

AO 243 (Rev. 09/17)

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court		District	Southern District of Ohio
Name (under which you were convicted): Brian Higgins		Docket or Case No.: 3:18-cr-00186	
Place of Confinement: Terre Haute, Indiana		Prisoner No.: 78259-061	
UNITED STATES OF AMERICA		Movant (include name under which convicted) V. Brian Higgins	

MOTION

FILED
 2024 FEB 16 PM 3:48
 U.S. DISTRICT COURT
 SOUTHERN DISTRICT OF OHIO
 DAYTON

1. (a) Name and location of court which entered the judgment of conviction you are challenging:
Southern District of Ohio - Dayton

 (b) Criminal docket or case number (if you know): 3:18-cr-00186
2. (a) Date of the judgment of conviction (if you know):
 (b) Date of sentencing: 5/25/2022
3. Length of sentence: 36 Months
4. Nature of crime (all counts):
 (3) Counts of Mail Fraud
 (2) Counts of Retaliation
5. (a) What was your plea? (Check one)
 (1) Not guilty (2) Guilty (3) Nolo contendere (no contest)
6. (b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to?
 N/A
6. If you went to trial, what kind of trial did you have? (Check one) Jury Judge only
7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes No

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8. Did you appeal from the judgment of conviction? Yes No

9. If you did appeal, answer the following:

(a) Name of court: Sixth Circuit Court of Appeals

(b) Docket or case number (if you know): 22-3538

(c) Result: Convictions were confirmed, restitution was remanded

(d) Date of result (if you know): 10/6/2023

(e) Citation to the case (if you know):

(f) Grounds raised:

Sixth Amendment right violated - counsel motion to withdraw

Court abused its discretion - refused expert funds

Court abused its discretion - limiting/excluding expert testimony

Court erred by admitting inadmissible recorded statements (403/404)

Cumulative effect of errors' - violation of due process

Court violated Sixth Amendment - impartial jury selection

Court miscalculated restitution - wrong method calculation

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes No

If "Yes," answer the following:

(1) Docket or case number (if you know):

(2) Result:

(3) Date of result (if you know):

(4) Citation to the case (if you know):

(5) Grounds raised:

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications, concerning this judgment of conviction in any court?

Yes No

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court:

(2) Docket or case number (if you know):

(3) Date of filing (if you know):

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(4) Nature of the proceeding:

(5) Grounds raised:

• • • •

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes No

(7) Result:

(8) Date of result (if you know):

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court:

(2) Docket of case number (if you know):

(3) Date of filing (if you know):

(4) Nature of the proceeding:

(5) Grounds raised:

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes No

(7) Result:

(8) Date of result (if you know):

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes No

(2) Second petition: Yes No

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

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12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground. Any legal arguments must be submitted in a separate memorandum.

GROUND ONE: INEFFECTIVE ASSISTANCE OF COUNSEL

- (a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):
SEE ATTACHED

(b) Direct Appeal of Ground One:

- (1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

- (2) If you did not raise this issue in your direct appeal, explain why:
SEE ATTACHED

(c) Post-Conviction Proceedings:

- (1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

- (2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

- (3) Did you receive a hearing on your motion, petition, or application?

Yes No

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(4) Did you appeal from the denial of your motion, petition, or application?

Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

GROUND TWO: PROSECUTORIAL MISCONDUCT

BRADY VIOLATIONS

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

SEE ATTACHED

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

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(2) If you did not raise this issue in your direct appeal, explain why:
SEE ATTACHED

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

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GROUND THREE: PROSECUTORIAL MISCONDUCT
VINDICTIVE PROSECUTION

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):
SEE ATTACHED

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why:

SEE ATTACHED

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes No

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(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

GROUND FOUR: PROSECUTORIAL MISCONDUCT

VINDICTIVE PROSECUTION

INEFFECTIVE ASSISTANCE OF COUNSEL

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

SEE ATTACHED

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why:

SEE ATTACHED

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

(2) If your answer to Question (c)(1) is "Yes," state:

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Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

YES

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14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the you are challenging? Yes No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At the preliminary hearing:

N/A

(b) At the arraignment and plea:

ANTHONY CICERO 500 EAST FIFTH STREET DAYTON, OHIO

(c) At the trial:

PAUL LAUFMAN/TAMARA SACK 4310 HUNT ROAD CINCINNATI, OHIO 45242

(d) At sentencing:

PAUL LAUFMAN/TAMARA SACK 4310 HUNT ROAD CINCINNATI, OHIO 45242

(e) On appeal:

UNIVERSITY OF MICHIGAN APPELLATE LITIGATION CLINIC ANN ARBOR, MICHIGAN 48109

(f) In any post-conviction proceeding:

N/A

(g) On appeal from any ruling against you in a post-conviction proceeding:

N/A

16. Were you sentenced on more than one court of an indictment, or on more than one indictment, in the same court and at the same time? Yes No

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

(b) Give the date the other sentence was imposed:

(c) Give the length of the other sentence:

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes No

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18. **TIMELINESS OF MOTION:** If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.*
MOVANT FURTHER PROVIDES THE ATTACHE MEMORANDUM AND EXHIBITS IN SUPPORT OF HIS MOTION

* The Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”) as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of –

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

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Therefore, movant asks that the Court grant the following relief:
VACATE THE JUDGEMENT HEREIN AND REFER THE MATTER BACK FOR A NEW TRIAL.

or any other relief to which movant may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on 2/16/2024 (month, date, year)

Executed (signed) on 2/16/2024 (date)


Signature of Movant
233 Brooklyn Ave
Burlingame, CA 94010 415417

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.

STATEMENT OF FACTS

July 11, 2014, my residence sustained over 300K worth of damage as the result of a ruptured saltwater aquarium system in excess of 650 gallons. I immediately notified Assurant Insurance Company, setting up a claim while beginning the remediation and repairs to my residence. Within the initial week of the damage to my property, I was introduced to Michael Marshall- owner of United Demolition and Site Management.

Upon meeting Mr. Marshall on the week of July 15, 2014, Marshall claimed that he was a former paratrooper as I also served as a Airborne Combat Medic in the United States Army. Mr. Marshall stated that he was a local contractor attempting to obtain public works contracts with the City of Dayton but was being blackballed by another City of Dayton contractor by the name of Linda Murphy president of JLM Trucking. It should be noted that during the first week of meeting Michael Marshall, he accused me of being a "Big time drug dealer" from Chicago- this claim continued for nearly a week, until finally, he accepted the fact that I was a businessman who had the contract with the Chicago Police Department for the Transportation of Deceased Bodies.

Ultimately, Michael Marshall asked if I would assist him with making contacts with City of Dayton officials in exchange of his assistance as a site manager for the repairs to my residence. I agreed as I had many connections with city officials and I thought that I was assisting a fellow veteran who was being slighted by a fellow contractor. Mr. Marshall for his part began daily visits to my residence assessing the damage and taking measurements so I could procure the necessary materials to repair the residence. On August 1, 2014, Mr. Marshall and I traveled to ProSource of Dayton to obtain an estimate for the flooring material which had longer lead times. During this time I continued making the necessary repairs to my residence.

Additionally, during this same period in time, I began to introduce Michael Marshall with City of Dayton Commissioner Joey Williams along with City of Dayton Minority Business Development Director Roshawn Winburn- the initial meeting between Commissioner Williams, Michael Marshall and myself took place at Longhorn Steakhouse on Miller Lane. We continued to have multiple meetings over the next several months with both Williams and Winburn, in which Mr. Marshall conveyed his frustration to both Williams and Winburn over not being able to obtain consideration with City of Dayton contracts. Michael Marshall at some point suggested that I become either a partner in United Demolition to assist with the minority set aside program, which would likely benefit Marshalls efforts in getting consideration for public works contracts- Marshall even suggested setting up a new entity (Airborne Construction) that would act as a "backstop" for United Demolition. Ultimately, no corporation was formed.

As I continued the repairs to my residence, it became apparent that the damages sustained to my residence were worse than originally anticipated. There was structural damage caused by the hardwood flooring that was glued to the sub flooring, resulting in the sub flooring being compromised. I hired Shell + Meyer a structural engineering company to asses the damage- they determined that there would need to be a supplemental estimate for repairs submitted to Assurant Insurance Company resulting in an additional 100K plus in repairs (in addition to the 135K originally quoted).

October 2014, 3 months after the ruptured fishtanks, Assurant issued a draft in the amount of \$41,393.92- I had personally funded the repairs up to this point. Shortly after the initial draft from Assurant, Mr. Marshall submitted a supplemental estimate to Assurant based on the latent damages to the residence not captured on the initial estimate. It was at this time that Mr. Marshall became increasingly interested in the potential of excess funds that may be leftover once the necessary repairs were completed. Mr. Marshall wanted me to consider investing in his company United Demolition even extending an of-

fer for me to acquire his other company Drywall Wizard with the excess funds. I declined. It should be noted that I did hire Drywall Wizard to assist in the repairs to the drywall, ultimately having to terminate their services for doing shoddy work.

Shortly after a second draw from Assurant, the insurance carrier alleged that I had presented some inflated estimates that were contained in the supplemental. This accusation on the part of Assurant caused the carrier to to suspend future payments contained in the supplemental. Enter attorney Anthony Cicero. Mr. Cicero had not only been a personal friend- I considered him to be family; Mr. Cicero handled all of my personal matters in addition to being my corporate counsel for all of my business matters. It was Mr. Cicero who had provided legal advice in how to handle my claim with Assurant. (It may also be important to note that Cicero also was representing me in a contract dispute with the City of Chicago and the Chicago Police Department. Upon the expiration of my contract to transport deceased individuals, the City had awarded the contract to a convicted sexual predator actively preying on children in the Chicagoland area.)

With regard to my insurance claim, Mr. Cicero was representing me in an insurance contract claim based on his opinion that there was unquestionably a valid and covered claim, that repair estimates were appropriate, and that the benefits to cover bona fide repair estimates should be paid. In addition to the contract action, Mr. Cicero represented me in a claim against Assurant for a bad-faith action. It was also during this period of representation by Cicero that Michael Marshall refused to turn over monies he had in his possession (excess of over 30K) from Assurant. Mr. Marshall claimed that he needed the funds to float United Demolition in other projects due to work he had completed for Waste Management but had yet to be paid. I ultimately, filed a police report with the Dayton Police Department.

April 2015, Michael Marshall agreed to pay 16K of the funds he controlled but had not turned over as an "offer in compromise" (half of what had been taken by Marshall et al.) which would allow me to sever all ties with United Demolition While Anthony Cicero continued to pursue the bad-faith action against Assurant- which did not get settled, Michael Marshall failed to return any moneys that he had stolen- funding United Demolition's various projects outside of the repairs to my residence.

April 2019, after attempting to sound the whistle on public corruption within the City of Chicago, to include corruption within the Chicago Police Department and the protection of a sexual predator by elected officials within the City, I went to the Resident Office of the Federal Bureau of Investigation in Dayton, Ohio. Upon my arrival to the FBI, I was interviewed by special agent Andrew Gragan who requested that return to the Dayton office at a later date as he needed to reach out to Chicago FBI to coordinate a meeting, in which I would turn over 3000 pages of documentation concerning crimes being committed within the City of Chicago.

On April 30, 2019, I arrived at the Clys Road offices of the FBI as SA Gragan had instructed- to turn over the documented evidence of crimes by Chicago officials to the FBI. Upon my arrival, SA Gragan confirmed my identity. After this brief exchange, Gragan informed me that I was under arrest for the 2014 ruptured fish tank in my residence. The Federal Bureau of Investigation had rounded up three individuals in what they coined Operation Demolished Integrity. The other individuals, all of whom I knew. In fact, two of the individuals included Dayton City commissioner Joey Williams and Roshawn Winburn (the third was Clayton Luckie- former Ohio Representative). Unbeknownst to me, during the time I was making the repairs to my residence and while I was introducing Michael Marshall to contacts that I had, Michael Marshall was a Confidential Human Source for the Federal Bureau of Investigation. It appears, Marshall had forged the relationship with me with the intention of capturing city officials in a play-to-play

scheme with Dayton businessman Steven Rauch- Rauch has a checkered history with City of Dayton officials who have been compensated with "brown paper bags" of money in exchange for demolition contracts.

United States Attorney Benjamin Glassman reported that I was rounded up in the public corruption case as a result of the investigation led by Confidential Human Source Michael Marshall in 2014. Although it turned out that I had no involvement in the activities that ended in convictions of several individuals. The government asserted the theory was that I was involved in a scheme to defraud Assurant with the intentions of not making the repairs to my residence. After my arrest for my insurance claim involving the ruptured fish tank and for which I was represented at every step by Mr. Cicero, the F.B.I. sought my help and assistance with regard to any information that I may have with regard to other potential prosecution targets.

I now find myself shackled before the Honorable U.S. Magistrate Judge Michael Newman- I was represented by my trusted friend and counsel Anthony Cicero. As previously stated, it was Cicero who not only represented me in the bad-faith action against Assurant Insurance Company, Cicero gave me the advice in how to administer the insurance claim. After my [not guilty] plea, I met with Mr. Cicero and turned over documents that were directly related to the insurance claim and all communication that Cicero had been directly involved in.

As Mr. Cicero began scouring over the documents, I provided with regard to the insurance claim and his advice to me throughout the process, he asked, "Where did you get these from?" I told him that I had kept a record of the file in which he was representing me, to which Mr. Cicero stated, "Put those away." The documents to support the validity of my insurance claim weren't necessary.

Almost immediately after my not guilty plea, Anthony Cicero and the Assistant United States Attorney Brent G. Tabacchi had agreed that my case was never going to go to trial- in my presence on at least 3 oc-

casions, Tabacchi wanted confirmation from Cicero that my case was going to settle. Not taking a Clarence Darrow to see that that there is a conflict of interest in Anthony Cicero representing me, in a criminal proceeding that he is a material witness, where there was [never] a scheme to defraud. Mr. Cicero chuckled and gave me a casual reassurance that my case was never going to trial, seems that he and Assistant United States Attorney Brent G. Tabacchi had made a pact that once the media frenzy had subsided and since I had no knowledge or involvement in the purpose of the F.B.I. operation into alleged government misdeeds, there would be an opportunity for my case to go away-similar to the charges levied against businessman Steven Rauch (one count of conspiracy to mail fraud and six counts of mail fraud) all which were ultimately dismissed.

On August 8, 2019, the government requested a meeting with myself and counsel, to include members of the Federal Bureau of Investigation, in which they presented a forensic accounting of the monies I was alleged to have "diverted." The amount presented (bank statements) totaled 25K. The governments theory was that I was not allowed to use money that was legitimately paid pursuant to estimates to repair my residence in any other way than to effect the repairs. (This is the basis for the sealed indictment against me couched in terms of a scheme from the inception. The government holds their theory on a document that Mr. Cicero advised me to sign- letter of intent as evidence of a scheme, however, the government fails to acknowledge that for the first 3 months of my valid claim, I funded all repairs. The first draft from Assurant was not received until October 2014. It was always my intention to complete the repairs to my residence, unfortunately I was stifled by the actions of an F.B.I. informant and the bad-faith actions of Assurant.) Assistant United States Attorney Brent G. Tabacchi began the meeting by telling me that I was facing a total of 82 years in federal prison; however, he had a "Path" that would be in my best interest. Brent G. Tabacchi request that I provide damning information against U.S. Congressman Michael Turner House Intelligence Committee Chairman and other elected officials within the city of Dayton,

in exchange for probation, zero restitution of the 25K and expungement of the charges within 12 months. I declined the governments generous offer and instructed Mr. Cicero that I wanted to proceed to trial, to which Cicero told me to be patient while things "Cooled off" with the media. Over the next several months, I was requested by Mr. Cicero to waive my rights to a speedy trial, to buy him and the government time- I agreed to waive my rights while Cicero and Assistant United States Attorney played a game of deception to the Honorable Thomas M. Rose by not disclosing Mr. Cicero's blatant conflict of interest.

January 21, 2020, the government called yet another meeting. This meeting was in the offices of Assistant United States Attorney Brent G. Tabacchi with the individuals in the prior meeting, to include an additional participant. SA Tyler Freeman from the Chicago office of the Federal Bureau of Investigation was present as the government wanted to secure a meeting with Chicago FBI regarding the crimes/documentation that I was request to provide on the morning of April 30, 2019. The meeting concluded with Assistant United States Attorney Brent G. Tabacchi assuring Mr. Cicero and I would be afforded a meeting in Chicago to present our well established record of crimes being committed by elected officials. This meeting was to take place within [2 weeks].

After nearly 9 months of Anthony Cicero representing me, it became apparent that my case was not going to settle. The media attention that Dayton Daily News had reported (public corruption within Dayton, Ohio) had not subsided. The government was desperate for me to take a plea, allowing my case to be resolved- all cases associated with Operation Demolished Integrity had been settled by way of plea deals. It is at this time, I made the difficult decision to terminate Mr. Cicero's representation, ultimately ending the 15 plus year friendship of Tony Cicero.

April 1, 2020, the Honorable Thomas M. Rose removed Mr. Cicero from my case and appointed me counsel, enter Tamara Sack. Ms. Sack. For her part, she seemed to be a talented trial attorney who expressed a desire to fight on my behalf. When presented the case and all events that had transpired over the previous year, she was taken aback at how Mr. Cicero had taken my case, let alone represented me for nearly a year while being a material witness to the governments theory of a scheme to defraud Assurant Insurance Company. Ms. Sack stated that she would prepare my case for trial and assured me that there would not be any additional unwarranted delays.

Approximately 6 months into Ms. Sacks representation, the Court determined that my case was "extremely difficult," resulting in the addition of another attorney. The Honorable Thomas M. Rose appointed a high powered attorney out of Cincinnati, Ohio- enter Paul M. Laufman. Mr. Laufman became the "lead" attorney in representing me and quickly began telling me that the criminal case against me was not looking good and that I should consider taking the governments latest offer- plea to a misdemeanor offense of my choosing. I was provide 19 pages of the federal misdemeanor code and told to "Pick an offense of my choice." I opted for the 2 things that I have done over the course of my life- fishing without a license or traveling across state lines transporting fireworks. Both Laufman and Sack laughed and stated that those offenses would not pass muster as the Dayton Dayton Daily News would be "all over that plea." I declined yet another one of the governments generous offers.

On December 15, 2020, there was yet another meeting with the government to include the Federal Bureau of Investigation along with Sack and Laufman. This meeting was called by me, to inquire why my meeting with Chicago FBI (discuss crimes against children) had yet taken place. It had been nearly a year since I was assured of a meeting with the FBI. Upon the commencement of the meeting, it was apparent that Assistant United States Attorney Brent G. Tabacchi was becoming agitated by my case remaining unresolved. The government stated that I

had "No right to meet with any 'law enforcement' agency" and that the reason I was baited to travel to the Dayton Resident office of the FBI on the morning of April 30, 2019, was because "The FBI did not know where I lived." At this point, I departed the room while my counsel stayed behind.

On December 16, 2020, my counsel reached out to me to debrief the previous days meeting with the government. I was advised that Assistant United States Attorney Brent G. Tabacchi had agreed to set up a meeting with Chicago FBI and that in return of setting up said meeting, I would be expected to take a plea deal of my choosing. This quid pro quo reeked of the previously mentioned gamesmanship on the part of the government. In fact, on December 17, 2020, the very next day (2 days after meeting with the government and FBI) Assistant United States Attorney Brent G. Tabacchi levied 4 additional charges, this time Witness Retaliation/Witness Intimidation against the Confidential Human Source(s) Michael Marshall and Scott Waters (Waters was business partners with Marshall in United Demolition). I had sued both individuals in civil court for stealing the 30K in insurance proceeds. The government stated that I had retaliated against the CHS's in order to deter them from testifying against me.

For the next year, Sack, Laufman and Assistant United States Attorney Brent G. Tabacchi would present many false declarations to the Honorable Thomas M. Rose, including their, "Grave concerns" with my ability to participate in my criminal proceedings due to my "fixation" of crimes being committed by elected officials within the City of Chicago, to include the protection of a sexual predator. This ultimately resulted in me being taken into custody by the United States Marshals and committed to the Bureau of Prisons for a 68 day mental evaluation, which I was ultimately declared competent to stand trial.

On January 5, 2022, the trial commenced. I ultimately was found guilty by a jury (all Caucasian) of 5 federal offenses. On May 25, 2022, I was sentenced by the Honorable Thomas M. Rose to a total of 36

months in the Bureau of Prison and taken into immediate custody as Assistant United States Attorney Brent G. Tabacchi declared me to be a "Danger to society" in which he had "Grave concerns that I would comply with the order" to self report- the customary sentence imposed on individuals convicted of similar crimes. In addition to the sentence of 36 months, the government asked the Court to impose restitution in the amount of \$84,113.04. This amount contradicts the amount of 25K that Assistant United States Attorney Brent G. Tabacchi presented to former counsel Anthony Cicero on August 8, 2019.

To date, I have filed a complaint with the Office of Disciplinary Counsel The Supreme Court of Ohio against Anthony Cicero, Esq. for Professional Misconduct and ethics violation associated with his representation in my criminal case. The Counsel currently has an open investigation (ODC File No. C2-1342) into my claims of Ineffective Assistance of Counsel. Additionally, I have made a request to the House Judiciary Committee to conduct formal hearing(s) into the misconduct of Assistant United States Attorney Brent G. Tabacchi and the Code of Silence that continues to protect sexual predators.

WWW.CORRUPTGMEN.COM

X-Files

TABLE OF EXHIBITS
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CV01557) - Cicero Represented

V.) **PAGEID 2614-21** Official Transcript - Motion for New Counsel
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W.) **PAGEID 2622-46** Miscarriage of Justice Letter September 20, 2022

X.) **PAGEID 2647** Ohio Disciplinary Counsel October 4, 2022 Letter

Y.) **PAGEID 2648-49** Anthony Cicero Response Letter to Disciplinary
Counsel

Z.) **PAGEID 2650-52** Brian Higgins Response to Ohio Disciplinary
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AA.) **PAGEID 2653** Ohio Organized Crime Investigations Commission
Report

BB.) **PAGEID 2654-55** Anthony Cicero - FBI CHS Michael Marshall
February 2015 Email

CC.) **PAGEID 2656** FBI CHS Michael Marshall August 19, 2014 Email

DD.) **PAGEID 2657** FBI CHS Michael Marshall August 21, 2014 Email

EE.) **PAGEID 2658-59** Dayton Police Report November 7, 2014

FF.) **PAGEID 2660** Builders Direct December 1, 2014 Email

GG.) **PAGEID 2661** Federal Bureau of Investigation April 16, 2015
FD-1023

HH.) **PAGEID 2662-65** ProSource August 1, 2014 Estimate(s)

II.) **PAGEID 2666-68** Assistant United States Attorney **JANUARY 21, 2021**
Proffer Letter

JJ.) **PAGEID 2669** Chicago Sun Times June 29, 2023 Article

KK.) **PAGEID 2670** Chairman Jim Jordan House Judiciary Committee
August 10, 2023 Letter

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AUDIO RECORDINGS
WWW.CORRUPTGMEN.COM
X-FILES

LL.) Paul Laufman/Tamara Sack May 12, 2021 Audio Recording
MM.) *Paul Laufman/Tamara Sack December 15, 2020 Audio Recording
NN.) *FBI/AUSA/Ohio Task Force Meeting December 16, 2020 Recording

* Headers are misplaced- meeting on December 15, 2020 was with FBI/
AUSA/Ohio Task Force. Meeting on December 16, 2020 was the following
Day- phone conference with counsel Paul Laufman/Tamara Sack

to trial." As further evidence of deception upon the Court, on January 2022 Hearing (Second Motion to Withdraw), Assistant United States Attorney Brent G. Tabacchi deceived the the Court with multiple false statements as evidenced below:

"...Your Honor...I don't know that new courses is going to solve any of the issues here. [Mr. Cicero] had very similar issues with Mr. Higgins...this appears to be a Mr. Higgins issue, not a defense counsel issue."

To which the Court replies:

"Wasn't there a [conflict] with Mr. Cicero?"

Assistant United States Attorney Brent G. Tabacchi's response to the Honorable Thomas M. Rose is patently false:

"There was, but these were [similar undercurrents] already boiling with Mr. Cicero."

Assistant United States Attorney Brent G. Tabacchi, would like the Court to believe that my "frivolous whims" (reporting sex crimes against children to the Federal Bureau of Investigation) was the "boiling" point in my relationship with Anthony Cicero- this is false. I made the difficult decision to terminate Cicero's counsel, ultimately filing a complaint with the Ohio Disciplinary Counsel due to Mr. Cicero refusing to disclose his conflict of interest to the Court.

SUPPORTING DOCUMENTATION

PAGEID # 2525-2650 - Exhibits A - Z

PAGEID # 2654-2655 - Exhibits BB

Reason Issue Was Not Raised On Appeal

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The Sixth Circuit generally will not review Ineffective Assistance of Counsel on direct appeal except in the rare circumstances where the existing trial court record is adequately developed on this matter.

“Ordinarily we will not review a claim of Ineffective Assistance of Counsel on direct appeal because the record is usually insufficient to permit an adequate review of such claim. *United States v. Shabazz*, 263F.3d 603, 612 (6th Cir. 2001). These claims are more properly raised in a post conviction proceeding brought pursuant to 28 U.S.C. 2255. *United States v. Long*, 190 F.3d 471, 478 (6th Cir. 1999); cf. *United States v. Hall*, 200 F3d 962, 965 (6th Cir. 2000) (finding that “[a]n exception exists; however, when the record is adequately developed to allow this court to assess the merits of the issue”).

Q - "To your knowledge, ever other meeting or interaction between Mr. Higgins and Waters and Marshall were recorded?"

A - "Yes. Any - that I'm aware of, thats correct."

This sworn testimony, is not only false, it proves that the Government has either withheld tapes/recording or that the Federal Bureau of Investigation handlers did not have control over their Confidential Informant(s); and they were able to selectively "activate the button" and record selective conversations that they determined to be turned over to their F.B.I. handlers. Either is contrary to the sworn testimony given by government witnesses at trial. It should be noted that the Discovery that was turned over by the government begins on August 28, 2014, over [six] weeks after Michael Marshall's first visit to 7240 Meeker Creek. Additionally, on cross examination, ages Kilpatrick re-affirmed his testimony:

Q - "Okay. Now, you also indicated that there were some recordings that were not - or some meeting between Mike Marshall and Brian Higgins that were not captured in a recording, either tape or video?"

A - "Yea. I'm aware of [two] instances>"

Q - "Okay. So it is your belief that [just] on those [two] occasions, that would be the Wright Patt Credit Union and the initial meeting between Mr. Higgins and Mr. Marshall at the Meeker Creek?"

A - "[Correct]."

On August 8, 2019, in a meeting with counsel Anthony Cicero, Assistant United States Attorney Brent G. Tabacchi, F.B.I. case agent Lance Kepple and Ohio Investigations Commission agent Brent Kilpatrick Mr. Cicero directly asked, "Who controlled CHS Marshall's activity?" F.B.I. case agent Kepple stated, "F.B.I. controlled [98%] of all Marshall's activity." On re-direct, agent Kilpatrick's testimony he states:

Q - "When you would go out and meet Mr. Marshall or Mr. Waters and give them a recording device, that was for the purpose of meetings, correct?"

A - "That's correct."

Q - "What about for calls? Did you have to go and give Mr. Marshall something each time there might be a call?"

A - "No, we did not."

Q - "Why was that?"

A - "So we have the ability to provide our informants - in this case, Mr. Marshall - with access to the service that he [could] use his phone and access the service to record any type of telephone conversation he may have with, in this case Mr. Higgins."

Q - "So, Mr. Marshall [had] on a daily basis the [ability] to record calls from Mr. Higgins?"

A - "Yes, that's correct."

Q - "There was no need for the agents to somehow meet Mr. Marshall beforehand to provide [him] with a recording device in the off chance Mr. Higgins might call?"

A - "In those specific situations, no, it wasn't necessary."

Q - "Did Mr. Marshall ever report to the F.B.I. an instance where he did [not] record a call that he had with Mr. Higgins?"

A - "No, I'm [not] aware of those instances."

There are more troubling issues with the testimony of agent Brent Kilpatrick. By his very own testimony, there is a minimum of [six] weeks of omitted recordings [controlled] by F.B.I. Confidential Human Source Michael Marshall. One glaring example can be found on page 007 of the Discover that was turned over by the government:

8/28/14 - Brian Higgins told CHS that Joey Williams liked both

Deals and wondered why [we] weren't doing Both of them...CHS asked if all Williams, Higgins and [he] could meet to discuss the contract with building (sic)...CHS said [he] still would be interested in opening up another restaurant at Central State...

8/30/14 - CHS returned a call to George Hamilton. Hamilton stated that he had texted CHS to ask him some questions and make sure everything was [straight] forward and [legit]...CHS stated that they had to [trust] each other and that the reason they couldn't put it in writing was because it was [not] being honest (sic)...CHS stated Hamilton would have to sign to certify payroll even though he might not be doing [any work] and asked Hamilton if he was okay with that since it was [illegal] and Hamilton stated yes, he was okay with it Because [we] have to trust each other...

I will first address the August 28, 2014 conversation between CHS Michael Marshall and myself. This is the [first] conversation that the government claims exists. Agent Kilpatrick and CHS Michael Marshall testified under oath that [all] interactions with Brian Higgins were recorded- exception of (2) recording failures. I met Michael Marshall at 7240 Meeker Creek the week of July 15, 2014. The governments recording begin approximately [six] weeks later.

On August 28, 2014- the governments first provided recording in the Discovery was purported conversation between CHS Michael Marshall and myself discussing business opportunities with Dayton city commissioner Joey Williams- prior to Williams becoming a F.B.I. Confidential Human Source himself. This first recording provided by the government is over a [month] after I initially introduced commissioner Williams and Mr. Winburn to Michael Marshall.

Additionally, on the same page (007) provided by the government, the conversation between FBI CHS Michael Marshall and a person named [George Hamilton]- who only appears on this page in my Discovery, seems to have some reservation concerning some type of business deal with Mr. Marshall. Mr. Hamilton goes as far as stating that he wants to make sure everything is "legit," while Mr. Marshall states, "What we are doing is [illegal]. In the end, Hamilton concedes "We have to trust each other." One could argue that the F.B.I. employed Michael Marshall as a Confidential Human Source to entrap individuals to go down paths that [he] devised. At a minimum, it calls into question, one, why was Michael Marshall given such latitude to pick and choose what he recorded or more troubling, what he [did not] record. Two, where are the [six] weeks of committed tapes that the government has intentionally withheld.

It is clear that agent Brent Kilpatrick and CHS Michael Marshall committed perjury while testifying in this criminal matter. The United States intentionally withheld material evidence (recordings) that it had in its possession- a violation of Brady v. Maryland, 373 U.S. 83 (1963).

SUPPORTING DOCUMENTATION

PAGEID # 2647 - EXHIBIT W

PAGEID # 2653 - EXHIBIT AA

PAGEID # 2654 - 2655 EXHIBIT BB

PAGEID # 2656 - EXHIBIT CC

PAGEID # 2657 - EXHIBIT DD

Reason Issue Was Not Raised On Appeal

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The Sixth Circuit generally will not review Prosecutorial Misconduct on direct appeal except in the rare circumstances where the existing trial court record is adequately developed on this matter.

“Ordinarily we will not review a claim of Prosecutorial Misconduct on direct appeal because the record is usually insufficient to permit an adequate review of such claim. *United States v. Shabazz*, 263F.3d 603, 612 (6th Cir. 2001). These claims are more properly raised in a post conviction proceeding brought pursuant to 28 U.S.C. 2255. *United States v. Long*, 190 F.3d 471, 478 (6th Cir. 1999); cf. *United States v. Hall*, 200 F3d 962, 965 (6th Cir. 2000) (finding that “[a]n exception exists; however, when the record is adequately developed to allow this court to assess the merits of the issue”).

GROUND THREE
PROSECUTORIAL MISCONDUCT
VINDICTIVE PROSECUTION

On December 17, 2020, Assistant United States Attorney Brent G. Tabacchi filed a 3rd Superseding Indictment, charging me with Witness Intimidation and Witness Retaliation in connection with a civil suit that I filed in Montgomery County Common Pleas Court. The charges filed by the government alleged that I only filed the civil suit in order to somehow prevent the Confidential Human Sources from testifying at my trial. Unfortunately, the facts do not support this theory.

On November 7, 2014, I contacted the Dayton Police Department to report the F.B.I. Confidential Human Source- Michael Marshall and Scott Waters had stolen over 30K of the insurance proceeds. After confronting Mr. Marshall, it was agreed that he would pay a sum of 16K (offer in compromise) once he collected monies from a job that he had completed. At no time was a civil suit brought up against either Mr. Marshall or Mr. Waters to intimidate them from taking the stand in my criminal trial. I had every right to pursue the individuals who stole money.

SUPPORTING DOCUMENTS

PAGEID # 2622 - 2647 EXHIBIT W

PAGEID # 2658 - 2659 EXHIBIT EE

PAGEID # 2660 - EXHIBIT FF

PAGEID # 2661 - EXHIBIT GG

GROUND FOUR
PROSECUTORIAL MISCONDUCT
VINDICTIVE PROSECUTION
INEFFECTIVE ASSISTANCE OF COUNSEL

On December 15, 2020, with counsel, I met with the government to discuss a failed meeting- reporting crimes against children as well as public corruption taking place in Chicago, Illinois. In 2020, the government had assured me a meeting with Chicago F.B.I. to report these crimes. Unfortunately, the meeting never took place. The government claims that [no] meeting could be set up due to me allegedly not having legal counsel representing me at the time to set up a meeting. Ultimately, this meeting ended with no resolution to my concerns of crimes against children.

On December 16, 2020, (less than 24 hours later) I was contacted by my counsel as they had worked out a way in which I could obtain the meeting with Chicago F.B.I. to report my concerns. Additionally, counsel stated that until the government wants to address crimes against children, there will be no discussion of a fish tank. However, The Assistant United States Attorney Brent G. Tabacchi had made a proffer. He would provide me with a meeting with Chicago F.B.I. in exchange for me taking a "plea of my choosing" in my criminal case. This quid pro quo was offered on December 16, 2020.

On December 17, 2020, a Superseding Indictment was levied against me for Witness Retaliation and Witness Intimidation.

SUPPORTING DOCUMENTATION

PAGEID # 2622 - 2646 Exhibit W

PAGEID # 2669 - Exhibit JJ

PAGEID # N/A Audio Recording - Exhibit MM

PAGEID # N/A Audio Recording - NN

Reason Issue Was Not Raised On Appeal

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“Ordinarily we will not review a claim of Prosecutorial Misconduct on direct appeal because the record is usually insufficient to permit an adequate review of such claim. *United States v. Shabazz*, 263F.3d 603, 612 (6th Cir. 2001). These claims are more properly raised in a post conviction proceeding brought pursuant to 28 U.S.C. 2255. *United States v. Long*, 190 F.3d 471, 478 (6th Cir. 1999); cf. *United States v. Hall*, 200 F3d 962, 965 (6th Cir. 2000) (finding that “[a]n exception exists; however, when the record is adequately developed to allow this court to assess the merits of the issue”).

GROUND FIVE
VINDICTIVE PROSECUTION
PROSECUTORIAL MISCONDUCT

On May 25, 2022, I was before the Honorable Thomas M. Rose for the purpose of learning my fate. I had been found guilty of Mail Fraud and Witness Retaliation. It was determined that I would be taken into immediate custody as the Court stated that I was a threat to the community and the government stated that they had "grave concerns" that I was a flight risk. However, before being taken into custody by the U.S. Marshal Service, the Assistant United States Attorney Brent G. Tabacchi request that the Court impose restitution in the amount of \$84,113.04., payable to Mr. Cooper, LLC. This is an amount that was shown several times to the jury by F.B.I. forensic accountant Susan Sigler.

The problem with this amount presented by the government at trial and sentencing is that it does not reflect the monies stolen by the CHS's Michael Marshall and Scott Waters for which I brought my civil suit. In the August 8, 2019 meeting with Anthony Cicero, the government and F.B.I. presented audited financials totaling 25K. By the governments own accounting system, there is an error. There is nearly a 60K error in Ms. Sigler's accounting.

SUPPORTING DOCUMENTATION

PAGEID # 2622 - 2646 EXHIBIT W

PAGEID # 2648 - EXHIBIT Y

PAGEID # 2650 - 2652 EXHIBIT Z

PAGEID # 2654 - 2655 EXHIBIT BB

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GROUND SIX
FORGERY
PROSECUTORIAL MISCONDUCT

January 2020, I was contacted by counsel Anthony Cicero, stating that the government wished to discuss "Chicago" and my concerns regarding crimes against children along with Alderman Edward Burke and other elected city officials. Seems that the F.B.I. has had a change of heart in investigating crimes against children.

On January 21, 2020, counsel and I met at the office of Assistant United States Attorney Brent G. Tabacchi along with F.B.I. agents Kipple, Kilpatrick and Tyler Freeman. SA Tyler Freeman was from F.B.I. Chicago. Ultimately, the government agreed to set up a meeting with Chicago F.B.I. to turn over the 3000 page of documented evidence of crimes being committed in Chicago. These are the same documents that I attempted to turn over the morning of April 19, 2019, when I was arrested for the ruptured fish tank.

Prior to the start of this meeting, counsel and I were presented with a document that the government wanted us to sign. This document stated that I wanted a meeting with Chicago F.B.I. to discuss public corruption occurring within the City of Chicago. This meeting had the appearance of housekeeping due to the F.B.I.'s haste in rounding up individuals on the morning of April 30, 2019 and not interviewing me prior.

I requested a copy of the signed document; however, I was told that a copy would be provided to me at a later date. After nearly six months of requesting this document, new counsel had obtained a copy. However, the copy that was presented to me was not the same copy as which Mr. Cicero and I had signed. In fact, this copy had the incor-

rect date of the meeting. It purported that the meeting took place on [January 21, 2021], instead of January 21, 2020, when Mr. Cicero and I had met. It is clear that the government has altered this document as the signature line clearly states January 21, 2020 however, the letter is dated January 21, 2021- a date that Mr. Cicero did [not] represent me.

SUPPORTING DOCUMENTATION

PAGEID # 2622 - 2646 Exhibit W

PAGEID # 2666 - 2668 Exhibit II

PAGEID # N/A Audio Recording LL

PAGEID # N/A Audio Recording MM

PAGEID # N/A Audio Recording NN

Reason Issue Was Not Raised On Appeal

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The Sixth Circuit generally will not review Prosecutorial Misconduct on direct appeal except in the rare circumstances where the existing trial court record is adequately developed on this matter.

“Ordinarily we will not review a claim of Prosecutorial Misconduct on direct appeal because the record is usually insufficient to permit an adequate review of such claim. *United States v. Shabazz*, 263F.3d 603, 612 (6th Cir. 2001). These claims are more properly raised in a post conviction proceeding brought pursuant to 28 U.S.C. 2255. *United States v. Long*, 190 F.3d 471, 478 (6th Cir. 1999); cf. *United States v. Hall*, 200 F3d 962, 965 (6th Cir. 2000) (finding that “[a]n exception exists; however, when the record is adequately developed to allow this court to assess the merits of the issue”).

GROUND SEVEN
WITNESS PERJURY
- MICHAEL MARSHALL -

At trial, the Government called its [star] witness, Confidential Human Source Michael Marshall to testify. After all, it was Marshall who just happened to stumble on a "scheme to defraud" the insurance carrier, Assurant Insurance Company. Marshall, who was working for the Federal Bureau of Investigation, on an unrelated covert operation (Operation Demolished Integrity), was tasked with getting evidence on Dayton demolition business owner Steve Rauch- Marshall was an employee of Rauch. The goal of this dragnet, was to catch Rauch giving brown paper sacks of money to elected City of Dayton officials, in exchange for public works contracts. The FBI, went to great lengths to ensnare various individuals, including, funding the creation of United Demolition Excavation & Site Management Co. LLC. This company was "owned and operated" by its principal, FBI Confidential Human Source Michael Marshall. During Mr. Marshall's sworn testimony, he was asked several questions, in which several of his responses under examination were perjurious. Under Direct examination, Marshall testified:

Q - "In or around early 2014, did the FBI approach you -- without getting into details of what they approached you about -- did the FBI approach you and ask for information about a certain investigation?"

A - "Yes."

Q - "Now, during your time as an informant -- again, without going into -- did you work on a number of investigations for the FBI?"

A - "Yes."

Q - "Can you estimate how many hours that you worked on behalf of the FBI?"

A - "1,500 - 2,000"

Q - "When you met him in or around [[August] of 2014 was that the first time you had met him?"

A - "Yes."

Q - "During your conversations with Mr. Higgins, were topics that came up that caused you some [concern]?"

A - "Yes."

Q - "And did you report those [concerns] to the FBI?"

A - "I did."

Q - "Did the FBI then give you [instructions] on what you were [supposed] to do concerning future interactions with Mr. Higgins?"

A - "Yes."

Q - "And what were those [instructions]?"

A - "Record [all] conversations."

Q - "Are you aware of [any] circumstances in which you [spoke] to Mr. Higgins between August of 2014 up through April of 2015 in which -- I'm not asking if a recording failed. I'm asking whether [you] failed to turn on a recording device in a conversation that you had with Mr. Higgins?"

A - "[NEVER]. I had several devices, not just one."

Q - "Okay. Now you don't know whether or not those devices failed or not?"

A - "No."

Q - "But did you ever [fail] to record a conversation that you had with Mr. Higgins?"

A - "[NEVER]."

- MARSHALL CROSS EXAMINATION -

Q - "Okay. Well, how long would you say you knew Brian? How long did you work with him on his insurance claim?"

A - "Months."

Q - "You didn't call him "Buddy" and shake his hand and fist bump him?"

A - "[EVERY SINGLE RECORDING -- EVERY SINGLE ACTION I HAD WITH BRIAN WAS RECORDED BY THE FBI.]"

Q - "Did you maintain a crew of subcontractors during the time that you were working on Mr. Higgins' insurance claim?"

A - "Well, [I had] employees and subcontractors."

Q - "Were you there as an informant, or were you there

as independently as a contractor?"

A - "[First] meeting was as a contractor."

Q - "And did you give Brian an estimate of the work you believed was required to make the repairs?"

A - "No, not [that] day."

Q - "After the first meeting -- how long would you describe that meeting was?"

A - "Not long."

Q - "...and did you communicate with Brian again, meeting him again?"

A - "[AFTER I SPOKE TO THE FBI]."

Q - "Fair to say, you sent emails back and forth with Brian?"

A - "A few. Whatever, you know, whatever documents he was needing, yes."

Q - "Did you ever share those emails with your handler?"

A - "Yes."

Q - "[Not] all?"

A - "[All] of them."

Q - "Were you aware that Brian had other people working in the home?"

A - "[I KNOW HE DIDN'T]."

It appears that FBI Confidential Human Source Michael Marshall committed perjury while taking the stand. CHS Michael Marshall's initial visit to the Meeker Creek residence was the week of July 17, 2014, [not] in August 2014 as he and the government has presented to the Court. In fact, emails sent by Marshall on August 21, 2014 to Shawn Jores (Assurant Insurance Adjustor), clearly states:

Shawn...please let me know once you have approved this invoice...[subcontractors] are requesting Mr. Higgins, to pay invoices, to keep the [project moving forward]."

The contractors that FBI Confidential Human Source Michael Marshall is referring to, were contractors that I had hired. By the government's accounts, CHS Michael Marshall and United Demolition had not been to 7240 Meeker Creek yet, let alone engaged in [any] work.

SUPPORTING DOCUMENTATION

PAGEID # 2622 - 2646 EXHIBIT W

PAGEID # 2653 - EXHIBIT AA

PAGEID # 2656 - EXHIBIT CC

PAGEID # 2657 - EXHIBIT DD

PAGEID # 2662 - 2665 EXHIBIT HH

Exhibit(s)

Grievance Form

Ms. Mrs. Miss. Mr.

YOUR NAME: HIGGINS BRIAN E N/A
 Last First MI Phone No.

PERMANENT ADDRESS: 330 West Second Street N/A
 Street Email Address

Dayton Montgomery Ohio 45422
 City County State Zip Code

ABOUT WHOM ARE YOU COMPLAINING?

(Please circle) ATTORNEY or JUDGE

NAME: Cicero Anthony R 937.424.5390
 Last First MI Phone No.

ADDRESS: 500 East 5th Street Dayton, Ohio 45402
 Street

Dayton Montgomery Ohio 45402
 City County State Zip Code

Have you filed this grievance with any other agency or bar association? Yes No

If yes, provide name of that agency and date of filing: N/A date: _____

Did you receive a response?: Yes No IF YES, PLEASE ATTACH A COPY

Did this attorney represent you? Yes No Type of case: CRIMINAL

Date the attorney was hired: 4/30/19 Does s/he still represent you?: Yes No

Did you pay the attorney a fee/retainer? Yes No If yes, how much?: N/A

Did you sign a written fee agreement/contract? Yes No IF YES, PLEASE ATTACH A COPY

Has the attorney sued you for fees? Yes No

Have you brought civil or criminal court action against this attorney or judge? Yes No

If yes, provide name of court and case number N/A

Result of court action: N/A

Name and contact information for attorney currently representing you, if different than attorney about whom you are complaining:
TAMARA SACK 513.225.2887 PAUL LAUFMAN 513.621.4556

Does this grievance involve a case that is still pending before a court? Yes No

If yes, provide name of court and case number: Southern District of Ohio 3:18-CR-00186-TMR

What action or resolution are you seeking from this office? Accountability

Exhibit I-A

WITNESSES:

List the name, address, and daytime telephone number of persons who can provide information, IF NECESSARY, in support of your grievance.

NAME **ADDRESS** **PHONE NO.**

LEORA BOYD 233 Brooklyn Ave Dayton, OH 45417 937-422-3902

TAMARA SACK 130 W. Second Street Dayton, OH 45402 513-225-2887

Michael Wright Esq 130 W. Second Street Dayton, OH 45402 937-222-7477

FACTS OF THE GRIEVANCE

Briefly explain the facts of your grievance in chronological order, including dates and a description of the conduct committed by this legal professional. Attach **COPIES (DO NOT SEND ORIGINALS)** of any correspondence and documents that support your grievance.

Mr. Anthony Ciceno represented me in all personal and business affairs from 2007-2020. In 2014, I sustained a significant amount of water damage to my residence from a ruptured hot tank. This damage caused a loss in excess of 220K.

Having full knowledge of the loss to the residence including all necessary repairs, Mr. Ciceno reviewed all documents received and submitted to the insurance carrier (Assurant) as well as the mortgage company (Nationstar). Due to the unique custom finishes and personal relationships with contractors, it was understood that there would likely be an excess of funds after the repairs were completed. As an extra layer of protection against any mishandling, I secured the service of a "Site Management" company

(United Demolition) to ensure all work/repairs conformed with my mortgage contract.

Mr. Cicero advised me to sign my ex wife name to any documents/drafts received from the insurance carrier/mortgage company and act like they mistake error. In fact Mr Cicero stated that it wouldn't be "insurance fraud" as my ex wife had no rights to any of the proceeds. He further states that the word it would be is "forgery." Seeing how I had no intent to defraud anyone, I elected to sign all documents/drafts as "FOR CHONDA HIGGINS" as forgery did not seem like sound legal advice. SEE exhibits

Ultimately, there was a lengthy dispute between the insurance carrier and myself over the claim as Assurant alleged that there was fraud in the submission of (2) ^{as items} receipts. One being an estimate for floor adhesives and another one being the estimate for the replacement of the fish tank. Both of which Mr. Cicero began litigating as Bad faith. SEE exhibits

On April 30, 2019 I was arrested by the FBI in a drugnet operation dubbed "Demolished Integrity."

The Rules of the Supreme Court of Ohio require that investigations be confidential. Please keep confidential the fact that you are submitting this grievance. The party against whom you are filing your grievance will receive notice of your grievance and may receive a copy of your grievance and be asked to respond to your allegations.



UNSIGNED GRIEVANCES WILL NOT BE PROCESSED.

June 6, 2022

Date

I was charged with mail fraud/wire fraud in an alleged scheme to defraud the insurance carrier. Mr. Cicero represented me at my initial arraignment and continued this representation for 11 months.

Shortly after my April 30, 2019 arraignment I began to question Mr. Cicero as to when he intended to disclose his intimate knowledge of the events that took place 5 years prior and that there was never a scheme to defraud anyone. Mr. Cicero acknowledged this fact; however, he instructed me to be patient and wait until after the November 2019 election as he believed that my case would be dismissed post election as there was a lot of "political pressure" on the Government's case. In fact, on several occasions the AUSA Brent Fabrici and Mr. Cicero discussed the fact that the case could NOT go to trial.

After following Mr. Cicero's instructions to "wait" it became apparent that Mr. Cicero was only interested in his exposure and the fact that he had remained on my case without disclosing to the Court, his conflict of being a ^{material} witness in my criminal case.

After months of failed attempts to get Mr. Cicero to

The Rules of the Supreme Court of Ohio require that investigations be confidential. Please keep confidential the fact that you are submitting this grievance. The party against whom you are filing your grievance will receive notice of your grievance and may receive a copy of your grievance and be asked to respond to your allegations.

Signature

UNSIGNED GRIEVANCES WILL NOT BE PROCESSED.

Date

June 6, 2022

address his material knowledge of the facts in my case to the Court as well as the Government, I made the decision to terminate Mr. Cicero's representation as it was abundantly apparent that he no longer had my best interest.

On March 30, 2020 Mr. Cicero represented to the Ohio Southern District Court that our 10-15 year friendships made it "difficult" for him to represent me, thus creating a conflict. This is NOT true or accurate. Mr. Cicero materially deceived the Court. See Transcript.

Mr. Cicero's remaining on my criminal case ^(11 MONTHS) while being a material witness, the deceiving the Court as to the conflict should be investigated as a violation of the Ohio Rules of Professional Conduct/Code of Judicial Conduct. It is for these reasons that I am requesting your office to open an investigation.

In addition to the supporting attached documentation, the Office of Disciplinary Counsel can visit WWW.CORRUPTGMEN.COM. There you will find additional written and audio evidence of professional misconduct by Mr. Cicero and others.

The Rules of the Supreme Court of Ohio require that investigations be confidential. Please keep confidential the fact that you are submitting this grievance. The party against whom you are filing your grievance will receive notice of your grievance and may receive a copy of your grievance and be asked to respond to your allegations.

Signature

Date

UNSIGNED GRIEVANCES WILL NOT BE PROCESSED.

WWW.CORRUPTGMEN.COM

Print

Subject: Fwd: Insurance Claim
From: brian higgins (brianehigginsceo@yahoo.com)
To: brianehigginsceo@yahoo.com;
Date: Thursday, May 2, 2019 11:17 AM

Sent from my iPhone

Begin forwarded message:

From: Brian <brianehigginsceo@yahoo.com>
Date: April 20, 2015 at 4:02:48 AM EDT
To: Tony Cicero <tonycicero@gocicero.com>
Subject: Re: Insurance Claim

Just FYI, I have a couple of things I think you may want to insert in the main body. I will get it to you this am, I'm really hoping we can get it out today as I really need to get this back on track.

Sent from my iPhone

On Apr 16, 2015, at 11:43 PM, Tony Cicero <tonycicero@gocicero.com> wrote:

Brian, sorry for not being able to meet up with you. I could probably meet you tomorrow at 10 to finalize this if you wanted. Otherwise, just let me know what you think. Am I missing something or is their fraud claim just absolutely ridiculous? I probably need to tone down some of the wording in the letter, but I just couldn't believe it once I got into it. I look at this letter as an exhibit for later use if necessary. In the email that it is attached to I will have a protected conversation with them that they need to act fast before we go a different route, etc.

If I don't see you tomorrow we definitely are having a cocktail and smoke this weekend sometime.

--
Anthony R. Cicero

Exhibit B

Print

Subject: Fwd: Higgins, Claim #00101591495, DOL 7/11/14
From: brian higgins (brianehigginsceo@yahoo.com)
To: brianehigginsceo@yahoo.com;
Date: Thursday, May 2, 2019 11:07 AM

Sent from my iPhone

Begin forwarded message:

From: Brian <brianehigginsceo@yahoo.com>
Date: February 20, 2015 at 7:34:21 PM EST
To: Mike Marshall <mike@uniteddemolition.com>
Subject: Fwd: Higgins, Claim #00101591495, DOL 7/11/14

This was the first email sent putting them on notice

Sent from my iPhone

Begin forwarded message:

From: Tony Cicero <tonycicero@gocicero.com>
Date: February 18, 2015 at 11:59:51 AM EST
To: shawn.joers@assurant.com
Cc: brianehigginsceo@yahoo.com
Subject: Higgins, Claim #00101591495, DOL 7/11/14

Mr. Joers,

I represent Brian Higgins in relation to the above referenced claim. I am in receipt of your letter dated February 4, 2015. Therein, you deny the claim based upon fraud, specifically stating that your "investigation indicates that information you presented to us in the form of invoices for repairs to your property were falsified and were presented with the intent to deceive."

Please identify the specific invoice or invoices which you claim were presented with fraudulent intent, along with what it is you believe is fraudulent about them. I will then provide you with the information showing you that you are incorrect. If I do not get a response from you within 24 hours, I will assume you would prefer me to file a bad faith claim against you and Assurant, and seek punitive/exemplary damages for your actions.

Exhibit C

I look forward to your prompt reply with the specificity that your actions require.

--
Anthony R. Cicero

Cicero Adams



Proven Success.

500 East Fifth Street
Dayton, Ohio 45402
(937) 424-5390 phone
(937) 424-5393 fax
www.gocicero.com

February 24, 2015

Kevin Rasmussen
ProSource Wholesale Flooring
2289 Arbor Boulevard
Dayton Ohio 45320
krasmussen@psdayflooring.com
937-298-1550

Brian Higgins
7240 Meeker Creek Drive
Dayton Ohio 45414

Mr. Higgins,

I'm writing this letter to inform all parties involved in your insurance claim. ProSource is a member's only wholesaler that sells to trade professionals. We are not a retail store. Your first purchase was placed through our member, Glen Bunn. The pricing that you and he determined was market price, was between you and him. The estimates I give you for your project was retail pricing and the price of materials would be worked out by you and your contractor. **No previous ProSource invoices's or estimates have been inflated, altered, or forged.** In the previous estimates I made a mistake and I estimated too much adhesive. I have attached the revised estimates. In conclusion the materials that are estimated are similar in quality and are not the same because they are no longer available. Please contact me if you have any questions or concerns at above phone number or email.



Kevin Rasmussen

Exhibit D

DAYTON
500 East 5th Street
Dayton, OH 45402
Tel (937) 424-5390
Fax (937) 424-5393

XENIA
36 N. Detroit Street, Ste 102
Xenia, OH 45385
Tel (937) 372-4000
Fax (937) 372-7850

Cicero Adams Limited Liability Company

Proven Success.

Attorneys at Law

Jay A. Adams
Anthony R. Cicero
Lori R. Cicero
Carl G. Goraleski
Sarah E. Michel

March 10, 2015

Stephen W. Gauster, Esq.
Sr. Vice President, Chief Corporate Counsel
Assurant Inc.
1 Chase Manhattan Plaza
New York, NY 10005-1401

**VIA EMAIL ONLY TO:
STEPHEN.GAUSTER@ASSURANT.COM**

RE: Bad Faith Insurance Claim

Dear Mr. Gauster:

I represent Brian Higgins. He has a bad faith insurance claim against Assurant due to the actions of a number of different adjusters, but most notably, Shawn Joers. Mr. Joers paid \$124,181.76 on the claim, stating this was the total loss value, less the deductible, recoverable, and non-recoverable depreciation. It was explained to him that this was insufficient. His response was to deny any further payments, claiming fraud in a way that left out any specifics.

It was at this point that I entered the case. I demanded that Mr. Joers set forth in writing the specifics of his fraud contention. After considerable effort, he eventually called me from his car while traveling with other people. My response to this unprofessional behavior is attached. As you can see, he still refuses to provide specifics. In terms of the excessive glue for flooring, I have obtained a statement from the company that provided the quote, explaining the error. (Attached.) My client cannot be faulted for their unintentional action. If there are legitimate questions about any of the other invoices, and I am provided specifics, those issues would be similarly easy to resolve. I believe there is nothing fraudulent about the information my client has provided to Mr. Joers and Assurant.

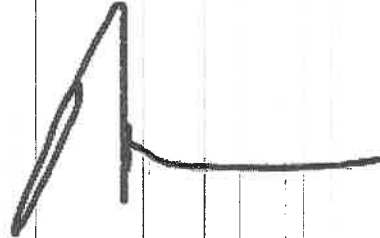
You should also be aware that my client received an initial estimate for the repair work needed, which was well in excess of \$200,000. Mr. Joers hired a company for Assurant to provide an estimate. We have learned from this company that its estimate exceeded the one obtained by my client. However, Mr. Joers prevented its release so he could modify it to the amount he ultimately paid, which is more than \$100,000 less than the estimate.

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Exhibit E

Mr. Higgins' cause of action against Assurant will seek punitive damages, costs, and attorney fees. If Assurant corrects the situation now, and adjusts the claim appropriately, it will only have to pay my attorney fees. I trust that I will be contacted in the event Assurant wishes to remedy this unlawful situation.

Sincerely,

A handwritten signature in black ink, appearing to read 'Anthony R. Cicero'. The signature is stylized, with a large, looped 'A' and a horizontal line extending to the right.

Anthony R. Cicero

ARC/cd

Enclosures

cc: Shawn Joers, at shawn.joers@assurant.com (with enclosures)



mhughes@calfee.com
216.622.8335 Direct

March 10, 2015

VIA EMAIL:

tonycicero@gocicero.com

Anthony R. Cicero, Esq.
500 East 5th St.
Dayton, OH 45402

Re: Claim of Brian Higgins, 00101591495

Dear Mr. Cicero:

This firm represents Standard Guaranty Insurance Company and Assurant Specialty Property in connection with the claim of your client Brian Higgins. Your recent correspondence was forwarded to me. I was just retained and have not yet reviewed the file. After I have reviewed the file, I will communicate with you further regarding the specific basis of the denial of further payments in connection with the claim.

In the meantime, please cease corresponding with my client and its employees regarding this claim, and please communicate with the undersigned.

Very truly yours,

/s/ Maura L. Hughes

Maura L. Hughes

cc: David T. Bules, Esq.

Calfee, Halter & Griswold LLP
Attorneys at Law

The Calfee Building
1405 East Sixth Street
Cleveland, Ohio 44114-1607
216.622.8200 Phone
216.241.0816 Fax
www.calfee.com

Member

LexMundi
Worldwide Legal Network

Lex Mundi is the world's leading network of independent law firms with in-depth experience in 100+ countries worldwide.

Exhibit F



mhughes@calfee.com
216.622.8335 Direct

Calfee, Halter & Griswold LLP
Attorneys at Law

The Calfee Building
1405 East Sixth Street
Cleveland, Ohio 44114-1607
216.622.8200 Phone
216.241.0816 Fax
www.calfee.com

March 24, 2015

VIA EMAIL:

tonycicero@gocicero.com
Anthony R. Cicero, Esq.
500 East 5th Street
Dayton, OH 45402

Re: Claim of Brian Higgins, 00101591495

You asked for information regarding the basis of Standard Guaranty Insurance Company's decision to deny the claim of Brian Higgins, and its conclusion that Mr. Higgins had engaged in Fraud as set forth in paragraph 3 of the Conditions, "Concealment or Fraud" of the Policy. Based on our investigation thus far, we have determined that Mr. Higgins engaged in Fraud by:

1. On or about December 1, 2014, in connection with a supplemental request for coverage of additional expenses, Mr. Higgins (through his contractor) submitted to SGI several estimates from ProSource Wholesale Floorcoverings. (See Attachment 1). SGI concluded from its investigation that (a) the listed amounts for several items on this estimate, including the carpet, carpet pad, and wood flooring, were intentionally inflated beyond the wholesale price that would actually be charged for the goods; (b) at least one of the items, "African Zebrawood," was no longer carried by the flooring wholesaler; (c) the amount of glue included in the estimate was inflated and listed at retail cost; and (d) the amounts on the estimates were inflated to retail price at the request of Mr. Higgins.
2. On or about August 28, 2014, Mr. Higgins submitted an invoice to SGI purportedly from CAD Lights Aquariums for an aquarium, in the amount of \$19,049.00, listing a "Date of Sale" of August 26, 2014, and a "Date for Shipping" of October 5, 2014. This was attached to an email purportedly from "Jason" at customerservice@cadlights.com. (See Attachment 2). Mr. Higgins later submitted a revised version of this invoice which listed different components but still indicated a total cost of \$19,049.00. (See also Attachment 2). SGI concluded from its investigation that no sale of an aquarium was made to Mr. Higgins by CAD Lights Aquariums, that CAD Lights Aquariums did not issue any such invoice to Mr. Higgins, and that the invoices were falsified.

Exhibit G

Calfee, Halter & Griswold LLP

Anthony R. Cicero, Esq.
Mach 24, 2015
Page 2

This letter is sent without prejudice to and without waiving any and all rights and remedies SGIC may have in connection with this claim, including without limitation, any other basis for denial as additional facts may be discovered upon further investigation. Please let me know if you have questions regarding the above matters.

Very truly yours,

/s/ Maura L. Hughes

Maura L. Hughes

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500 East 5th Street
Dayton, OH 45402
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Fax (937) 424-5393

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CiceroAdams
Limited Liability Company

Proven Success.

April 17, 2015

Attorneys-at-Law

VIA EMAIL:

mhughes@calfee.com
Maura L. Hughes
Calfee, Halter & Griswold, LLP
1405 East Sixth Street
Cleveland, Ohio 44114-1607

Jay A. Adams
Anthony R. Cicero
Lori R. Cicero
Carl G. Goraleski
Sarah E. Michel

Re: Claim of Brian Higgins, 00101591495

I am responding to your letter of March 24, 2015. Thank you for finally providing your client's basis for denying the claim. It is certainly unusual to receive this information for the first time from outside legal counsel. Nevertheless, my client presents the following response to each of the two (2) reasons your client provides for claiming fraud.

1. December 1, 2014 Pro Source Information

I was under the impression that you had been forwarded my letter of March 10, 2015, directed to Stephen Gauster. Perhaps you did not receive the attachments. I attach all of that to this correspondence in the hope that you have a chance to review it in its entirety. There you will see a distinct lack of any fraudulent behavior in relation to the retail pricing and what we will call the "glue" issue. Is your client really claiming that it does not need to pay retail pricing for materials, and that my client must submit wholesale pricing estimates? Of course not, that would be ridiculous. So, perhaps you could shed a little light on where there is fraud as claimed in 1a, 1c, and 1d.

Pursuant to your statements in 1b, it appears your client is claiming fraud because the exact same material that was originally installed was quoted, when comparable materials were intended. Again, a review of Kevin Rasmussen's letter from ProSource Wholesale Flooring illustrates that nothing improper was intended by the estimate. Of course, my client would expect payment to be made directly to ProSource, or his contractor. How would he pull off any fraud in this situation?

2. August 24 CAD Lights Aquariums Information

As to the Aquarium, we understand that your client claims that a) no sale of an aquarium was made to Mr. Higgins; b) CAD Lights never issued any invoices such that were submitted by Mr. Higgins; and, c) the invoices were falsified. Mr. Higgins

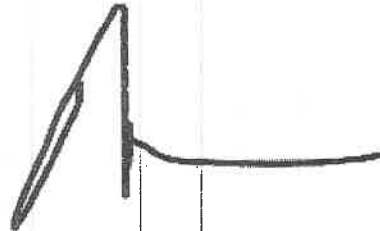
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A Limited Liability Company

Exhibit H

simply forwarded the emails he received from the CAD Lights salesperson to your client. Your client does not claim this salesperson told them something different than what Mr. Higgins provided. (Which is the same for your client's claims in 1 above.) Because this would also be an impossibility, your client apparently thinks Mr. Higgins is so ignorant as to present two completely different invoices, for two completely different aquariums, that he is claiming to have purchased. Again, I assume you have a difficult time presenting this information without a straight face, or maybe even a chuckle. While ignorant on its face, I provide you more complete correspondence between Mr. Higgins and the CAD Lights salesperson with whom he dealt. The second invoice did not present different components, it just itemized the components in greater detail for your client. And, of course Mr. Higgins never finalized a purchase of this Aquarium. He would only do so after your client approved it as covered under the policy. That was the whole point of providing the invoice to your client.

In conclusion, we expect you will review the enclosed documentation and promptly reverse wayward course of your client.

Sincerely,

A handwritten signature in black ink, appearing to read 'Anthony R. Cicero'. The signature is stylized, with a large, sharp 'A' and a horizontal line extending to the right.

Anthony R. Cicero

DAYTON
500 East 5th Street
Dayton, OH 45402
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CiceroAdams
Limited Liability Company

Proven Success.

April 21, 2015

Attorneys-at-Law

Jay A. Adams
Anthony R. Cicero
Lori R. Cicero

Carl G. Goraleski
Sarah E. Michel

VIA EMAIL:

mhughes@calfee.com

Maura L. Hughes
Calfee, Halter & Griswold, LLP
1405 East Sixth Street
Cleveland, Ohio 44114-1607

Re: Claim of Brian Higgins, 00101591495

I am responding to your letter of March 24, 2015. Thank you for finally providing your client's basis for denying the claim. The following is a response to each of the two (2) reasons your client provides for claiming fraud.

1. December 1, 2014 Pro Source Information

I was under the impression that you had been forwarded my letter of March 10, 2015, directed to Stephen Gauster. Perhaps you did not receive the attachments. I attach all of that to this correspondence. There you will see a distinct lack of any fraudulent behavior in relation to the retail pricing and the "glue" issue. Is your client really claiming that it does not need to pay retail pricing for materials, and that my client must submit wholesale pricing estimates? Of course not. Perhaps your client could shed a little light on where there is fraud as claimed in 1a, 1c, and 1d.

Pursuant to your statements in 1b, it appears your client is claiming fraud because the exact same material that was originally installed was quoted, when comparable materials were intended. Again, a review of Kevin Rasmussen's letter from ProSource Wholesale Flooring illustrates that nothing improper was intended by the estimate. Of course, my client would expect payment to be made directly to ProSource, or his contractor. Is your client claiming a grand conspiracy? Again, perhaps your client should shed a little more light upon what is fraudulent.

2. August 24 CAD Lights Aquariums Information

As to the Aquarium, we understand that your client claims that a) no sale of an aquarium was made to Mr. Higgins; b) CAD Lights never issued any invoices such that were submitted by Mr. Higgins; and, c) the invoices were falsified. Mr. Higgins simply forwarded the emails he received from the CAD Lights salesperson to your client. Your client does not claim this salesperson told them something different than

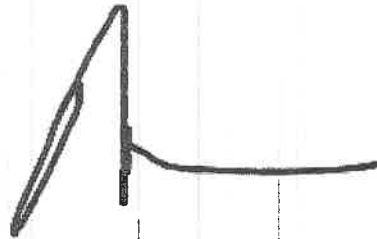
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Exhibit I

what Mr. Higgins provided. (Which also holds true for your client's claims above.) If I understand the statements in your letter correctly, your client apparently thinks Mr. Higgins is so ignorant as to present two completely different invoices, for two completely different aquariums, that he is claiming to have actually purchased. Again, I assume you have a difficult time presenting this information without a straight face, or maybe even a chuckle. While ignorant on its face, I provide you more complete correspondence between Mr. Higgins and the CAD Lights salesperson with whom he dealt. The second invoice did not present different components, it just itemized the components in greater detail for your client. And, of course Mr. Higgins never finalized a purchase of this Aquarium. He would only do so after your client approved it as covered under the policy. That was the whole point of providing the invoice to your client. Which also shows a balance due.

During a telephone conversation with a representative of your client on January 27, 2015, Mr. Higgins was given vague descriptions of what you have set forth in Paragraph 1. It appears the information we provided earlier in that regard only prompted your client to make the additionally false accusations set forth in Paragraph 2. We expect the enclosed documentation to be promptly reviewed, and the wayward course of your client reversed. I will proceed to calculate Mr. Higgins' estimated damages, attorney fees, and costs to this point. Within the next 10 days I will contact you to discuss the manner in which we will proceed.

Sincerely,

A handwritten signature in black ink, appearing to read 'Anthony R. Cicero'. The signature is stylized, with a large, looped initial 'A' and a horizontal line extending to the right.

Anthony R. Cicero

Case: 3:18-cr-00186-TMR Doc #: 1 Filed: 12/13/18 Page: 1 of 1 PAGEID #: 1

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

2018 Dec 13 PM 3:30

IN RE:

: CASE NO.

3:18 cr 186

SEALED INDICTMENT

: UNITED STATES' MOTION
: TO SEAL INDICTMENT

The United States Attorney respectfully requests that this indictment be kept secret until further order of the Court.

MEMORANDUM

Rule 6(e)(4). Federal Rules of Criminal Procedure, authorizes the federal judge to whom an indictment is returned to direct that the indictment be kept secret until further order of the Court. Because the investigation is on-going, the United States Attorney requests that the Clerk of Court be ordered to seal the indictment as well as this motion and order and not disclose its return except as necessary for the issuance and execution of warrant of arrest.

Respectfully submitted,

BENJAMIN C. GLASSMAN
United States Attorney

s/Brent G. Tabacchi
BRENT G. TABACCHI (IL 6276029)
Assistant United States Attorney
Attorney for Plaintiff
200 West Second Street, Suite 600
Dayton, Ohio 45402
Office: (937) 225-2910
Fax: (937) 225-2564
E-mail: Brent.Tabacchi@usdoj.gov

Exhibit J

Case: 3:18-cr-00186-TMR Doc #: 2 Filed: 12/13/18 Page: 1 of 1 PAGEID #: 2

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

2018 DEC 13 PM 3:00

IN RE:

: CASE NO.

3:18 cr 186

SEALED INDICTMENT

:

ORDER SEALING INDICTMENT

:

IT IS HEREBY ORDERED, pursuant to Rule 6(e)(4) of the Federal Rules of Criminal Procedure, that the indictment herein be kept secret until further order of the Court. Until such time, the Clerk is directed to seal the indictment, this order, and the motion of the United States, and no person shall disclose the return of the indictment except when necessary for the issuance and execution of warrant of arrest.



JUDGE WALTER H. RICE
UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

FILED
RICHARD W. NADEL
CLERK OF COURT
2018 DEC 13 PH 3:53
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
DAYTON, OHIO

UNITED STATES OF AMERICA, : No. **3:18 cr 186**
: :
Plaintiff, : I N D I C T M E N T
: :
v. : 18 U.S.C. § 1341
: 18 U.S.C. § 1343
BRIAN HIGGINS, : 18 U.S.C. § 2
: :
Defendant. :

THOMAS M. ROSE

The Grand Jury charges:

COUNTS ONE THROUGH THREE

[18 U.S.C. §§ 1341 and 2]

I. INTRODUCTION

At all times relevant to this Indictment:

1. Defendant BRIAN HIGGINS was a businessman in the greater Dayton, Ohio metropolitan area. Throughout that time, defendant BRIAN HIGGINS lived at, and was one of the titled owners of, 7240 Meeker Creek Drive, Dayton, Ohio (hereinafter "Meeker Residence"), a private, one-story home with over 8,000 square feet of living space. Defendant BRIAN HIGGINS co-owned the Meeker Residence with an individual identified herein by the initials C.H. By at least summer 2014, however, C.H. did not live at the Meeker Residence.

Exhibit K

2. Nationstar Mortgage, LLC, (hereinafter "Nationstar") was a company headquartered in Texas that originated and serviced mortgages for customers throughout the United States. Nationstar held a legal interest in the Meeker Residence.

3. Assurant, through its related entity Standard Guaranty Insurance Company, (collectively, "Assurant") was a specialized insurance business that operated in various states, including Ohio. Assurant provided homeowners insurance coverage on the Meeker Residence for Nationstar and C.H.

II. THE SCHEME TO DEFRAUD AND ITS EXECUTION

4. Between a beginning date unknown, but at least by in or around August 2014, and continuing through in or around February 2015, in the Southern District of Ohio, defendant **BRIAN HIGGINS** knowingly and with the intent to defraud, devised, executed, and participated in a scheme to defraud Assurant and to obtain money and property owned by and under the custody and control of Assurant, by means of materially false and fraudulent pretenses, representations, and promises, and the non-disclosure and concealment of material facts through a fraudulent insurance scheme.

5. Defendant **BRIAN HIGGINS** devised this fraudulent insurance scheme to operate, and the fraudulent insurance scheme

did operate, as follows:

a. During July 2014, while defendant BRIAN HIGGINS resided at the Meeker Residence, the property sustained significant water damage from a leak in an approximately 600 gallon fish tank. Around the time of this incident, various financial institutions, including Nationstar, had joined foreclosure proceedings against the Meeker Residence. Despite the pendency of this litigation, Morningstar obtained for its benefit and that of C.H. homeowners insurance on the Meeker Residence.

b. In or around August 2014, defendant BRIAN HIGGINS submitted a claim in the name of C.H. to Assurant concerning the water damage. As part of the claim's process, Assurant required that the claimant submit true and accurate information to it, concerning, among other things: the cost of repairs as well as bona fide invoices documenting actual repair work performed, or expected to be performed, on the residence. Based on the claimant's tacit representation concerning the validity of this paperwork -- including, among other things, bona fide invoices and repair cost estimates -- Assurant issued funds ultimately destined for, among others, the vendor who performed the purported repair work on the property.

c. Rather than submitting bona fide, accurate invoices and other documentation concerning repairs performed on the Meeker Residence, defendant BRIAN HIGGINS created and caused to be created false, fraudulent, and fictitious paperwork that materially misrepresented the repair work performed on this property. Defendant BRIAN HIGGINS submitted and then caused to be submitted these false, fraudulent, and fictitious documents. Defendant BRIAN HIGGINS also engaged in conversations with Assurant in which he materially misrepresented and fraudulently omitted material facts concerning, among other things, the status of work at the Meeker Residence. In doing so, defendant BRIAN HIGGINS intended for Assurant to issue funds that he then planned to divert for his own personal benefit rather than repairing the Meeker Residence as represented.

d. Based on defendant BRIAN HIGGINS' false and fraudulent pretenses, representations, and promises, and the non-disclosure and concealment of material facts, Assurant issued funds, and sustained losses, totaling over one hundred thousand dollars.

III. THE MAILINGS

6. On or about the dates listed below, in the Southern District of Ohio, defendant **BRIAN HIGGINS**, for the purpose of carrying out the above-described scheme to defraud, caused the items described below to be deposited and to be sent and delivered by the United States Postal Service as well as private and commercial interstate carriers:

<u>COUNT</u>	<u>DATE</u>	<u>MAILING</u>
ONE	8/15/2014	Letter from Assurant addressed to C.H. at the Meeker Residence
TWO	9/10/2014	Check totaling \$14,666.89 to a company identified herein by the initials U.D.
THREE	2/4/2015	Letter from Assurant addressed to defendant BRIAN HIGGINS at the Meeker Residence

All in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT FOUR

[18 U.S.C. §§ 1343 and 2]

I. INTRODUCTION

7. The allegations of paragraphs 1 through 3 of this Indictment are realleged and incorporated by reference as though set forth in full.

II. THE SCHEME TO DEFRAUD AND ITS EXECUTION

8. Between a beginning date unknown, but at least by in or around August 2014, and continuing through in or around February 2015, in the Southern District of Ohio, defendant BRIAN HIGGINS knowingly and with the intent to defraud, devised, executed, and participated in a scheme to defraud Assurant and to obtain money and property owned by and under the custody and control of Assurant, by means of materially false and fraudulent pretenses, representations, and promises, and the non-disclosure and concealment of material facts through a fraudulent insurance scheme.

9. The scheme was designed to operate and did operate as described above in paragraphs 5(a) through 5(d) of this Indictment.


III. THE WIRINGS

10. On or about the dates listed below, in the Southern District of Ohio, and elsewhere, defendant BRIAN HIGGINS, for the purpose of carrying out the above-described scheme to defraud, caused the transmission of the following writings, signs, and signals, by means of wire communication in interstate commerce:

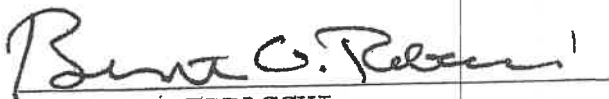
<u>COUNT</u>	<u>DATE</u>	<u>MAILING</u>
FOUR	8/28/2014	Interstate email from defendant BRIAN HIGGINS to Assurant

In violation of Title 18, United States Code, Section 1343 and 2.

A TRUE BILL


Foreperson

BENJAMIN C. GLASSMAN
United States Attorney


BRENT G. TABACCHI
Assistant United States Attorney

@

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA,	)	CASE NO.: 3:18-cr-186
)	
Plaintiff,	)	(Judge Thomas M. Rose)
)	
v.)	
)	
BRIAN HIGGINS,)	
)	
Defendant.)	

NOTICE OF APPEARANCE OF COUNSEL

Now come Anthony R. Cicero of CiceroAdams, LLC, and hereby give notice that he will be representing Defendant, Brian Higgins, in the above referenced matter.

Respectfully submitted,

/s/Anthony R. Cicero
ANTHONY R. CICERO #0065408
ATTORNEY FOR DEFENDANT
CiceroAdams, LLC
500 East Fifth Street
Dayton, Ohio 45402
937.424.5390 phone
937.424.5393 facsimile
TonyCicero@gocicero.com

Exhibit L

CERTIFICATE OF SERVICE

I hereby certify that on April 30, 2019, I electronically filed the foregoing with the Clerk of Court, which will automatically serve Brent Tabacchi, Assistant U.S. Attorney, 602 Federal Building, 200 West Second Street, Dayton, Ohio 45402.

/s/Anthony R. Cicero
ANTHONY R. CICERO #0065408
CiceroAdams, LLC
500 East Fifth Street
Dayton, Ohio 45402
937.424.5390 phone
937.424.5393 facsimile
TonyCicero@gocicero.com
ATTORNEY FOR DEFENDANT

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA,	)	CASE NO.: 3:18-cr-186
)	
Plaintiff,	)	(Judge Thomas M. Rose)
)	
v.)	
)	
BRIAN HIGGINS,)	
)	
Defendant.)	

MOTION TO WITHDRAW AS COUNSEL

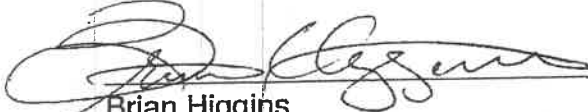
Now comes Counsel for Defendant, and hereby moves this Honorable Court pursuant to S.D. Ohio Crim. R. 83.4(c)(2) for an Order pursuant to S.D. Ohio Crim. R. 83.4(c)(4) permitting the undersigned to withdraw as Counsel of record for the Defendant herein. A conflict of interest has developed that should allow for counsel to withdraw and makes the ability to provide effective representation significantly compromised. Defendant agrees with this request, having signed this motion. An affidavit as required by local rules is not attached hereto due to the sensitive nature of this information. Counsel would respectfully request an in chambers conference to continue to protect Defendant's interests while counsel of record.

WHEREFORE, Counsel respectfully requests leave from this Court to withdraw as counsel for Defendant in the instant case.

Exhibit m

Respectfully submitted,

/s/Anthony R. Cicero
ANTHONY R. CICERO #0065408
ATTORNEY FOR DEFENDANT
CiceroAdams, LLC
500 East Fifth Street
Dayton, Ohio 45402
937.424.5390 phone
937.424.5393 facsimile
tonycicero@gocicero.com
ATTORNEY FOR DEFENDANT


Brian Higgins

CERTIFICATE OF SERVICE

I hereby certify that on February 19, 2020, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the Assistant U.S. Attorney, 602 Federal Building, 200 West Second Street, Dayton, Ohio 45402.

/s/Anthony R. Cicero

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
AT DAYTON

UNITED STATES OF AMERICA,)	
)	
Plaintiff,	)	CASE NO. 3:18-cr-186-TMR
)	
-vs-)	
)	
BRIAN HIGGINS,	)	MOTION FOR NEW
	)	COUNSEL
Defendant.)	

TRANSCRIPT OF TELEPHONIC PROCEEDINGS
BEFORE THE HONORABLE **THOMAS M. ROSE**,
UNITED STATES DISTRICT JUDGE, PRESIDING
MONDAY, March 30, 2020
DAYTON, OH

APPEARANCES:

For the Plaintiff: **BRENT TABACCHI, ESQ.**
U.S. Attorney's Office
200 W. Second Street
Room 602
Dayton, OH 45402

For the Defendant: **ANTHONY R. CICERO, ESQ.**
Attorney at Law
500 East Fifth Street
Dayton, OH 45402

Also Present: Tamara Sack, Esq.

Proceedings recorded by mechanical stenography,
transcript produced by computer.

Mary A. Schweinhagen, RDR, CRR
Federal Official Court Reporter
200 West Second Street
Dayton, OH 45402
*** **

Mary A. Schweinhagen, RDR, CRR *Exhibit A*

09:40:16 1 P-R-O-C-E-E-D-I-N-G-S 10:38 A.M.

09:40:16 2 THE COURT: Counsel, good morning.

09:40:22 3 MS. SACK: Good morning, Judge.

09:40:25 4 THE COURT: Mr. Higgins, good morning.

09:40:27 5 THE DEFENDANT: Good morning, sir.

09:40:30 6 THE COURT: We are here pursuant to a motion to

09:40:33 7 withdraw as counsel in the United States of America versus

09:40:37 8 Brian Higgins, Case Number 3-18-cr-186.

09:40:46 9 I guess since we are doing this by phone, I would first

09:40:48 10 ask if everyone would enter their appearance, please.

09:40:53 11 MR. TABACCHI: Good morning, Your Honor. Brent

09:40:56 12 Tabacchi on behalf of the United States.

09:40:57 13 MR. CICERO: Tony Cicero for Brian Higgins.

09:41:03 14 THE COURT: And we also have --

09:41:05 15 MS. SACK: Your Honor --

09:41:06 16 THE COURT: Go ahead.

09:41:07 17 MS. SACK: Tamara Sack is present.

09:41:09 18 THE COURT: And, Mr. Higgins, you are here too,

09:41:12 19 right?

09:41:12 20 THE DEFENDANT: Yes, Your Honor, Brian Higgins.

09:41:15 21 THE COURT: As I indicated, we're here for the

09:41:18 22 purposes of dealing or entertaining the motion to withdraw as

09:41:26 23 counsel filed by Mr. Cicero.

09:41:29 24 Mr. Cicero, do you want to in any way, shape, or form

09:41:33 25 supplement that?

09:41:34 1 MR. CICERO: If the Court would like me to I can.

09:41:36 2 THE COURT: Well, just maybe a brief supplement.

09:41:41 3 MR. CICERO: Your Honor, Brian Higgins is a close
09:41:45 4 friend of mine of 10, 15 years now. I thought I could
09:41:51 5 separate the friendship and the attorney relationship, but
09:41:57 6 that's proving to be too difficult to do. Brian and I have
09:42:02 7 talked about it at length, and he's in agreement with this
09:42:06 8 request.

09:42:06 9 THE COURT: Mr. Higgins, is that correct?

09:42:10 10 THE DEFENDANT: That is correct, Your Honor.

09:42:11 11 THE COURT: It's also my understanding -- and,
09:42:17 12 Mr. Cicero, I guess this is again -- I am addressing you.
09:42:20 13 It's also my understanding that although you had initially,
09:42:28 14 I'm assuming, representing Mr. Higgins, one of the reasons is
09:42:33 15 the fact of your close relationship with him, that if the
09:42:36 16 Court grants the motion to withdraw, it's your belief that he
09:42:40 17 most likely would qualify for CJA representation?

09:42:48 18 MR. CICERO: That's correct, Judge.

09:42:49 19 THE COURT: Mr. Higgins, CJA representation
09:42:55 20 basically requires, for the Court to find that an individual
09:42:59 21 qualifies for that representation, must submit to the Court an
09:43:05 22 affidavit indicating basically their, well, for lack of a
09:43:10 23 better way of saying it, financial conditions. Once the Court
09:43:14 24 sees that affidavit, the Court can, if it finds, appoint
09:43:19 25 counsel under the CJA act. You understand?

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THE DEFENDANT: Yes, Your Honor.

THE COURT: So before I can -- if I allow Mr. Cicero to withdraw, before I can appoint, if you're not planning to retain counsel and if you believe that you do or would after your discussions, I'm assuming with Mr. Cicero, with regard to this that you believe you would qualify for representation, I would need to get as quickly as possible an affidavit from you so that we can make that determination. Do you understand?

THE DEFENDANT: Yes, Your Honor, I do understand.

THE COURT: And is that what you wish to do?

THE DEFENDANT: Yes, Your Honor. I believe Mr. Cicero has an affidavit that he's going to forward over to me.

THE COURT: Yes, we need to get that done as quickly as possible because, obviously, the Court is unable to take any action until I get that document. Do you understand?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Now, we also have with us here this morning Ms. Sack who has --

MS. SACK: Yes, Your Honor.

THE COURT: It's my understandings, Ms. Sack, you've heard the discussion here that we have had on the record. If the Court allows Mr. Cicero to withdraw and if the Court finds that Mr. Higgins does qualify under the CJA, you indicate that you would be -- and you've come to the Court's assistance on

09:44:57 1 numerous cases, very difficult cases on a number of cases --
09:45:02 2 and that you would be willing to take on the representation of
09:45:08 3 Mr. Higgins; is that correct?

09:45:10 4 MS. SACK: Yes, Your Honor. And if I may?

09:45:13 5 THE COURT: Surely.

09:45:14 6 MS. SACK: Notwithstanding the fact that I've not --
09:45:16 7 there's not been a formal ruling on the withdrawal of counsel
09:45:21 8 and the appointment of CJA counsel, Mr. Higgins and I have
09:45:25 9 established contact, and we have discussed his case and we've
09:45:30 10 introduced ourselves to one another.

09:45:32 11 THE COURT: Great.

09:45:32 12 MS. SACK: So it would be my hope that in the event
09:45:39 13 that this does go through, that it would be, for lack of a
09:45:43 14 better word, a seamless transition. Thank you.

09:45:46 15 THE COURT: The Court is hoping so too. But the
09:45:50 16 Court does need to follow certain rules, and in order for me
09:45:56 17 to follow certain rules, I need things to rule on.

09:46:03 18 So I think, Mr. Cicero and Mr. Higgins, you understand
09:46:06 19 what the Court needs?

09:46:08 20 MR. CICERO: That's correct.

09:46:08 21 THE DEFENDANT: I'm clear. Yes, Your Honor.

09:46:10 22 THE COURT: And it's been here indicated upon the
09:46:14 23 record that Ms. Sack is willing, able, and ready to take up
09:46:18 24 representation if the Court does grant the motion and approve
:46:22 25 the CJA representation.

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So -- well, first, Mr. Tabacchi?

MR. TABACCHI: Yes, Your Honor.

THE COURT: Do you have anything you want to add?

MR. TABACCHI: Not at this time, Your Honor. Thank you.

THE COURT: So here's what I'm going to do. I'm going to take the matter under consideration. As quickly as I receive the affidavit, which my understanding is going to be forwarded immediately by Mr. Cicero to Mr. Higgins, Mr. Higgins will fill it out, and I'm assuming it should be -- is it to come back to you, Mr. Cicero?

MR. CICERO: I'll file it, Judge.

THE COURT: If you'll file it, that will get it to us. And then based upon that and assuming, making an assumption here --

MS. PENSKI: Excuse me, Your Honor?

THE COURT: Yes.

MS. PENSKI: Excuse me, Judge.

Tony, if you could forward that directly to me because that document should be placed under seal. Once the defendant gets it filled, forward it to me, and I will receipt it.

MR. CICERO: I will do that, Liz.

THE COURT: Thank you, Elizabeth.

The Court, although it doesn't like to pre-judge anything, I am assuming that there won't be any problem in the

09:47:37 1 affidavit nor the appointment of CJA counsel; so, therefore,
09:47:43 2 upon that receipt and upon approval, the Court will grant
09:47:50 3 Mr. Cicero's motion to withdraw and appoint Ms. Sack as
09:47:55 4 Mr. Higgins' representative.

09:47:57 5 So at this point in time I will be conditionally granting
09:48:02 6 Mr. Cicero's withdrawal and conditionally appointing Ms. Sack.
09:48:09 7 However, all of these things are conditioned upon the
09:48:12 8 successful filing and approval by the Court of the affidavit.

09:48:19 9 Any questions?

09:48:22 10 MS. SACK: No, Your Honor. Thank you.

09:48:24 11 MR. CICERO: No, Your Honor. Thanks.

09:48:25 12 THE COURT: Mr. Higgins, do you got any questions?

09:48:28 13 THE DEFENDANT: No, Your Honor.

09:48:28 14 THE COURT: I want to thank you all for making
09:48:33 15 yourselves available. And I promise you as quickly as you get
09:48:37 16 your job done, I will do mine. Thank you. Have a good day.

09:48:44 17 MS. SACK: Thank you, Your Honor.

09:48:48 18 (Proceedings concluded at 10:47 a.m.)

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CERTIFICATE OF REPORTER

I, Mary A. Schweinhagen, Federal Official Realtime Court Reporter, in and for the United States District Court for the Southern District of Ohio, do hereby certify that pursuant to Section 753, Title 28, United States Code that the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

s/Mary A. Schweinhagen

October 9, 2020

MARY A. SCHWEINHAGEN, RDR, CRR
FEDERAL OFFICIAL COURT REPORTER

Mary A. Schweinhagen, RDR, CRR (937) 512-1604

DAYTON
500 East 5th Street
Dayton, OH 45402
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Fax (937) 372-7850

Cicero Adams
A Limited Liability Company

Proven Success.

February 19, 2015

Attorneys at Law

Jay A. Adams
Anthony R. Cicero
Lori R. Cicero

Carl G. Goraleski
Sarah E. Michel

Shawn Joers
Field Staff Adjuster
Assurant Specialty Property

VIA EMAIL ONLY

RE: Brian Higgins, Claim #00101591495

Dear Mr. Joers:

Please be advised that I represent Brian Higgins in regard to the above referenced claim. I am responding to your email of today's date, received at 7:01 p.m., wherein you request a signed letter of representation. My email should have been sufficient notification, and your decision to request a formal letter is considered just another bad faith action delaying your processing of a valid claim.

Sincerely,




Anthony R. Cicero

www.GoCicero.com
A Limited Liability Company

HIGGINS-0027

Exhibit D

UNCLASSIFIED

FD-1023	FEDERAL BUREAU OF INVESTIGATION CHS REPORTING DOCUMENT	
---------	--	---

HEADER

Source ID: [REDACTED]
Date: 06/10/2015
Case Agent Name: ROLLINS, LANCE D.
Field Office/Division: Cincinnati
Squad: Squad Seventeen

SOURCE REPORTING

Date of Contact: 02/16/2015
List all present including yourself (do not include the CHS):
 SA Lance Kepple
Type of Contact: Other
Other Contact Type: Recorder receipt
Date of Report: 06/09/2015

Substantive Case File Number

Source Reporting:

On 2/16/2015, [REDACTED] met BRIAN HIGGINS at the conference maintained by [REDACTED]. They discussed an insurance claim that has been filed and the discussion is summarized below:
 [REDACTED] reveals to [REDACTED] that Higgins received a letter stating that Higgins submitted a fraudulent insurance claim. Higgins explains that the insurance company Cicero, rejected his claim as fraudulent. Higgins says this was due to his name and address being left off the claim and that the claim did not otherwise specify it was being submitted for Brian Higgins. Higgins also says the insurance company is questioning the date of the claim.
 Higgins discusses his credit card records and finds what he believes to be proof that he paid for the carpet associated with the claim. Not associated with the insurance claim, Higgins tells the sources that he spent \$100,000 in one month on his American Express card and \$50,000 on another card that same month.
 Higgins references getting guidance from "Tony" several times on the insurance claim. Tony is presumably an attorney.
 6:30 minute mark - [REDACTED] leaves the room

File 46-00002

[REDACTED] returns to the conference room with documentation related to the insurance claim issue. The group discusses the tactics of the insurance company and its investigator, and further discusses general details about the claim and the insurance company's reply. Higgins and the group are adamant that they committed no fraud and that the insurance company is in the wrong.

File 46-00003

[REDACTED] discusses a time when he bid a project involving a Shawn George and [REDACTED] lost a contract under questionable circumstances. Discussion continues on the insurance company claim issue.


File 46-00004

FD-1023	Page 1 of 3	FEDERAL BUREAU OF INVESTIGATION
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UNCLASSIFIED

HIGGINS-0129
 Exhibit P

UNCLASSIFIED

FD-1023	FEDERAL BUREAU OF INVESTIGATION CHS REPORTING DOCUMENT	
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HEADER

Source ID: [REDACTED]
Date: 02/24/2015
Case Agent Name: ROLLINS, LANCE D.
Field Office/Division: Cincinnati
Squad: Squad Seventeen

SOURCE REPORTING

Date of Contact: 02/24/2015
List all present including yourself (do not include the CHS):
 Kepple
Type of Contact: e-Mail
Date of Report: 02/24/2015

~~Substantive Case File Number~~

Source Reporting:
 [REDACTED] provided via email a copy of emails from Higgins. The emails pertain to communications between Higgins, his attorney, and Assurant Property Specialty.

SIGNATURE

Submitted By	lrkepple (Lance Kepple)	Tue, 24 Feb 2015 14:50:12 -0500
First Level Approved By	jwilliams (Jeffrey Williams)	Wed, 25 Feb 2015 14:44:09 -0500

UNCLASSIFIED

HIGGINS-0115

Exhibit Q

UNCLASSIFIED

FD-1023

FEDERAL BUREAU OF INVESTIGATION
CHS REPORTING DOCUMENT



HEADER

Source ID: [REDACTED]
Date: 02/26/2015
Case Agent Name: ROLLINS, LANCE D.
Field Office/Division: Cincinnati
Squad: Squad Seventeen

SOURCE REPORTING

Date of Contact: 02/26/2015
List all present including yourself (do not include the CHS):
Kepple
Type of Contact: e-Mail
Date of Report: 02/26/2015

Substantive Case File Number

[REDACTED]

Source Reporting:

[REDACTED] provided via email, copies of communications between Brian Higgins, Tony Cicern (Higgins civil attorney), and Assurant. Higgins supplied the information to [REDACTED] without any request from [REDACTED].

SIGNATURE

Submitted By: lkepple (Lance Kepple)
First Level Approved By: jwilliams (Jeffrey Williams)

Thu, 26 Feb 2015 15:45:50 -0500
Fri, 27 Feb 2015 11:20:52 -0500

FD-1023

Page 1 of 1

FEDERAL BUREAU OF INVESTIGATION

UNCLASSIFIED

HIGGINS-0116

Exhibit R

[Cite as *U.S. Bank Natl. Assn. v. Higgins*, 2012-Ohio-4086.]

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY**

U.S. BANK NATIONAL ASSOCIATION	:	
	:	Appellate Case No. 24963
Plaintiff-Appellee	:	
	:	Trial Court Case No. 2010-CV-5470
v.	:	
	:	
CHONDA B. HIGGINS, et al.	:	(Civil Appeal from
	:	Common Pleas Court)
Defendant-Appellant	:	

OPINION

Rendered on the 7th day of September, 2012.

JASON WHITACRE, Atty. Reg. #0077330, LAURA C. INFANTE, Atty. Reg. #0082050 and JULIE TERRY, Atty. Reg. #0082098, The Law Offices of John D. Clunk, 4500 Courthouse Boulevard, Suite 400, Stow, Ohio 44224

Attorneys for Plaintiff-Appellee, U.S. Bank National Association

GEORGE PATRICOFF, Atty. Reg. #0024506, 301 West Third Street, 5th Floor, Dayton, Ohio 45422

Attorney for Defendant-Appellee, Montgomery County Treasurer

ANTHONY R. CICERO, Atty. Reg. #0065408, Cicero Law Office, LLC, 500 East Fifth Street, Dayton, Ohio 45402

Attorney for Defendant-Appellant, Brian Higgins

CHONDA B. HIGGINS, 7634 Morning Mist Circle, Dayton, Ohio 45426

Defendant-Appellee, *pro se*

Exhibit S

FAIN, J.

{¶ 1} Defendant-appellant Brian Higgins appeals from a summary judgment rendered against him in an action for foreclosure filed by plaintiff-appellee U.S. Bank National Association. Higgins contends that the trial court erred by rendering summary judgment against him, because U.S. Bank failed to demonstrate that it was the holder of the note and mortgage, by assignment. He further contends that because the assignment of the mortgage to U.S. Bank was executed after the filing of this action, U.S. Bank failed to demonstrate that it was the real party in interest with standing to bring the action.

{¶ 2} We conclude that there is evidence, competent under Civ. R. 56, upon which the trial court could rely in determining that the note and mortgage had been assigned to U.S. Bank. We further conclude that any defect with regard to U.S. Bank's standing and real-party-in-interest status was cured prior to the rendering of summary judgment, which we have found to be sufficient. *Fed. Home Loan Mtge. Corp. v. Schwartzwald*, 194 Ohio App.3d 644, 2011-Ohio-2681, 957 N.E.2d 790 (2d Dist.). Accordingly, the judgment of the trial court is Affirmed.

I. The Evidence in Support of the Summary Judgment

{¶ 3} In 2007, Chonda Higgins gave a promissory note in the sum of \$904,400 to First Franklin Financial Corporation. Simultaneously, Chonda Higgins and her husband, Brian Higgins, gave First Franklin a mortgage securing the note.

{¶ 4} On July 9, 2010, U.S. Bank filed a complaint asserting that the Higginses had defaulted on the note and mortgage. Attached to the complaint was a copy of the note executed by and between Chonda Higgins and First Franklin. Also attached to the complaint

was a copy of a mortgage deed executed by and between Chonda and Brian Higgins, as mortgagors, and First Franklin, as mortgagee. U.S. Bank sought judgment on the note in the amount of \$891,335.37, with interest at the rate of 8.65%, as well as costs and advances. The complaint also sought a finding that the mortgage was a valid first lien upon the real estate, and an order that the mortgage be foreclosed and the property sold. U.S. Bank filed an amended complaint on July 13, 2010, which merely added a party-defendant without otherwise amending the text of the original complaint.

{¶ 5} U.S. Bank moved for summary judgment. Attached to the motion was the affidavit of Robert N. Peters, in which Peters made the following averments:

1. I am authorized to sign this affidavit on behalf of plaintiff, as an officer of Bank of America, N.A., which is plaintiff's servicer for the subject loan ("the Loan").

2. BANA maintains records for the Loan in its capacity as plaintiff's servicer.

I am able to testify to the matters stated herein because I have personal knowledge of BANA's procedures for creating these records. As part of my job responsibilities for BANA, I am familiar with the type of records maintained by BANA in connection with the Loan.

3. The information in this affidavit is taken from BANA's business records. These records are: (a) made at or near the time of the occurrence of the matters recorded by persons with personal knowledge of the information in the business record, or from information transmitted by persons with personal knowledge; (b) kept in the course of BANA's regularly conducted business activities; and (c) it is the regular practice of BANA to make such records. I have personally reviewed the

attached records, and I make this affidavit from a review of those business records and from my personal knowledge of how said records are created and maintained.

4. U.S. Bank, National Association, as successor trustee to Bank of America, N.A. as successor by merger to LaSalle Bank N.A., as Trustee for Merrill Lynch First Franklin Mortgage Loan Trust, Mortgage Loan Asset-Backed Certificates, Series 2007-2 has possession of the note.

5. The business records attached, which I have reviewed are true and correct copies from the business records described above. They show Chonda B. Higgins defaulted and the amount stated in the attached business records is owed on the Loan.

6. Borrower defaulted on the note by failing to make payments due for April 1, 2010, or any subsequent installments. The indebtedness has been accelerated. The balance due on said loan is the principal sum of \$891,335.37 plus interest at 8.65% per annum from March 1, 2010.

{¶ 6} Also attached to the motion for summary judgment are the following documents: (1) a document titled "Bank of America, N.A. Account Information Statement," which shows an unpaid principal balance of \$891,335.37; (2) a legal description of the subject property; and (3) a copy of a July 13, 2010 document entitled "Assignment of Real Estate Mortgage," which indicates that:

Mortgage Electronic Registration Systems, Inc as nominee for First Franklin Financial Corp., and Op. Sub. Of MLB&T Co., FSB, * * * for value received has granted, bargained, sold, assigned, transferred and set over unto U.S. Bank, National Association, as successor trustee to Bank of America, N.A. as

successor by merger to LaSalle Bank N.A., as Trustee for Merrill Lynch First Franklin Mortgage Loan Trust, Mortgage Loan Asset-Backed Certificates, Series 2007-2 * * * a certain indenture [sic] of mortgage dated 22nd day of February A.D. 2007, made by Chonda Higgins and Brian Higgins (signing for the purpose of waiving any and all homesated [sic] rights and/or any and all dower or curtesy rights) wife and husband to it, securing the payment of one promissory note therein described for the sum of nine hundred four thousand four hundred and no/100 — dollars (\$904,400.00) and all its right, title and interest in and to the premises situated in county of Montgomery State of Ohio * * * together with the said note therein described and the money due or to grow due thereon, with interest.

{¶ 7} Higgins filed a memorandum in opposition to the motion for summary judgment, in which he argued that U.S. Bank failed to present sufficient evidence to prove that it is the holder of the note. He also argued that because the assignment of the note was not executed until after the filing of the subject lawsuit, U.S. Bank lacked standing to file the action.

{¶ 8} The trial court rendered summary judgment in favor of U.S. Bank. Brian Higgins appeals. Chonda Higgins has not appealed.

**II. Copy of Recorded Assignment of Mortgage Was Sufficient
Evidence to Establish that U.S. Bank Was Entitled
to Enforce the Terms of the Note and Mortgage**

{¶ 9} Higgins's First Assignment of Error states:

THE TRIAL COURT ERRED BY ACCEPTING THE EVIDENTIARY MATERIAL PRESENTED BY PLAINTIFF AS SUFFICIENT TO OBTAIN SUMMARY JUDGMENT.

{¶ 10} Higgins contends that U.S. Bank did not present sufficient evidence to prove that it is the holder of the note and mortgage, because the copy of the assignment of mortgage to U.S. Bank is not sufficient documentary proof that U.S. Bank is the holder of the instrument. In support, Higgins cites *LaSalle Bank, N.A. v. Fulk*, 5th Dist. Stark No. 2010-CA-00294, 2011-Ohio-3319, for the proposition that a “copy of a notarized [assignment] document [which * * *] does not state the volume and page wherein it is recorded, and is not certified by the records custodian * * * does not constitute proper evidentiary material upon which the court can rely in determining appellee has standing to foreclose on the note and mortgage.” *Id.* at ¶ 31. Conversely, U.S. Bank contends that this court is not bound by the holding in *LaSalle*.

{¶ 11} Summary judgment is proper only when the party moving for summary judgment demonstrates that: (1) no genuine issue of material fact exists; (2) the moving party is entitled to judgment as a matter of law; and (3) reasonable minds can come to but one conclusion, and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence most strongly construed in that party's favor. Civ.R. 56(C). This court reviews summary judgment de novo, meaning that we do so independently and without deference to the trial court's findings of fact. *Fed. Home Loan Mtge. Corp. v. Schwartzwald*, 194 Ohio App.3d 644, 2011-Ohio-2681, 957 N.E.2d 790, ¶ 26 (2d Dist.).

[Cite as *U.S. Bank Natl. Assn. v. Higgins*, 2012-Ohio-4086.]

{¶ 12} Civ.R. 56(C) provides that:

[s]ummary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule.

{¶ 13} Civ.R. 56(C) provides that the only types of evidence that may be considered are “pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and any written stipulations of fact.” Furthermore, the Rule states that “no evidence or stipulation may be considered except as stated in this rule.” “Other types of documents may be introduced as evidentiary material only through incorporation by reference in a properly framed affidavit.” *Mitchell v. Internatl. Flavors & Fragrances, Inc.*, 179 Ohio App.3d 365, 2008-Ohio-3697, 902 N.E.2d 37, ¶ 17 (1st Dist.).

{¶ 14} Civ.R. 56(E), which sets forth the requirements for affidavits in support of motions for summary judgment, states that affidavits “shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated in the affidavit. Sworn or certified copies of all papers or parts of papers referred to in an affidavit shall be attached to or served with the affidavit.” “The requirement of Civ.R. 56(E) that sworn or certified copies of all papers referred to in the affidavit be attached is satisfied by attaching the papers to the affidavit, coupled with a statement therein that such copies are true copies and reproductions.”

Schwartzwald, supra, at ¶ 30.

{¶ 15} The issue presented by this assignment of error is whether U.S. Bank met its burden on summary judgment of producing competent evidence to prove that it is the holder of the note and the assignee of the mortgage. In other words, did the trial court err by relying upon, for summary judgment purposes, a copy of the assignment of the mortgage, without requiring the submission of the original document. We addressed this issue in *SFJV v. Ream*, 187 Ohio App.3d 715, 2010-Ohio-1615, 933 N.E.2d 819, ¶ 46-48 (2d Dist.), wherein we stated:

“Proving the contents of a writing presents problems with hearsay, authentication, and the best evidence rule.” *State v. Carter*, 4th Dist. Ross No. 99 CA 2479, 2000 WL 1466189. Evid.R. 801(C) defines hearsay as a “statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” A “statement,” as included in the definition of hearsay, is an oral or written assertion or nonverbal conduct of a person if that conduct is intended by him as an assertion. Evid.R. 801(A). “Evid.R. 802 mandates the exclusion of hearsay unless any exceptions apply.” *In re Lane*, 4th Dist. Washington No. 02CA61, 2003-Ohio-3755, at ¶ 11. The relevant exceptions to the hearsay rule include business records, public records, and records of documents affecting an interest in property. Evid.R. 803(6), (8), (14).

Documents must be authenticated or identified prior to their admission into evidence. Evid.R. 901. This requirement is satisfied “by evidence sufficient to support a finding that the matter in question is what its proponent

claims.” *Id.* Extrinsic evidence of authenticity is not required for certain documents to be admitted. Evid.R. 902. For example, certified copies of public records, commercial paper, and acknowledged documents are self-authenticating. Evid.R. 902(4), (8), and (9).

* * * “Duplicates” are admissible “to the same extent as an original unless (1) a genuine question is raised as to the authenticity of the original or (2) in the circumstances, it would be unfair to admit the duplicate in lieu of the original.” Evid.R. 1003. Evid.R. 1001(4) defines a “duplicate” as “a counterpart produced * * * by means of photography, including enlargements and miniatures, or by mechanical or electronic re-recording, * * * or by other equivalent techniques which accurately reproduce the original.”

{¶ 16} The assignment of mortgage in this case constitutes a document affecting an interest in property. It is therefore exempted from the hearsay rule under Evid.R. 803(14):

Records of documents affecting an interest in property. The record of a document purporting to establish or affect an interest in property, as proof of the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed, if the record is a record of a public office and an applicable statute authorizes the recording of documents of that kind in that office.

{¶ 17} The assignment in the case before us has a page with an acknowledgment by a notary. “Documents acknowledged by [a notary] are self-authenticating.” *Ream, supra*, at ¶ 50, citing *Lorain Cty. Bar Assn. v. Kennedy*, 95 Ohio St.3d 116, 766 N.E.2d 151 (2002);

Evid.R. 902(8). The assignment also contains a notation regarding the fact that the assignment was filed of record on July 26, 2010 as 10-043540 in the Recorder's Office, Montgomery County. Furthermore, Peters averred that the copy of the assignment was a true and correct copy of the original.

{¶ 18} *LaSalle, supra*, which Higgins urges us to follow, is distinguishable. In *La Salle*, the copy of the assignment therein did not “state the volume and page wherein it is recorded, and is not certified by the records custodian.” *LaSalle*, at ¶ 31. Based upon the facts in this case and Evid. R. 803(14), we conclude that U.S. Bank was not required to produce the original assignment of mortgage. Accordingly, we will review the exhibit/duplicate as if it were the original.

{¶ 19} We next turn to the issue of whether this document demonstrates that U.S. Bank is the holder of the note and mortgage. This court, in *Fed. Home Loan Mtge. Corp. v. Schwartzwald*, 194 Ohio App.3d 644, 2011-Ohio-2681, 957 N.E.2d 790, ¶ 35-40 (2d Dist.), has stated:

R.C. 1303.31(A) identifies three classes of persons who are “entitled to enforce” an instrument, such as a note: (1) the holder of the instrument, (2) a nonholder in possession of the instrument who has the rights of a holder, and (3) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to R.C. 1303.38 or R.C. 1303.58(D).

With respect to negotiable instruments, “holder” means either:

“(a) If the instrument is payable to bearer, a person who is in possession of the instrument;

“(b) If the instrument is payable to an identified person, the identified person when in possession of the instrument.” R.C. 1301.01(T)(1).

“An instrument is transferred when it is delivered by a person other than its issuer for the purpose of giving to the person receiving delivery the right to enforce the instrument.” R.C. 1303.22(A). The transfer of an instrument vests in the transferee any right of the transferor to enforce the instrument. R.C. 1303.22(B).

“Negotiation” is a particular type of transfer. Specifically, “negotiation” means “a voluntary or involuntary transfer of possession of an instrument by a person other than the issuer to a person who by the transfer becomes the holder of the instrument.” R.C. 1303.21(A). “Except for negotiation by a remitter, if an instrument is payable to an identified person, negotiation requires transfer of possession of the instrument and its indorsement by the holder. If an instrument is payable to bearer, it may be negotiated by transfer of possession alone.” R.C. 1303.21(B).

{¶ 20} In this case, the note attached to the complaint is payable to an identified entity, First Franklin Financial Corporation. Thus, only First Franklin could have negotiated the subject note by transferring the note and endorsing it to a specific person or to “bearer.” “A bearer is defined as ‘the person in possession of an instrument * * * payable to bearer or endorsed in blank.’ ” *Fifth Third Mtge. Co. v. Bihn*, 2d Dist. Montgomery No. 24691, 2012-Ohio-637, ¶ 19. (Citation omitted.)

{¶ 21} As noted above, the assignment of the mortgage clearly indicates the intent of

First Franklin to transfer the note along with the mortgage to U.S. Bank. This is sufficient to demonstrate that U.S. Bank is the holder of the note. *Id.* at ¶ 28.

{¶ 22} We conclude that there is sufficient, competent evidence to demonstrate that U.S. Bank is the holder of the note and mortgage with the right to enforce the same. Accordingly, Higgins's First Assignment of Error is overruled.

III. Foreclosure Plaintiff Need Not Prove that it Was the Assignee of Mortgage at the Time of Filing of the Complaint; Proof that it Was the Assignee at the Time the Judgment Was Rendered Was Sufficient

{¶ 23} Higgins asserts the following for his Second Assignment of Error:

THE TRIAL COURT ERRED BY GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AS PLAINTIFF DID NOT HAVE AN INTEREST IN THE PROPERTY WHEN IT SOUGHT JURISDICTION TO OBTAIN FORECLOSURE.

{¶ 24} Higgins argues that because the assignment of the mortgage was executed after the date this lawsuit was filed, U.S. Bank is not the real party in interest and cannot seek enforcement of the note.

{¶ 25} As noted by U.S. Bank, this court has already addressed this issue in *Fed. Home Loan Mtge. Corp. v. Schwartzwald*, 194 Ohio App.3d 644, 2011-Ohio-2681, 957 N.E.2d 790 (2d Dist.), wherein we stated that "the lack of standing or a real-party-in-interest defect can be cured by the assignment of the mortgage prior to judgment." *Id.* at ¶ 75. As in *Schwartzwald*, there is no dispute that U.S. Bank had the rights of the mortgagee and the

holder of the note when summary judgment was rendered. Therefore, the trial court did not err in overruling Higgins's objection to standing and jurisdiction.

{¶ 26} Higgins's Second Assignment of Error is overruled.

IV. Conclusion

{¶ 27} Both of Higgins's assignments of error having been overruled, the judgment of the trial court is Affirmed.

.....

GRADY, P.J., and FROELICH, J., concur.

Copies mailed to:

Jason A. Whitacre
Laura C. Infante
Julia Terry
George Patricoff
Anthony R. Cicero
Chonda Higgins
Hon. Mary K. Huffman

LEASE

THIS LEASE is made as of October __, 2014, between **Tan Vo and Thao Truong**, whose address is 6777 Mont Pellier Blvd, Centerville, Ohio 45459 ("Landlord"), and **Loco Pollo, LLC**, a limited liability company ("Tenant").

1. GRANT OF LEASE. Landlord leases to Tenant, and Tenant leases from Landlord, on the terms and conditions set forth in this Lease, the premises located at 865 North Main Street in the City of Dayton, Montgomery County, Ohio (the "Premises").

2. CONDITION OF PREMISES. The Premises are leased to Tenant in their present condition, "as is," as of the date of this Lease.

3. TERM. The Term of this Lease ("Primary Term") shall commence on the 9th day of the month of **October, 2014** (the "Commencement Date") and shall expire on the last day of the month that concludes six (6) years from the Rent Commencement Date. As used herein the "Rent Commencement Date" is the 1st day of the month of **March, 2015**.

4. RENEWAL TERM. Provided Tenant is not in default under this Lease beyond any applicable period for curing the default, Tenant shall have the option to renew this Lease for two (2) additional periods of two (2) Lease Years each (each, a "Renewal Term") by giving Landlord written notice of renewal at least 90 days before the expiration of the Primary Term. The renewals shall be upon the same terms and conditions that apply during the Primary Term, except for the amount of the rent, which shall be as set forth in Section 5.1. The phrases "term of this Lease," "Lease term" or any similar phrases used in this Lease, shall, where appropriate, mean the Primary Term and the exercised Renewal Term(s), if applicable.

5. RENT.

5.1. Base Rent. Tenant agrees to pay to Landlord as minimum rent for the Premises during the term of this Lease the following amounts:

<u>Period</u>	<u>Annual Rent</u>	<u>Monthly Rent</u>
Commencement Date – Rent Commencement Date	\$0.00	\$0.00
Rent Commencement Date – through end of year 1	\$0.00	\$0.00
Beginning year 2 — through end of Year 7	\$24,000.00	\$2,000.00
Optional Renewal Term of 2 years.	\$33,000.00	\$2,750.00

Exhibit T

Optional Renewal Term of 2 years.	\$42,000.00	\$3,500.00
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5.2. Payment. The rent shall be due and payable in equal monthly installments in advance on the first day of each month during the term of this Lease to Landlord at its notice address, or at such other place as Landlord may designate by written notice to Tenant.

6. USE OF PREMISES. Tenant will use and occupy the Premises for restaurant purposes. Tenant shall not cause or permit injury or waste to the Premises or the Building, or cause or permit a nuisance to exist, and shall keep the Premises and the walkways adjacent to the Premises and any grading, platform and service areas used by Tenant clean and free from rubbish and dirt at all times.

7. COMPLIANCE WITH LAWS. Tenant, at its sole expense, shall comply with all present and future laws and regulations applicable to its use and occupancy of the Premises, and shall make any repairs, modifications or additions to the Premises that may be required by any of those laws or regulations.

8. UTILITIES AND SERVICES. Tenant shall pay all charges against the Premises for water, sanitary sewer, gas, light, heat, electricity and any other utility services furnished to or consumed on the Premises.

9. INSURANCE. Tenant shall procure and maintain commercial general liability insurance for the Premises with policy limits of not less than \$1,000,000.00.

10. MAINTENANCE.

10.1. Landlord's Repairs. Landlord shall not make any repairs or maintenance to the building during the lease period.

10.2. Tenant's Repairs. Tenant shall, at its expense, perform all repairs and maintenance and make all replacements as are necessary to keep in good order, condition and repair, all portions of the interior of the Premises, including, but not limited to, interior walls, floor coverings, carpeting, finished ceilings, light fixtures, doors and entranceways, glass, windows and all plumbing, sewer, electrical, heating and air conditioning facilities and equipment. Tenant further agrees that it will not cause or permit any waste or damage to the Premises.

11. IMPROVEMENTS BY TENANT. Tenant shall have the right to make such nonstructural alterations, additions or improvements within the Premises as it considers necessary or desirable for the conduct of its business, provided that (i) all work shall be done in a good and workmanlike manner and in accordance with all applicable laws and regulations and the other provisions of this Lease; (ii) the structural integrity of the

Building shall not be impaired. Upon the termination of this Lease, any alterations, additions or improvements made by Tenant shall become the property of Landlord, or, if Landlord requests, the same shall be removed, without damage to the Premises, and Tenant shall restore the Premises to as near its original condition as possible, except for normal wear and tear since the last repair or replacement required by this Lease. Notwithstanding the foregoing, upon the termination of this Lease, Tenant shall remove its trade fixtures, equipment and personal property from the Premises and Tenant shall restore any damage to the Premises occasioned by such removal.

12. REAL ESTATE TAXES. Landlord shall pay all real estate taxes and assessments becoming due and payable with respect to the Property during the term of this Lease. Tenant understands that Landlord is currently behind in taxes owed prior to the Commencement of this Lease. Landlord agrees to enter into a payment plan, or other similar arrangement acceptable to Tenant, with taxing authorities so that there is no interference with business operations.

13. DAMAGE AND DESTRUCTION. If during the term of this Lease the Premises are so damaged by fire or other casualty as to be rendered untenable in whole or in substantial part, then either Landlord or Tenant may terminate this Lease effective the date of such casualty. These elections by Landlord or Tenant shall be made within 30 days after the occurrence of the casualty, or shall be deemed waived. If this Lease is not so terminated, either because the damage does not render the Premises untenable, either in whole or in substantial part or because neither Landlord nor Tenant elects to terminate this Lease pursuant to the preceding provisions, then Landlord shall, with all due diligence, repair and restore the Premises to substantially their original condition (notwithstanding Tenant's Work and any alterations or improvements made by Tenant) by not later than 180 days after the occurrence of the casualty, or within such longer period as may be permitted due to any "Excusable Delay" as defined below. The rent shall be abated in proportion to the untenable space until the Premises are restored.

14. CONDEMNATION. If during the Lease term the Premises or any part of the Premises is taken by eminent domain or sold under threat of taking by eminent domain, and the loss of that part of the Premises so taken or sold substantially interferes with Tenant's use of the Premises, then Tenant may terminate this Lease by giving Landlord written notice. This termination shall be effective as of the date of the occurrence of the taking or sale. Landlord shall also have the right to terminate this Lease if all or any substantial part of the Premises, Building or Property is taken or condemned or sold under threat of taking. The rights of termination of Landlord and Tenant under the preceding sentences shall be exercised within a reasonable time after notice of the taking, but in no event later than the effective date of the taking or sale.

18. DEFAULT.

18.1. Tenant's Default. Tenant shall be in default of this Lease if (a) Tenant fails to pay the rent or any other amount required to be paid by Tenant within 10 days after the same becomes due and payable under the terms of this Lease; (b) Tenant fails to perform any other duty or obligation imposed by this Lease and the default continues for a period of 30 days after written notice is given to Tenant by Landlord, or for an unreasonable period of time if 30 days is not sufficient time to repair, remedy or correct such default; (c) Tenant is declared insolvent or adjudged bankrupt, or makes a general assignment for the benefit of its creditors; (d) a receiver of any property of Tenant in or upon the Premises is appointed in any action, suit or proceeding by or against Tenant; (e) any action or proceeding under the National Bankruptcy Act is filed by or against Tenant, and such appointment, suit, action or proceeding is not dismissed within sixty days; or (f) the interest of Tenant in the Premises is sold under execution or other legal process.

18.2. Remedies. In the event of Tenant's default, Landlord shall have the right to enter upon the Premises and repossess and enjoy the same as if this Lease had not been made, and, upon demand by Landlord, Tenant shall surrender complete and peaceable possession of the Premises. This Lease shall then terminate at Landlord's option. Whether or not Landlord elects to terminate this Lease, Landlord may immediately recover from Tenant, and Tenant shall be liable to Landlord for, all rent due and unpaid up to the time of such reentry. If Landlord elects to terminate this Lease, Landlord shall be entitled to the damages caused by Tenant's default, which shall include (a) the costs of reletting the Premises, (b) the difference between the total amount of rent and other charges that Tenant agreed to pay for the balance of the term of this Lease and the fair rental value of the Premises over the same period (i.e., the amount of rent and other charges that Landlord would reasonably expect to receive by reletting the Premises), and (c) all additional sums to which Landlord may be entitled under applicable law. Tenant's obligation to pay rent shall survive any termination of this Lease due to Tenant's default. If Landlord does not elect to terminate this Lease, Landlord may, without waiving or postponing any other rights given it by law or provided for in this Lease, relet the Premises on such terms as it deems best, and apply the proceeds, less all expenses of reletting, to payment of past due rent and the rent due for the balance of the term and hold Tenant liable for the difference. In no event shall Tenant be entitled to any excess rents received by Landlord upon reletting the Premises.

18.3. Right to Cure. Without limiting any other remedy available to Landlord by reason of Tenant's default, in the event Tenant defaults in the performance of any of its obligations, Landlord may, at its option (but without any obligation so to do), do all things as it deems necessary and appropriate to cure the default, perform for Tenant any obligation which Tenant is obligated to perform but has not performed, and expend such sums as may be required. All costs and expenses so incurred by Landlord shall be due and payable to Landlord immediately upon demand, together with interest at the rate of

10% per annum or, if less, the highest legal rate, from the date that the costs and expenses were incurred until the same are paid to Landlord.

19. ASSIGNMENT AND SUBLETTING.

19.1. Tenant shall not, without Landlord's prior written consent, which consent shall not be unreasonably withheld, assign this Lease in whole or in part or sublet any part or all of the Premises. For purposes of this Lease, any transfer of beneficial interests in Tenant or combination of transfers that effect in change of control of Tenant shall be deemed an assignment of this Lease. No assignment of this Lease or subletting of the Premises shall be deemed to release Tenant from any of its obligations under this Lease, nor shall any assignment or subletting be construed as permitting any further assignment or subletting except in accordance with this section.

19.2. Landlord may assign this lease in whole to one corporate entity that it intends to create. The corporate entity must be owned by Landlord, or must own the premises, in its entirety.

20. QUIET ENJOYMENT. Landlord covenants that it has the full right and authority to make this Lease and that if Tenant pays the rent and performs all of the terms of this Lease, Tenant shall peaceably and quietly enjoy and possess the Premises throughout the term, subject only to the conditions set forth in this Lease.

21. SUCCESSORS AND ASSIGNS. The conditions, covenants and agreements in this Lease to be kept and performed by Landlord and Tenant shall bind and inure to the benefit of their (heirs, personal representatives,) successors and assigns.

22. PERSONAL PROPERTY. All trade fixtures, furnishings, equipment and other personal property placed or maintained on the Premises shall be at Tenant's sole risk, and Landlord shall not be liable for any loss or damage to such property from any cause whatsoever.

23. WAIVER. No waiver of any condition or covenant of this Lease by either party shall be deemed to imply or constitute a further waiver of the same or any other condition or covenant, and nothing contained in this Lease shall be construed to be a waiver on the part of Landlord of any right or remedy in law or otherwise.

24. BROKERS. Landlord and Tenant agree that no brokerage commission or similar compensation is due in connection with this transaction. Each party agrees to indemnify the other against all claims for brokerage commissions or other compensation for services rendered at its instance in connection with this transaction.

25. SURRENDER. Upon the expiration or earlier termination of this Lease, Tenant shall surrender to Landlord the Premises in good condition and repair, ordinary wear and

tear since the last repair required by this Lease, fire and other casualty or governmental takings excepted.

26. SEVERABILITY. If any provision of this Lease or its application to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected, and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

27. MEMORANDUM OF LEASE. Upon request of either party, the parties shall execute a memorandum of this Lease in recordable form in accordance with the provisions of Section 5301.251 of the Ohio Revised Code.

28. NOTICES. All notices to be given to either party shall be deemed given if made in writing and deposited in the United States certified mail, postage prepaid, return receipt requested, or if sent by a nationally recognized overnight courier service, and addressed to the parties at the following addresses:

Landlord's Address:

Tenant's Address:

29. SIGNS. Tenant shall maintain signage in good condition and shall be responsible for any costs associated therewith.

30. RIGHT OF ENTRY. Landlord shall have the right to enter the Premises during normal business hours to examine their condition and to make any repairs. Except where it is impractical to do so, Landlord shall give Tenant at least 24 hours notice before any entry.

31. ENTIRE AGREEMENT. This Lease contains the entire agreement between the parties and supersedes all prior understandings. No amendment to this Lease shall be valid unless in writing and executed by the party against whom enforcement of the amendment is sought.

32. CAPTIONS. The captions of this Lease are for convenience of reference only and shall not be considered in the construction of any provisions of this Lease.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

SIGNED as of the date first written above.

TENANT:

Loco Pollo, LLC

By: _____

Name:

Title: Member

LANDLORD:

Tan Vo and Thao Truong

Name: Tan Vo

Name: Thao Truong

STATE OF OHIO)

) SS:

COUNTY OF MONTGOMERY)

The foregoing instrument was acknowledge before me this ____ day of _____, 2014
by _____, from Loco Pollo, LLC, on behalf of the company.

Notary Public

STATE OF OHIO)

) SS:

COUNTY OF MONTGOMERY)

The foregoing instrument was acknowledge before me this ____ day of _____, 2014
by _____.

Notary Public

STATE OF OHIO)

)

SS:

COUNTY OF MONTGOMERY)

)

The foregoing instrument was acknowledge before me this ____ day of _____, 2014
by _____.

Notary Public

heater. Plaintiff simply misread the document. As to the "other items" Plaintiff alleges in paragraph 6 of his affidavit in support of his claim of fraud, Defendant cannot possibly speculate as to what he is referring.

Plaintiff claims he was prevented from entering the premises prior to the settlement, but that is false. Plaintiff was allowed to return and enter onto the premises a second time in order to take photographs to assist with determining that everything was in order when Defendant vacates, nothing more. Practically the entire kitchen is observable from the window inside the entryway of the premises. That is where the parties stood and discussed the contents. If Plaintiff wanted to enter, he merely needed to say so.

In order to prevail on a motion pursuant to Ohio Civ. R. 60(B), a person needs to have "(1) a meritorious defense or claim to present if relief is granted; (2) entitlement to relief under one of the grounds set forth in Civ.R. 60(B)(1)-(5); and (3) the motion must be timely filed." *GTE Automatic Electric, Inc. v. ARC Industries, Inc.*, 47 Ohio St.2d 146, 351 N.E.2d 113 (1976), paragraph two of the syllabus. Plaintiff lacks the first two requirements of such a claim.

Plaintiff has only presented one issue² with any specificity, and on that issue he cannot establish a meritorious defense or fraud. Plaintiff has only established that he is incapable of reading and understanding the plain language in an invoice. This hardly provides the meritorious defense of lack of knowledge. Plaintiff was represented by counsel, and if he had any question as to the wording in an invoice, he could consult with his counsel. Additionally, it does not mean there was any fraud. Fraud would

² The water heater.

require an intentional misrepresentation on Defendant's part, and no such intent has been presented.

Defendant would submit that Plaintiff has simply established that he has buyer's remorse. A decision concerning relief from judgment pursuant to Civ.R. 60(B) lies well within the discretion of the trial court. *Strack v. Pelton*, 70 Ohio St.3d 172, 174, 637 N.E.2d 914 (1994). Defendant would request that discretion be exercised in a way that enforces the settlement agreement entered in open court.

Respectfully submitted by,

/s/Anthony R. Cicero
ANTHONY R. CICERO (0065408)
Cicero Law Office, LLC
500 East Fifth Street
Dayton, Ohio 45402
(937) 424-5390 phone
(937) 424-5393 facsimile
cicero@gocicero.com
ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

Counsel for Defendant hereby certifies that a copy of the foregoing was served by the electronic filing system to counsel for Plaintiff on this 17th day of September, 2014.

/s/Anthony R. Cicero

While not exclusive of the items that will leave, the six (6) filters for the hood system and the compressor for the walk-in cooler will be removed from the property, being disconnected from the supply line at the compressor;

Plaintiff will arrange a time, through his attorney and Defendant's counsel prior to October 20, 2014, to obtain the personal property items of Plaintiff, that Defendant is holding in a storage unit. Plaintiff's failure to do so will cause the property to be considered abandoned;

Defendant will return to Plaintiff the keys to the premises at a walk-through of the premises that will occur with the parties and counsel at 12:00 noon on October 20, 2014.

At the walk-through, and if the premises are left in the condition set forth herein, the parties will execute a Final Judgment Entry releasing the remaining rent escrow of \$1,500 to Defendant or his counsel, splitting any remaining costs equally between the parties, and completely terminating this case;

If a Final Judgment Entry is not signed because it is alleged that the premises are not left in the condition set forth herein, the parties will conduct a hearing on this issue before the Magistrate Judge on October 27, 2014, at 1:30 p.m.

Plaintiff and Defendant agree not to disparage either party, and agree to go their separate ways peaceably.

IT IS SO ORDERED

APPROVED:

/s/David Fuchsman
MAGISTRATE DAVID FUCHSMAN

JUDGE MARY KATHERINE HUFFMAN

Respectfully submitted by,

/s/Anthony R. Cicero
ANTHONY R. CICERO (0065408)
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cicero@gocicero.com
ATTORNEY FOR DEFENDANT

/s/Brian Huelsman (seen but not approved)
BRIAN HUELSMAN #0055444
Moore & Associates
262 James E. Bohanan Mem. Dr.
Vandalia, Ohio 45377
(937) 898-7068 phone
(937) 898-5859 facsimile
huelsmanlaw@yahoo.com
ATTORNEY FOR PLAINTIFF



General Division
Montgomery County Common Pleas Court
41 N. Perry Street, Dayton, Ohio 45422

Type: Agreed Entry: (Signed By Judge)
Case Number: 2014 CV 01557
Case Title: DONELSON TRUST vs BRIAN HIGGINS

So Ordered

Mary H. Huffman

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GREGORY A BRUSH
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Montgomery County Common Pleas Court
General Division

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO

DONELSON TRUST et al,

Plaintiff,

-vs-

BRIAN HIGGINS,

Defendants.

CASE NO. 2014 CV 01557

JUDGE MARY KATHERINE HUFFMAN
MAGISTRATE DAVID H. FUCHSMAN

**MAGISTRATE'S DECISION DENYING
PLAINTIFF'S MOTION TO VACATE
AGREED ENTRY AND GRANTING
DAMAGES**

TO: Honorable MARY KATHERINE HUFFMAN

FROM: Magistrate DAVID H. FUCHSMAN

This matter is currently before the undersigned Magistrate pursuant to Rule 53 of the Ohio Rules of Civil Procedure and a General Order of Reference filed by the Court. On April 11, 2014, the parties consented to the Magistrate presiding over their jury trial. Both parties subsequently waived the jury demand on August 26, 2014. On August 27, 2014, the matter proceeded as a court trial before the undersigned Magistrate, and was resolved through settlement late during the trial. The terms of the settlement were stipulated to on the record, as well as being filed with the Court as an Agreed Judgment Entry on September 3, 2014.

Currently before the Court is Plaintiff's Motion to Vacate the parties' Agreed Entry, as well as the issue of any remaining damages between the parties. Defendant filed a Memorandum in Opposition to the Motion to Vacate Agreement on September 17, 2014. A hearing was held on both matters on October 27, 2014. Plaintiff appeared through its trustee, Mr. M. P. Donelson, who proceeded *pro se*, following the withdrawal of his counsel on October 22, 2014. Defendant, Mr. Brian Higgins, was also present and was represented by counsel, Mr. Anthony Cicero. This matter is now ready for decision.

PROCEDURAL HISTORY AND FINDINGS OF FACT

This matter arises out of a Complaint for forcible entry and detainer filed by Plaintiff, Donelson Trust, on March 17, 2014. The Complaint was amended, by leave of the Court, on May 2, 2014 to include counts for declaratory judgment and breach of contract. Plaintiff is the owner of a commercial property parcel located at 3907 West Third Street, Dayton, Ohio. Plaintiff alleges that Defendant, Brian Higgins, agreed to pay \$1,099.00 per month as rent for this commercial property for use as a restaurant (“Quincy’s Fish House”), beginning in June 2013, but failed to sign the lease or pay the agreed upon rent obligation, all while occupying and renovating the premises. Defendant was personally served with the original Complaint on March 19, 2014.

Defendant filed his initial Answer and Counterclaim on April 11, 2014, and his Answer to the Amended Complaint on May 22, 2014. Defendant admits to occupying the property since June 2013, and that the agreed rent was \$1,099.00 per month. However, Defendant denies that he is in violation of the lease agreement and has refused to deliver or surrender the commercial premises upon an eviction notice from Plaintiff. The factual basis for this denial rests in Defendant’s allegations that the premises were not in the condition represented to him, and that as a result he had to incur considerable time and expense renovating the premises: costs that were allegedly agreed to be subtracted from any rent due. Because he allegedly relied on Plaintiff’s misrepresentations, Defendant asserts the defense of promissory estoppel, and also asserts counterclaims for specific performance and fraud, essentially asking the Court to enforce the lease, offset his costs and damages from any alleged rent due, and access damages in his favor.

Per Court Order, Defendant began to pay the monthly rent payment into the Clerk of Court’s escrow account in April 2014. The matter was referred to mediation on June 26, 2014, and the parties’ mediation took place on July 10, 2014. On July 14, 2014, the parties notified the Court that they were unable to reach settlement through the mediation process.

Consequently, this matter proceeded to trial before the undersigned Magistrate on August 27, 2014. Plaintiff Donelson Trust appeared through its trustee, M.P. Donelson, along with counsel, Mr. Brian Huelsman. Defendant Brian Higgins appeared, along with counsel, Mr. Anthony Cicero. Following Plaintiff’s presentation of testimony from Mr. Donelson, the undersigned Magistrate discussed potential settlement with the parties. During a break in the trial, the parties, accompanied by counsel, left the Court

and traveled to the property in question to discuss disputed items and conditions at the premises.

Immediately following the visit to the premises, a settlement agreement was reached and read into the record (albeit much different in terms than those suggested by the Magistrate), followed by an Agreed Judgment Entry filed on September 3, 2014. The Agreed Judgment Entry, which is consistent with that stipulated to in Court, states as follows:

As stated on the record in open court on August 27, 2014, the parties have agreed to resolve their claims in this matter as follows:

Plaintiff obtains restitution of the premises on October 20, 2014, at 12:00 noon;

Plaintiff's second claim for back rent and damages is dismissed with prejudice;

Defendant's counterclaims are dismissed with prejudice;

All rent escrow paid by Defendant, except \$1,500.00, is released to Defendant or his counsel, Anthony R. Cicero;

It is agreed that Defendant will generally leave the premises in the same condition in which first obtained, leaving trade fixtures that were present and removing those that were added to the property. Any walls that were moved or relocated will stay as modified;

While not exclusive of the items that will stay, the Ansel system, the flat cooktop, the hood, tall outdoor sign, wire metro shelving, and the hot water heater will remain with the property;

While not exclusive of the items that will leave, the six (6) filters for the hood system and the compressor for the walk-in cooler will be removed from the property, being disconnected from the supply line at the compressor;

Plaintiff will arrange a time, through his attorney and Defendant's counsel prior to October 20, 2014, to obtain the personal property items of Plaintiff, that Defendant is holding in a storage unit. Plaintiff's failure to do so will cause the property to be considered abandoned;

Defendant will return to Plaintiff the keys to the premises at a walk-through of the premises that will occur with the parties and counsel at 12:00 noon on October 20, 2014;

At the walk-through, and if the premises are left in the condition set forth herein, the parties will execute a Final Judgment Entry releasing the remaining rent escrow of \$1,500 to Defendant or his counsel, splitting any remaining costs equally between the parties, and completely terminating this case;

If a Final Judgment Entry is not signed because it is alleged that the premises are not left in the condition set forth herein, the parties will conduct a hearing on this issue before the Magistrate Judge on October 27, 2014, at 1:30 p.m.

Plaintiff and Defendant agree not to disparage either party, and agree to go their separate ways peaceably.

Agreed Judgment Entry, September 3, 2014.

The undersigned Magistrate repeatedly asked both parties if there were any other items regarding the premises that they wished to discuss, on the record, prior to finalizing the Agreement. After discussion of the hot water heater, which was agreed would remain on the property in exchange for Defendant being allowed to take all six filters from the oven hood, the agreement was finalized, consistent with the Agreed Judgment Entry, quoted above.

Furthermore, following the reading of this Agreement into the record, the Magistrate encouraged the parties to save the photographs they had just taken during the break in the trial (such as a photograph depicting the point at which the compressor from the walk-in cooler should be removed). The Magistrate also indicated that the parties would be returning to the premises following adjournment, accompanied by counsel, in order for Plaintiff to take further photographs of the premises which he could potentially utilize at the October 27, 2014 hearing should the Defendant not leave the premises in a suitable condition. For the same reason, the Magistrate also encouraged Defendant to take photographs at the October 20, 2014 walk-through to demonstrate that he left the premises as stipulated in the Agreement. The purpose of the walk-through, as characterized by the Magistrate, was intended to resolve any issues as to the condition of the premises prior to its surrender.

The Magistrate concluded by personally asking both Mr. Donelson and Mr. Higgins if they had heard the agreement as read onto the record, and if they understood it. Both parties affirmed that they had. Furthermore, the Magistrate inquired if any promises, other than what had been read onto the record, had been made to either party, either through counsel or himself. Both parties agreed that no other promises had been made.

A. PLAINTIFF'S MOTION TO VACATE AGREEMENT

On September 2, 2014, Plaintiff filed a Motion to Vacate the Agreement under Ohio Civil Rule 60(B). As the basis for this Motion, Plaintiff claims that Defendant Higgins misrepresented the value of certain improvements to the premises during the discovery process, the representation of which Plaintiff relied on in agreeing to settle the matter during the trial on August 27, 2014.

As the factual basis for this reliance, Plaintiff asserts that, during the review of the premises that occurred during the course of the trial, Plaintiff was not permitted to gain full access to the kitchen area. Plaintiff claims that, as part of the settlement that was read into the record, the Court ordered that Defendant allow Plaintiff access to the premises to take further photographs as evidence of what items would remain. After Court adjourned, Plaintiff claims that he returned to the premises to take these photographs and discovered that certain items within the property were not the value that Defendant had represented them to be in discovery. For example, Plaintiff points to the water heater stipulated to in the agreement and alleges that Defendant represented the value of this heater to be \$1,600, when it was actually worth less than \$200. Therefore, Plaintiff argues that the Agreement was induced by fraud, misrepresentation, or misconduct by Defendant and should be vacated in accordance with Ohio Civ. R. 60(B)(3).

In support of this Motion, Plaintiff attached an Affidavit by Mr. Donelson, which, in addition to the claims concerning the value of the water heater, claims that he “saw other items which were not as valuable as Mr. Higgins had claimed. I based my decision to settle this matter in part because of the representations made by Brian Higgins and the value of the items he installed on the property.”

Defendant filed his Memorandum in Opposition to Plaintiff’s Motion to Vacate on September 17, 2014. As a factual matter, Plaintiff disputes Defendant’s claim that the water heater in question is worth \$200, and maintains that the foundation for such a belief is lacking from Plaintiff’s motion. As Plaintiff did not attach the purported discovery material which indicates the value of the water heater, Defendant attaches what he presumes is the document Plaintiff refers to in its Motion: an invoice from Marable’s Drain Cleaning and Plumbing, dated July 2, 2013, totaling \$6,210.00, included in which is a charge of \$1,675.00 for “water heater install.” According to an Affidavit by Defendant Brian Higgins, also attached to the motion, the water heater itself was purchased separately. Defendant therefore argues that Plaintiff simply misunderstood the invoice in question (i.e. installation charge versus appliance charge.)

Furthermore, Defendant denies Plaintiff’s claims that he was prevented from entering the premises prior to the August 27, 2014 settlement, maintaining that they observed the kitchen from the entryway and that Plaintiff did not request further admittance. Furthermore, Defendant characterizes the purpose of the second viewing, after the settlement, differently from Plaintiff. Defendant maintains that the second visit to

the property was for the sole purpose of taking photographs to assist in determining that everything was in order for the October 20, 2014 surrender of the premises.

As a matter of law, Defendant argues that Plaintiff lacks the first two requirements of an Ohio Civ. R. 60(B) motion, and also cannot demonstrate the intentional misrepresentation required for a claim of fraud.

On September 18, 2014, the Court set a hearing on the Motion to Vacate Agreement for October 27, 2014, at the same time as the Damages Hearing set in the Agreed Judgment Entry. Plaintiff filed a Motion to Reschedule the Hearing to an earlier date on October 2, 2014, with an amended Motion filed the next day, October 3, 2014. In this Motion, Plaintiff argued for an expedited hearing in order to prevent Defendant from removing disputed items from the rental property, and to prevent released escrow funds from being “dissipated.” However, before the Magistrate ruled on this Motion, Plaintiff’s counsel, Mr. Brian Huelsman, filed a Motion to Withdraw. This Motion was granted the same day it was filed, October 22, 2014.

B. THE HEARING

On October 27, 2014, the Magistrate heard arguments on the Motion to Vacate Agreement and also conducted the Damages Hearing due to the failure of the parties to submit a Final Judgment Entry on this matter, as specified in the Agreed Judgment Entry. Plaintiff appeared through its trustee, Mr. Donelson, who proceeded *pro se* due to the withdrawal of counsel. Defendant, Mr. Brian Higgins, also appeared, again represented by Attorney Cicero.

Regarding the Motion to Vacate Agreement, Mr. Donelson testified that, following the court trial on August 27, 2014, the parties proceeded to the property in question, accompanied by counsel, in order to take photographs of the condition of the premises. Mr. Donelson stated it was during that visit that he noticed the hot water heater was not the value he expected it to be, claiming that he had expected it to be worth \$1,600.00, as opposed to the “\$50.00 used water heater” he observed that day. He testified that he had not noticed this during the visit prior to the agreement because he had been prevented from walking into the kitchen. Notably, the visit included both parties and both attorneys.

Regarding allegations of potential damages to the premises that violated the Agreed Judgment Entry, it was agreed by both parties that neither Mr. Donelson nor his previous counsel arrived at the October 20, 2014 walk-through, as had been agreed to in the Agreed Judgment Entry. Defense counsel, Mr. Cicero, stated that he, along with his client, waited at the property for over an hour at the agreed upon time. Mr.

Cicero later emailed a copy of a final agreed entry to Plaintiff's former counsel, which was to be signed following the walk-through, but did not receive a response as Mr. Huelsman was withdrawing from the case. The parties concurred that Mr. Donelson picked up the keys to the premises from Mr. Cicero's office later that week. Mr. Donelson claims that he did not know when the walk-through was, and that he was told by his attorney that he could not do anything until there was a response on the motions that had already been filed—i.e. the Motion to Vacate Agreement.

The Magistrate then heard testimony from Mr. Donelson regarding his allegations that Defendant did not leave the premises as stipulated in the Agreement. Mr. Donelson testified that, following his retrieval of the keys to the building, he inspected it and noticed that "a bunch of stuff was taken out" that he believed the Magistrate said was not to be removed, including the wire metro shelving, plumbing to the hot water heater, parts connected to the Ansel system (i.e. the siren and the piping for the chemical), outdoor lighting fixtures, outdoor fencing, some landscaping, and the personal property that had been moved to a storage facility by Mr. Higgins. Mr. Donelson conceded that other items specified in the Agreed Judgment Entry were still present, including the cooktop and hood, the large outdoor sign, and the hot water heater.

Mr. Donelson also testified that wires were left exposed throughout the premises, and that he didn't know what was going to need to be repaired. Furthermore, there is an outstanding water bill with the City of Dayton in the amount of \$683.50 which Mr. Donelson claims is the responsibility of Defendant.

Although requested by the Magistrate, Plaintiff was unable to provide any photographic evidence as to the state of the property prior to Defendant's occupancy. Furthermore, Plaintiff did not provide any evidence (testimony or otherwise) as to the value of the damages he allegedly sustained.

The Magistrate then heard testimony from Defendant, Mr. Brian Higgins. Defendant maintains that he only took the fixtures that he added to the property, as reflected in the Agreed Entry. Mr. Higgins testified that he removed the items stipulated in the Agreement, including the six filters for the hood system and the compressor for the walk-in cooler, which he disconnected at the supply line, as per the Agreement. Regarding the Ansel system, Mr. Higgins testified that he left it intact, with the chemicals necessary for its operation, sealing it appropriately—but stated that he did remove the strobe light that worked with the system because he installed it, and it was not present prior to his tenancy. Mr. Higgins testified that the

pping Mr. Donelson stated was missing was specific to the fryers he had installed and in no way affected the Ansel system.

Regarding the allegations that he wrongfully removed outdoor lighting, Mr. Higgins testified that he only removed lighting that he had installed. The parties agreed that there were three poles on the property, with two lights on each pole: two poles in front of the building and one in back. While Mr. Donelson claims they were all in working order prior to Defendant's occupancy, Mr. Higgins testified that the two poles in the front of the building were not, so he installed new LED light fixtures. Because he had installed them, Mr. Higgins testified that he removed them prior to his surrender of the premises. Mr. Donelson agreed that the light fixture in back is still functioning and is not at issue.

Mr. Higgins admitted removing landscaping that he had planted around the property. Consisting mostly of shrubbery, he estimated that it was worth approximately \$100.

As to Mr. Donelson's personal property at the storage unit, Mr. Higgins testified that he contacted the storage unit business following the Agreed Entry to instruct it to release the property to Mr. Donelson when he arrived to collect it, which was to occur prior to the October 20, 2014 surrender. Mr. Higgins stated he is unaware if that property is still located there, given Mr. Donelson's failure to collect it. Again, Mr. Donelson stated he didn't collect these items because he was waiting on the pending motion before this Court, per his attorney's instructions.

Mr. Higgins testified that he did remove some fencing, but only the eight sections that he had installed, leaving the sections that had existed, with voids, as they had appeared prior to his tenancy. This contradicted Mr. Donelson's testimony, which indicated that there had been fencing on the front and side of the building that Mr. Higgins had torn down and replaced, taking that replacement fencing with him.

Mr. Higgins admitted that the water bill would be his responsibility, as he had called to disconnect the utilities but hadn't received a final statement. The parties therefore agreed that the water bill would be deducted from the funds remaining in escrow. Accordingly, the Magistrate requested that the parties forward the bill to his office so that he could direct the Clerk of Courts to make the appropriate payment. This bill was received on October 31, dated for the period from September 23, 2014 to October 21, 2014, and totals \$683.50.

As for the allegations of exposed wiring, Mr. Higgins testified that everything was capped and put in the same condition that it had been prior to his occupancy. Mr. Donelson disputed this, claiming that a bank of lights in the building wasn't functioning. However, the photographic evidence supporting that damage claim was conflicting at best. Mr. Higgins also testified that all plumbing was left intact.

In attempting to provide further evidence that all wiring and plumbing was left in an appropriate condition, as well as the state of the hot water heater in question, Defendant called Mr. Keith Beason to testify. Mr. Beason is a general contractor at his family business, Beason Service Contractors. Mr. Beason is a business partner of Mr. Higgins, with an interest in the restaurant they were attempting to establish at the property in question, and oversaw much of the renovation of the building by Defendant, as well as the disassembly of the fixtures in question. Mr. Beason is currently a licensed electrician, and has held HVAC licensure in the past, though not currently. He has never been a licensed plumber, but testified that he has significant experience in the field.

Mr. Beason testified that the hot water heater which had been on the property prior to Defendant's occupancy was not functional, and that it was so rusted it fell apart upon removal. He explained that, due to leaks in the building's gas system, he and Defendant chose to install an electric water heater. Mr. Beason testified that he personally purchased the hot water heater, and that it cost approximately \$480. He was familiar with the invoice in question, and explained that he believed Plaintiff was confused between the cost of the hot water heater versus the cost of installation, which is stated as approximately \$1600.00 on the invoice. Mr. Beason testified that the water heater was left intact when Defendant surrendered the building.

Mr. Beason further testified that he had been at the property on August 27, 2014, and was the individual that Plaintiff claims prevented him from fully inspecting the property. Mr. Beason explained that he never prevented Mr. Donelson from accessing any area or taking photographs of the premises, but did object when Plaintiff appeared to be taking photographs of the restaurant product (i.e. food items) as that revealed the restaurant's "trade secrets." Mr. Beason articulated that this objection was after the agreement was entered into between the parties.

Furthermore, Mr. Beason testified that he was present during what was to be the final walk-through on October 20, 2014, and was familiar with the condition of the premises on that date. Mr. Beason testified that all plumbing was appropriately capped off, allowing for reconnection, as was the Ansel system. Mr.

Beason also corroborated Mr. Higgins' account that the nozzles removed were specific to the fryers they had installed, and so were removed along with the fryers.

On cross-examination, Mr. Beason admitted that there were several sets of keys to the building in question, implying it to be conceivable that structural changes were made after the final walk-through was scheduled on October 20, 2014. Plaintiff questioned Mr. Beason about the state of the plumbing and removal of piping, but Mr. Beason rejected the idea that he or Defendant removed any plumbing in the walls, even though they had replaced some of it. Mr. Beason did state that piping that was specific to the fixtures they had supplied was removed, however—such as to the water heater.

LAW AND ANALYSIS

I. PLAINTIFF'S MOTION TO VACATE AGREEMENT

Plaintiff argues that the Agreed Judgment Entry resolving this matter should be vacated in accordance with Ohio Civ. R. 60(B)(3) which provides that

On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order or proceeding for the following reasons* * * (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party

The law for evaluating a Rule 60(B) motion is well established. The movant must show (1) that he has a meritorious defense or claim to present if relief is granted; (2) that he is entitled to relief under one of the grounds stated in Civ. R. 60(B)(1) through (5); and (3) the motion is made within a reasonable time, and, where the grounds of relief are Civ. R. 60(B)(1), (2) or (3), not more than one year after the judgment, order or proceeding was entered or taken." *Leibold v. Hiddens*, 2007 Ohio 2972, *P23, citing *GTE Automatic Elec., Inc. v. ARC Industries, Inc.* (1976) 47 Ohio St. 2d 146, paragraph 2 of the syllabus.

Plaintiff's burden of proof under Ohio Civ. R. 60(B) is synonymous with his burden under general contract law: one who signs a contract, such as in this case, may not in the absence of fraud, or mutual mistake, avoid the contract, or its obligations. *Dane v. Kirsh*, 1985 Ohio App. LEXIS 6374, 9 (Ohio Ct. App., Montgomery County Mar. 20, 1985).

The Magistrate agrees with Defendant that Plaintiff lacks the first two elements of a successful Civ. R. 60(B) motion as required under *GTE Automatic, Inc.* As a factual matter, while Plaintiff makes the blanket allegation that there are "items" on the premises which were not as valuable as Defendant had

asserted, and that he relied on these assertions in entering into the Agreement. Plaintiff only specifies one such item: the hot water heater. Plaintiff has produced no evidence as to what documentation he alleges that Defendant presented to him in discovery, nor any evidence to corroborate his lay estimate as to the fair market value of the water heater. In contrast, Defendant has supplied the invoice for the installation of the hot water heater, and this invoice quotes a cost of \$1,675.00. Defendant also provided the testimony of Mr. Beason, who purchased the heater for approximately \$480.00. Accordingly, Plaintiff has not convinced this Court that Defendant misrepresented the value of the hot water heater. Furthermore, Plaintiff has provided no evidence that the value of any other fixture on the property was falsely represented.

Furthermore, Plaintiff's claim that he was unable to view the kitchen area of the premises prior to entering into the agreement is not convincing. Had this been the case, he could have easily raised this to the Court's attention when the parties returned to Court just prior to reading their agreement into the record. It is also telling that Plaintiff's attorney made no mention, at the time of reading the agreement into the record, that they had allegedly been denied access to the premises. Instead, Plaintiff, after being given numerous opportunities to raise specific matters of dispute, affirmed his consent to the agreement and that he understood it. When questioned about this at the Hearing on the Motion to Vacate Agreement, Mr. Donelson testified that he was "just tired—and I did not want to continue going through this." This is not a valid basis for a Civ. R. 60(B) motion to vacate.

In addition, even had Plaintiff been mistaken in his belief as to the value of the water heater, such a unilateral mistake would not be basis to void the contract. A unilateral mistake "occurs when one party recognizes the true effect of an agreement while the other does not." *Czerniak v. Aziz*, 2011-Ohio-3112, P35 (Ohio Ct. App., Lucas County June 24, 2011), quoting *Gen. Tire, Inc. v. Mehlfeldt* (1997), 118 Ohio App.3d 109, 115, 691 N.E.2d 1132. Restatement of the Law 2d, Contracts (1981) 402, Section 153 provides,

Where a mistake of one party at the time a contract was made as to a basic assumption on which he made the contract has a material effect on the agreed exchange of performances that is adverse to him, the contract is voidable by him if he does not bear the risk of the mistake under the rule stated in § 154, and

- (a) the effect of the mistake is such that enforcement of the contract would be unconscionable, or
- (b) the other party had reason to know of the mistake or his fault caused the mistake.

The Court finds neither Section (a) nor (b) are applicable to the facts of this case. Furthermore, Plaintiff bears the risk of the mistake under Restatement of the Law 2d, Contracts (1981) 402, Section 154. As cited by *Czerniak*, a party bears the risk of a mistake when:

(b) he is aware, at the time the contract is made, that he has only limited knowledge with respect to the facts to which the mistake relates but treats his limited knowledge as sufficient, or

Czerniak at P37- 39, *citing* Restat 2d of Contracts, § 154. Had Plaintiff, as he claims, been unable to enter the entirety of the premises, he would have been aware of his limited knowledge of the condition of the water heater, yet but accepted that limited knowledge as sufficient when entering into the Agreement before the Court, in accordance with § 154(b).

Plaintiff has not met his burden to demonstrate that he would have a meritorious claim if relief were granted, as required by *GTE Automatic Elec., Inc.* Furthermore, he has demonstrated neither fraud nor misrepresentation as required under Ohio Civ. R. 60(B)(3). In contrast, Defendant has shown that Plaintiff's assertion as to the value of the hot water heater is incorrect, and that the basis for the settlement remains. Accordingly, Plaintiff's Motion to Vacate Agreement is denied.

II. DAMAGES

As the Agreed Judgment Entry remains valid, the only matter remaining before this Court is to enforce the remaining terms of the Agreement. As Plaintiff has obtained restitution of the premises, it is only for this Court to determine if the premises was left in the condition stipulated to between the parties (i.e. if Defendant generally left the premises in the "same condition in which first obtained, leaving trade fixtures that were present and removing those that were added to the property." *See Agreed Judgment Entry.*)

The burden of proving damages is upon the party seeking damages. *Motorist Mutual Insurance Co. v. Trent*, (1988) 1988 Ohio App. LEXIS 2341, 2. The party must prove the damages by a preponderance of the evidence. *Capital Equip. Enterprises v. Wilson Concepts*, (1984), 10 Ohio App. 3d 233, 234.

In considering Plaintiff's claims that certain parts of the premises were not left as agreed, or up to the condition that they were in prior to Defendant's occupation, Plaintiff produces no evidence other than his own testimony. No other testimony was elicited and not exhibits were introduced. Plaintiff's testimony was directly contradicted by the testimony presented by Defendant. Additionally, the Agreed Judgment Entry, which was stipulated to in open court and to which Mr. Donelson affirmed his understanding, stipulated that

a final walk-through was to occur on October 20, 2014 in order to avoid any such claims and allow for their correction prior to the surrender of the premises. However, Plaintiff did not appear at that walk-through. Nor did Plaintiff attempt to retrieve the items in storage prior to October 20, 2014, as required by the Agreement. While Plaintiff argues that he was awaiting a decision on the Motion to Vacate, the Agreed Entry was still controlling.

Defendant presented testimony that all electrical wiring and plumbing was appropriately capped off and disconnected, both from Mr. Higgins and from Mr. Beason, a general contractor. Due to Plaintiff's failure to sufficiently contradict this testimony or attend the final walk-through, the Magistrate finds the evidence equally balanced at best, and therefore Plaintiff has not proven damages on this regard.

Furthermore, Mr. Higgins and Mr. Beason testified that they only removed fixtures which were not present prior to their occupancy, consistent with the agreement. These fixtures included a strobe light that related to the Ansel system, nozzles that were specific to their fryers, and plumbing specific to their sinks. The Magistrate finds this testimony credible. Plaintiff failed to prove that any materials related to the Ansel system or water heater, as stipulated by the agreement, were unreasonably disrupted.

Furthermore, Plaintiff has failed to prove that the two sets of outdoor lights were functioning prior to Defendant's occupancy, or that a fence existed as Plaintiff claims. While Mr. Donelson testified that these fixtures were functional and/or existed, he provided no photographic evidence to that effect, and Defendant's testimony directly contradicted these claims.

While Plaintiff initially asserted that the "wire metro shelving" was removed from the premises, he failed to provide any testimony or evidence to that effect. In addition, Plaintiff has claimed landscaping was removed from the property. Mr. Higgins admitted that he removed approximately \$100 worth of shrubbery which he had planted himself. Such an action, although petty, is not a direct violation of the Agreement.

Finally, the Agreed Entry specifically states that Plaintiff's failure to retrieve the property at the storage unit will cause the property to be considered abandoned. While Plaintiff is encouraged to attempt to retrieve that property, it can no longer be considered the obligation of Defendant to maintain it, as Defendant acted in accordance with the Agreement.

The Magistrate notes that Plaintiff did not provide any evidence as to the value of his claimed damages. He produced neither testimony nor exhibits to establish even a prima facie showing on damages.

Therefore, even if Plaintiff had met his burden in proving the wrongful acts claimed, the Magistrate could, at most, only award nominal damages. The fact that Plaintiff acted *pro se* at the October 27, 2014 hearing does not relieve him of his burden, as it is well established that *pro se* litigants are to be held to the same standard as litigants who are represented by counsel. *In re Application of Black Fork Wind Energy, L.L.C.*, 138 Ohio St. 3d 43 (Ohio 2013).

While Plaintiff has failed to meet the burden of proof for all of the above claimed damages, it is uncontested that Defendant is liable for the \$683.50 water bill due to the City of Dayton for the period of September 23, 2014 to October 21, 2014. As the parties have so stipulated, the Court will direct this payment out of the remaining escrow funds.

MAGISTRATE'S DECISION

Accordingly, the Magistrate issues the following decision:

- 1) **Plaintiff's Motion to Vacate the Agreed Judgment Entry be DENIED;**
- 2) **The Clerk is directed to pay \$683.50 out of the escrow account to the City of Dayton Division of Revenue and Taxation, 101 W. Third St. Dayton, Ohio 45402 for the outstanding balance on 3907 E. 3rd Street as of October 21, 2014.**
- 3) **The remaining escrow balance be returned to Defendant or his counsel, Mr. Anthony Cicero. However, Defendant's share of Court costs, ordered in the next paragraph, shall be deducted from the remaining \$816.50.**
- 4) **Costs to be split equally between the parties, as stipulated by the Agreed Judgment Entry.**

The parties are referred to Civil Rule 53 and Rule 2.31 of the Rules of the Montgomery County Common Pleas Court regarding the filing of objections to the Magistrate's Decision. Pursuant to Civil Rule 53, either party may file objections to this Magistrate's Decision within fourteen (14) days of the time-stamped date of this entry.

Except for a claim of plain error, a party shall not assign as error on appeal the court's adoption of any factual findings or legal conclusions, whether or not specifically designated as a finding of fact or conclusion of law under Civil Rule 53 (D) (3) (a) (ii), unless the party has objected to that finding or conclusion as required by Civil Rule 53 (D) (3) (b).

MAGISTRATE DAVID H. FUCHSMAN

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Copies of this document were sent to all parties listed below by ordinary mail

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General Division
Montgomery County Common Pleas Court
41 N. Perry Street, Dayton, Ohio 45422

Type: Magistrate Decision
Case Number: 2014 CV 01557
Case Title: DONELSON TRUST vs BRIAN HIGGINS

So Ordered

A handwritten signature in black ink, appearing to read "David Fuchsma". The signature is stylized and written in a cursive-like font.

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COURT OF COMMON PLEAS
Thursday, December 11, 2014 2:42:11 PM
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GREGORY A BRUSH
CLERK OF COURTS MONTGOMERY COUNTY OHIO

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IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO

DONELSON TRUST, et al.,

Plaintiff,

-vs-

BRIAN HIGGINS,

Defendants.

CASE NO. 2014 CV 01557

JUDGE MARY KATHERINE HUFFMAN
MAGISTRATE DAVID H. FUCHSMAN

**JUDGMENT ENTRY ADOPTING
MAGISTRATE'S DECISION**

Montgomery County Common Pleas Court
General Division

This matter came on for the Court's review and analysis of the Magistrate's Decision, dated November 24, 2014, filed in this case pursuant to Civ. R. 53 (D) (3).

The Court first finds that the parties in this case have not caused to be filed any objections to the Magistrate's Decision pursuant to Civ. R. 53 (D) (3) (b).

The Court next proceeds to determine whether or not there is any error of law, or defect on the face of the Magistrate's Decision and the Court finds neither to be present.

Therefore, the Court adopts the Magistrate's Decision, its findings, conclusions and decision as the Court's own, and this entry shall serve and be the final judgment entry and order of the Court.

The judgment is hereby entered as follows:

- 1) **Plaintiff's Motion to Vacate the Agreed Judgment Entry be DENIED;**
- 2) **The Clerk is directed to pay \$683.50 out of the escrow account to the City of Dayton Division of Revenue and Taxation, 101 W. Third St. Dayton, Ohio 45402 for the outstanding balance on 3907 E. 3rd Street as of October 21, 2014.**
- 3) **The remaining escrow balance be returned to Defendant or his counsel, Mr. Anthony Cicero. However, Defendant's share of Court costs, ordered in the next paragraph, shall be deducted from the remaining \$816.50.**
- 4) **Costs to be split equally between the parties, as stipulated by the Agreed Judgment Entry.**

SO ORDERED:

JUDGE MARY KATHERINE HUFFMAN

THIS IS A FINAL APPEALABLE ORDER, AND THERE IS NOT JUST REASON FOR DELAY FOR PURPOSES OF CIV.R.54 PURSUANT TO APP.R.4. THE PARTIES SHALL FILE A NOTICE OF APPEAL WITHIN THIRTY (30) DAYS.

To the Clerk of Courts:

Please serve the attorney for each party and each party not represented by counsel with Notice of Judgment and its date of entry upon the journal

This document is electronically filed by using the Clerk of Courts e-Filing system. The system will post a record of the filing to the e-Filing account "Notifications" tab of the following case participants:

JOSEPH P. MOORE
(937) 898-3975
Attorney for Plaintiff, Donelson Trust and M P Donelson Trustee

ANTHONY R. CICERO
(937) 424-5390
Attorney for Defendant, Brian Higgins

Magistrates' Office (937) 225-4168

gmg



General Division
Montgomery County Common Pleas Court
41 N. Perry Street, Dayton, Ohio 45422

Type: Judgment Entry Adopting Magistrate Decision
Case Number: 2014 CV 01557
Case Title: DONELSON TRUST vs BRIAN HIGGINS

So Ordered

Margaret Huffman

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
AT DAYTON

UNITED STATES OF AMERICA,)	
)	
Plaintiff,	)	CASE NO. 3:18-cr-186-TMR
)	
-vs-)	
)	
BRIAN HIGGINS,	)	MOTION FOR NEW
	)	COUNSEL
Defendant.)	

TRANSCRIPT OF TELEPHONIC PROCEEDINGS
BEFORE THE HONORABLE **THOMAS M. ROSE**,
UNITED STATES DISTRICT JUDGE, PRESIDING
MONDAY, March 30, 2020
DAYTON, OH

APPEARANCES:

For the Plaintiff: **BRENT TABACCHI, ESQ.**
U.S. Attorney's Office
200 W. Second Street
Room 602
Dayton, OH 45402

For the Defendant: **ANTHONY R. CICERO, ESQ.**
Attorney at Law
500 East Fifth Street
Dayton, OH 45402

Also Present: Tamara Sack, Esq.

Proceedings recorded by mechanical stenography,
transcript produced by computer.

Mary A. Schweinhagen, RDR, CRR
Federal Official Court Reporter
200 West Second Street
Dayton, OH 45402
*** **

Mary A. Schweinhagen, RDR, CRR (937) 512-1604

Exhibit V

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MR. CICERO: If the Court would like me to I can.

THE COURT: Well, just maybe a brief supplement.

MR. CICERO: Your Honor, Brian Higgins is a close friend of mine of 10, 15 years now. I thought I could separate the friendship and the attorney relationship, but that's proving to be too difficult to do. Brian and I have talked about it at length, and he's in agreement with this request.

THE COURT: Mr. Higgins, is that correct?

THE DEFENDANT: That is correct, Your Honor.

THE COURT: It's also my understanding -- and, Mr. Cicero, I guess this is again -- I am addressing you. It's also my understanding that although you had initially, I'm assuming, representing Mr. Higgins, one of the reasons is the fact of your close relationship with him, that if the Court grants the motion to withdraw, it's your belief that he most likely would qualify for CJA representation?

MR. CICERO: That's correct, Judge.

THE COURT: Mr. Higgins, CJA representation basically requires, for the Court to find that an individual qualifies for that representation, must submit to the Court an affidavit indicating basically their, well, for lack of a better way of saying it, financial conditions. Once the Court sees that affidavit, the Court can, if it finds, appoint counsel under the CJA act. You understand?

Mary A. Schweinhagen, RDR, CRR (937) 512-1604

09:44:57 1 numerous cases, very difficult cases on a number of cases --
09:45:02 2 and that you would be willing to take on the representation of
09:45:08 3 Mr. Higgins; is that correct?

09:45:10 4 MS. SACK: Yes, Your Honor. And if I may?

09:45:13 5 THE COURT: Surely.

09:45:14 6 MS. SACK: Notwithstanding the fact that I've not --
09:45:16 7 there's not been a formal ruling on the withdrawal of counsel
09:45:21 8 and the appointment of CJA counsel, Mr. Higgins and I have
09:45:25 9 established contact, and we have discussed his case and we've
09:45:30 10 introduced ourselves to one another.

09:45:32 11 THE COURT: Great.

09:45:32 12 MS. SACK: So it would be my hope that in the event
09:45:39 13 that this does go through, that it would be, for lack of a
09:45:43 14 better word, a seamless transition. Thank you.

09:45:46 15 THE COURT: The Court is hoping so too. But the
09:45:50 16 Court does need to follow certain rules, and in order for me
09:45:56 17 to follow certain rules, I need things to rule on.

09:46:03 18 So I think, Mr. Cicero and Mr. Higgins, you understand
09:46:06 19 what the Court needs?

09:46:08 20 MR. CICERO: That's correct.

09:46:08 21 THE DEFENDANT: I'm clear. Yes, Your Honor.

09:46:10 22 THE COURT: And it's been here indicated upon the
09:46:14 23 record that Ms. Sack is willing, able, and ready to take up
09:46:18 24 representation if the Court does grant the motion and approve
09:46:22 25 the CJA representation.

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affidavit nor the appointment of CJA counsel; so, therefore, upon that receipt and upon approval, the Court will grant Mr. Cicero's motion to withdraw and appoint Ms. Sack as Mr. Higgins' representative.

So at this point in time I will be conditionally granting Mr. Cicero's withdrawal and conditionally appointing Ms. Sack. However, all of these things are conditioned upon the successful filing and approval by the Court of the affidavit.

Any questions?

MS. SACK: No, Your Honor. Thank you.

MR. CICERO: No, Your Honor. Thanks.

THE COURT: Mr. Higgins, do you got any questions?

THE DEFENDANT: No, Your Honor.

THE COURT: I want to thank you all for making yourselves available. And I promise you as quickly as you get your job done, I will do mine. Thank you. Have a good day.

MS. SACK: Thank you, Your Honor.

(Proceedings concluded at 10:47 a.m.)

While incarcerated in the Bureau of Prison (BOP) federal facility in Florence, Colorado, one can not help but to think of Dr. Martin Luther King and his Letter from Birmingham Jail. To fully understand how one takes a journey through the magical gates of the BOP, we must go back to the summer of 2004.

On June 1, 2004, my company (forensic livery service) was tasked with the sensitive duty of Transportation of Deceased Persons for the City of Chicago (City) Department of Police (CPD). This work had previously been performed by CPD's famed 'Wagon Unit,' a controversial unit that transported the deceased to the Cook County Medical Examiner's Office as well as individuals in CPD custody. After the heatwave of 1995, the Fraternal Order of Police (FOP) took the City to federal court, arguing that it was not in their contract to transport deceased individuals. Ultimately, the FOP won and a federal court ruled that the City had to pay out of grade pay (millions of dollars annually) to the rank and file for every deceased transport made within their respected shifts.

We along with the City and CPD agreed to phase in our services (pilot program) to ensure a smooth transition to all 25 of CPD's districts that we would be responsible for. In the beginning, things were a little challenging as an outside firm (Dayton, Ohio) coming into a city known for political graft and abuse. To add to the growing pains, the City had grossly miscalculated the number of deceased transports (contract was based on a per body fee agreement) which made it fiscally difficult to perform our duties as we had over a million dollar shortfall in funding. Negotiations with the City to address this gap were very slow moving as the City had other "priorities" (Millenium Park) and Bossman Daley's never ending battles with a divided city counsel. In 2006, after several hard negotiations and rebids, a sucessful agreement had been hammered out. The City along with CPD would adequately fund this vital social service- (5 year 15 million dollar contract) to ensure the success of the program.

Enter Alderman EDWARD BURKE. Arguably the most powerful elected official in the City, BURKE wielded extreme power as the Chairman of the City's Finance Committee. BURKE is also the longest serving elected official in the history of Chicago, who just happens to be the husband of Illinois Supreme Court Chief Justice Anne Burke.

Exhibit W

In 2007, BURKE began to "take interest" in the Transportation of Deceased Persons contract. BURKE's meddling began as accusations of inflated pricing as it related to the amount the City was paying for our services. He argued that there were other cities throughout the country that paid less than Chicago and demanded that council hearings be held to "study" the cost that the City was paying. It was at the same time, I was informed by a high ranking CPD official that if I wanted to keep my contract, I was going to have to see BURKE as he held the keys to my future with the City of Chicago.

I went to the City Hall offices of Ald. BURKE to pay him a visit. After waiting over an hour, I was given a post-it note by an aid that stated "100K" and had the name and number of someone named "Peter-" I ultimately turned the note over to the City's Inspector General (JOSEPH FERGUSON) Office as requested by DAVID HOFFMAN. It was apparent that this was the amount demanded if I had a desire to maintain my relationship with the City.

Ultimately, I declined BURKE's offer (you pay once, you pay forever). Soon, I would learn that the ring of BURKE (kissing of his pinky ring that he often wears on his left hand) was more powerful than the occupant of the 5th Floor (Mayor's Office) and that my days in the Windy City would be numbered. Soon, the City began to pressure me to renegotiate my pricing with CPD. After some concessions in the scope of service, a new fee was negotiated through the Department of Procurement Services (DPS). It was also at that time that CPD released over 500K in monies for services previously performed but not paid by the City.

For the first several months of the renegotiated contract, things appeared to be quiet. All monthly meetings at CPD Headquarters with representatives from all 25 district commands had 'excellent' reviews for performance.

In 2008, BURKE's hammer reappeared. BURKE began to hold closed door meetings petitioning the City's Consumer Affairs Commissioner Norma Reyes, to allow for the use of "decommissioned" ambulances. Seems that BURKE's law firm represented one of the largest private ambulance companies in the midwest. Shortly after, BURKE was able to get the passage of a city ordinance allowing for the use of decommissioned ambulances. In addition, BURKE began to assemble an Evaluation Committee (EC) as it had been decided that CPD along with DPS would prepare a Request for Proposals (RFP) to be issued,

allowing for the early termination of our contract. However, at some point the decision was made to allow our contract to remain in place until its expiration of September 30, 2011.

On July 27, 2010, DPS had a bid closing for the Transportation of Deceased Persons. CPD and DPS wanted to be prepared for any "issues" by bidding the contract out a year prior to its expiration. Approximately a week after the close of bids, Chief Procurement Officer (CPO) JAMIE RHEE made the unprecedented decision to allow for a "Double Late" bid from Allied Services Group (ASG)- once a bid date has been established, no bids will be accepted after the closing date. ASG stated that it was "unaware where to submit its bid," thus they needed additional time to get their bid in. CPO RHEE instructed ASG to submit its bid no later than the close of business on August 2, 2010. On August 3, 2010, ASG submitted its proposal to the Bid and Bond Room. This decision by RHEE is a violation of all Illinois procurement standards, to include DPS practices.

With the bids submitted, the EC (comprised of representatives from CPD, DPS, Chicago Fire, Law Department and Budget Department) began the process of reviewing the proposals. Numerous bids were received from several companies, all which seem to be lacking one crucial thing- the mandatory experience called for in the RFP. The EC was now faced with a challenge. How would they find a way to disqualify the incumbent (myself) provider and carry out the orders of BURKE to terminate the contract with the City, as this was a sham committee. This dilemma would fall in the hands of CPO RHEE and JON JOHNSON from the Office of Budget. The two of them would act as BURKE's point persons and report directly to the Alderman.

The EC reached a unanimous decision to score ASG's (Double Late) bid, "the most responsive bidder," elevating ASG to the top of all bids submitted. In fact, ASG was deemed "most qualified" with ZERO experience while committing fraud in their application as ASG listed its sole experience by purportedly "acquiring" another company, Allied Cleaning Service (ACS), who "specialized" in the transportation of deceased persons. The EC ultimately submitted its recommendation to interim Chicago Police Superintendent Terry Hillard for approval.

After conducting an extensive pre and post-award investigation of ASG's proposal, we uncovered many fatal flaws in ASG's application to the City. First, ASG listed its owner/president as Mr. JOHN STAMPS, formally of Stamps Construction (a handyman service).

Mr. STAMPS claims to have "acquired" ACS; a materially false claim as ACS was never acquired or owned by ASG. In fact, ASG and ACS were owned and operated by JOHN W. KLACZAK. Mr. KLACZAK had a good reason for not disclosing his identity in ASG's application to the City; Mr. KLACZAK is a convicted sexual predator.

Additionally, with the assistance of a private investigator (retired FBI agent) we learned that KLACZAK was a former police officer for the Village of Thornton, Illinois. It was there that Mr. KLACZAK was terminated as a village police officer, due to a cocaine addiction. Amazingly, three years later in 2003, KLACZAK was appointed fire chief of the same village. It is, after this appointment that things took a dark turn. The Thornton Fire Department had a cadet program (training for young adolescents interested in the fire service) which was under the direct supervision of Chief KLACZAK. Mr. KLACZAK was known for hosting cocaine and alcohol parties for 13-14 year old boys within the fire cadet program. Mr. KLACZAK's propensity for performing oral and anal sex on young boys was known throughout the department. In 2005, KLACZAK was sentenced to 5 years in state prison and ordered to register as a sexual predator for the remainder of his life.

It is with this information in hand that my corporate counsel Anthony Cicero filed a formal dispute with the Department of Procurement Services. Additionally, I retained local (Chicago) counsel to assist. Enter Montel Gayles. Mr. Gayles was JAMIE RHEE's predecessor as Chief Procurement Officer for the City. In the capacity of CPO, Mr. Gayles had oversight of the City's multi-billion dollars worth of procurement contracts for goods and services. With Mr. Gayles representing our interest in the procurement process, he was able to identify the fatal flaws Ms. RHEE made in awarding ASG's contract.

After a through review of the procurement process, Mr. Gayles communicated the errors that the City made, directly to RHEE in the form of a Bid Protest. It quickly became the decision of DPS that Ms. RHEE acted within her discretion and DPS ultimately dismissed our grievance. I then retained the services of another local (Illinois) attorney James P. Rome. Mr. Rome filed suit against the City in Cook County Court of Chancery. It was there that things took yet another twist.

The City argued before the Honorable DIANE LARSON, that the CPO has unfettered discretion in awarding any contract that she pleases, absent of fraud. KAREN DORFF, the City's attorney gave a bizarre example of RCA and Comcast being wholly owned by NBC, somehow suggesting that we had erred in filing our suit due to the ownership of ACS. The court eventually ruled in the City's favor.

In 2017, believing that the previous court had erred, I retained the services of Michael Rosenblat, an attorney whose area of specialty is false claims and whistleblower suits. Upon review of the expansive record, Rosenblat not only determined that there were egregious errors in the way the City had administered the contract to ASG, there were numerous False Claims Violations in ASG's application. Mr. Rosenblat then filed a Qui Tam suit (Whistleblower), arguing gross abuse of discretion as well as fraud on the part of ASG and various City officials, including RHEE. The Illinois Attorney General argued in their response that I had an "Uphill Battle" in my pursuit for justice and the case was dismissed. (Side note- Mr. Rosenblat stated that in his 35+ years of practicing law, he had never seen a Qui Tam dismissed due to the complaintant having an "Uphill Battle").

Just when I had nearly given up any hope or faith in sounding the whistle- over 10 years of fighting the Machine to the tune of well over a million spent, being the voice for the children, there was a break.

July 27, 2018, the Chicago Tribune did an expose titled, "BETRAYED." Seems the Chicago Public Schools (CPS) had hundreds of un-investigated sex abuse claims involving CPS students, dating back over a decade. In fact, 520 students had been raped or sexually assaulted while the City and CPS leaders glossed over the abuse. Many students were re-victimized by Chicago Police investigators who questioned and dismissed the victims claims. In one case, a young girl was raped over 40 times by her track coach. In another, a special needs child was sexually assaulted by a school janitor; all with the City and CPS leaders turning a blind eye.

Immediately, Mayor RAHM EMANUEL and Janice Jackson, Chicago Public Schools CEO, attempted to get in front of the crisis. Even Ald. BURKE got involved by establishing a hotline for parents to call if they believed that their children had fallen prey. Meanwhile,

Mayor EMANUEL, issued a statement calling for "immediate accountability" and for ANYONE with suggestions on how the City could 'tighten things up,' to come forward. This was the call to action that I desperately needed!

Now having a sense of renewal, I was even more driven to fight for justice. I began a direct action campaign. I conducted covert site visits to several of KLACZAK's shell corporations. Ultimately, I landed in Lynwood, Illinois at a business owned by KLACZAK called Paw Palace. Paw Palace is situated on a sprawling 20 acre compound with a large pond- this also serves as KLACZAK's primary residence, approximately 1/8 of a mile from an elementary school. Paw Palace's primary business is pet grooming, dog boarding and in home canine training. They are also a Chicagoland leader in police K-9 training.

As I found myself on the grounds of Paw Palace, posing as having an interest in the adoption of one of the many rescue dogs, I was able to walk the grounds with 'Cash,' a 3 y/o mixed mastiff. I took notice of almost every detail on the property, it was upon our return to the adoption center that I witnessed a disturbing sight. Two young boys (guessing 12-14 years of age) exiting Mr. KLACZAK's residence which sits adjacent to the boarding/training center but across from the rescue center where I was now positioned. I asked one of the volunteers who was working the center if those were the owner's children, to which she replied, "No, they probably just went to use the bathroom." Astonished at what I had just witnessed, I knew that I had to intensify my investigation.

On the next day, I returned. This time I wanted to get photos of the house which is situated in front of the pond as well as information on several of the vehicles that were parked near the residence. After about 30 minutes on the property, I departed. The following week, I retained the services of a private investigator in Dayton, Ohio who ran the plates of the vehicles on KLACZAK's property. Within 24 hours of giving him the information, he called and asked, "Who did you piss off?" Seems the FEDS had called him and questioned why he was "snooping around" running those plates. He stated that he was working for a client, to which he was instructed to, "Leave those plates alone." In his 40 plus years of doing investigative work, he stated that, it was the first time he ever got a call from the FEDS concerning a license plate check.

Not having to be Perry Mason, I knew that I was on to something. I returned to Paw Palace two weeks later, this time with another individual. If I was going to catch this predator (Chris Hansen), it was going to take more than just me. Upon our arrival, we went to the office and inquired with the manager if he knew of the property ever being rented out as it would be the perfect place to host a birthday party. We were told that we needed to speak to the owner, who was not present. As we began to depart, the manager said, "Here he comes," as if on cue.

Not believing my eyes, I was about to be face to face with the "Man Behind the Curtain." My nearly 10 year pursuit had come down to this moment. The predator who had eluded many of his victims that had attempted to collect civil judgments by filing bankruptcy multiple times and created shell companies to conceal his identity, was walking our way. Extending his hand, he introduced himself as 'JOHN.' I began by complimenting his impressive property and the great work his volunteers did at the rescue and adoption center. My cohort then chimed in, asking if he would ever consider renting out the property for a birthday party for her "twin nephews" that were turning 14 years old. 'JOHN' paused for a second before asking, how many children did we anticipate, to which she stated 30-40 with a handful of adults chaperoning.

Knowing that this was a risky move as KLACZAK was certain to be on heightened alert considering his status as a predator, I held my breath. Without hesitation, KLACZAK responded, "I'd love to host your nephews party." He provided a Paw Palace business card and instructed us to contact him via company email with the details. In total shock at what had just occurred, I knew that we needed more. Clearly, no one would ever believe that "Mr. OZ" had agreed to host a birthday party on his property for dozens of children.

After a couple of months of "repositioning our strategy," I figured it was time to reconnect with "JOHNNY." Surely he would have forgotten our previous visit and even if he remembered, he would certainly have a change of heart and decline hosting the party. To my surprise, JOHN immediately replied to our email and was eager to provide details as he thought that we had made alternate plans.

JOHN W. KLACZAK confirmed the details in his response email, along with the amount of \$750.00 (no deposit required). In a follow-up conversation, he offered to make it an overnight camping party with a fire pit if the parents wanted to "Enhance the Experience-" should be noted that KLAZACK shares his residence with another convicted sexual predator- STACY M. GORGAS who runs Cleaning Specialist Inc. (CSI) a crime scene cleanup company owned by KLACZAK.

Now we had our "Golden Cookie!" Mr. KLACZAK committing himself over the wire certainly will get the City leaders to take notice now that I had tangible evidence of a predator on the prey.

November 2018, two months before the January mayorial election I decided that it was the right time to visit some former allies from the City's Black Caucus. I had gained their support years prior when the late Alderwoman JoAnn Thompson and Alderman WALTER BURNETT objected to BURKE's unwarranted meddling in our contract. I certainly did not want to catch the Caucus off guard with my sensitive information so close to what was certain to be a historic election (first openly gay African American female front-runner). After all, it was the Caucus along with the late Desiree Tate (a political powerhouse in her own right) who were instrumental in assisting me when I first arrived in the City, having no clue how to navigate the waters of the Windy City.

Armed with clear and convincing evidence of KLACZAK actively violating the terms of his lifetime predator registration of not being in the presence of children (let alone hosting 30-40 children running around his property) is what I needed. With evidence in hand, my first stop was Ald. BURNETT. Ironically, he was meeting with his Ward attorney when I arrived. He carefully began reviewing the handful of sensitive documents that I had provided, including the email from KLACZAK. As he studied the documents, he paused and said, "We have a problem." Seems that JOHN STAMPS had solicited the assistance of Ald. BURNETT in getting the CPO to accept his "Double LATE" bid years prior. BURNETT then asked the question that I had not anticipated... He said, "Have you gone to the FBI with this information?" Caught off guard, I told him no; the FBI was the last place that I would have thought to go to.

Clearly, in deep thought, the Alderman went on to discuss the timing of this information (historic election) as well as the Chicago Police Department PR nightmare in the wake of the killing of Laquan

McDonald and the subsequent cover-up by Mayor RAHM EMANUEL and the Chicago Public School sex abuse crisis. BURNETT stated that he would reach out to ED SISSEL (Corporation Counsel) as well as the 5th Floor and set up a follow-up meeting.

A week after meeting with BURNETT, I was able to connect with Alderwoman CARRIE AUSTIN's office. AUSTIN was the powerful Chairwoman of the City's Budget Committee and had a history of standing up to BURKE. It was apparent that BURNETT had spoken to AUSTIN as I was instructed to forward the sensitive documents over to her via a private email account that was provided to me, prior to securing a meeting. After a couple of weeks had passed, I received confirmation from her chief of staff that she had agreed to meet.

Arriving at the Ward office was like a scene out of the movie, The Godfather. Constituents, business owners, laborers and then me; all cramped in a small lobby. It was clear that it was going to be a long day! Five minutes after my arrival and to my surprise, I hear my name called. As I am ushered into the Alderwoman's office, she greets me with a hug as if we were long lost friends. She appeared very relaxed and well briefed on the subject matter for which I was there for, uttering a familiar phrase, "I hear we have a problem."

As we begin to discuss the sensitive information, I was cut off in mid sentence. The Alderwoman asked; "Have you spoken to anyone outside of the City about this matter?" Not fully understanding the question, I stated that I had met on numerous occasions with the Inspector General's Office, including turning over the dossier that was requested of me. She said; "No. Have you gone to the FBI?" What are the chances of two people asking the same question!? I replied, no but BURNETT asked the same question. She then explained that I had them (City) by the "Short Hairs" and that I needed to be careful who I shared my information with.

Over the next 2.5 hours (there had to be some upset people in the lobby), the Alderwoman gave me some insight into the inner workings of the Machine. First, describing the City's payout to the family of Laquan McDonald (Budget Committee authorized the settlement). She stated that the City was prepared to pay in excess of 20 million had it not been for an eager family who settled for "pennies on the dollar" (5 million dollar settlement). She added that if it were her children or grandchildren; "They'd be paying me 5 million a day!" I found the Alderwoman's candor to be surprising as this was a conver-

Then came the bombshell. Alderwoman AUSTIN began to explain that the City was well aware that they were doing business with KLACZAK. The reason that they had not terminated their relationship with the sexual predator was because of the exposure it would give a "certain individual." Assuming she was talking about RAHM EMANUEL and the fact that his office was well aware of my years sounding the whistle, she chuckled and said, RHEE was the 'linchpin.' The Alderwoman went on to explain that the former CPO who oversaw and awarded KLACZAK's contract was now the Commissioner of Aviation. As such, AUSTIN explained that RHEE was the "Gatekeeper" of the 8 BILLION-DOLLAR federally funded Airport Modernization Program. Still not fully tracking where she was going, I asked her how that had anything to do with the Chicago Police Department partnering with a convicted predator. She began to explain in great detail that RHEE, in her capacity of being the Commissioner, was the "Keeper of the BBC." I was totally lost at this point, until she let out a laugh and said, the "Billionaire Boys Club." RHEE was overseeing a slush fund that awarded multi-million dollar contracts to friends and family of the BBC Stakeholders.

Finally, it all came together! The City had been ignoring my pleas to address its relationship with KLACZAK because if his contract was disturbed, it would open up RHEE's malfeasance as the City's Chief Procurement Officer, which would likely call into question hundreds of contracts that she had signed off on; potentially jeopardizing the BBC. The Alderwoman gave a look of approval as I for the first time was able to fully grasp the magnitude of the Machine. With that, AUSTIN closed by saying that she would reach out to Corporation Counsel (former White House Counsel under the Obama Administration) and get back with me.

Now, things had taken on a whole new dynamic, and I was fully aware why I had been blown to the wind. The City was stuck with KLACZAK. After a few weeks had passed, Alderwoman AUSTIN reached out and informed me that her "election was more important" (reason for the delayed response) and that she had spoken to Counsel and it was the City's position that I had pursued civil litigation in the courts and the City had no more to say. Shortly after, I received a similar call from JOE DEAL the Mayor's Chief of Staff informing me that the Mayor's Office did not feel that my concerns warranted a response or any involvement.

Several months later, one final stop on my "Informational Tour." With just weeks post the April 2, 2019 historic runoff mayorial election (I deliberately waited until after the runoff because of the crowded field of nine), it was time to pay mayor-elect LORI LIGHTFOOT a visit. The former Chicago Police Accountability Task Force President, LIGHTFOOT headed CPD's professional accountability board. LIGHTFOOT is a former federal prosecutor turned high-powered litigator with the firm Mayer Brown LLP. It is this firm that I pay my visit to. (The mayor-elect had a transition office but it was certain to be a "show" with people vying to get on the 5th Floor team).

As a partner with Mayer Brown, mayor-elect LIGHTFOOT had made a name for herself. The Ohio native (Massillon, Ohio), graduated from the University of Chicago School of Law and won the election in an unprecedented landslide (74%) against Cook County Board President Toni Preckwinkle. This visit would not be to see the Lady of the Hour, this visit is to see TYRONE FAHNER, senior partner and LIGHTFOOT mentor (also former Illinois Attorney General). It is my hope to get my sensitive information to the inner circle of the new Administration as it is certain to be a crisis landing on her desk.

Upon my arrival at the office of Mayer Brown, I scanned the directory for Mr. FAHNER. The security officer at the front desk called up to his office, eventually dispatching his assistant (Gail) to come down (people in Chicago get nervous when they get unsolicited visits- billionaire MICHAEL SACKS is a story for later). After quickly scanning the documents, Gail asks if she can make a copy for the "Big Guy" as the documents seem to have gotten her attention. I later follow up with an email to Mr. FAHNER to which I got no response. My work is now complete on the Chicago Tour. I now set my attention to the final piece of this twisted puzzle.

Back in Dayton, Ohio, I find myself searching for what my next move will be. All of my options to sound the whistle on public corruption, seem to be fading. There is nowhere to go next, or was there?! After weeks of feeling hopeless and not knowing where to turn, a light went off. The common denominator between Ald. AUSTIN and Ald. BURNETT was the FBI! I needed to report my muckrake to the federal authorities, they certainly would take notice of my 10 plus years of documented evidence. Plot twist...

On April 10, 2019, I went to the resident office of the FBI in Dayton, Ohio as it was certain that the relationship between the Chicago Police Department and the Chicago FBI would be too close, at least for my initial visit. Upon my arrival, I was greeted by Special Agent ANDREW GRAGAN. SA GRAGAN seemed caught off guard by my unsolicited visit (I am sure most people do not cold call the FBI). I begin explaining that for the past 10 years, I had been sounding the whistle on public corruption taking place in Chicago, Illinois that involved elected officials at the highest level of city government. Having brought over 3000 pages of documented evidence, SA GRAGAN asked if I would be willing to return to the office at a later date, as he "needed to make some calls." Approximately 2 weeks later GRAGAN informed me that he was able to secure a meeting, in which Chicago FBI would travel to Dayton (for an interview) and asked that I return on April 30, 2019 at 0730 hrs with my dossier. Finally, someone to hear my pleas- not just someone, the Federal Bureau of Investigation!

April 30, 2019, would be the day that my life would be forever changed. I arrived at the office of the FBI on Clyo Road at the requested hour. I was greeted by the person that I had come to know as SA GRAGAN. Struggling to carry the banker boxes of evidence, GRAGAN began asking me; "Are you Brian Higgins?" I found this to be odd as we had previously met and had several conversations regarding my upcoming visit. After confirming my identity, GRAGAN asked me; "Do you have any weapons on you?" Now, I may not be the sharpest tool in the tool box but I was thinking for this to be the FBI, they ask some of the most elementary questions at 7:30 in the morning. I play along and reply; "No weapons ANDREW-" in my Dave Chappelle voice. The next thing out of his mouth was shocking. "You are under arrest Mr. Higgins." If not for the fact that my sense of humor was intact, I probably would have been shaken. I calmly asked him; "On what charges ANDREW?" He proceeded to state; "You are being arrested in connection with a 2014 leaking fish tank."

Seems that in a 2014 insurance claim for water damage to my residence (over 250K worth of damage), I spent 25K outside of the repairs to the home. The fact that I could do the repairs for less than what the insurance claim was, is somehow a federal crime.

eral contractors, most of whom I had relationships with as I supported many in business with various projects over the years. One contractor however; MICHAEL MARSHALL (would remind you of a bad used car salesman after Hurricane Ian), I retained on the suggestion of a friend to be the site manager (United Demolition). MARSHALL also had another company (Drywall Wizard) and asked that I give him the drywall work. Unbeknownst to me, MARSHALL was a Confidential Human Source a.k.a. CI working for the FBI. MARSHALL stated that he had some previous issues getting work with the City of Dayton as a contractor. I was asked if I would introduce him to City officials who I thought could help him and his company with public works contracts, which I did. In the end, I had to terminate MARSHALL and his ragtag companies for performing shoddy work on my residence but not before he ran off with over 30K of the insurance proceeds.

I was driven to the Courthouse and arraigned on the charges of mail fraud and wire fraud for spending 25K of the insurance monies outside of the residence. The Governments "theory" is that I did not intend to complete the repairs to the residence and that I was going to "run for the hills." The fact is, I was in litigation with the insurance carrier (Assurant Insurance Co.) for Bad-Faith as they deliberately withheld over 100K in monies needed to complete the repairs. In addition to my arrest, I was rounded up with three other individuals (first round of indictments), all of whom I knew. Two of the individuals were City of Dayton employees (one a City Commissioner and regional bank president) who I introduced to MARSHALL, unaware that he was a Government Informant.

In MARSHALL's capacity of an Informant, he forged relationships with the officials that I thought could assist him with city contracts. MARSHALL and these individuals began exchanging money for favors a.k.a. bribes. Now they too found themselves in front of Magistrate Michael Newman facing charges ranging from bribery to theft in office and lying to federal authorities.

The Government coined their dragnet operation, "Demolished Integrity;" a "Widespread Culture of Corruption" dealing with a 40K patio that MARSHALL had built for one of the individuals and 30K in cash recieved by another, both in exchange for public works contracts. United States Attorney BENJAMIN GLASSMAN stated that I was rounded up with the others because my case (manufactured by MICHAEL MARSHALL) stemmed from the same investigation- not public corruption. Side note-

most all contracts that MARSHALL was able to procure for public works were terminated due to his poor performance. Seems that the CI's work was as shoddy as the "Keystone Cops" investigation.

During my arraignment, Magistrate Newman asked how I plead to the charges. After entering my "NOT GUILTY" plea, my counsel (arguably one of the best criminal defense attorneys in Ohio) excitedly said; "I've got great news, 'they' don't even want you (as if I had just won the Showcase Showdown on the Price is Right), you are here because you know where the 'bodies' are!" To this I laugh. I have traveled to the FBI exposing a multi-billion dollar federally funded slush fund, a ghosting scheme (using the identity of the deceased on the black market) and a sexual predator actively preying on children- yet, I am sitting in federal court shackled and arrested for a leaking fish tank. This is laughable if for no other reason, we now know that the Federal Bureau of Investigation could care less about the sexually abused children. They would rather use federal resources (millions spent) pursuing a civil matter, if that, as neither my insurance carrier or mortgage company had filed suit in connection to my 2014 insurance claim.

On August 8, 2019, the Government called a meeting purportedly in an attempt to "resolve" my case. Present were the AUSA BRENT TABACCHI, Ohio BCI BRENT KILPATRICK and FBI SA LANCE KEPPLER. The meeting began by the Government laying out their "theory" of the case. They described it as a "slam dunk," and my bank records show me taking 25K from the insurance proceeds and spending on items outside of my residence. However, TABACCHI had a "path" that would prevent me from going to prison. Mr. TABACCHI extended an olive branch. He proposed that I provide damning information against U.S. Congressman Michael Turner (R) and other elected officials to include Montgomery County Commissioner Debbie Lieberman, Montgomery County Coroner Dr. Kent Harshbarger as well as former Coroner/Crime Laboratory Director Kenneth Betz. In exchange TABACCHI would guarantee probation and ZERO restitution in my criminal case. I declined and the meeting was adjourned. Should be noted that TABACCHI stated that if any information that I would provide had been "outside of the statute of limitations, he had a way of getting around it."

January 21, 2020, another meeting was called by the Government, this meeting was attended by the previous individuals with the addition of FBI SA TYLER FREEMAN from the Chicago FBI. It was apparent

electd officials on April 30, 2019, they neglected to interview me. In fact, the day that I was taken into custody, they had loaded the 3000 pages of evidence that I was requested to turn over, back into my vehicle.

This meeting however, was different than the first as it had the appearance of "housekeeping," to discuss my claims of crimes being committed in Chicago. I was asked if I would testify against the now disgraced Ald. ED BURKE (his meddling in my contract with the City and CPD)- he was indicted for extortion caught on tape in late 2018 related to a 10K shakedown of a Burger King restaurant remodeling permit in his ward. I agreed to testify against BURKE. Additionally, I was asked if I would go undercover and wear a wire on the sexual predator KLACZAK, to which I declined. At the conclusion of the meeting, counsel and I were asked if we preferred to travel to Chicago for a formal interview or if we wanted Chicago FBI to travel to Ohio. We agreed on going to Chicago (my last Dayton visit was not fruitful) and were told that a meeting would be confirmed within 2 weeks.

December 15, 2020, nearly 11 months after being assured of a meeting (another broken promise), we meet again. This time it was a meeting that I had requested as the Government had operated in bad-faith (I recorded it). This meeting turned out to be as fruitless as all others. It was quickly apparent that TABACCHI was under political pressure to "resolve my case." It began by him scolding me and telling me that I had "NO RIGHT TO MEET WITH ANY LAW ENFORCEMENT AGENCY," to include the FBI. After pressed as to why we were denied our meeting as promised, Mr. TABACCHI stated that, "WE CAN HAVE OUR REASONS." He added that he had contacted FBI Chicago and that they had no interest in hearing what I had to say. When asked why the FBI would have me on a ruse to travel to their offices on the morning of April 30, 2019, TABACCHI replied, "THE FBI DIDN'T KNOW WHERE YOU LIVED;" at which time I excused myself from the meeting.

December 16, 2020, the next day after wasting my time, I received a call from counsel, informing me that after I departed, they stayed around to "discuss my case" in further detail. They conveyed that the Government wanted to know, what it was that I wanted. Counsel replied, "WE WANT A MEETING WITH CHICAGO FBI TO TALK ABOUT THE CHILDREN." After conversing amongst themselves, TABACCHI now agreed to set up yet another meeting with FBI Chicago. One catch, he wanted me to take a plea deal in my criminal case- a plea

Federal Misdemeanor Code and told to "pick the misdemeanor that was acceptable to me," with expungement within 12 months (great deal if you are guilty). Counsel once again emphasized that until we get our meeting with Chicago FBI, "WE ARE NOT DISCUSSING A FISH TANK."

Now within less than 24 hours, the Government had done yet another pivot. First, Chicago FBI had NO INTEREST in discussing sexually abused children, now they agree to meet with me. TABACCHI offering a quid pro quo to report high crimes in exchange for a plea, reeked of duplicity- as if my name was DAN.

December 17, 2020. the next day, the offer had been resended. Mr. TABACCHI filed a superseding indictment, charging me with witness tampering and witness retaliation for filing a timely civil suit against the Informant MARSHALL et al. that stole over 30K of the insurance proceeds. The superseding indictment is just another example of prosecutorial misconduct/vindictiveness on the part of BRENT TABACCHI.

May 2021, an exasperated legal team had come up with a "new strategy." They wanted me to participate in a game of "trickery" on the the Honorable Thomas M. Rose. Seems that they had coordinated efforts with the Government to request a Competency Evaluation of my mental state. This would require a formal hearing in open court. The AUSA and counsel however, would need my assistance to convince the Judge to send me away for a psychological evaluation to take place within the Bureau of Prison- up to 45 days with a goal of obtaining a "non-competent" diagnosis. This all in an attempt for a mistrial.

On May 21, 2021, counsel contacted me to "pregame" the upcoming Hearing. Not believing that my own defense team was going to intentionally "Hoodwink and Bamboozle" the Court, I recorded our conversation (one of many). It was in this conversation that counsel thanked me for following their advice and "ALWAYS DOING THE THINGS THAT THEY ASKED OF ME." They just needed me to do one last thing. They needed me to assist them in convincing the judge to send me away, arguing that I suffered from a "mental defect" that would require an in treatment mental evaluation. I was advised to be prepared to be taken into immediate custody of the U.S. Marshals and likely be shipped to Butner, North Carolina (BOP medical facility).

On May 24, 2021, standing before the Honorable Judge Rose, I was asked if I understood the proceedings, to which I affirmed. At this point, counsel and the Government began to argue that they had

"grave concerns" for my mental state and questioned if I had the ability to assist them in my defense. They specifically cited my desire to discuss things that were not apart of my criminal case i.e. the children. Counsel went on the record to say that I was "fixated" on crimes being committed in Chicago, Illinois dealing with former Mayor RAHM EMANUEL et al., related to a "contract dispute and child molestation." TABAGCHI concurred with defense counsel that I continue to raise issues that are "irrelevant" to my case (fish tank).

The Honorable Thomas M. Rose asked that I "Cooperate with the Court" as he was going to place me in immediate custody for up to 45 days. He further stated that the Court also shared the same concerns as counsel and the Government. Additionally, he stated that if I came back deemed to be competent, the Court would get my case back on schedule as this evaluation was going to delay our insurance experts Daubert Hearing (expert testimony, no crime was committed).

After spending a total of 68 days in the magical BOP (Summer Cross Country Tour) that took me from two county jails, a federal holding facility in Oklahoma, City OK and finally to downtown Chicago. Yes, the Windy City, where it all began- Metropolitan Correctional Center (MCC) Chicago. There I spent several weeks in solitary confinement ("Covid 19 protocol"), finally meeting with Dr. Jason Dana, Chief of Psychology who was tasked with determining my "sanity." Dr. Dana spent approximately 3 hours in multiple interview sessions, discussing my childhood and adolescent upbringing- (did I kill small animals as a child). In addition, I was asked to pair various shapes and sizes i.e. squares vs triangles vs circles, to which I was declared to be competent and was immediately released from custody after 23 days of additional incarceration (Court ordered maximum of 45 days in BOP custody).

For the next several months, my legal team did very little in the way of representation/trial prep. In fact, the tension was so intense that one of my attorney's refused to give me eye contact and the other slipped up and disclosed that they had contacted their malpractice carrier, putting them on notice of a potential claim. It seems that our attorney/client relationship had eroded now that I was "fully woke," and on to the games and deception that they had displayed in open court. Having nothing to lose, I thought that

I would try a little experiment. Let's call it, "Operation Pass the Potato." How many Government officials, A.K.A. "GMEN" (coined by J. Edgar Hoover) can I pass over knowledge of high crimes and abuse against children before someone acknowledges my pleas. For the record, my bet was none.

I begin with my representatives from Ohio, U.S. Sen(s) ROB PORTMAN and SHERROD BROWN, followed by AUSA BRENT TABACCHI's target- U.S. Rep MICHAEL TURNER. All were provided courtesy copies of the dossier, to which none elected to acknowledge receipt. I was currently batting 1000. Next up, let's hit I-95 to Washington, certainly there will be someone that wants to save the children. I start with COREY ELLIS, at the time Chief of Staff to FBI Director CHRISTOPHER WRAY, (now United States Attorney for South Carolina). He certainly would take interest as the gatekeeper for the Director. After all, it was WRAY who was quoted, "It is jarring to me. It is totally inconsistent with what we train our people on and totally inconsistent from what I see from the hundreds of agents that work these cases everyday." (Reference to the handling of the USA Gymnastics sex abuse allegations by the Indianapolis FBI office). Mr. ELLIS appears to be a smart guy, graduate of Brown University followed by the University of Memphis School of Law. As expected, crickets; ZERO interest in the children from 950 Pennsylvania Avenue (DOJ Headquarters).

On to the next- I need to "Land the Big Tuna," in the words of Alderman EDWARD BURKE. How could I get to 1600 Pennsylvania Avenue?" I figured the new Administration that ran on transparency and accountability would be the answer to addressing my concerns. I began by studying the cabinet. We had the DOJ and the FBI who gave ZERO F's, not much higher than that. Wait a minute, my attention immediately went to the "Man of the Hour," RAHM EMANUEL. After all, he was the one that coined, "Never allow a good crisis to go to waste, it's the opportunity to do the big things you never thought possible and make them possible." I needed to reach the Chief of Staff, as I heard rumblings of "46" appointing RAHM EMANUEL a.k.a. "RAMBO" the Ambassador to Japan. If this is accurate, I predict his appointment to be the shortest ambassadorship an administration has had as he is certain to be recalled to Washington to answer some questions- "What did you know, when did you know it and what did you do?" I turned my attention to RONALD KLAIN, a former high-powered attorney and Chief

of Staff to Vice President Biden, now returning to the White House for an encore as Chief of Staff to "46."

Mr. KLAIN, husband to Monica Medina, co-founder of Our Daily Planet, an environmental news platform; certainly the family man (father of 3) would take notice of crimes against children as this was the next stop on our "Hot Potato Tour." For several weeks, I hit roadblocks. The White House can be a tricky place to navigate, especially when you are dishing out Hot Potatoes. I attempted once again to penetrate the WH Switchboard (humorous story for later), to no avail. Knowing that KLAIN was once a prominent D.C. attorney, I turned my attention to the D.C. Bar Association. Bingo, the needle in the haystack. Seems that Mr. KLAIN was registered online with the Bar who listed his personal email address in its directory. KLAIN had a AOL.COM email (a tyrannosaurus rex by today's standards) but made sense as he previously worked for Case Holdings (Steve Case, founder of AOL).

Potato in hand, I sent Mr. KLAIN a personal note informing him of a potential crisis that was certain to be of national interest if not handled appropriately. I emphasized that it was not my intent to harm or embarrass the incoming Administration; however, a number of DOJ AND FBI officials had put them in peril, namely BRENT TABACCHI. After a couple of weeks of no response, I reached out to Mr. KLAIN for a second time. Certainly he was busy solving some world crisis, he probably had just overlooked my note. To my surprise, it seemed that I may have spooked the Chief of Staff. KLAIN had changed his email account. Unfortunately for him, he attached a forwarding message, directing anyone attempting to contact him via email to use his "new" GMAIL.COM account. Seems the Potato was a bit too hot for the West Wing power broker.

Now the table was set. There is no one in Government that can claim to be "uninformed" (most political puppets like to hide behind the cover of their underlings). Every level of Government had a seat at this uncomfortable table. Just one final stop on this roller coaster, my TRIAL.

Out of the "Gang of 7" (6 African American and 1 wealthy white guy), I was the lone one standing in the way of the Government closing the door on their failed 'dud' operation. The "Big Whale" out of the group was STEVE RAUCH, a self-proclaimed "Hillbilly with money" (his words, not mine) paid millions of dollars in "compensat-

ory gifts" in brown paper bags to elected officials over the decades to gain favor for his demolition business. In fact, a year prior to his federal indictment, RAUCH beat a highly publicized state case for illegal dumping that involved the U.S. EPA. Seems that RAUCH should change his name to TEFLON. RAUCH was charged by TABACCHI for mail fraud, conspiracy to commit mail fraud and aiding and abetting. Facing decades in prison, RAUCH had one trick up his sleeve. Mr. 'TEFLON' retained the services of Taft-Stettinius & Hollister LLP., to represent him- ALL CHARGES DROPPED! Not only did RAUCH give the Government the middle finger, his enterprise was ordered to pay a measly \$15,000.00 fine, rubbing TABACCHI's nose in his doo-doo of a case.

On January 5, 2022, in the Walter H. Rice Courthouse, I sat for my final pretrial. We were set to conclude the Witch Hunt in 5 days but not before doing a little housekeeping. The Honorable Thomas M. Rose wanted to confirm that all parties were ready to proceed with the January 10, 2022 trial. I was given the opportunity to address the Court and communicate my concerns with proceeding with counsel as there had been little to no trial prep- case was never anticipated to go to trial by counsel (former or current) nor the Government. There was lack of material witnesses being called (NONE) and probably most troubling, I had never been asked by counsel for my side of the Governments flawed theory (scheme to defraud Assurant Insurance Co). This is laughable on its face as I was the one pursuing a Bad-Faith Claim against Assurant for dishonesty in administrating the claim.

Counsel then had an opportunity to address the Court. Appropriately, they conceded that the attorney/client relationship had eroded and they in fact did not feel comfortable moving forward with the trial as scheduled. Next up; the Court asked the Government if they were prepared to proceed with the trial, to which Mr. TABACCHI proudly boasted, "The Government is ready to proceed, you Honor." Now this is a 180 pivot from previous hearings where I was asked on multiple occasions to take continuances to delay the proceedings as former counsel and TABACCHI attempted to let my case "cool down." (Previous counsel and TABACCHI had made a pact that my case would never see trial)- my case was 100% politically motivated and had garnered enormous media coverage due to the "Culture of Corruption." TABACCHI accused counsel and myself of attempting an "11th hour delay" and argued that the trial should proceed. With that, Judge Rose orders that the trial would commence on January 10, 2022 at 9:00 am.

January 10, 2022, "All Rise" were the words from Liz Penske, Clerk for the Honorable Judge Thomas M. Rose (reminiscent of an umpire calling the start of Opening Day at Great American Ballpark- "Play Ball"). Thinking to myself, this should be interesting (I knew that I had less than a 2% chance of prevailing as "The House Always Wins"). This case however, did not require Clarence Darrow. The only way that TABACCHI would be victorious was if he "scuffs the ball and uses a corked bat." His case and theory had more holes than a slice of handcut swiss cheese on a ruben from Katzinger's Deli in German Village.

January 13, 2022, three days into my trial, I was informed by a dear friend that he and his 'lady' had tested positive for Covid. This was only relevant because leading up to the trial, I had spent time with them socially, including dinner just two days prior. Out of an abundance of caution, I informed counsel that there was a chance that I may have been exposed (I sat between my counsel at the same table during trial). Unaware of the consequences of this disclosure, Judge Rose ordered the closure of the Court until I could be tested, resulting in a day of delay. I tested negative. As the trial resumed the following day, Mr. TABACCHI requested that I be sequestered (house arrest with GPS tracking) for the remainder of the trial, to "ensure that there would not be another delay." The Court granted the Government's request.

As the trial resumed, it was abundantly apparent that I was down 5-0 in the bottom of the ninth with 2 outs. This was all but a done deal. The best I could hope for was a box of Cracker Jacks and a Dave Parker bobble-head as a parting gift. The Government had pulled out all of its tricks- false testimony, manufactured evidence, witness perjury and the kitchen sink.

The Government however, made a unique move. TABACCHI elected not to call FBI SA LANCE KEPPLER to the stand. Remember, it was KEPPLER that was the case agent of the biggest FBI operation in Dayton's famed history. In fact, it was KEPPLER who presented the case to the Grand Jury (they say that you can indict a ham sandwich) to get the indictment of the Gang of 7. Instead, TABACCHI called BCI Task Force agent BRENT KILPATRICK to the stand. Seemed the Government was careful not to have the FBI on the stand committing perjury; instead, they threw KILPATRICK under the bus (smart move) as the Government was under water with a house full of scandal.

KILPATRICK did not fail. He went down the perjurious rabbit hole, giving false testimony, while getting caught up in perjury, but not before handing over the "Golden Cookie." KILPATRICK gave what I predict will be the nail in TABACCHI's case on appeal- this really is the "Gang That Couldn't Shoot Straight" (a 1971 comedy).

January 20, 2022, the magical words- GUILTY! I have been found guilty on 5 out of 7 counts. As one juror departed the court, she muttered the words, "I'm sorry." Now for most people, this would be a moment of anguish and sorrow. For me, this is a cummulation of an experiment. Let's call it an Experiment of the [INJUSTICE] system.

My case began as something out of Laurel and Hardy. An FBI led investigation by a sketchy Confidential Informant that the Government put into business (United Demolition) to bait City of Dayton officials into getting public service contracts, in exchange for the, "brown paper sack." In the end, the Government allowed the Confidential Human Source(s) to pocket tens of thousands of tax payer dollars. The ringleader, MICHAEL MARSHALL had duped many unassuming individuals in both United Demolition and his ragtag Drywall Wizard. MARSHALL et al., not only stole from the public and private sector, he entrapped many to go down rabbit holes that they may not have even considered, let alone masterminded. Unfortunately, all took plea deals with the Government- some even became Informants themselves.

At any rate, my experiment is going as planned. Justice is not "blind" as we have been taught to believe in 5th grade civics class. I predict an autopsy of this case, will be studied by many, for years to come- this is truly a Miscarriage of Justice at the highest level.

May 25, 2022, in a packed courtroom (mostly Government workers within the building that rarely see a high profile 'Heater Case' go trial), are present to witness my fate, as this is sentencing day. I have been advised that I need to be prepared to be taken into immediate custody (like the board game Monopoly- Go to jail, go directly to jail, do not pass go, do not collect \$200), not being afforded the customary ability to settle my affairs and self surrender to a BOP facility- it appears that my latest writing (exposing the Code of Silence) has chafed some tails, including the Honorable Thomas M. Rose. In addition, Mr. TABACCHI has once again moved the goal post. A day before my sentencing, the Government has asked the Court to impose restitution (previously no restitution was ordered) in the amount of \$84,613.04 to Mr. Cooper LLC (formally NationStar

Mortgage). Seems that Mr. TABACCHI has pulled this amount out of his Department of Justice issued toolbox- it was originally 25K that the Government claimed I had "diverted."

Prior to Judge Rose imposing my sentence, he afforded me the opportunity to address the Court. I began by giving my thanks to the Court and the many people that made this moment possible (like an Oscar acceptance speech) i.e. FBI, Ohio BCI, Liz Penske, the Court reporter and most of all, Assistant United States Attorney BRENT G. TABACCHI. Without Mr. TABACCHI, I would have never had the opportunity to experience the Justice System at its finest.

As I stood before Judge Rose, he began to reprimand me for not "showing remorse" for my actions and that he feared that I may become a repeat offender, as I was a "danger to the community." Rose then imposed the maximum (Pretrial Services recommendation of 36 months) and ordered that I be taken into immediate custody of the United States Marshal Service. Ough, remember the GPS monitor that was placed on me three days into my trial. It was finally removed 132 days later and replaced with shackles and leg irons- I am now officially a convicted felon- game 2 shutout loss 1-0 (down 2 games of a 5 game series). The best screenwriter could not make this up!

So, an update since my conviction 129 days ago... I have had some monumental victories (in the words of the late Vin Scully- "We have a lot of baseball left"). First, I am in a place that can only be described as breathtaking. There are 360 degree mountain views, where the air is pure and clean. I am currently training to become a certified service dog trainer through CARES, Inc., an organization that places therapy dogs for schools, hospitals, children with medical issues along with veterans with severe PTSD and brain injuries. Additionally, the University of Michigan School of Law (Appellate Litigation Clinic) has picked up my appeal before the Sixth Circuit Court of Appeals. The Clinic has identified significant issues in the trial court proceedings and has assembled a team of 3rd year law students along with faculty attorneys to work my appeal.

On a somber note, I filed a complaint against my dear friend and former attorney Anthony Cicero. It was Cicero and TABACCHI who conspired (chain conspiracy) to get me to "sit idle" while they figured a way to either get my case dismissed or to convince me to take a plea deal (more of the latter) as my case was politically polarized and motivated. In fact, it was Cicero who represented me in

disclose the conflict of interest- Cicero was a material witness to the Governments flawed theory (scheme to defraud). It was Cicero and TABACCHI who were trying to find a way to "quietly resolve" my case. In the end, Cicero represented me for 11 months before I made the difficult decision to terminate his representation. The Ohio Disciplinary Counsel of the Supreme Court is investigating my claims against Cicero, aware that he will be given (should be) an opportunity to respond to my claim. I am confident that the extensive record of Mr. Cicero's involvement in the 2014 Bad-Faith Claim will be evident that Cicero had a duty to recuse himself from my criminal case.

Finally, citizen journalist and community activist David Esrati (the only journalist that covered the trial from cover to cover) has been entrenched in his own legal battle. Seems that Mr. Esrati has pinched a nerve with the Government when he unearthed the FBI and TABACCHI covering up grand jury testimony of crimes being committed by former Mayor of Dayton NAN WHALEY while she was in office. (Must be noted that WHALEY is the 2022 Democratic Nominee for Governor of Ohio).

Mr. Esrati filed a Freedom of Information Act (FOIA) request to the Department of Justice requesting the grand jury transcript. Under rare circumstances are grand jury testimonies released; however, it appears as though Esrati has found case law stating that elected officials who commit crimes while in office are not protected from grand jury secrecy. To date, Esrati has filed suit in federal court against the DOJ and FBI to obtain the transcript; showing WHALEY accepting bribes from STEVE RAUCH- this is the same grand jury that was seated for the Gang of 7.

Since Esrati's federal suit, his case has been transferred to 4 separate federal judges. It appears that Esrati is dishing out his own Hot Potatoes as the DOJ is desperate to conceal the truth behind WHALEY's crimes before the November 8, 2022 Ohio Gubernatorial election, duping the Ohio voters in a key midterm election. Full disclosure, David Esrati and I have been friends for nearly 20 years and are both former United States Army Paratroopers. Esrati is also running against TABACCHI's main target- MICHAEL TURNER in the 2022 race for U.S. House of Representatives.

Recently U.S. Attorney General MERRICK GARLAND has defended the DOJ by saying that his office, "Follows the facts wherever they lead." GARLAND also stated in response to the USA Gymnastics debacle (FBI investigation) that, "The FBI has revised its procedures and

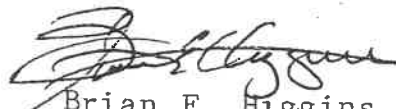
the Deputy Attorney General has issued a memoranda to the field so whenever U.S. Attorney's Office or federal law enforcement decides not to follow-up (investigate sex abuse claims), that they immediately advise the state and local law enforcement, so they can continue to investigate suspected crimes." To date, after sounding the whistle for well over a decade, I have been denied even a meeting with the "janitor." The Federal Bureau of Investigation Director CHRISTOPHER WRAY summed it up when he said, "No one is above the law." Does this hold true for Senior Assistant United States Attorney BRENT G. TABACCHI et al.? That is correct, Mr. TABACCHI was given a promotion after securing my conviction. Perhaps TABACCHI gets the same pass that former Dayton City Mayor NAN WHALEY received after accepting hundreds of thousands of dollars from demolition contractors- the blessing of the AUSA to run for Governor of the State of Ohio in the 2022 election after committing documented crimes.

Post my conviction, I have reached out to officials in Illinois, requesting that Illinois Attorney General Kwame Raoul revisit my 2017 Qui Tam suit, that his predecessor LISA MADIGAN wrongfully dismissed. In addition, I have requested that Cook County States Attorney Kim Foxx, open up an investigation into ALTHEA TAYLOR, of Taylor Made Industries. Ms. TAYLOR wrote the proposal that JOHN W. KLACZAK used to induce the City of Chicago in obtaining the fraudulent contract with the Chicago Police Department.

Fully aware of the gravity of the alligations that I am levying against high ranking Government officials, I created a website which contains the dossier of the cover-up by DOJ and FBI officials. This site also hosts numerous audio recordings of Government officials dismissing my concerns of a convicted sexual predator, actively preying on children. In the words of the late John Lewis, "Never, ever be afraid to make some noise and get in good trouble, necessary trouble." As a Politically Punished Prisoner, I will continue to endeavor to get into, "Good Trouble," being the voice for the children who find themselves, the victims of sexual abuse.

It is for the above reasons, I am requesting a full Congressional Hearing(s) into the Code of Silence.

Respectfully,


Brian E. Higgins
INMATE 78259-061

WWW.CORRUPTGMEN.COM

Disciplinary Counsel

THE SUPREME COURT OF OHIO

DISCIPLINARY COUNSEL
JOSEPH M. CALGIURI

CHIEF ASSISTANT DISCIPLINARY COUNSEL
MICHELLE A. HALL

SENIOR ASSISTANT DISCIPLINARY COUNSEL
AMY C. STONE
DONALD M. SCHEETZ
KAREN H. OSMOND



ASSISTANT DISCIPLINARY COUNSEL
MICHELLE R. BOWMAN
AUDREY E. VARWIG
LIA J. MEEHAN
ADAM P. BESSLER
MATTHEW A. KANAI
KELLI C. SCHMIDT
MARTHA S. ASSEFF

SPECIAL ASSISTANT DISCIPLINARY COUNSEL
LORI J. BROWN

October 4, 2022

**LEGAL MAIL
PERSONAL AND CONFIDENTIAL**

Mr. Brian E. Higgins (78259061)
FCI Florence
Satellite Camp
P.O. Box 5000
Florence, CO 81226

**Re: Anthony Cicero, Esq.
Our File No. C2-1342**

Dear Mr. Higgins:

Anthony Cicero responded to your allegations. We are providing you with a copy and an opportunity to submit additional information supporting your grievance. Because our authority is limited to investigating alleged violations of the Ohio Rules of Professional Conduct, please limit your reply to issues about ethics.

If you choose to reply to Anthony Cicero's response, you must do so in writing. . I encourage you to send your response via email to my assistant, Christine McKrimmon, at christine.mckrimmon@sc.ohio.gov. If we do not receive your reply by October 18, 2022, we will base our decision on the information received thus far.

Sincerely,

Martha S. Asseff
Assistant Disciplinary Counsel

MSA/cm
Enclosure

Exhibit
X

DAYTON
500 East 5th Street
Dayton, OH 45402
Tel (937) 424-5390
Fax (937) 424-5393

XENIA
100 North Detroit Street
Xenia, OH 45385
Tel (937) 372-4000
Fax (937) 372-7850

VANDALIA
812 East National Road
Vandalia, OH 45377
Tel (937) 454-5544
Fax (937) 424-5393

CiceroAdams Limited Liability Company

Proven Success.

Attorneys-at-Law

Jay A. Adams
Anthony R. Cicero
Lori R. Cicero

Carl G. Goraleski
Adam H. Krumholz
Mary Adeline R. Lewis
Robert W. Gurry

Jeffrey D. Slyman
Of Counsel

September 14, 2022

Martha S. Asseff
VIA EMAIL ONLY TO: christine.mckrimmon@sc.ohio.gov
Assistant Disciplinary Counsel
65 East State Street, Ste 1510
Columbus, OH 43215

RE: ODC File No. C2-1342

Dear Ms. Asseff:

I provide this response to your letter dated August 31, 2022, and Mr. Higgins' allegations. Mr. Higgins states "Mr. Cicero remaining on my criminal case while being a material witness, then deceiving the Court as to the conflict should be investigated as a violation of the Ohio Rules of Professional Conduct/Code of Judicial Conduct. It is for these reasons that I am requesting your office to open an investigation." I would like to address both of these claims in reverse order.

First, I did not deceive the Court. The Motion to Withdraw as Counsel clearly states that "a conflict of interest has developed that.....makes the ability to provide effective representation significantly compromised." I further requested an in chambers conference to explain specifics if the Court so desired. However, the State of Ohio closed all but necessary businesses a week before March 30, 2020, due to the pandemic. The Court handled this matter through a phone call. The Court had counsel it could appoint, Ms. Tamara Sack, on the same phone call. Mr. Higgins met with Ms. Sack prior to the Court officially appointing her. (3.30.20 Emails, Attached). It was very clear that the Court was going to grant the motion and appoint Ms. Sack as Mr. Higgins' attorney.

Accordingly, it was not necessary for me to go into the myriad reasons why I no longer wanted to represent Mr. Higgins. As I told the Court, at that time, our friendship hindered the attorney/client relationship. For example, when I explained to Mr. Higgins that based upon my discussions with the Assistant United States Attorney (AUSA) that I believed I could resolve the matter with a misdemeanor conviction requiring no jail or prison, no probation, and no restitution, Mr. Higgins asked me why I would not fight for him like I did my other criminal clients. In the fog he was suffering, he was unable to see I was doing exactly that. It was my hope that new attorneys could communicate with him more effectively, so he did not end up going to prison. Ultimately, they were unsuccessful too.

*Exhibit
Y*

Second, I never was a material witness. As much as Mr. Higgins wants, and wanted, to point to the email of September 25, 2014, it was not material to the case. On July 29, 2019, I filed a detailed Motion for Discovery and a Bill of Particulars (attached) that detailed the problems with the then pending Indictment, and the state of discovery. As illustrated therein, the government's theory was that Mr. Higgins inappropriately diverted insurance proceeds for personal expenses unrelated to the house repairs, among other things. My filing prompted a superseding indictment on December 12, 2019. Therein was the first indication that my advice on September 15, 2014, may be relevant to the case, however it was extremely tangential. (Attached, SSI 12.12.19, pp. 5-6).

On January 21, 2020, Mr. Higgins and I met with the AUSA and agents on the case. This meeting was an opportunity for them to preview their evidence and better explain their case to us. During that meeting they presented spreadsheets that detailed bank account transfers for personal reasons totaling approximately \$25,000.00.

I filed to withdraw on February 19, 2020, approximately one (1) month from the above referenced meeting, and approximately two (2) months from the First Superseding Indictment. Mr. Higgins ultimately went to trial on a Fourth Superseding Indictment. (Attached). There is no mention in that indictment about the way Mr. Higgins signed checks. My testimony was not necessary or relevant. I was not called as a witness in his trial.

It is my understanding that Mr. Higgins is in prison and has filed an appeal of his convictions. I have removed from my response a significant amount of privileged information he relayed to me during my representation of him on the criminal case. While he may have waived that privilege by filing this grievance, I am still trying to respect his confidentiality, and for the most part I have. If you think additional information may be necessary to your review and analysis, please advise and I will supplement.

Sincerely,



Anthony R. Cicero

Enc: 3.30.20 Hearing Emails
M4Discovery&Bill 7.29.19
SSI 12.12.19
4th SSI 12.14.21

October 25, 2022

Martha S. Asseff
Assistant Disciplinary Counsel
65 East State Street, Suite 1510
Columbus, Ohio 43215

SENT VIA EMAIL: christine.mckrimmon@sc.ohio.gov

RE: ODC File # C2-1342

Dear Ms. Asseff:

Provided below is a response to your letter dated October 4, 2022, regarding the ethical violations of Anthony R. Cicero, Esq. I appreciate the Disciplinary Counsel affording me an opportunity to respond and provide additional support and documentation regarding my grievance of Mr. Cicero.

I am currently a federal prisoner incarcerated at Florence Prison Camp in Florence, Colorado. I was convicted in 2022 and sentenced to 36 months in a prison camp. It was Mr. Cicero's representation of me in this criminal matter, as well as previous civil matters, that forms the basis for my grievance.

Starting in 2014, Mr. Cicero represented me in several civil matters that are directly related to my 2019 criminal indictment. Notwithstanding the fact that Mr. Cicero's advice, counsel and representation in those matters were implicated in my criminal case, thereby creating a conflict of interest, Mr. Cicero agreed to represent me in my criminal case. Unfortunately, his representation - and conflict of interest - significantly compromised my defense in that case.

As I understand it, the Ohio Rules of Professional Conduct prohibit a lawyer from representing a client when doing so could create a conflict with the attorney's own interest. In this case, it was clear from the outset that Mr. Cicero's advice and counsel in the civil matters could be - and in fact were - at issue in my criminal case. And, when Mr. Cicero began putting his own interests ahead of mine, that is when I terminated his representation.

In the late summer of 2014, Mr. Cicero represented me in a dispute with my commercial landlord while I was operating a restaurant. After several months of litigation and court mediation, we were able to resolve the matter. During the litigation, Mr. Cicero had advised me to pay my rent into an escrow account with the Montgomery County Common Pleas Court (2014-CV01557). Ultimately, with Mr. Cicero's guidance, we settled the matter amicably and the landlord and I parted ways, with the escrow monies being returned to me.

This dispute with my landlord from 2014 formed part of the Government's basis for my criminal indictment. In fact, the Fourth Superseding Indictment, the Government alleged that, "Defendant Brian Higgins was embroiled in litigation ultimately resulting in him vacating the Third Street premises thereby triggering his search for a new restaurant space in around late summer of 2014." Because Mr. Cicero represented me in that matter, it should have been clear to him that his advice and counsel may be at issue, thereby creating a conflict of interest.

Exhibit
7

More problematic for Mr. Cicero; however, was his representation of me in 2014, in a dispute with my insurance carrier (Assurant), where his advice was directly responsible for the allegations in my criminal indictment(s). In that case, I was seeking payment from my insurance carrier (excess of 100K) to complete the repairs to my residence from a leaking fish tank. When the insurance carrier tried to dodge its payment responsibilities, Mr. Cicero represented me in an effort to collect.

One of the most damaging allegations against me in the criminal case is that I "diverted" \$25,000.00 of the insurance proceeds to "Fund the build out of my new restaurant." Importantly, the \$25,000 I am alleged to have "diverted" was done pursuant to Mr. Cicero's advice and involvement. It was Mr. Cicero that not only assisted with the negotiations of the lease for the new restaurant, but Cicero drafted and wrote the lease for the business that I "funded."

Mr. Cicero's conflict of interest does not end there. During the litigation with my insurance carrier, Mr. Cicero advised me that it was okay to forge my ex-wife's signature on insurance documents (advice that I luckily did not take). In an email to me on September 15, 2014, Mr. Cicero offered his professional opinion that "forgery" is okay and acceptable. And then, in 2019, he accepted representation of me where fraud allegations are leveled against me.

Unfortunately, Mr. Cicero could not separate the potential blow-back on him from my interest during the criminal case. I can now see that his advice and counsel in that matter was clouded by his overarching concern: would his self-serving counsel in my civil matter(s) expose him to liability. It is abundantly clear that his repeated attempts to push me to accept a plea deal had less to do with what was best for me, and more to do with covering up his previous counsel.

Mr. Cicero's representation of me in my criminal case violated his ethical duties in other ways. First, in 11 months of work, he did not do anything. Literally. Other than file a Bill of Particulars, he did nothing else. And then, when my new counsel, Ms. Tamar Sack began representing me, Mr. Cicero dodged and ignored her repeated requests for my file for nearly two months, thereby hurting my ability to prepare my defense.

It soon became apparent why Mr. Cicero did not want to turn over my file- he did not want his conflict of interest or lack of work product exposed. After Ms. Sack was finally able to retrieve my file, she remarked that she had "Never seen an attorney that had a file for 11 months with little to no work." In fact, she said there was a "treasure trove" of information concerning the bad-faith action against the insurance carrier but nothing outside of the Bill of Particulars in my criminal case.

In the end, Ms. Sack did serve a subpoena on Mr. Cicero. It was communicated that upon her arrival to Mr. Cicero's office, he and his business partner Jay Adams were combative and rude. It was Ms. Sack's and her co-counsel's opinion that Cicero would either invoke his Fifth Amendment or at a minimum, Cicero would be a "hostile witness," to which they elected not to call him in my trial- against my wishes.

Mr. Cicero's response to the Disciplinary Counsel as well as to the Court in my criminal matter are further evidence of his lack of candor, dishonesty and ethical violations. Mr. Cicero would have the Court, and this Counsel, believe that he thought he "Could separate the friendship and the attorney relationship, but that [proved] to be too difficult." As such, Mr. Cicero claims he terminated his representation. Again, that is simply false.

As I mentioned previously, when it became clear that Mr. Cicero no longer represented my best interests, I terminated the attorney-client relationship during a lunch meeting the afternoon of February 19, 2020 (the day he filed his motion to withdraw). Any representation Mr. Cicero made-or makes- to the Court or this Counsel is patently false. In fact, upon terminating his representation, Mr. Cicero became visibly upset and began cursing me, saying that I "Needed to take the fucking deal" that he had worked out with the AUSA. This was the first time in our long friendship that Mr. Cicero had ever addressed me in this way, and it was clear that he was concerned about his exposure that would inevitably expose his malfeasance at trial.

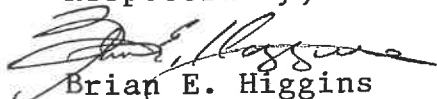
Additionally, I am providing the Counsel with a copy of a civil matter that Mr. Cicero represented me on (US Bank vs Chonda Higgins et al.) in 2010 that ultimately went before the Ohio Supreme Court. This is yet another example of the conflict of interest that Mr. Cicero had as it was the Government's main argument that, "By the summer of 2014, the Meeker Residence was in financial distress. In the preceding years, neither defendant Brian Higgins nor C.H. had made a mortgage payment on the Meeker Residence to Nationstar or any other financial institution." This case (Appellate Case # CA-24963) was litigated by Mr. Anthony R. Cicero.

In his letter to this Counsel, in an effort yet again to shift the blame and focus from himself, Cicero claims that I was "in the fog." If I was in any kind of "fog," it was following Mr. Cicero's advice and instructions to "hold tight," and trusting his counsel- which is now abundantly clear that he did not represent my best interest. Ironically, Mr. Cicero states that "It was not necessary for me to go into the myriad reasons why I no longer wanted to represent Mr. Higgins." Perhaps it was Mr. Cicero who was "in the fog" since I was the one to terminate his representation and any alligations to the contrary, is false.

In light of the information provided herein, and the supporting documents (exhibits) attached, it is clear that Mr. Cicero violated his ethical obligations and duties to me, his client. His conflict of interest, his lack of candor & honesty, and his failure to represent my best interests had catastrophic consequences for me and are clear violations of the Ohio Rules of Professional Conduct.

Thank you again for investigating these matters. Should you have any questions or need additional information or documentation, please let me know.

Respectfully,


Brian E. Higgins



OOCIC

OHIO ORGANIZED CRIME INVESTIGATIONS COMMISSION

REPORT OF INVESTIGATION

TF 13-2
13-0207

RE: Phones call between Brian Higgins and [REDACTED] on August 28, 2014; Call between George Hamilton and [REDACTED] on August 30, 2014 and Call between Brian Higgins and [REDACTED] on September 2, 2014

8/28/14 - Brian Higgins told [REDACTED] that Joey Williams liked both deals and wondered why we weren't doing both of them. Higgins also stated that Williams would like to know if we could get Tan into locking a set price for the building and rent. [REDACTED] asked if all Williams, Higgins and he could meet to discuss the contract with building. [REDACTED] said he still would be interested in opening up another restaurant at Central State but Higgins stated he wouldn't think it would do good in the summer time. [REDACTED] stated that they could open up a pizza place. Higgins didn't like that idea.

8/30/14 - [REDACTED] returned a call to George Hamilton. Hamilton stated that he had texted [REDACTED] to ask him some questions and wanted to make sure everything was straight forward and legit. Hamilton stated he was concerned with everything being handled through word of mouth and not paperwork. [REDACTED] stated that they have to trust each other and that the reason they couldn't put it in writing was because it was not being honest. Hamilton stated he didn't want to do anything that wasn't legal and [REDACTED] stated that all of it was illegal but if they just keep it between themselves it would be ok. [REDACTED] stated that Hamilton would have to sign to certify payroll even though he might not be doing any work and asked Hamilton if he was okay with that since it was illegal and Hamilton stated yes he was okay with it because we have to trust each other. Later in the conversation [REDACTED] told Hamilton point blank that it is illegal but Hamilton assured [REDACTED] that he understood and is using it to his advantage and is comfortable with it. [REDACTED] asks Hamilton for a copy of all his paperwork including HUD. [REDACTED] told Hamilton that he is glad Roshawn Winburn took interested in him and Hamilton stated that Winburn referred him to [REDACTED] because they can help you get established in the business.

9/2/14 - Conversation between Brian Higgins and [REDACTED] told Higgins that he will talk to Tan to fine tune her request. Higgins stated that he did background on Tan and found out she was \$6,000 behind on taxes and she paid \$80,000 for the building. Higgins feels that they need to negotiate with different options. There was talk about how much a month they should pay and [REDACTED] asked Higgins if Joey Williams would approve and Higgins stated yes he felt he would be okay with it but the whole thing with Williams is making sure Williams gets [REDACTED] business with the city Higgins stated that's really what you want from him. Higgins stated that Williams is only with the City of Dayton and there is plenty of business in the state that Winburn could help you because of his father. There was small talk about Steve Rauch and Higgins stated that Joey

Exhibit
AA



Fw: Fwd: Insurance Claim

2 messages

----- Forwarded Message -----

From: "brian higgins" <brianehigginsceo@yahoo.com>
To: "brianehigginsceo@yahoo.com" <brianehigginsceo@yahoo.com>
Sent: Sun, Oct 31, 2021 at 3:02 PM
Subject: Fwd: Insurance Claim

Sent from my iPhone

Begin forwarded message:

From: brian higgins <brianehigginsceo@yahoo.com>
Date: October 28, 2021 at 9:42:05 PM EDT
To: brianehigginsceo@yahoo.com
Subject: Fwd: Insurance Claim

Sent from my iPhone

Begin forwarded message:

From: Brian <brianehigginsceo@yahoo.com>
Date: February 26, 2015 at 10:10:25 AM EST
To: Mike Marshall <mike@uniteddemolition.com>
Subject: Fwd: Insurance Claim

Just FYI

Sent from my iPhone

Begin forwarded message:

From: Tony Cicero <tonycicero@gocicero.com>
Date: February 25, 2015 at 9:26:32 PM CST
To: brianehigginsceo@yahoo.com
Subject: Insurance Claim


Brian,

*Exhibit
BB*

Gmail - Fw: Fwd: Insurance Claim

The documents you sent over look good. I would like to get the following information from you though. All of Joers' line item estimates of what he's going to pay, anything he has sent. The names of the people with the bank that you have been dealing with on this and their contact information. Basically, if you have been keeping a file on this, bring in the whole thing and I'll get from it what I need.

I think Joers is not going to respond with specifics. So, I'm thinking I write a letter to the Bank asking them if they give me permission to name them as a Plaintiff against Assurant as well as you, or if their counsel wants to join us in the bad faith claim against Assurant. In the letter I'll explain some of the ridiculous behavior that has gone on, and how Assurant is screwing them over since they have an interest in the home too. I'll then copy that letter to Joers and Assurant's legal counsel. If that doesn't get them to move, we'll have to sue.

--
Anthony R. Cicero

500 East Fifth Street
Dayton, Ohio 45402
(937) 424-5390 phone
(937) 424-5393 fax
www.gocicero.com

Mike Marshall (937)718-5258

Operations Manager

United Demolition,

Excavation & Site Management Co. LLC

One First National Plaza, Suite 632

130 West Second St

Dayton, Ohio 45401

(937)253-8300 Office

Mike@UnitedDemolition.com

www.UnitedDemolition.com

From: Mike Marshall [mailto:mike@uniteddemolition.com]

Sent: Tuesday, August 19, 2014 4:22 PM

To: 'BrianeHigginsceo@yahoo.com'

Cc: 'tristate4812@gmail.com'

Subject: Higgins Demo Invoice # 1

Brian,

Please forward this cost breakdown for the demo work to date.

Thanks

Also see the attached W9

Mike Marshall (937)718-5258

Operations Manager

United Demolition,

Excavation & Site Management Co. LLC

One First National Plaza, Suite 632

130 West Second St

Dayton, Ohio 45401

(937)253-8300 Office

Mike@UnitedDemolition.com

www.UnitedDemolition.com

<Higgins Demo #1.pdf>

<W9UnitedDemo.pdf>

*Exhibit
cc*

----- Forwarded Message -----

From: "brian higgins" <brianehigginsceo@yahoo.com>
To: "brianehigginsceo@yahoo.com" <brianehigginsceo@yahoo.com>
Sent: Sun, Jan 16, 2022 at 11:12 AM
Subject: Fwd: Higgins Demo Invoice # 1

Sent from my iPhone

Begin forwarded message:

From: brian higgins <brianehigginsceo@yahoo.com>
Date: April 30, 2019 at 3:10:32 PM EDT
To: mwright@yourohiollegalhelp.com
Subject: Fwd: Higgins Demo Invoice # 1

Sent from my iPhone

Begin forwarded message:

From: Brian <brianehigginsceo@yahoo.com>
Date: August 21, 2014 at 6:13:32 PM EDT
To: Mike Marshall <mike@uniteddemolition.com>
Subject: Re: Higgins Demo Invoice # 1

Perfect!

Sent from my iPhone

On Aug 21, 2014, at 5:42 PM, "Mike Marshall" <mike@uniteddemolition.com> wrote:

Shawn,

Please let me know once you have this approved this invoice.

The subcontractors are requesting Mr. Higgins, to pay invoices, to keep the project moving forward.

Thanks

*Exhibit
DD*

Calls-For-Service Details

Call No 143110709	Received Date 11/07/2014	Priority 5	Agency MP	Dispatch Area 8D	Area 8D			
Original Call FRAUD	Call Type FRAUD	Jurisdiction DA	Report No	Disposition N				
Received Date 11/07/2014	Received Time 12:40:20	Entry Time 11/07/2014 12:41:23	Dispatch Date 11/07/2014	Dispatch Time 12:56:37				
Enroute Time 11/07/2014 12:56:46	On Scene OK Time 11/07/2014 13:00:31	Arrival Date 11/07/2014	Arrival Time 13:00:15	Cleared Date 11/07/2014	Cleared Time 13:37:03			
Rep Dist D124	Fire Dist 0403H	Map Coordinates 01491986 00645613						
Location 130 W SECOND ST		Apartment 632	City DAYTON	Area 99				
Cross Street PNC BANK			Geo Flag? ?					
Unit ID DA821	Dept ID D25122	Assignment 1	Dept ID 2	Assignment 2	Dept ID 3	Assignment 3	Dept ID 4	Assignment 4
Beat 999	Dup of Call No	In Progress?	Origin	# Prior Calls				
Act Catch Up?		Premise Hazard? Y		Os Flag 0	Ov Flag			
Fire Call No	EMS Call No	Entry Did 184	Dispatch Did 858					
Name BRIAN HIGGINS		Address	Phone No 937-671-1995					

Status Service Record

Status Segment ENTRY	Status Date/Time 11/07/2014 12:41:23	Jurisdiction	Report No	Override?	Operator DID 184	Terminal ID P7
TEXT:COMPL IS HOME OWNER . THE CONTRACTOR HAS \$30,000.00OF HIS MONEY AND THEY ARE REFUSING TO DO THE WORK, AND NOW THEY ARE REFUSING TO RETURN THE MONEY \NAME:BRIAN HIGGINS \PH:937-671-1995						
Status Segment HOLD	Status Date/Time 11/07/2014 12:45:20	Jurisdiction	Report No	Override?	Operator DID 858	Terminal ID P3
Status Segment DISPATCH	Status Date/Time 11/07/2014 12:56:37	Jurisdiction	Report No	Override?	Operator DID 858	Terminal ID P3
#143110709 DA821						
Status Segment ID	Status Date/Time 11/07/2014 12:56:37	Jurisdiction	Report No	Override?	Operator DID 858	Terminal ID P3
DA821 (D25122)DIX,JEROME A						
Status Segment ENROUTE	Status Date/Time 11/07/2014 12:56:46	Jurisdiction	Report No	Override?	Operator DID D25122	Terminal ID D039
DA821						

Exhib. EE

Calls-For-Service Details

Status Segment	Status Date/Time	Jurisdiction	Report No	Override?	Operator DID	Terminal ID
ONSCENE	11/07/2014 13:00:15				D25122	D039
DA821						


Status Segment	Status Date/Time	Jurisdiction	Report No	Override?	Operator DID	Terminal ID
ONSCENOK	11/07/2014 13:00:31				858	P3
DA821						

Status Segment	Status Date/Time	Jurisdiction	Report No	Override?	Operator DID	Terminal ID
MISC	11/07/2014 13:35:01				D25122	D039
DA821, MADE CONTACT W/BRIAN HIGGINS WHO ADVISED HE HAD ABREACH O CONTRACT ISSUE W/THE COMPANY LOCATED AT THE ABOVE LOC. HIGGINS ADVISED THE COMPANY WOULD NOT FINISH WORK AT HIS RESIDENCE AT 7240 MEEKER CREEK DR BUTLER TWP OH 45414. HIGGINS WANTED A RPT INDICATING SUCH. HIGGINS WAS ADVISED HE NEEDED TO CONTACT BUTLER TWP FOR RPT DUE TO HOUSE BEING IN THEIR JURISDICTION. SHOULD BE KNOWN THAT I ATTEMPTED CONTACT WITH BUSINESS OWNERS. NO ONE WOULD ANSWER DOOR EVEN THOUGH THEY WERE IN OFFICE. I DID SPEEK WITH COMPANIES. ATTN MR SULLIVAN.						

Status Segment	Status Date/Time	Jurisdiction	Report No	Override?	Operator DID	Terminal ID
CLEAR	11/07/2014 13:37:03				D25122	D039
DA821 N						

Status Segment	Status Date/Time	Jurisdiction	Report No	Override?	Operator DID	Terminal ID
CLOSE	11/07/2014 13:37:03				D25122	D039
DA821 N						

Unit Information

Details	Unit ID	Dept ID 1	Assignment 1	Enroute Time	Transport Time
	DA821	D25122		11/07/2014 12:56:46	

End of document

From: Brian [mailto:brianehigginsceo@yahoo.com]
Sent: December-01-14 6:35 AM
To: Daniel Finamore
Subject: Re: Your BuildDirect Quote

Good Monday Dan!

I hope you and your family had a nice holiday. Yes, I want to move forward with the order. The contractor did what we suspected and used funds from my project to fund other ventures! He assures me that he will have the money replaced by weeks end and that will be the time the order will be filled.

I will follow up with you mid to late week to give you an update as we are totally off of our projected completion.

Brian

Sent from my iPhone

On Nov 26, 2014, at 6:45 AM, Daniel Finamore <danielfinamore@builddirect.com> wrote:

Hi Brian,

Daniel here from BuildDirect.

Just wanted to follow up on the quote (#1633613) I had issued to see how your project is coming along.

Are you still interested in the product?

Let me know when you get the chance and we can go from there. I can be reached at 1-877-631-2845 ex 1067, or just fire off an email.

Talk to you soon.

Daniel Finamore
1-877-631-2845 ex 1067
danielfinamore@builddirect.com

www.builddirect.com

<image002.jpg>

— Forwarded Message —

Exhibit
FF

UNCLASSIFIED

FD-1023	FEDERAL BUREAU OF INVESTIGATION CHS REPORTING DOCUMENT	
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HEADER

Source ID: [REDACTED]
 Date: 04/16/2015
 Case Agent Name: ROLLINS, LANCE D.
 Field Office/Division: Cincinnati
 Squad: Squad Seventeen

SOURCE REPORTING

Date of Contact: 04/16/2015
 List all present including yourself (do not include the CHS):
 ITACC
 Type of Contact: Telephonic
 Date of Report: 04/16/2015

Substantive Case File Number

Source Reporting:

On April 10, 2015 CHS recorded a consensual telephone call with Brian Higgins. CHS advised Higgins that he/she had not collected the \$16,000 from a current job, but would collect it soon. CHS planned on paying Higgins after the collection of this money, maybe next Monday.

Original recording is maintained in ELSUR.

SIGNATURE

Submitted By	tdrollins (Lance Rollins)	Thu, 16 Apr 2015 10:53:37 -0400
First Level Approved By	jrwilliams (Jeffrey Williams)	Mon, 20 Apr 2015 10:45:38 -0400

FD-1023	Page 1 of 1	FEDERAL BUREAU OF INVESTIGATION
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UNCLASSIFIED

Exhibit
GG



PROSOURCE OF DAYTON
 2289 ARBOR BLVD.
 DAYTON, OH 45439
 Telephone: 937/298-1550 Fax: 937/298-4476

ES4 0965

ESTIMATE

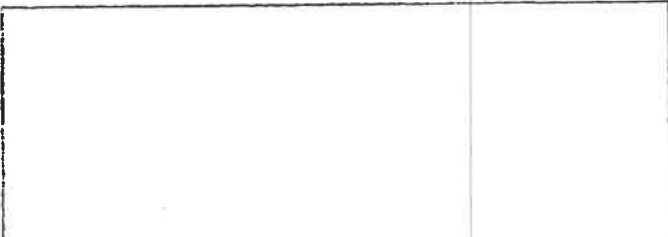
Sold To	Ship To
UNITED DEMOLITION UNITED DEMOLITION 130 W. 2ND STREET DAYTON, OH 45401 Home:9372538300	HIGGINS, BRIAN 7240 MEEKER CREEK DRIVE DAYTON, OH 45414
Business:9372538300	

Order Date	Purchase Order	Order Number
08/01/14	HIGGINS WOOD	ES4 0965

Style/Item	Color/Description	Size	Quantity	Units	Price	Total
SOMERSET COLOR 3 1/4 ENG.	GOLDEN	---	2,000.00	SF	8.53	17,060.00
ADH.CAPITOL WOOD GLUE - 4 GL (WOODY)	4.GALLON	---	53.00	EA	179.85	9,532.05
HARD SURFACE FRIEGHT		---	1.00	EA	65.00	65.00

The hardwood listed above is a
comparable 3 1/4 engineered oak.

12/01/14
 Sales Representative(s):
 KEVIN RASMUSSEN



	3:19PM -
Material:	26,592.05
Service:	65.00
Misc. Charges:	0.00
Sales Tax:	1,927.92
Misc. Tax:	0.00
INVOICE TOTAL:	\$28,584.97
Discount:	0.00
Less Payment(s):	0.00
BALANCE DUE:	\$28,584.97

Telephone: 9372538300

Exhibit
HH



PROSOURCE OF DAYTON
 2289 ARBOR BLVD.
 DAYTON, OH 45439
 Telephone: 937/298-1550 Fax: 937/298-4476

ES4 0967

ESTIMATE

Sold To	Ship To
UNITED DEMOLITION UNITED DEMOLITION 130 W. 2ND STREET DAYTON, OH 45401 Home:9372538300	HIGGINS, BRIAN 7240 MEEKER CREEK DRIVE DAYTON, OH 45414
Business: 9372538300	

Order Date	Purchase Order	Order Number
08/01/14	HIGGINS HARD	ES4 0967

Style/Item	Color/Description	Size	Quantity	Units	Price	Total
AFRICAN ZEBRAWOOD	WEK3-10		648.00	SF	12.30	7,970.40
HARD SURFACE FRIEGHT			1.00	EA	65.00	65.00
QUARTER ROUND	TO MATCH		20.00	LF	30.36	607.20
THRESHOLD	TO MATCH		4.00	EA	56.72	226.88
FOAM SELITAC PANELS	SL100		10.00	BX	71.43	714.30

- 12/01/14 -
 Sales Representative(s):
 KEVIN RASMUSSEN

3:19PM
 Material: 9,518.78
 Service: 65.00
 Misc. Charges: 0.00
 Sales Tax: 690.11
 Misc. Tax: 0.00

INVOICE TOTAL: \$10,273.89
 Discount: 0.00
 Less Payment(s): 0.00
BALANCE DUE: \$10,273.89

Telephone: 9372538300



PROSOURCE OF DAYTON
 2289 ARBOR BLVD.
 DAYTON, OH 45439
 Telephone: 937/298-1550 Fax: 937/298-4476

ES4 0964

ESTIMATE

Sold To	Ship To
UNITED DEMOLITION UNITED DEMOLITION 130 W. 2ND STREET DAYTON, OH 45401 Home: 9372538300 Business: 9372538300	HIGGINS, BRIAN 7240 MEEKER CREEK DRIVE DAYTON, OH 45414

Order Date	Purchase Order	Order Number
	HIGGINS CARP	ES4 0964

Style/Item	Color/Description	Size	Quantity	Units	Price	Total
REGGAE	WINEBERRY	12X113.5	1,362.00	SF	14.73	20,062.26
PAD 7/16 8LB ULTRABOND	ULTRABOND	---	1,755.00	SF	0.66	1,140.75
CARPET FREIGHT		---	1,704.00	EA	0.12	204.48

- 12/01/14 - Sales Representative(s): KEVIN RASMUSSEN	Material: 21,203.01 Service: 204.48 Misc. Charges: 0.00 Sales Tax: 1,537.22 Misc. Tax: 0.00 INVOICE TOTAL: <u>\$22,944.71</u> Discount: 0.00 Less Payment(s): 0.00 BALANCE DUE: <u>\$22,944.71</u>
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Telephone: 9372538300



U. S. Department of Justice
United States Attorney
Southern District of Ohio

Brent G. Tabacchi
Assistant United States Attorney
Phone: (937) 225-2910
Facsimile: (937) 225-2564

602 Federal Building
200 West Second Street
Dayton, OH 45402

~~January 21, 2024~~

BY: **HAND DELIVERY**
Anthony Cicero, Esq.

Re: Brian Higgins

Dear Mr. Cicero:

You have advised me that your client, Brian Higgins, wishes to meet with the United States Attorney's Office for the Southern District of Ohio ("this Office") for the purpose of making a proffer in connection with the above-referenced matter. This Office is willing to meet with you and your client under the following terms and conditions:

(1) You and your client understand that:

(a) this agreement binds only you, your client, and this Office; it does not bind any other law enforcement or prosecuting authority;

(b) law enforcement personnel will be present at the meeting as invited by this Office;

(c) this agreement is limited to the statements made by your client at meetings to be held on ~~January 21, 2024~~ and does not apply to any statements made by your client at any other time, whether oral, written or recorded;

(d) any information provided by you on behalf of your client is covered by this agreement as if it had been provided by your client;

(e) this agreement does not provide any protections to your client not expressly set forth herein.

Exhibit
II

(2) Your client will respond truthfully and completely to any and all questions put to your client at the meeting;

(3) Except as otherwise provided in paragraphs four, five, and six herein, in the above-captioned case and in any other prosecution that may be brought against your client by this Office, this Office will not offer in evidence in its case-in-chief during any civil proceeding or criminal prosecution, or offer in evidence in connection with any sentencing proceeding for the purpose of determining an appropriate sentence, any statements made by your client at the meeting;

(4) Notwithstanding paragraph three above, this Office may use:

(a) information derived directly or indirectly from the meeting for the purpose of obtaining and pursuing leads to other evidence, which evidence may be used for any purpose, including any prosecution of your client; and

(b) statements made by you or your client at the meeting and all evidence obtained directly or indirectly from those statements for the purpose of cross-examination should your client testify, or to refute or counter at any stage of any criminal or civil proceedings (including this Office's case-in-chief at trial) any evidence, argument, statement or representation offered by or on behalf of your client in connection with any criminal or civil proceeding.

(5) This Office reserves the right to use any statements or information provided by your client in any prosecution for false statements, obstruction of justice or perjury;

(6) Your client's complete truthfulness and candor are express material conditions to the undertakings of this Office set forth in this letter. Therefore, if this Office should ever conclude that your client has knowingly withheld material information from this Office or otherwise not been completely truthful and candid, this Office may use against your client for any purpose (including sentencing) any statements made or other information provided by your client during the meeting. If this Office so concludes, it will notify you before making any use of such statements or other information.

(7) No plea discussions or negotiations will occur during the meeting, and any statements made by your client during the meeting will not be "plea discussions" or any "related

* TOP NEWS

CS+T

BY JON SEIDEL AND LYNN SWEET
Staff Reporters

April Perry could become the first woman to serve as Chicago's top federal prosecutor after President Joe Biden announced Wednesday his plan to nominate her as the city's next U.S. attorney.

Currently serving in a senior counsel role at GE HealthCare, Perry worked as a federal prosecutor in Chicago from 2004 until 2016. Her former colleagues from that office praised her Wednesday as a "seasoned prosecutor," an "exceptional trial lawyer," and one with a particular interest in prosecuting the

sexual exploitation of children. "She is a strong and passionate advocate for victims of sex crimes," Nancy DePodesta, now a partner at Saul Ewing LLP, told the Chicago Sun-Times.

Biden's nomination of Perry reflects an ongoing effort by the president and Senate Judiciary Chairman Dick Durbin to diversify the ranks of the nation's federal judges and prosecutors. But there have been calls for a female U.S. attorney in Chicago for years. And they only grew stronger when news broke in January that U.S. Attorney John Lausch would be leaving the key post.

Durbin and Sen. Tammy Duckworth, D-Ill., sent the Biden White House two recommendations for the spot in March, Perry and Sergio Acosta, who both got high marks from the screening committee they established.

If confirmed by the Senate, Perry will inherit an office of about 800 employees based in Chicago and Rockford. Several criminal trials have commenced this year as the federal court continues to catch up after the COVID-19 pandemic, and more are set to come.

Six people have been convicted at trial this year as a result of the feds' public corruption investigations. And another jury is currently deliberating a racketeering conspiracy case involving a South Side street gang — the second such case to be considered by jurors in seven months.

Perry could not be reached for comment Wednesday. She serves as senior counsel, global investigations and fraud and abuse prevention, at GE HealthCare. She also served as general counsel for Ubiety Technologies from 2019 until 2022.

Before that, she served from 2017 until 2019 as chief ethics officer for Cook County State's Attorney Kim Foxx. Perry's tenure there ended amid the scandal that involved the prosecution of actor Jussie Smollett.

Perry announced in a February 2019 memo that Foxx would be recusing herself from decision-making in the Smollett case. Perry has previously said she advised Foxx to seek to have her top deputy, Joe Magats, appointed as a special assistant state's attorney in the case. She said Foxx declined to follow her advice. Perry then resigned from the of-



PREZ MAKES HISTORIC PICK FOR CHICAGO'S TOP PROSECUTOR

If confirmed by Senate, April Perry, known as a 'passionate advocate' for sex-crime victims, would become city's 1st female U.S. attorney

April Perry previously worked as a federal prosecutor in Chicago and as chief ethics officer for Cook County State's Attorney Kim Foxx. She is now a senior counsel at GE HealthCare. PROVIDED PHOTO

fice in May 2019.

Perry joined Foxx's office after 12 years as a federal prosecutor, where she served as supervisory litigation counsel and coordinator for civil rights and hate crimes as well as for Project Safe Childhood.

The most well-known case she participated in was likely the 2016 trial of Jon Burge, the former Chicago police commander, for allegedly using force to interrogate or torture and convicting who died in 2018. Perry delivered the final argument in his trial for Perry and the murder of a police officer. There absolutely was a code of ethics.

"It is time that somebody do something," Perry told the jury. "You have seen the evil. You have heard the evil. And now we ask that you speak the truth."

Still, Perry's former colleagues mostly pointed to her work on child exploitation cases. They made particular note of the case of Donald McGuire, a former Catholic priest who claimed to be a spiritual adviser to Matthew Flores, who was convicted in 2008 of molesting a child.

During closing arguments in that trial, Perry likened McGuire to "the story of the wolf in sheep's clothing, about a predator who disguises himself in order to get close to his prey."

"April [Perry] was absolutely terrific," said Julie Porter, who prosecuted the case with Perry when they both served as federal prosecutors. Now, Porter is founding partner at Salvatore Prescott Porter & Porter.

Megan Church, who also served as a federal prosecutor and attended law school with Perry at Northwestern University, added that "those are very tough cases, not only to handle as a prosecutor, but also to supervise and to teach prosecutors. ... [Perry] did a great job with that."

Church is now a partner at MoloLamken LLP.

While DePodesta said "it's fantastic" that a woman could finally become U.S. attorney in Chicago, she stressed that Perry is also "so exceptionally qualified for the position."

Crucially, Porter called Perry "somebody who has a deep appreciation for the significant responsibility that prosecutors have."

"Indicting people with crimes is extraordinary," Porter said. "Meaning, it's an extraordinarily serious step that has great consequences. Everybody who serves in that role needs to care deeply about getting it right and about trying their very best. Not just to win, but to do justice. And April has always been a great role model on those issues and others."

Exhibit
JJ

August 10, 2023

Representative Jim Jordan
Chairman, House Judiciary Committee
2056 Rayburn House Office Building
Washington, D.C. 20515

SENT VIA U.S. POSTAL 7018 1830 0001 4410 1678

RE: Department of Justice - Code of Silence
Request for Congressional Hearings

Chairman Jordan,

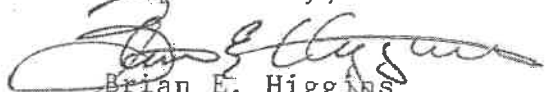
This is a follow-up to my July 10, 2023 correspondence, in which I reported misconduct within the Federal Bureau of Investigation and the Department of Justice. I recently received a response to my concerns (FBI and DOJ cover-up of an active sexual predator) from the Office of the Chief Administrator, House of Representatives. SEE ADMINISTRATIVE COUNSEL 7/26/2023 LTR - SEE NATIONAL CENTER FOR MISSING & EXPLOITED CHILDREN 8/7/2023 LTR

As previously discussed, I have a well documented dossier- including audio recordings of the FBI and DOJ officials engaging in misconduct. In August 2019, I was asked to provide damning information on Congressman Michael Turner, Chairman of the House Intellegence Committee and other local (Dayton) elected officials. When I declined, I met the hammer of the DOJ- multiple superseding indictments. In fact, the Assistant United States Attorney, Southern District of Ohio BRENT G. TABACCHI allowed former City of Dayton Mayor NAN WHALEY to collect hundreds of thousands of dollars in bribe money from a City contractor (for over a decade), only to turn a blind eye- allowing WHALEY to become the 2022 Ohio Democratic Gubernatorial Candidate. Seems there are [two] tiers of justice.

As a result of your repeated pleas for a call to action (anyone with information of misconduct within the DOJ or FBI) to come forward and testify as to what they know to you and the Judiciary Committee; I hereby, accept your call. I am requesting full Congressional Hearings into the Department of Justice - Code of Silence.

I look forward to hearing from your office.

Respectfully,


Brian E. Higgins
INMATE 78259-061

Cc: Attached Congressional Hearing List

Yiota Souras
National Center for Missing & Exploited Children

WWW.CORRUPTGMEN.COM

Exhibit
KK

AO 243 (Rev. 09/17)

**Motion to Vacate, Set Aside, or Correct a Sentence
By a Person in Federal Custody**

(Motion Under 28 U.S.C. § 2255)

Instructions

1. To use this form, you must be a person who is serving a sentence under a judgment against you in a federal court. You are asking for relief from the conviction or the sentence. This form is your motion for relief.
2. You must file the form in the United States district court that entered the judgment that you are challenging. If you want to challenge a federal judgment that imposed a sentence to be served in the future, you should file the motion in the federal court that entered that judgment.
3. Make sure the form is typed or neatly written.
4. You must tell the truth and sign the form. If you make a false statement of a material fact, you may be prosecuted for perjury.
5. Answer all the questions. You do not need to cite law. You may submit additional pages if necessary. If you do not fill out the form properly, you will be asked to submit additional or correct information. If you want to submit any legal arguments, you must submit them in a separate memorandum. Be aware that any such memorandum may be subject to page limits set forth in the local rules of the court where you file this motion.
6. If you cannot pay for the costs of this motion (such as costs for an attorney or transcripts), you may ask to proceed *in forma pauperis* (as a poor person). To do that, you must fill out the last page of this form. Also, you must submit a certificate signed by an officer at the institution where you are confined showing the amount of money that the institution is holding for you.
7. In this motion, you may challenge the judgment entered by only one court. If you want to challenge a judgment entered by a different judge or division (either in the same district or in a different district), you must file a separate motion.
8. When you have completed the form, send the original and _____ copies to the Clerk of the United States District Court at this address:

**Walter H. Rice Federal Courthouse
200 West Second Street
Dayton, Ohio 45402**

If you want a file-stamped copy of the petition, you must enclose an additional copy of the petition and ask the court to file-stamp it and return it to you.

9. **CAUTION:** You must include in this motion all the grounds for relief from the conviction or sentence that you challenge. And you must state the facts that support each ground. If you fail to set forth all the grounds in this motion, you may be barred from presenting additional grounds at a later date.
10. **CAPITAL CASES:** If you are under a sentence of death, you are entitled to the assistance of counsel and should request the appointment of counsel.