in seeking to have his wife sit on interview panels.

Moreover, I am concerned as to Mr. Comiskey's attempts to taint the City Council against Ms. Helfant in admittedly telling Council members that Ms. Helfant violated Rule 3.07. If the intention was to prohibit the hiring of department heads' relatives, the Rule may need to be amended. Rule 3.07 does not state that it is a violation to hire a department head's relative.

Case in point, Rule 3.07, states in pertinent part, that "No City official, *department head*, or supervisor may appoint, employ, promote, advance or be influential in any way in the employment of any individual who is a relative, as defined on page 2-3 herein, of a City Official, *department head*, or supervisor." [emphasis added]

The City's policy, in many sections, distinguishes between department heads and the Human Resources Director. By way of example, Section 4.3 (E) and (F) distinguish between responsibilities of Department Head and HR Department. If the City wished to promulgate a rule which barred the hiring of department head's relatives it could have done so. It is also noteworthy that Mr. Comiskey was unsure whether the decision to hire Mrs. Shonk was made by Ms. Helfant or by Ms. Kraynik.<sup>11</sup>

Upon assuming certain hiring procedures, which required that Mr. Comiskey, solely, finalize the hiring of all full-time employees, approve offers of employment, including the preparation of offer letters, the result was an overwhelming backlog and delays in hiring which often left applicants in the pipeline for months. Brittany Heller applied for a position in June of 2023 and the City Manager was still working on her offer letter as of August 16, 2023. Mr. Mays was merely awaiting a transfer from one department to another and he opted to resign rather than continue to await Mr. Comiskey's approval of the transfer.

As if removing hiring procedures from Ms. Helfant were not enough, Mr. Comiskey followed up by removing from Ms. Helfant the ability to initiate investigation; an obligation expressly imposed and afforded to her and the Human Resources Department the City's Policy.

On June 15, 2023, Mr. Comiskey emailed Ms. Helfant, informing her that she was not to initiate any investigations, absent his approval. When Mr. Comiskey was asked what precipitated his decision, he said that he terminated Ms. Helfant's authority to initiate investigations of internal complaints because Ms. Lovern told him that she was the subject of an investigation by Ms. Helfant. Ms. Lovern also confirmed in her interview that Ms. Helfant's investigation authority was terminated because Ms. Lovern was the subject of an investigation.

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<sup>11</sup> It is highly likely that Ms. Helfant finalized the decision to hire Ms. Shonk, but this was not known with certainty by Mr. Comiskey when he told Councilmembers that Ms. Helfant violated the policy.

Mind you, Mr. Comiskey did not contact Ms. Helfant to confirm if Ms. Lovern was being investigated and if so, why. He did no independent fact finding. He did not simply direct Ms. Helfant not to investigate Ms. Lovern. Rather, he imposed a new rule which potentially impacted *all employees*. The Human Resources Director is charged with investigating a number of internal complaints. Section 3.18 (10) states “The Human Resources Director has the primary responsibility for investigative actions of all suspected inappropriate activity as defined in this policy.” Section 3.4 states, in pertinent part, that the Human Resources Director “is responsible for investigating” complaints of harassment/sexual harassment. Said authority was stripped from Ms. Helfant and the Human Resources Department, solely, to protect Ms. Lovern.

On or about June 26, 2023, Mr. Comiskey called a meeting with Ms. Helfant, Ms. Sommer and Mr. Hargroves. During that meeting, Mr. Comiskey was apprised of pending investigations, including a complaint against him. Mr. Comiskey acknowledged that during that meeting that he questioned both Mr. Hargroves and Ms. Helfant, separately about who was responsible for directing an investigation into Ms. Lovern. Mr. Comiskey concluded the meeting, having imposed a host of prohibitions against Ms. Helfant, which included, prohibiting her from contacting the City Attorney, limiting her participation in union negotiations, etc. All of which was confirmed in Ms. Helfant’s June 27, 2023, email, which he never refuted.

During Ms. Sommer’s interview, she said that after Ms. Helfant and Mr. Hargroves left the meeting that Mr. Comiskey told her that he believed that Mayor Stile or then City Attorney Sutphen had directed Ms. Helfant to investigate Ms. Lovern.

At the time that Mr. Comiskey usurped the investigative process from Ms. Helfant, at least one investigation went ignored. Angela Smith initiated an internal complaint in June 2023. As of the time of our interview, Mr. Comiskey could not state who was investigating Ms. Smith’s complaint, who he had designated to conduct her investigation or the status thereof.

Mr. Comiskey made clear that he believed that Ms. Lovern had been treated unfairly. He believed that Ms. Lovern had been raked through the coals during Council meetings. Even if true, none of this justified his unreasonable and improper steps to protect Ms. Lovern. To be clear, Mr. Comiskey’s fiduciary duty, at all relevant times, was to the City of Mount Dora. He serves at the pleasure of the City Council, thus, to interfere with the City’s investigation procedures and negatively impact other employees seeking redress was highly inappropriate and a dereliction of his duties.

On December 23, 2023 (a Saturday), weeks after Mr. Comiskey’s December 1, 2023, interview, Mr. Comiskey provided documents to respond to the allegations against him. A true and a correct copy of the documents are attached hereto as **Exhibit “MM”**. Having reviewed these documents, they served the opposite effect for which Mr. Comiskey intended: 1) The documents provided by Mr. Comiskey, while making it more likely that Ms. Helfant hired Ms. Shonk, do nothing to negate the evidence that Mr. Comiskey was aware of this hire as early as February 2023. Thus, I do not credit Mr.

Comiskey's testimony that it was the hiring of Ms. Shonk that caused him to remove hiring procedures from Ms. Helfant and the Human Resources Department in May 2023; 2) Mr. Comiskey responded to the allegation that he failed to process investigations that were removed from Ms. Helfant by providing a string of emails wherein Mr. Comiskey informed Ms. Angela Smith that her internal complaint, which included a complaint against him, would be sent to Jeff Mandel for investigation.

Mr. Comiskey's July 18, 2023, email to Ms. Smith is an incomplete picture of events. Ms. Sutphen responded to Mr. Comiskey's email on the same day, saying that his decision of unilaterally seeking outside counsel had potential legal consequences.

Interestingly, on the same day (July 18, 2023) Mr. Comiskey also emailed Ms. Helfant, stating: "I understand you have filed a complaint against me with the city council. I have asked Jeff Mandel to review your complaint, conduct interviews, and prepare a report of findings for the mayor, city council, you and myself." First, under no set of circumstances would Mr. Comiskey's email to Ms. Helfant have been appropriate. It was calculated to chill Ms. Helfant's desire to pursue her complaint and was highly improper. A true and correct copy of the email is attached hereto at **Exhibit "NN"**.

Of equal importance is that during both the July 18 and August 1, 2023, Council meetings, Council members, including Mayor Stile and Councilman Rolfson, expressed strong disagreement with the investigatory processes being removed from the Human Resources Department pursuant to City Policy and with Mr. Comiskey's intent to select an attorney to investigate complaints against him. Thus, the idea that Mr. Comiskey thought that Ms. Smith's complaint was being investigated by Mr. Mandel despite the concerns stated by council members and there being no report or findings ever having been generated is highly unreasonable. Ms. Smith's complaint has languished under Mr. Comiskey's authority and due to his interference with the City's established process. A true and correct copy of emails regarding pending complaints are attached hereto as **Composite Exhibit "OO"**.

I find that Mr. Comiskey's conduct violated 15.2 GROUP III OFFENSES (1) Wanton or willful neglect in performing assigned duties and (15) Incompetence or inefficiency in the performance of assigned duties and the following provisions of Section 13 (D):

- (i) malfeasance, malfeasance and/or nonfeasance in performance of duties and responsibilities;
- (ii) Neglect of duty, including the inability or willingness to properly discharge the responsibilities of office;
- (iii) violation of any substantive City Policy, rule or regulation would subject another City employee to termination; and
- (ix) any other act of similar nature of the same or greater seriousness to those matters listed hereinabove

Mr. Comiskey's above-described conduct is evidence of wrongdoing and his failure to perform his duties and responsibilities. As the City Manager one of Mr. Comiskey's primary duties was to promote the mission, goals, and policies of the City. Mr. Comiskey failed in that endeavor. For example, Mr. Comiskey's treatment of Ms. Helfant in removing job functions from her and the Human Resources Department was unjustified and in exchange internal complaints went unresolved and hiring was severely delayed.

### **SUPERVISION OF MERRY LOVERN:**

From all accounts Mr. Comiskey and Ms. Lovern are very protective of each other. Ms. Lovern said that soon after Mr. Comiskey's hire, she informed him that Ms. Sutphen was untrustworthy. From all appearances Mr. Comiskey and Ms. Lovern took an "us against the world" approach to running City Hall.

Included in their responses to the survey, several employees indicated their frustration with Ms. Lovern's misconduct. The comments, which are attached as handwritten notes to the survey results, paint a picture of Ms. Lovern routinely being mean spirited and cruel to her co-workers. Ms. Lovern told me she thought the statements were made up. I found no such evidence of this, and Ms. Lovern's negative behavior was confirmed by multiple witnesses, whose testimony I credit.

Mr. Comiskey said that he read the comments, but he did nothing in response. When asked why he took no action, he said that he did not trust the reliability of the survey. He could not satisfactorily answer why he did not initiate an own investigation if he believed that the responses to the survey were unreliable. Mind you, by the time that the survey comments were released concerning Ms. Lovern, Mr. Comiskey was aware that months prior that Ms. Lovern had threatened Ms. Vega, stating she would "break her hand" if she went around her again to get a signature from the City Manager. Mr. Comiskey said that Ms. Vega reported the incident to him and he later spoke with Ms. Lovern and simply told Ms. Lovern that she should not speak to employees in that manner and that she should come to him if he needed to speak to employees. Mr. Comiskey commended Ms. Lovern's performance at the June 6, 2023, Council meeting according to the minutes, which are attached hereto as **Exhibit "PP"**.

Ms. Helfant said that she told Mr. Comiskey about Ms. Lovern's conduct; that Ms. Lovern had recorded her phone calls with citizens protesting as part of First Amendment Auditors (Ms. Lovern admitted to this and that they were recorded without their permission or knowledge) and that she replayed these recordings with her taunting these callers in the Human Resources Department; and that Ms. Lovern told at least two employees that she would uncover the identities of the survey participants (Ms. Sommer sought to modify her responses after Ms. Lovern's statement). Ms. Lovern suffered no consequences from Mr. Comiskey and in fact he indicated that he did not see how Ms. Lovern's purported comments were of consequence. Mr. Comiskey's response is perplexing.

Councilman Walker made clear at the June 6, 2023, council meeting that everyone should avoid attempts to determine the identity of survey participants. At that same meeting Mayor Stile expressed concern that Ms. Lovern would take steps to uncover the identity of survey participants. Thus, when Mr. Comiskey learned that Council's concerns had come into fruition, he should have immediately addressed the issue with Ms. Lovern. Instead, he did nothing.

On May 31, 2023, Mr. Comiskey submitted a response to Mayor Stile's motion for his resignation. It was telling that Mr. Comiskey chose to use his rebuttal to raise the concern that Ms. Lovern was not invited to Mr. Ford's party. A true and correct copy of Mr. Comiskey's rebuttal is attached hereto as **Exhibit "QQ"**.

Mr. Comiskey said that he was unaware that Ms. Lovern secretly recorded residents. I do not credit Mr. Comiskey's response and find that he was being untruthful. As an aside, I find that Mr. Comiskey was intentionally evasive during his interview, often stating that he could not recall events which he reasonably should have remembered. By way of example, Mr. Comiskey wrote in a letter on or about October 23, 2023, that a resident told him that there was a conspiracy to terminate his employment. When I asked him the name of resident that he spoke with he could not "recall" even though the conversation was just weeks before our interview. A true and correct copy of October 23, 2023, letter is attached hereto as **Exhibit "RR", pg. 6**.

Moreover, Mr. Comiskey's decision to alter the procedure for investigating internal complaints, simply because he believed that Ms. Lovern was being subjected to an investigation was unreasonable and highly improper. Even Ms. Lovern knew that the reasoning behind Mr. Comiskey's alteration of the investigation process was tied to his wanting to protect her. *See Lovern (October 30, 2023) Depo. Tr. 36:7-12.*

Mr. Comiskey's blind allegiance to Ms. Lovern further supported the notion that Ms. Lovern was protected and that as Mr. Ford described, employees needed to "kiss the ring" of Ms. Lovern to gain access to Mr. Comiskey.

Mr. Comiskey has at all times relevant to this matter had an obligation to supervise staff, which included the obligation to intervene on behalf of employees being bullied or mistreated. He failed in that endeavor. Rather, Mr. Comiskey enveloped Ms. Lovern in a protective bubble where her conduct went unchallenged and absent any recourse.

I find that Mr. Comiskey's conduct violated 15.2 GROUP III OFFENSES (1) Wanton or willful neglect in performing assigned duties, (2) Making false claims or false statements in any internal investigation, inquiry or proceeding and (15) Incompetence or inefficiency in the performance of assigned duties and the following provisions of Section 13 (D):

- (i) malfeasance, malfeasance and/or nonfeasance in performance of duties and responsibilities;
- (ii) Neglect of duty, including the inability or willingness to properly discharge the responsibilities of office;

(iii) violation of any substantive City Policy, rule or regulation would subject another City employee to termination; and

(ix) any other act of similar nature of the same or greater seriousness to those matters listed hereinabove

### **POLITICAL DEMONSTRATION:**

According to Interim Police Chief Gibson, Mr. Comiskey was fully aware that Chief Gibson and law enforcement officers were gathering intel to determine who was involved in a potential abortion rights demonstration in the City. For public safety reasons, Chief Gibson was keeping Mr. Comiskey abreast as additional investigatory information became known. All the while Mr. Comiskey knew that his wife and daughter were organizers of the demonstration, but he never disclosed this information to Chief Gibson. According to an article published by National Public Radio on May 22, 2022, “Jane Lee Comiskey, 58, traveled to Gainesville from Mount Dora for the rally.” Ms. Comiskey was an active participant in similar demonstrations. A true and correct copy of NPR Article is attached hereto as **Exhibit “SS”**.

On June 24, 2022, Chief Gibson texted Mr. Comiskey “In case you have not seen yet, check your email regarding a planned event tonight in front of City Hall.” Mr. Comiskey responds, “Yes, I saw it. I will likely be here at the start of it.” At 4:34PM on the same day, Mr. Comiskey wrote, “Mike, Unless you feel strong about it, I wouldn’t create any additional patrols for tonight’s event. I do not think you need it...” In the same text exchange, Chief Gibson wrote: “Also, our intel analyst is actually communicating with the organizer on his UC account. It may be canceled.” Information that the City Manager’s immediate family was intimately involved would have been helpful in assisting the Police Department in formulating a response and, frankly, said information was wrongfully withheld by Mr. Comiskey.

Furthermore, Mr. Ford was clear that it was he who informed Police Chief Gibson that Mr. Comiskey’s wife and daughter were involved in the demonstration and that the Chief was shocked by this information.

Mr. Comiskey’s statement to me that he thought everyone knew of his family’s participation because his wife may have signed off on the application for the rally permit clearly misses the point. Mr. Comiskey had an ongoing duty to disclose what he knew to the Police Chief. Failure to do so, created an unnecessary risk for police officers, the public, demonstrator and counterdemonstrators. This was a gross dereliction of duty.

I find that Mr. Comiskey violated 15.2 GROUP III OFFENSES (1) Wanton or willful neglect in performing assigned duties and (15) Incompetence or inefficiency in the performance of assigned duties and the following provisions of Section 13 (D):

(i) malfeasance, malfeasance and/or nonfeasance in performance of duties and responsibilities;



(ii) Neglect of duty, including the inability or willingness to properly discharge the responsibilities of office;

(iii) violation of any substantive City Policy, rule or regulation would subject another City employee to termination; and

(ix) any other act of similar nature of the same or greater seriousness to those matters listed hereinabove.

**TROY SHONK COMPLAINTS OF HARASSMENT:**

Mr. Shonk's complaints that Mr. Comiskey harassed him and negatively impacted his Department (Parks & Recreation) in denying his request for a \$7,200.00 in the budget and disparately approving budget items; emailing him multiple times to address perceived maintenance issues around the City, including nature trails; and moving his staff (i.e. Chris Carson), absent his input, to name a few, are duly noted.

The above referenced actions by Mr. Comiskey no matter how ill-advised or perceived were all within Mr. Comiskey's authority as the City Manager and did not violate any City Policy. With that said, I was left perplexed as to what was Mr. Comiskey's purpose in bombarding Mr. Shonk with multiple emails? On one occasion Mr. Comiskey exceeded twenty (20) emails in one day with photos of elongated blades of grass on an otherwise mowed area, pieces of paper on a trail, etc. I could find little redeeming value in pointing out such miniscule deficiencies. Said conduct is further confusing when viewed with the knowledge that additional staff were sought in the Parks and Recreation Department, which were either denied or affected by the dragging hiring process created by Mr. Comiskey.

I do not sustain any violations against Mr. Comiskey as to this allegation.

**MISCELLANEOUS CONCERNS:**

The following are concerns, which did not rise to the level of specific violations of City Policy or employment agreement, but are of great concern:

- Whatever disagreements or issues Mr. Comiskey had with Mayor Stile and/or Ms. Sutphen, it was highly inappropriate to share his grievances with staff. Ms. Barton and others recalled conversations with Mr. Comiskey where he said Ms. Lovern, a non-lawyer, knew more than Ms. Sutphen; that he did not want Ms. Sutphen to be consulted in multi-year vender contracts; and that he told Ms. Sommer that he believed that the Mayor and Ms. Sutphen were involved in lodging an investigation into Ms. Lovern. Plainly, there was no proper purpose in involving staff in his gripes.
- Ignoring Mr. Adam Sumner's advice that the kiosk RFP was not sustainable due to budget constraints, but then pulling the matter from the agenda because, according to Mr. Comiskey, someone (he could not recall the person's name) gave

him information identical to that which Mr. Sumner gave to him weeks prior was a waste of his staff's expertise and contributed to the low morale.

- I find that Mr. Comiskey did instruct Mr. Marlar to survey potential vendors to determine if Mr. Marlar could find a subcontractor for the kiosk RFP at a price less than the existing subcontractor to the RFP. Mr. Comiskey's directive could have run afoul of the purchasing procedures. Of greater concern is Mr. Comiskey's statement to me that Mr. Marlar misunderstood his direction. I credit both Mr. Marlar and Ms. Douglas' testimony
- Mr. Comiskey's statement that he was confused as to the Council's parameters of the survey and questioning whether Ms. Helfant was actually directed by the Council to oversee the survey was disingenuous at best. I listened to the May 16, 2023, meeting and what is clear is that the Council discussed the following: 1) That an anonymous survey of Mr. Comiskey's direct reports would take place; 2) That Kim Helfant and the Human Resources Department would facilitate the process. This was discussed again at the May 22, 2023, Council Special Meeting; and 3) The Council spoke at length about wanting to avoid any actual or perceived retaliation because of anyone's participation. The latter is extremely crucial, as Mr. Comiskey was put on notice of the concern for and care which the Council wanted all to take to avoid all appearance of retaliation.
- The City Manager took no steps to assist the Parks & Recreation Department in rehousing the City's Summer Camp once the public-school partner terminated its relationship with the City.
- Ignoring emails from Mayor Stile.
- Finalizing the hiring of applicants for the Library and Ms. Esquia faster than other applicants or giving the appearance of preferential treatment.
- Mr. Comiskey's delays in setting his interview demonstrated his disregard for the importance of a reasonably swift conclusion to this investigation.
- The long duration in which employees are called to serve as Interim Directors creates uncertainty. By way of example, Jason Marlar was still in limbo, serving as Interim IT Director, at the time of our interview and Deputy Chief Loewer served as Interim Fire Chief for over a year.
- Mr. Comiskey's statement to Ms. Barton to "nod and smile" and not volunteer budget information to the City Council...statements which were confirmed by both Ms. Barton and Ms. Douglas were inappropriate. Mr. Comiskey denied having made the comment, which I do not credit.
- Mr. Comiskey's testimony was intentionally evasive. He often used the phrase "I do not recall", when referring to matters which he would reasonably be expected to remember. I was left with the impression that Mr. Comiskey was being evasive. Interestingly, at the August 1, 2023, meeting, Councilman Walker said that he asked Mr. Comiskey to recount a conversation that Mr. Comiskey had with a certain attorney. Mr. Comiskey told Councilman Walker that he "couldn't remember". Councilman Walker was disappointed, saying that he could not

believe that Mr. Comiskey did not remember what he discussed with the attorney. This is a pattern of behavior.

- Numerous employees made mention of Mr. Comiskey's failure to attend scheduled meetings; falling asleep at meetings; or abruptly leaving meetings.

RECOMMENDATION: For all the reasons set forth above, I recommend that Mr. Comiskey be terminated. The City's employment agreement with Mr. Comiskey provides that the City Manager may be terminated at a public meeting. No cause is required for termination pursuant to the City's Charter. However, where an employee is terminated for any reasons enumerated in Section 13 (D), the City is not obligated to pay severance under Section 13. I find that Mr. Comiskey's conduct rose to that level.

### **MERRY LOVERN:**

Ms. Lovern was adamant that the comments made about her were either false or due to Ms. Helfant having induced employees to make such false comments about her. Ms. Lovern is sadly mistaken and her refusal to acknowledge how her colleagues feel about her conduct towards them is evidence of her lack of accountability and inability to take remedial action.

While many employees, including Ms. Helfant credited Ms. Lovern for her knowledge base and ability to be kind, numerous employees indicated that Ms. Lovern has been severely unkind, demeaning, and threatening.

By way of example, Ms. Sommer said that she thought it unfair that Ms. Helfant and Mr. Hargroves were being blamed for the negative comments made about Ms. Lovern, when in fact employees had complained about Ms. Lovern to her and had expressed sentiments like those expressed in the survey. I also believe that Ms. Lovern told Ms. Sommer that she hoped that Councilman Rolfson broke his hip. I also credit the testimony that Ms. Lovern improperly monitors employees' emails.

I experienced Ms. Lovern's concerning behavior first-hand during her interview. She began her interview calmly and then without provocation, she abruptly grabbed papers out of a binder and tossed them in front of me. See Lovern Depo. (October 30, 2023) Tr. 25:12-25; 26:1-9.

Ms. Lovern's unkind behavior towards her colleagues alone may be insufficient to warrant termination pursuant to the City's Policy. However, when the conduct includes recording residents, without their knowledge and celebrating her taunting them, her continued tenure with the City loses its benefits.

Florida's wiretapping law is a "two-party consent" law, such that Section 934.03, *Florida Statutes* makes it a crime to intercept or record a "wire, oral, or electronic communication" in Florida, **unless all parties to the communication consent.** (4)(a) states, Except as provided in paragraph (b), whoever violates subsection (1) is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, s. 775.084, or s. 934.41. Ms. Lovern, admittedly recorded residents without obtaining their consent to do so.

In addition to possibly subjecting herself to criminal prosecution, Ms. Lovern exposed herself and the City to civil damages.

Next, I accept as credible the testimony of Ms. Vega that Ms. Lovern threatened to break her hands if she ever went around her to get Ms. Comiskey to sign any documents. Mr. Comiskey acknowledged that Ms. Vega told him about the incident and that he met with Ms. Lovern and discussed it with Ms. Lovern, telling her “don’t talk to employees. You can bring it to me.” *See Comiskey Depo. Tr. 77:9-12*

Ms. Lovern denied ever having made the comment. That was simply untrue. Ms. Lovern was under oath and was aware that her answers were being considered as part of an investigation. This is unacceptable.

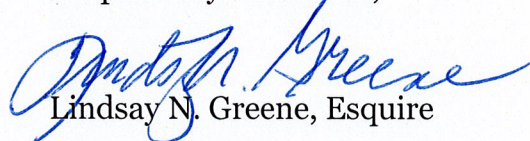
Finally, Ms. Lovern’s comments that she intended to uncover the identities of survey participants (which she also denied) are incredulous. Her behavior had a chilling effect on survey participants, as evidenced by employees amending their responses. Ms. Lovern’s desire to invoke fear, coupled with the knowledge that she had such power made her behavior all so much more troubling. Ms. Lovern’s ongoing “power trip” has been toxic and is unsustainable.

I find that Ms. Lovern violated 15.2 GROUP III OFFENSES (1) Wanton or willful neglect in performing assigned duties; (2) Making false claims or false statements in any internal investigation, inquiry or proceeding; and (15) Incompetence or inefficiency in the performance of assigned duties.

RECOMMENDATION: For all the reasons set forth above, I recommend that Ms. Lovern be terminated. While the City Council may lack authority to terminate an employee, the City Council may direct the City Manager to do so.

Should you have any further questions or concerns, do not hesitate to contact me.

Respectfully submitted,



Lindsay N. Greene, Esquire