

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

<p>GIAVONNA M. EVANS, Plaintiff, vs. OHIO LOTTERY COMMISSION, DENNIS BERG, <i>in his individual capacity</i>, and ELIZABETH POPADIUK, <i>in her individual capacity</i>, Defendants.</p>	<p>Case No. 1:15-cv-00164 Judge Dan Aaron Polster Magistrate Judge Kenneth S. McHargh</p>
<p style="text-align: center;">AMENDED COMPLAINT WITH JURY DEMAND</p>	

NATURE OF THE ACTION

1. This is a civil-rights action brought for violations of Title VII, the Equal Pay Act, 42 U.S.C. § 1983, the Fourteenth Amendment to the United States Constitution, and 42 U.S.C. § 1981. In this complaint, Ohio Lottery Commission employee Giavonna Evans, who for nearly two years served as the Lottery’s Online Product Manager without receiving the appropriate pay or title, alleges that the Lottery acted with discriminatory animus in refusing to promote Ms. Evans to the job promised to her, which she was already performing to high praise. Instead of promoting a worker described by her immediate supervisor as “bright, intelligent, articulate, eager, and dedicated,” the Lottery denied Ms. Evans her promotion because she is an African-

American woman. And when Ms. Evans challenged this discrimination, the Lottery retaliated against her and took unlawful measures to conceal its practices, depriving her of equal protection of the laws, her right to substantive due process, and protections guaranteed by federal statute.

PARTIES

2. Plaintiff Giavonna Evans is an employee at the Ohio Lottery Commission. She resides in Lakewood, Ohio.

3. Defendant Ohio Lottery Commission is an agency of the State of Ohio located in Cleveland, Ohio. The Lottery is operated as a business enterprise and generates millions of dollars in annual revenue, including \$904.3 million in fiscal year 2014. The Lottery is vicariously liable for the acts of its agents.

4. Defendant Dennis Berg is the Director of the Ohio Lottery Commission. He works in Cleveland, OH. At all relevant times he was acting under color of state law. He is sued in his individual capacity.

5. Defendant Elizabeth Popadiuk is the Deputy Director of Human Resources for the Ohio Lottery Commission. She works in Cleveland, OH. At all relevant times she was acting under color of state law. She is sued in her personal capacity.

JURISDICTION AND VENUE

6. Jurisdiction over federal claims under 42 U.S.C. § 2000e *et seq.* and 29 U.S.C. § 206, *et seq.*, which provide for attorney and expert fees, is asserted under 28 U.S.C. § 1331.

7. The Court has personal jurisdiction over Defendants and venue is proper in this Court under 28 U.S.C. § 1391 because the events giving rise to Plaintiff's claims took place within the jurisdiction of the U.S. District Court for the Northern District of Ohio.

FACTUAL BACKGROUND

Ms. Evans enters the Ohio Lottery's administrative ranks.

8. Giavonna Evans has worked for the Ohio Lottery Commission since February 7, 2009. She is an African-American female.

9. Before joining the Lottery, Ms. Evans had management experience. She served as a manager trainee at Hertz Rental Car for nine months and as a shift supervisor at Starbucks for three-and-a-half years.

10. The Lottery hired Ms. Evans as a Lottery Game Specialist. In that capacity, she operated machines that picked the winning lottery numbers. She was hired part-time and moved to full-time.

11. In 2010, the Lottery promoted Ms. Evans to Administrative Assistant 1 in the Office of General Services. Under the collective-bargaining agreement between the Lottery and the union (Ohio Civil Service Employees Association/AFSCME), the position of "Administrative Assistant 1" changed to "Administrative Professional 2" as of August 9, 2011.

Ms. Evans interviews with the Lottery's Deputy Director for Human Resources Elizabeth Popadiuk and Deputy Director for Product Development Gwendolyn Penn for the open Online Product Manager position.

12. Ms. Evans was on maternity leave for 12 weeks from December 2011–March 2012. When she returned, the co-worker who had performed her work in her absence (Pat Ginley), continued to perform Ms. Evans's duties despite her return.

13. Ms. Evans repeatedly protested the lack of work to her supervisor at the time, Business Administrator 2 Jim Bonnette, who told her that he had nothing for her to do and to "chill out."

14. Two months later, on May 9, 2012, Ms. Evans went to the Lottery's Human Resources department to raise concern with Human Capital Management Senior Analyst Stefanie Zackery (a white female) regarding the fact that one of Ms. Evans's co-workers had recently come to work

in the contagious stage of shingles. Ms. Evans was concerned she might be susceptible to shingles because she had neither been vaccinated against chicken pox nor had chicken pox as a child. Ms. Evans's maternity leave had depleted her sick time, and she wanted to know the Lottery's policy should she become ill with shingles.

15. During the meeting with Ms. Zackery, Deputy Director for Human Resources Defendant Elizabeth Popadiuk (a white female) walked by and asked about Ms. Evans's work situation.

16. The Lottery's deputy directors, as well as the director, are political appointees who may be removed by the governor.

17. To Deputy Director Popadiuk's inquiry, Ms. Evans responded that she had not been given any assignments since returning from maternity leave. Ms. Evans detailed how she asked her supervisor for work and he responded there was nothing for her to do because the person who had taken over her job responsibilities during her maternity leave was still doing them.

18. Defendant Popadiuk responded that what Ms. Evans described should not be happening. At that point, Popadiuk phoned Deputy Director for the Office of Product Development Gwendolyn Penn (an African-American female) and asked if Penn could meet with them about filling the two positions that were open in Penn's department.

19. The departures of two employees—Daniel Price (a white male) and Kassin Bahhur (a Palestinian male)—had created the open positions in Penn's department that Deputy Director Popadiuk sought to fill.

20. Mr. Price was the Online Product Manager (job classification Program Administrator 3), and Mr. Bahhur served as his assistant (job classification Program Administrator 2). During this conversation with Deputy Director Penn and Ms. Evans on May 9, 2012, Deputy Director Popadiuk expressly characterized those two positions as "open."

21. At Deputy Director Popadiuk's request, Deputy Director Penn met with Ms. Evans and Deputy Director Popadiuk for an impromptu interview.

22. Deputy Director Penn questioned Ms. Evans about her qualifications and expressed to Defendant Popadiuk that Deputy Director Penn needed someone who was qualified and could truly perform the Online Product Manager's duties. Deputy Director Penn emphasized that the job was highly complicated.

23. Deputy Director Popadiuk stated that Ms. Evans was "more than qualified." Defendant Popadiuk also described Ms. Evans as "bright," "hardworking," and "willing to be trained to do the job."

Deputy Director Popadiuk promises Ms. Evans formal promotion upon successful completion of a six-month probationary period, in line with the Lottery's established internal promotion policy.

24. Deputy Director Popadiuk and Deputy Director Penn decided that Ms. Evans would assume the Online Product Manager duties and the three would meet again in six months to review her evaluation from Deputy Director Penn.

25. Defendant Popadiuk promised Ms. Evans that Ms. Evans would be promoted to Online Product Manager/Program Administrator 3 (the position vacated by Mr. Price's departure) if, after the six-month trial period, Deputy Director Penn recommended it.

26. The understanding was that upon Ms. Evans's successful completion of this informal probationary period—and with Deputy Director Penn's recommendation that Ms. Evans be formally promoted to the position—the Lottery's Human Resources department would "post" the position (ostensibly for open applications) and Ms. Evans would be promoted. This process is the customary method by which the Lottery has filled and continues to fill open positions.

27. Ms. Evans trusted Deputy Director Popadiuk's assurances that Ms. Evans would be promoted if she successfully completed the duties Deputy Director Penn assigned Ms. Evans over

the next six months. It was with this understanding that Ms. Evans agreed to be transferred from the General Services Office to Product Development.

**Ms. Evans assumes the duties of the Online Product Manager
(without the help of the full-time assistant that her predecessor enjoyed).**

28. Following the meeting/interview on May 9, 2012, Deputy Director Popadiuk notified Ms. Evans's supervisor that Ms. Evans would be moving to Product Development to fill Mr. Price's vacated position

29. Defendant Popadiuk sent Ms. Evans an email confirming her transfer and noting that her pay rate and position title would not change during this informal probationary period.

30. Once Ms. Evans moved to Product Development, Deputy Director Penn trained Ms. Evans to perform Mr. Price's job, which she did.

31. Mr. Price, Ms. Evans's predecessor in the job, had been paid \$82,000 annually as the Online Product Manager.

32. Unlike her, Ms. Evans's predecessor in the job had an assistant to help him carry out his duties. That assistant was Mr. Bahhur, who earned \$59,000 annually.

33. Ms. Evans performed the duties of both men—Mr. Price and Mr. Bahhur—while being paid only \$36,000 annually. By contrast, those men were paid a combined \$141,000.

34. The Ohio Department of Administrative Services (DAS) description for the Program Administrator job classifications (1, 2, and 3) is attached as Exhibit 1. This description lists a Program Administrator 3's job duties as including the following:

“Acts for administrator (e.g., provides program direction for staff; administers statewide agency programs; insures [*sic*] compliance with state & federal [*sic*] program requirements; advocates for legislation to enhance services/ programs related to assigned specialty), provides regular direction to division heads & other staff members, conducts staff meetings to discuss & execute policies & procedures, reviews proposals of division heads & other staff members & makes recommendations to administrator, assumes full responsibility & authority in administrator's absence, plans,

directs & appraises work of administrator's office staff, including clerical & lower-level administrative employees, manages office auxiliary functions (e.g., maintenance, security, public information, personnel) & formulates & implements program policy, or does all of preceding & supervises assigned staff (i.e., clerical &/or lower-level administrative personnel.

Analyzes & evaluates programs, procedures & policies; develops & revises programs; provides technical advice to aid administrator in decision-making.

Prepares & directs preparation of correspondence, reports, policy statements, legislative drafts; provides information on programs & policies to private organizations, government officials & general public.

Coordinates & monitors personnel & fiscal services of administrative unit; oversees & provides budget preparation & administration; orients & counsels new professional personnel; identifies staff training needs.

Represents administrator at meetings & conferences with state, federal & community agencies; speaks for administrator on policy matters.”

35. While she was serving as Online Product Manager, Ms. Evans's duties included the following:

- formulating and implementing program policies by developing online games;
- working with the Information Technology department to ensure products were successfully launched;
- managing the online games to ensure they were running appropriately;
- tracking individual game performance as well as the entire product line;
- tracking, monitoring, and analyzing the entire product line for various trend lines;
- working with the Office of Legal regarding the creation and review of online-game rules;
- developing strategies to maximize sales and agency profit;
- working with internal staff employees and external representatives (vendors and retailers) to help them maximize online game sales and profits;
- conducting weekly tracking of sales and liability trends;
- preparing reports and policy statements regarding online products;

- serving as liaison to the Lottery's online-gaming vendor on Deputy Director Penn's behalf including ensuring that the vendor adhered to contractual obligations relating to online products;
- directing the Online Gaming Marketer regarding State of the Industry presentations and other required information including developing surveys for promotions/games and preparing reports on survey findings;
- working with the vendor and the Deputy Director to conduct evaluations and research of programs to determine effectiveness;
- assisting with preparation of focus groups including facilitating focus-group testing for Lottery products and analyzing focus-group results;
- researching other lotteries to gather and analyze sales data and new games;
- providing program direction by relieving her superior (Deputy Director Penn) of administrative duties;
- performing other duties and special projects as assigned.

36. By its own terms, the job duties enumerated in the DAS description for the Program Administrator 3 job classification are not exhaustive. Before listing the job duties, the description expressly provides that: "These duties are illustrative only. Incumbents may perform some or all of these duties and other job-related duties as assigned."

37. The DAS job description is not intended to describe only the Online Product Manager or even Program Administrators who work only at the Lottery. It encompasses many people in agencies throughout the state doing various kinds of work in different types of fields. It is both over- and under-inclusive.

38. Based on Ms. Evans's responsibilities and the DAS job description, Ms. Evans performed the duties of a Program Administrator 3.

Ms. Evans's placement within the Lottery's organizational structure corresponded with that of the Online Product Manager.

39. Deputy Director Penn, as head of Product Development (before she was retaliated against for supporting and assisting Ms. Evans in opposing the Lottery's discrimination), had authority over both (1) instant lottery tickets and (2) the online games that Ms. Evans handled.

40. The co-workers under Deputy Director Penn responsible for the instant tickets were Ron Fornaro (Program Administrator 3) and Pamela Strickland (Administrative Professional 3).

41. Comparable to Mr. Price and Mr. Bahhur—Ms. Evans's predecessors—Mr. Fornaro and Ms. Strickland were paid annual salaries of \$81,900 and \$53,404 respectively.

42. While Mr. Fornaro and Ms. Strickland continued to work in their respective capacities under Deputy Director Penn, the Lottery expected Ms. Evans to perform Mr. Price's (and Mr. Bahhur's) previous job without the title or the pay.

Ms. Evans excels at the Online Product Manager duties, earns a glowing performance evaluation, and receives Deputy Director Penn's endorsement for formal promotion.

43. Deputy Director Penn—whose recommendation was to be the final stamp on Ms. Evans's promotion—observed Ms. Evans perform Online Product Manager duties for six months.

44. After observing Ms. Evans perform Online Product Manager duties for six months, Deputy Director Penn concluded that Ms. Evans was skillfully performing the duties of a Program Administrator 3 during her probationary period as the Online Product Manager.

45. Deputy Director Penn concluded that Ms. Evans was the right person for the job and recommended her formal promotion to Online Product Manager/Program Administrator 3.

46. On November 1, 2012, Deputy Director Penn completed a performance evaluation for Ms. Evans (attached as Exhibit 2).

47. Deputy Director Penn rated Ms. Evans as “EXCEEDS EXPECTATIONS” in every category: Quality & Efficiency, Teamwork & Cooperation, Customer Service, Communication, and Flexibility. As the label suggests, and the evaluation itself notes, this rating is reserved for “essential” employees that “contribute to the organization at a level that is higher than what is expected for employees in th[e] position.”

48. Deputy Director Penn opened her narrative evaluation by observing, “Gia is bright, talented, and very intelligent. She has surpassed my initial expectations.”

49. Deputy Director Penn also noted that Ms. Evans is “quick and fully understands that which is given to her. She completes her work in an accurate and neat manner. Gia does not shy away from the challenges of Online Products, but dives into working on the tasks.”

50. Deputy Director Penn credited Ms. Evans for cultivating positive and productive working relationships with other Lottery staff members, including those from other departments. Deputy Director Penn described Ms. Evans as “very professional.”

51. Deputy Director Penn described Ms. Evans as “the right person for the Online Product Manager’s job” and as having “the character and integrity to be the Online Product Manager.” In other words, the Deputy Director with supervisory authority for the Online Product Manager position formally and unequivocally recommended Ms. Evans to fill this open position. That deputy director also acknowledged that Ms. Evans had already been performing the duties of Online Product Manager for the previous six months.

52. In the evaluation, Deputy Director Penn observed that “[w]hile her previous job was very different than the Online Product Manager’s responsibility, after six months, an outsider would believe she’s always been the manager.”

53. Deputy Director Penn concluded her evaluation by stating “Giavonna will make [a] phenomenal Online Product Manager; in fact, she will be successful at whatever she sets her

sights on. It's in the best interest of the agency to offer the Program Administrator 3 position to Ms. Evans. With her talents, Gia is the future of the Ohio Lottery Commission and we cannot afford to lose such a tremendous and talented worker." "Please accept this as my unbiased endorsement for Ms. Giavonna Evans to become the Online Product Manager (PROGRAM ADMINISTRATOR 3)."

54. Both Deputy Director Penn and Ms. Evans signed the performance evaluation.

55. Deputy Director Penn delivered that positive performance evaluation along with a separate memorandum to Deputy Director Popadiuk and Lottery Director Defendant Dennis Berg (a white male who was appointed by Governor John Kasich), recommending that Ms. Evans be promoted to Online Product Manager/Program Administrator 3 (Memorandum (Nov. 1, 2012) attached as Exhibit 3).

56. In Deputy Director Penn's separate memorandum recommending Ms. Evans's promotion, Penn stated: "I would like to take this opportunity to recommend Giavonna for the position of Online Manager (PROGRAM ADMINISTRATOR 3)."

57. Deputy Director Penn's memorandum also shows that Ms. Evans was already (successfully) performing Program Administrator 3 duties from May 2012 to November 2012. She mentions: "I feel confident that she will continue to succeed in her job duties. Giavonna is a dedicated worker and thus far her work has been exemplary. She has proven to be a take-charge person who is able to successfully develop plans and implement them."

58. Deputy Director Penn's assessment confirms that Ms. Evans was performing the Online Product Manager's duties by, among other responsibilities, developing and implementing plans for online games in accordance with the job duties listed in DAS's job description for the Program Administrator 3 classification.

59. Deputy Director Penn's performance evaluation and memorandum recommending that Ms. Evans be formally promoted to Online Product Manager/Program Administrator 3 are consistent with the promise that Deputy Director Popadiuk made to Ms. Evans in the presence of Deputy Director Penn on May 9, 2012: Ms. Evans was to temporarily perform the Online Product Manager's duties, and, if Ms. Evans proved herself capable, she would be formally promoted and installed as the Online Product Manager/Program Administrator 3.

60. Deputy Director Penn's performance evaluation and memorandum recommending Ms. Evans for promotion indicates that Deputy Director Penn shared Ms. Evans's understanding of what the three women discussed and agreed to on May 9, 2012.

Deputy Director Penn stands in an especially compelling position to recommend Ms. Evans for formal promotion.

61. Deputy Director Penn is in a compelling place to understand not only the requirements of the Online Product Manager's job but also the workings of the Lottery's established (if unwritten) practices for promoting workers from within.

62. Deputy Director Penn supervised Ms. Evans in the performance of her Program Administrator 3 duties.

63. Deputy Director Penn understood that Ms. Evans was moved to Product Development for a six-month informal probationary period to see if she was the right fit for the Online Product Manager position.

64. Deputy Director Penn previously performed the Online Product Manager duties herself when she held the position.

65. Deputy Director Penn is intimately familiar with the Lottery's standard promotion practice having been promoted through it herself under a previous administration, specifically through the same trajectory that Deputy Director Popadiuk described for Ms. Evans.

66. Deputy Director Penn was a Fiscal Specialist 1 and then moved to the Online Product Manager position for an informal probationary period.

67. After successfully performing the job responsibilities of the higher classification, the Lottery officially “posted” the position and selected Penn to fill it. She was later promoted to the position of Deputy Director for Product Development (a title she currently holds in name only as a result of the Lottery’s subsequent retaliation against her for supporting Ms. Evans’s opposition to discrimination), with Mr. Price and Mr. Bahhur working under Penn as Program Administrator 3 and 2 respectively on the online-gaming side. Mr. Fornaro and Ms. Strickland worked under Deputy Director Penn on the instant-tickets side as Program Administrator 3 and Administrative Professional 3 respectively.

**Director Berg and Deputy Director Popadiuk stall
consideration of Ms. Evans’s promotion.**

68. Again, on November 1, 2012, Deputy Director Penn had submitted her performance evaluation and recommendation for Ms. Evans to Defendants Director Berg and Deputy Director Popadiuk.

69. Deputy Director Penn then followed up with Defendants Berg and Popadiuk about formalizing Ms. Evans’s promotion to Online Product Manager/Program Administrator 3.

70. On November 28, 2012, after several weeks of being rebuffed in her efforts to arrange a discussion of the promotion, Deputy Director Penn emailed Director Berg and Deputy Director Popadiuk to ask to “schedule a meeting to discuss promoting Gia to the Online Manager’s position.” (Attached as Exhibit 4).

71. Deputy Director Penn continued, “I recently sent my recommendation and evaluation to you both.” Deputy Director Penn went on to reiterate that, “Gia has done and continues to do

an exemplary job. She's very motivated and has the tenacity and aptitude to be an excellent Online Manager. She's truly part of the future of the lottery."

72. Despite this email request, Deputy Director Penn received no response until early December 2012—only after Ms. Evans phoned Deputy Director Popadiuk questioning the delay.

73. Because Defendants Director Berg and Deputy Director Popadiuk had ignored Deputy Director Penn's attempts to formalize Ms. Evans's promotion, Ms. Evans called Defendant Popadiuk and asked about the status of the promised promotion.

74. Following her evaluation, Ms. Evans understood that she had fulfilled her end of the bargain by exceeding Deputy Director Penn's expectations and proving that she was capable of performing the Online Product Manager's duties. Now, to hold up its end of the bargain and per its standard practice, it was time for the Lottery to promote her.

75. Ms. Evans made clear that she was in a pivotal position and could either stay with the Lottery or leave to take a position elsewhere, and had only stayed because she was promised this promotion.

76. Deputy Director Popadiuk stated that she was "uncomfortable" having this conversation with Ms. Evans but would contact Deputy Director Penn.

Director Berg and Deputy Director Popadiuk deny Ms. Evans her promotion because "that's too much money for her."

77. The week following Ms. Evans's phone call, Deputy Director Penn (finally) met with Defendants Director Berg and Deputy Director Popadiuk to discuss Ms. Evans's promotion.

78. Deputy Director Penn continued to advocate for Ms. Evans's promotion, urging that she be paid as Mr. Price had been paid for doing the same job.

79. When deliberating on whether to promote Ms. Evans, Director Berg and Deputy Director Popadiuk wholly disregarded Deputy Director Penn's performance evaluation and memorandum recommending Ms. Evans for formal promotion.

80. To the notion that Ms. Evans—an African-American female—should be paid the same as Mr. Price—a white male—had been paid for doing the same work, Director Berg responded, **“that’s too much money for *her*.”**

81. Based on that discriminatory sentiment, the Lottery refused to promote Ms. Evans.

82. Meanwhile, Ms. Evans had been performing Online Product Manager/Program Administrator 3 duties without the title, compensation, or full-time assistance that Mr. Price enjoyed.

83. During this meeting, Defendants Berg and Popadiuk claimed that they would have to “go to the governor’s office” to get a raise approved for Ms. Evans. From the time of Ms. Evans’s informal promotion until the time of that that meeting, the Lottery had hired 67 employees who, except for interns and part-time workers, all made more money than Ms. Evans presumably without any special blessing from Governor Kasich.

84. The reference to having to obtain approval from the governor’s office may have been a tactic to avoid recognizing Ms. Evans’s work and compensating her appropriately. Or the Governor’s Office itself participated in or authorized the discrimination against Ms. Evans.

85. These delaying tactics were successful from the Lottery’s perspective, as Ms. Evans continued to perform the duties of a Program Administrator 3 while being paid as an Administrative Professional 2.

**Director Berg promotes a similarly situated white male
because he is a “family man.”**

86. Like Ms. Evans, Edward Slyman (a white male) was a Lottery employee previously classified as an Administrative Professional 2.

87. Mr. Slyman was transferred to the Lottery’s Finance Department—just as Ms. Evans was transferred to the Product Development Department. He moved to the Office of Finance and performed the duties of a Program Administrator 1 with no formal change in title.

88. Unlike Ms. Evans, Mr. Slyman was awarded the position he was performing based on the Lottery’s standard practice for internal promotions. Mr. Slyman had done the work of the higher position for a probationary period, applied for the position when it was “posted,” and was awarded the promotion as a foregone conclusion.

89. Mr. Slyman’s experience demonstrates the typical process the Lottery uses to promote internal candidates. But during the Kasich administration, only Lottery employees with the good fortune to be white males have advanced under this policy.

90. In July 2013, Defendant Director Berg said the reason Mr. Slyman had been promoted was “because he’s a family man.” More than one Lottery employee, including multiple deputy directors, witnessed Director Berg make this comment about why he decided to promote Mr. Slyman. Apparently, Director Berg did not consider the raise that accompanied Mr. Slyman’s promotion to be “too much money for *him*.”

91. Ms. Evans is “a family woman” and deserves to be recognized and compensated for her work just as white males are.

92. Mr. Slyman is currently a Program Administrator 2 in the Office of Finance. While performing Program Administrator 1 duties (even while formally retaining the Administrative

Professional 2 title), he obtained the experience the Lottery requires for one to be promoted to Program Administrator 2.

93. For Mr. Slyman, the Lottery did not require formal designation in his new job classification for performance of those job duties to count toward the “experience” he needed to be promoted.

94. In contrast, the Lottery refused to recognize Ms. Evans’s experience in performing Program Administrator 3 duties without the formal designation as it persisted in denying Ms. Evans her promotion. By refusing to count this on-the-job experience, the Lottery attempted to maintain that Ms. Evans was unqualified for the position she had been performing to high praise.

Ms. Evans files a grievance challenging her job classification because she had been working out-of-class in performing the duties of an Online Product Manager.

95. Having continued to perform the Online Product Manager’s duties for more than a year—without the commensurate title or compensation, on September 27, 2013, Ms. Evans filed a grievance with her union representative, Jim Larocca of the Ohio Civil Service Employees Association/AFSCME. In addition to the discriminatory aspects of the situation, working outside her job classification without appropriate compensation violated the collective-bargaining agreement.

96. As her union representative, Mr. Larocca owed a duty to Ms. Evans to file her grievance in a timely manner.

97. Mr. Larocca notified Defendant Deputy Director Popadiuk about Ms. Evans’s grievance, but he did not formally file the appropriate paperwork at that time.

**Ms. Evans files a charge of discrimination
with the Ohio Civil Rights Commission.**

98. On October 18, 2013, Ms. Evans timely filed a charge of discrimination with the Ohio Civil Rights Commission. The charge complained of the race and gender discrimination that Ms. Evans experienced when the Lottery failed to promote her to Online Product Manager.

99. The Lottery received notice of the charge shortly after Ms. Evans filed it.

100. This charge was later transferred to the Equal Employment Opportunity Commission and was consolidated with Ms. Evans's later charge of discrimination (filed March 24, 2014 and described below) based on the retaliation she has suffered for opposing the Lottery's discrimination against her.

**After inexplicable delay, Jim Larocca formally files
Ms. Evans's grievance against the Lottery.**

101. Mr. Larocca did not file Ms. Evans's grievance until October 29, 2013—after sustained insistence by Ms. Evans.

102. Because Mr. Larocca tipped off Defendant Popadiuk, she had notice of the grievance weeks before its formal filing.

103. When Mr. Larocca formally filed Ms. Evans's grievance, Deputy Director Popadiuk notified Deputy Director Penn to instruct Ms. Evans to cease performing Mr. Price's duties until the grievance investigation was complete.

**To further support her charge of discrimination, Ms. Evans
requests public records from the Lottery.**

104. When Ms. Evans filed her Ohio Civil Rights Commission charge of discrimination, she sought further information to support it.

105. In an October 30, 2013 public-records request, Ms. Evans requested, among other records, her personnel file and all communications regarding her or the position Program Administrator 3 (including her performance evaluations).

The Lottery incorrectly denies Ms. Evans's grievance.

106. Following the grievance-investigation process, on December 2, 2013, Defendant Deputy Director Popadiuk "determined"—falsely—that Ms. Evans was not performing the same duties as Mr. Price and denied her grievance by claiming that the duties she was performing "are consistent with her current classification of Administrative Professional 2."

107. On the Lottery's behalf, Defendant Popadiuk insisted—falsely and knowingly so—that Ms. Evans performed merely clerical duties. Popadiuk made this false finding despite having received Deputy Director Penn's November 1, 2012 evaluation of Ms. Evans's performance and formal recommendation for promotion.

108. No one who read Penn's November 1, 2012 evaluation and recommendation of Ms. Evans could honestly conclude that Ms. Evans performed merely clerical duties.

Instead of restoring her duties, the Lottery retaliates against Ms. Evans for filing a charge of discrimination.

109. During the grievance process, Deputy Director Popadiuk was aware of Ms. Evans's charge filed with the Ohio Civil Rights Commission and spoke to Deputy Director Penn about it. Defendant Popadiuk cut off communication with Ms. Evans after Ms. Evans filed the charge, but repeatedly spoke to Deputy Director Penn about whether Ms. Evans would "change her mind" about the charge.

110. After Deputy Director Popadiuk incorrectly "determined" on December 2, 2013 that Ms. Evans was not working out of class, per the collective-bargaining agreement, her duties were supposed to be restored.

111. But initially they were not.

112. The Lottery retaliated against Ms. Evans for opposing discrimination and filing the charge with the Ohio Civil Rights Commission.

113. This retaliation involved excluding Ms. Evans from projects and emails of which she previously was a part, and working around Ms. Evans through the Lottery's main vendor Intralot. Ms. Evans stopped receiving the types of projects that she would work on before she filed her charge. Emails she sent were ignored, including to Defendant Popadiuk.

The Lottery willfully violates Ohio's Public Records Law to conceal its unlawful discrimination against Ms. Evans.

114. To investigate the Lottery's discrimination and retaliation against her, Ms. Evans, through counsel, submitted a public-records request to the Lottery on October 30, 2014. That request sought a variety of records including specifically the following: (1) Ms. Evans's personnel file (including evaluations), (2) documents regarding Ms. Evans (including those drafted by Deputy Director Penn or received by Deputy Director Popadiuk or Director Berg), and (3) all documents regarding the job classification Program Administrator 3 (including those drafted by Deputy Director Penn or received by Deputy Director Popadiuk or Director Berg).

115. Ms. Evans's November 1, 2012 performance evaluation completed by Deputy Director Penn and delivered to Director Berg and Deputy Director Popadiuk should have been produced in response to her October 30, 2014 public-records request because it fell within each of those three categories: it was (1) a performance evaluation of Ms. Evans, (2) a document about Ms. Evans from Deputy Director Penn to Director Berg and Deputy Director Popadiuk, and (3) a document about the job classification Program Administrator 3 from Deputy Director Penn to Defendants Director Berg and Deputy Director Popadiuk.

116. In response to her public-records request, the Lottery provided Ms. Evans's performance evaluations dated April 30, 2009, May 28, 2009, and March 31, 2010.

117. But the Lottery willfully omitted what was then her most recent performance evaluation from Deputy Director Penn dated November 1, 2012.

118. The Lottery withheld Deputy Director Penn's November 2012 evaluation of Ms. Evans's performance because it glowingly described the quality of Ms. Evans's work and unequivocally recommended her formal promotion to Online Product Manager.

119. The Lottery continued to resist and dissemble despite warnings from Ms. Evans through her counsel. Those warnings were accompanied by specific and repeated requests to provide all of Ms. Evans's performance evaluations.

120. On December 27, 2013, Lottery counsel falsely claimed that "the Lottery has produced all evaluations and recommendations for Giavonna Evans in its previous record productions."

121. Both Defendants Director Berg and Deputy Director Popadiuk had received the glowing November 1, 2012 performance evaluation when Deputy Director Penn delivered the evaluation that same day, along with her memorandum in support of Ms. Evans.

122. Deputy Director Penn concluded her memorandum recommending Ms. Evans's promotion by stating that "[a]long with this recommendation is Ms. Evan's [*sic*] performance evaluation." This statement shows that Deputy Director Penn delivered the performance evaluation with the memorandum to Defendants Berg and Popadiuk.

123. Deputy Director Penn again delivered the November 2012 evaluation to Deputy Director Popadiuk as part of the public-records collection process because Penn, having read the public-records request, understood that the evaluation was responsive. But it was *still* withheld from Ms. Evans until after she filed a mandamus action with the Supreme Court of Ohio.

After Ms. Evans formally complained about being retaliated against, the Lottery restored her rightful Online Product Manager duties, but still without the rightful title and pay.

124. On January 14, 2014, Ms. Evans sent Deputy Director Popadiuk an email stating the following: “Hi Liz, I would like to meet with you to discuss the fact that I feel as if there has been some backlash or retaliation since I filed my discrimination claim with OCRC.”

125. Two days later, Ms. Evans met with Defendant Popadiuk regarding the retaliation.

126. Only after Ms. Evans’s complaints of retaliation by email and in person did Deputy Director Popadiuk restore Ms. Evans’s duties. For months, she continued to do the job vacated by Mr. Price but without his title or pay.

The Lottery finally provides Ms. Evans with a copy of her glowing performance evaluation.

127. Only after Ms. Evans filed a complaint for writ of mandamus with the Ohio Supreme Court on January 28, 2014 did the Lottery on February 27, 2014 finally release Ms. Evans’s glowing November 2012 performance evaluation.

128. The Lottery’s decision to withhold Ms. Evans’s acclamatory performance evaluation from Deputy Director Penn was plainly calculated to try to cover up its discrimination against Ms. Evans.

129. In belatedly providing Deputy Director Penn’s performance evaluation for Ms. Evans, the Lottery’s Chief Legal Counsel Lawrence Miltner disingenuously claimed it was not part of Ms. Evans’s personnel file and therefore not responsive to her public-records request.

130. Miltner’s assertion is directly contradicted by controlling and unequivocal case law. In *State ex rel. Morgan v. City of New Lexington*, the Ohio Supreme Court held that records need not be officially designated as a “personnel files” to be responsive to a public-records request for

personnel files.¹ “[R]ecords that are the functional equivalent of personnel files” are responsive as well.²

131. Under this controlling authority, Deputy Director Penn’s evaluation of Ms. Evans was part of the Lottery’s personnel file for Ms. Evans.

132. The idea that an employee’s personnel file does not include recent performance evaluations defies intuition and logic. Ohio law requires all agencies to “use the performance evaluation as a tool of supervision and training.”³ Failing to maintain such records in employees’ personnel files does not further that policy.

133. Ms. Evans’s November 1, 2012 performance evaluation was excluded from her personnel file in an intentional effort to cover up the Lottery’s discrimination against her as an African-American woman.

134. Even if the November 1, 2012 performance evaluation was not part of Ms. Evans’s “official” personnel file, the Lottery was still obliged to disclose the evaluation in response to other explicit categories of her public-records request.

135. The November 1, 2012 performance evaluation mentions both Ms. Evans and the job classification “Program Administrator 3.” It is thus *both* (1) a communication about Ms. Evans (and therefore responsive to the third category of records listed in her request, which sought “[a]ll documents (including correspondence, memos, emails, notes, etc.) between or among Elizabeth Popadiuk, Gwen Penn, Dennis Berg, Pat [V]asil, and/or anyone else regarding Giavonna Evans or Gia Evans from January 1, 2012 to the present.”) *and* (2) a communication about the job classification Program Administrator 3 (and therefore responsive to the fourth category of records

¹ 112 Ohio St. 3d 33, 43, 857 N.E.2d 1208, 1219 (Ohio 2006).

² *Id.*

³ Ohio Admin. Code 123:1-29-01(F).

listed in her request, which sought “[a]ll documents (including correspondence, memos, emails, notes, etc.) between or among Elizabeth Popadiuk, Gwen Penn, Dennis Berg, Pat [V]asil, and/or anyone else regarding the job classification of Program Administrator 3 or the job classification Administrative Professional 2 from January 1, 2012 to the present.”).

136. Although the performance evaluation was plainly responsive, it was deliberately withheld because it is devastating to the Lottery’s defense against Ms. Evans’s discrimination claims.

137. The Lottery did not want Ms. Evans to share this public record with the Ohio Civil Rights Commission or to have it as part of any future litigation. Thus, the Lottery willfully violated Ohio’s Public Records Act.

Ms. Evans files another charge of discrimination—this time with the Equal Employment Opportunity Commission—regarding the retaliation she faced for opposing the Lottery’s discrimination against her.

138. On March 24, 2014, Ms. Evans filed a separate charge of discrimination with the U.S. Equal Employment Opportunity Commission regarding the retaliation she endured as a consequence for filing her first charge of discrimination with the Ohio Civil Rights Commission.

139. Her original October 18, 2013 charge with the Ohio Civil Rights Commission was transferred to the Equal Employment Opportunity Commission and consolidated with her March 24, 2014 charge.

On appeal, the Lottery’s denial of Ms. Evan’s grievance is reversed.

140. Ms. Evans appealed the denial of her grievance on December 3, 2013, which sent the grievance to arbitration. She notified the Lottery of the appeal the following day.

141. At the arbitration hearing on March 24, 2014, the arbitrator questioned Ms. Evans about her job duties, which she described in detail. In addition, Deputy Director Penn testified in support of Ms. Evans by further specifying the nature and extent of her duties and confirming Ms. Evans’s account of her responsibilities. When questioned about Ms. Evans’s autonomy in her

duties, Deputy Director Penn imparted that she trusts Ms. Evans to make decisions without first consulting her.

142. After both sides had the opportunity to present evidence, Deputy Director Popadiuk's determination was reversed. The arbitrator ruled that Ms. Evans had been working outside of her job classification (Administrative Professional 2) by performing the duties of a Program Administrator 3. (Arbitration decision attached as Exhibit 5).

143. The arbitrator explained that Ms. Evans had "considerable roles of action and judgment," that she "collaborate[d] with the Dep[uty] Dir[ector] working in a position of trust & authority," and that she "develop[ed] program plans."

144. The arbitrator listed many of Ms. Evans's specific duties that led to the conclusion that she had been performing as a Program Administrator 3, including "research and analyze proposals, procedures and policies; co-develops prog[ram] proposals and pro[ram] plans; provide technical advice to aid administrator in decision-making; [and] co-administrates special prog[rams] and meetings."

145. The arbitrator ordered the Lottery to pay Ms. Evans back pay at the wage she should have earned—the wage of the white male who previously held the position was paid to do that job—from the time her grievance was formally filed on October 29, 2013 until the arbitration date. In addition, the arbitrator awarded Ms. Evans front pay at that rate for the next 30 days.

146. The arbitrator's decision also provided for a 30-day stay, during which the Lottery was to decide whether to allow Ms. Evans to continue the Program Administrator 3 duties she had been performing (and compensate her accordingly) or to reassign her to Administrative Professional 2 duties.

**The Lottery extends its retaliation to Deputy Director Penn
for her support of Ms. Evans.**

147. Throughout Ms. Evans's struggle to obtain equal treatment in her employment and oppose the Lottery's unlawful discrimination against minorities and women, Deputy Director Penn has fully supported Ms. Evans's efforts and opposition. Penn openly disagreed with Defendant Popadiuk during the arbitration hearing on March 24, 2014 by truthfully stating Ms. Evans's job duties. In doing so, Penn—despite pressure to tow the company line—directly contradicted Deputy Director Popadiuk's version of events and her grievance finding that Ms. Evans performed merely clerical duties.

148. Because Deputy Director Penn supported and assisted Ms. Evans in opposing discrimination, the Lottery retaliated against Penn as well.

149. Since Ms. Evan's arbitration hearing, Deputy Director Penn has been cut out of any meaningful involvement in Lottery operations and management. Before the arbitration, Penn and Ms. Evans prepared an in-depth Product Portfolio Management project. When they presented it on March 27, 2014, representatives from the Lottery's departments of Sales Management and Marketing Communications thought it was a wonderful presentation. But instead of having Deputy Director Penn implement the project's recommendations, Director Berg ordered Deputy Director Penn to make no changes and to turn over detailed Lottery information, some of which was proprietary, to Intralot—an outside vendor. In transferring Deputy Director Penn's duties to Intralot, Defendant Berg commanded her to “just facilitate” the actions advised by Intralot's Lottery representative.

150. Deputy Director Penn now reports to another deputy director, and no one reports to Penn any longer. The Lottery has relegated Deputy Director Penn to doing nothing but contract compliance.

151. In addition, the Lottery retaliated against Deputy Director Penn by dismantling her entire Online Products department. The Lottery reshuffled the corresponding duties amongst Information Technology, Marketing, and mostly Intralot, an outside vendor. These changes have constructively made Amy Byers of Intralot the Lottery's Online Product Manager, even though she lacks any product-development experience.

152. The Lottery's outsourcing of Online Product operations to Intralot is contrary to 34 years of established Lottery practice making Product Development responsible for developing games and prize structures. Intralot is not authorized to launch games or develop prize structures without Online Products' approval because the Lottery is not privatized.

153. Instant tickets are now managed by Deputy Director of Sales Patricia Vasil, a Kasich appointee. Deputy Director Penn no longer holds sway over its operations.

154. The Lottery maintains Deputy Director Penn's empty title of "Deputy Director" because she is the only minority to hold that title.

**Though she excelled as a Program Administrator 3,
the Lottery takes away Ms. Evans's duties,
relegating her to mind-numbing clerical drudgery.**

155. Following the 30-day stay after the arbitrator's decision, rather than formally promote her to Online Product Manager, the Lottery returned Ms. Evans to clerical duties as an Administrative Professional 2 in the Licensing and Bonding Department. She no longer works under Deputy Director Penn.

156. Since April 2014, the Lottery has limited Ms. Evans to merely clerical duties such as stuffing envelopes for license renewals, entering incoming mail for new licenses and mailing them out, tracking overdue renewals, answering phones, and entering new license applications.

157. Since complaining about her discriminatory treatment, Ms. Evans no longer has any management or development responsibilities.

158. Other acts of retaliation since she was ousted from Online Products include being ignored and snubbed by various colleagues including Maureen Hall, Pat Vasil, Amy Byers, Defendant Popadiuk, and Stephanie Zackery, being avoided by Defendant Berg, and creating the impression that she was moved out of Product Development for reasons that are false and detrimental to her reputation and career.

159. Defendants' failure to promote Ms. Evans following the arbitrator's ruling in her favor is a continuing violation of her right to be free from discrimination and part of the Lottery's overarching policy of discrimination.

**Ms. Evans was (and still is) qualified for
the position of Program Administrator 3.**

160. Ms. Evans is qualified for the position of Program Administrator 3. She meets the qualifications set for the position per the Ohio Department of Administrative Services.

161. Ms. Evans has an undergraduate degree in Justice Studies from Kent State University.

162. Ms. Evans has more than 36 months training or experience in a supervisory, administrative, managerial, and/or staff position involving planning, research, and/or policy/procedure development.

163. In fact, Ms. Evans has five years of management experience having served as a manager trainee at Hertz Rental Car for nine months, a shift supervisor at Starbucks for three-and-a-half years, and as Online Product Manager for just less than two years.

164. Ms. Evans additionally qualifies as Online Product Manager/Program Administrator 3 simply by successfully fulfilling the position's responsibilities for 23 months, which certainly counts as the "equivalent" of the minimum class qualifications.

165. From May 2012, the date of Ms. Evans's transfer to Product Development, until April 2014, she performed the duties of a Program Administrator 3—and performed them in such as

way that her direct supervisor concluded “an outsider would believe she’s always been the manager.”

166. Deputy Director Penn recommended and advocated for Ms. Evans’s promotion to the position of Online Product Manager because Penn had observed for herself that Ms. Evans was qualified and could ably perform the duties of the position.

167. Likewise, Deputy Director Popadiuk asked Ms. Evans to perform the duties Mr. Price and his assistant had performed because she believed Ms. Evans to be qualified and represented to Deputy Director Penn that Ms. Evans was qualified.

168. That Ms. Evans was denied proper title and pay does not negate the training and experience she received or the capacity in which she has worked. The Lottery cannot use its discriminatory actions to justify its failure to promote Ms. Evans.

COUNT 1
Gender and Race Discrimination (Disparate Treatment) under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. against the Lottery

169. Plaintiff incorporates all previous allegations.

170. Under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(a)(1), it is an unlawful employment practice for any employer to fail or refuse to hire an individual, or otherwise discriminate against her with respect to her compensation, terms, conditions, or privileges of employment, because of her gender or race.

171. Under 42 U.S.C. § 1981a and 42 U.S.C. § 2000e et seq., whoever violates the above-described legal obligation is subject to a civil action for damages, injunctive relief, or any other appropriate relief.

172. The Lottery willfully and maliciously discriminated and continues to discriminate against Ms. Evans because of her gender *and* race. The Lottery has disparately and unfavorably treated Ms. Evans distinctly because she is an African-American woman.

173. As is the case here, “discrimination against black females can exist even in the absence of discrimination against black men or white women.”⁴ In other words, “black females are a protected class for Title VII purposes.”⁵

174. The Lottery willfully discriminated against Ms. Evans in terms of pay. It determined her salary based on less-favorable standards than those it applied to similarly situated male employees or similarly situated non-African-American employees.

175. While the Lottery paid Mr. Price (a white male) \$82,000 annually to perform Online Product Manager duties, Ms. Evans has performed those same duties for 23 months and earned no more than \$36,000 annually. Even Mr. Price’s assistant, a male of Palestinian descent, earned \$59,000 annually.

176. The Lottery willfully discriminated against Ms. Evans by denying her an assistant, which her predecessor had enjoyed.

177. The Lottery also willfully discriminated against Ms. Evans by failing to formally promote her and thus denying her the official job title and rank commensurate with her Online Product Manager duties.

178. During her entire tenure performing as the Online Product Manager (Program Administrator 3), she was classified and paid as an Administrative Professional 2. She was compensated for the difference only from October 29, 2013 through April 22, 2014 (from the filing of her grievance until the date of the arbitrator’s decision).

⁴ *Jeffries v. Harris Cnty. Cmty. Action Assoc.*, 615 F.2d 1025, 1032 (5th Cir. 1980); *see e.g., Jenkins v. Nashville Pub. Radio*, 106 Fed. App’x 991, 993–95 (6th Cir. 2004) (relying on evidence of the employer’s failure to hire African-American women as supervisors to reverse summary judgment of an employee’s Title VII race and gender discrimination claim).

⁵ *Prince v. Comm’r*, 713 F. Supp. 984, 992 (E.D. Mich. 1989).

179. Director Berg and Deputy Director Popadiuk chose to deviate from its internal promotion process when considering Ms. Evans for promotion because paying her fully for her duties was “too much money for her” as an African-American woman.

180. Ms. Evans was highly qualified to be the Online Product Manager. She performed the job as if “she’s always been the manager,” which caused Deputy Director Penn to endorse her for the position.

181. The Lottery’s subsequent refusal to formally make the Online Program Manager position available is itself part of the discrimination.

182. In refusing to promote Ms. Evans, the Lottery disregarded strong and unqualified support on the part of her direct supervisor, Deputy Director Penn, another African-American woman.

183. The Lottery has not denied similarly situated male or non-African-American employees advancement under its internal promotion process after they have served successfully in a new position on a probationary basis.

184. Not long after denying Ms. Evans her promotion, Director Berg chose to promote Mr. Slyman, a white male, after a probationary period because he is “a family man.”

185. Because of its racially discriminatory employment practices, the Lottery has a workforce composition that increasingly skews against African-American women. Despite retaliating against Deputy Director Penn for her support of Ms. Evans, the Lottery leaves her in upper management (in name only) because of its concern for its poor diversity numbers.

186. Every year, all state agencies including the Lottery must give a report to Governor Kasich’s office regarding the number of minorities working for that agency. There are 376 Lottery employees; only 53 are African-American. After Ms. Evans filed her charge of discrimination, five African-American women were hired in a four-month period in an attempt

to create the impression that African-American women were not targeted for discriminatory treatment.

187. Lottery employee Stephanie Miller, an African-American woman, is the EEOC officer for the Lottery. Deputy Director Popadiuk told Ms. Miller to try her best to make the minority numbers look as good as possible. Popadiuk asked Miller to merge certain regional offices with others to give the false appearance of larger numbers of minorities employed throughout the Lottery.

188. If not for Ms. Evans's membership in a protected class, and the racial and gender biases of Lottery managers and supervisors, she would not have suffered adverse employment actions or been paid less generously than her similarly situated male or non-African-American counterparts.

189. The Lottery is vicariously liable for its agents' acts toward Ms. Evans.

190. As a direct and proximate result of the Lottery's unlawful conduct, Ms. Evans has suffered and will continue to suffer economic and non-economic damages for which Defendant is liable including, but not limited to, pain and suffering, loss of salary, and other terms, privileges, and conditions of employment.

191. The Lottery's acts were willful, egregious, malicious, and worthy of substantial sanction to punish and deter Defendant and others from engaging in this type of unlawful conduct.

COUNT 2
Retaliation Under Title VII, 42 U.S.C. § 2000e-3(a) against the Lottery

192. Under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-3(a), it is an unlawful employment practice to discriminate in any manner (i.e., retaliate) against any person because she opposed an unlawful discriminatory practice.

193. Under 42 U.S.C. § 1981a and 42 U.S.C. § 2000e *et seq.*, whoever violates the above-described legal obligation is subject to a civil action for damages, injunctive relief, or any other appropriate relief.

194. Ms. Evans had a reasonable, good-faith belief that the Lottery had discriminated against her on the basis of her gender and race regarding her compensation and other terms, conditions, and privileges of employment including failing to promote her to Online Product Manager/Program Administrator 3.

195. Ms. Evans engaged in a protected activity under Title VII by filing a charge of discrimination with the Ohio Civil Rights Commission against the Lottery. The charge concerned the gender and race discrimination she experienced.

196. Ms. Evans engaged in protected activity under Title VII by filing a grievance regarding the Lottery's failure to properly compensate her based on the duties she was performing.

197. Ms. Evans engaged in a protected activity under Title VII by filing a charge of discrimination with the Equal Employment Opportunity Commission based on the retaliation she suffered for opposing discrimination.

198. Defendant was aware that Ms. Evans engaged in protected activities.

199. Defendant intentionally and maliciously discriminated and retaliated against Ms. Evans after she opposed an unlawful discriminatory practice, i.e., gender and race discrimination against African-American females including its failure to promote her or pay her as it did her male counterparts.

200. The Lottery retaliated against Ms. Evans in numerous ways including, but not limited to, the following:

- a. Deputy Director Popadiuk cut off communications with Ms. Evans, including ignoring her direct email;

- b. Deputy Director Popadiuk repeatedly sought Deputy Director Penn's assistance in helping to change Ms. Evans's mind about opposing her discriminatory treatment including through the grievance process;
- c. Deputy Director Popadiuk incorrectly determined for Ms. Evans's grievance that she was not working out of class;
- d. The Lottery did not restore Ms. Evans's job duties after Popadiuk originally denied Ms. Evans's grievance until Ms. Evans complained about the retaliation;
- e. The Lottery excluded Ms. Evans from projects and emails of which she previously was a part and worked around Ms. Evans through the Lottery's main vendor Intralot;
- f. The Lottery violated Ohio's Public Records Act by willfully concealing Ms. Evans's positive performance evaluation in the hopes of preventing her from successfully opposing the discrimination to which the Lottery was actively subjecting her;
- g. The Lottery continues to refuse Ms. Evans promotion;
- h. The Lottery stripped Ms. Evans of all of her management, development, and decision-making authority;
- i. Ms. Evans has been ignored and snubbed by coworkers and management including Director Berg, Deputy Director Popadiuk, Deputy Director Vasil, Stephanie Zackery, Jim LaRocca, and Amy Byers;
- j. When she was transferred to Licensing and Bonding, she was tasked with work that was seven months old;
- k. Since her transfer to Licensing and Bonding, her assigned tasks are very monotonous and menial.

1. Lottery management retaliated against Deputy Director Penn, Ms. Evans's supervisor, supporter, and mentor who is a witness to the Lottery's discrimination and retaliation against Ms. Evans, for Penn's support of Ms. Evans's position, in an effort to make it more difficult for Ms. Evans to prove her claims of discrimination and retaliation.
201. Only after Ms. Evans complained of retaliation by email and in person did Deputy Director Popadiuk restore some of Ms. Evans's duties for a brief time period before she was eventually stripped entirely of her responsibilities and relegated to clerical work.
202. The retaliation changed the terms and conditions of Ms. Evans's employment and subjected her to adverse employment actions.
203. The repetitive clerical drudgery to which she is constantly subjected has caused her to develop tendonitis in her hands and wrists.
204. The retaliation that Ms. Evans suffered would dissuade a reasonable worker from opposing discrimination.
205. The Lottery is vicariously liable for its agents' acts toward Ms. Evans.
206. As a direct and proximate result of this unlawful conduct, Ms. Evans has suffered and will continue to suffer economic and non-economic damages for which Defendant is liable, including, but not limited to, pain and suffering, the loss of salary, wages, and benefits, and other terms, privileges, and conditions of employment.
207. The Lottery's acts were willful, egregious, malicious, and worthy of substantial sanction to punish and deter Defendant and others from engaging in this type of unlawful conduct.

COUNT 3
Gender Discrimination under the Equal Pay Act,
29 U.S.C. § 206 against the Lottery

208. Plaintiff Evans incorporates all previous allegations.

209. The Lottery paid different wage rates in terms of base salary to employees of opposite sexes for equal work on jobs the performance of which require substantially equal skill, effort, and responsibility and are performed under similar working conditions.

210. Because of the Lottery's discriminatory refusal to formally make the Online Product Manager position available, Ms. Evans performed the duties of that position long after her probationary period while being paid only as an Administrative Professional 2.

211. The Lottery paid Ms. Evans less than her male counterparts. Her male predecessor, Mr. Price, enjoyed more than double in salary than she has for the same job: \$82,000 versus \$36,000 annually.

212. The Lottery also paid the male assistant to Ms. Evans's predecessor substantially more than Ms. Evans: \$59,000 versus \$36,000 annually.

213. As a result of paying Ms. Evans at a lower rate than her male peers, the Lottery had an Online Product Manager who an "outsider would believe [has] always been the manager" at a steep discount compared to her male peers.

214. The Lottery paid Mr. Price and Mr. Bahhur a combined \$141,000. Ms. Evans was paid only \$36,000 to do the jobs of both men.

215. The deliberate differential in salary locked Ms. Evans into an inferior position regardless of her effort or productivity.

216. No economic or business considerations justified paying Ms. Evans a lower rate than males classified as Program Administrator 3.

217. As a direct and proximate result of the Lottery's unlawful conduct, Ms. Evans has suffered and will continue to suffer damages for which the Lottery is liable.

218. The Lottery's acts were willful, egregious, malicious, and worthy of substantial sanction to punish and deter Defendant and others from engaging in this type of unlawful conduct.

COUNT 4

Denial of equal protection under the Fourteenth Amendment (race discrimination) against the Lottery (for injunctive relief) and against Defendants Berg and Popadiuk (for damages in their individual capacities) under 42 U.S.C. § 1983

219. Plaintiff Evans incorporates all previous allegations.

220. Ms. Evans has a right, protected by the Equal Protection Clause of the Fourteenth Amendment, to be free from invidious discrimination on the basis of race in public employment.

221. As described in detail above, Ms. Evans suffered purposeful or intentional discrimination on the basis of race in terms of both pay and promotions. But for the discrimination, she would not have suffered adverse employment actions.

222. As described in detail above, Defendant Lottery violated Ms. Evans's constitutional right to be free from race discrimination.

223. As described in detail above, Defendant Berg violated Ms. Evans's constitutional right to be free from race discrimination.

224. As described in detail above, Defendant Popadiuk violated Ms. Evans's constitutional right to be free from race discrimination.

225. Throughout Ms. Evans's entire tenure at the Lottery, her right to be free from race discrimination in employment was clearly established and any reasonable public employee or official would have been aware of that.

226. Discrimination against Ms. Evans because of her race was a motivating factor in Defendants' failure to promote her, to pay her equitably, and to retaliate against her for complaining about discrimination.

227. Defendants' discrimination against Ms. Evans was part of an overarching policy of discrimination at the Lottery.

228. Defendants' conduct was objectively unreasonable in light of Ms. Evans's clearly established constitutional rights.

229. As a direct and proximate result of Defendants' unlawful conduct, Ms. Evans has suffered and will continue to suffer damages for which Defendants Berg and Popadiuk are liable. The Lottery must be enjoined from further harming Ms. Evans.

230. Defendants' acts were willful, egregious, malicious, and worthy of substantial sanction to punish and deter Defendants and others from engaging in this type of unlawful conduct.

COUNT 5

Denial of equal protection under the Fourteenth Amendment (gender discrimination) against the Lottery (for injunctive relief) and against Defendants Berg and Popadiuk (for damages in their individual capacities) under 42 U.S.C. § 1983

231. Plaintiff Evans incorporates all previous allegations.

232. Ms. Evans has a right, protected by the Equal Protection Clause of the Fourteenth Amendment, to be free from invidious discrimination on the basis of gender in public employment.

233. As described in detail above, Ms. Evans suffered purposeful or intentional discrimination on the basis of gender in terms of both pay and promotions. But for the discrimination, she would not have suffered adverse employment actions.

234. As described in detail above, Defendant Lottery violated Ms. Evans's constitutional right to be free from gender discrimination.

235. As described in detail above, Defendant Berg violated Ms. Evans's constitutional right to be free from gender discrimination.

236. As described in detail above, Defendant Popadiuk violated Ms. Evans's constitutional right to be free from gender discrimination.

237. Throughout Ms. Evans's entire tenure at the Lottery, her right to be free from gender discrimination in employment was clearly established and any reasonable public employee or official would have been aware of that.

238. Discrimination against Ms. Evans because of her gender was a motivating factor in Defendants' failure to promote her, to pay her equitably, and to retaliate against her for complaining about discrimination.

239. Defendants' discrimination against Ms. Evans was part of an overarching policy of discrimination at the Lottery.

240. Defendants' conduct was objectively unreasonable in light of Ms. Evans's clearly established constitutional rights.

241. As a direct and proximate result of Defendants' unlawful conduct, Ms. Evans has suffered and will continue to suffer damages for which Defendants Berg and Popadiuk are liable. The Lottery must be enjoined from further harming Ms. Evans.

242. Defendants' acts were willful, egregious, malicious, and worthy of substantial sanction to punish and deter Defendants and others from engaging in this type of unlawful conduct.

COUNT 6

42 U.S.C. § 1981 race discrimination against the Lottery (for injunctive relief)

243. Plaintiff Evans incorporates all previous allegations.

244. Ms. Evans is a member of a protected group under the statute.

245. As described in detail above, she applied for and was qualified for the position vacated by a white male, Daniel Price, (Online Products Manager/Program Administrator 3) that, according to Defendant Popadiuk, the Deputy Director for Human Resources, was available. The availability of this position was also confirmed by Gwen Penn, the Deputy Director for Product Development who was Mr. Price's direct supervisor.

246. Ms. Evans was not promoted as promised despite her qualifications, her outstanding performance in the position for six months, and the unequivocal recommendation of her immediate supervisor, Deputy Director Penn, that Ms. Evans be promoted.

247. In failing to promote Ms. Evans, the Lottery treated her worse than a similarly situated non-protected person.

248. As a direct and proximate result of the Lottery's unlawful conduct, Ms. Evans has suffered and will continue to suffer damages. The Lottery must be enjoined from further harming Ms. Evans.

PRAYER FOR RELIEF

For the reasons stated above, Plaintiff respectfully requests the following relief from the Court.

- A. Declare that Defendants' acts and conduct constitute violations of federal law and the United States Constitution;
- B. Order the Lottery to promote Ms. Evans to the position she was promised;
- C. Enjoin Defendants from further retaliating against Ms. Evans and from further implementing any previous acts of retaliation;
- D. Enter judgment in Ms. Evans's favor as to all claims for relief;
- E. Award Ms. Evans full compensatory damages, economic and non-economic, including, but not limited to, damages for pain and suffering, mental anguish, emotional distress, humiliation, and inconvenience that Ms. Evans has suffered and is reasonably certain to suffer in the future;
- F. Award Ms. Evans punitive damages for Defendants' egregious, willful, and malicious conduct in violation of Title VII and her constitutional rights;
- G. Award pre-judgment and post-judgment interest at the highest lawful rate;
- H. Award Ms. Evans her reasonable attorneys' fees (including expert fees) and all other costs of this suit;
- I. Award all other relief in law or equity to which Ms. Evans is entitled and that the Court deems equitable, just, or proper.

JURY DEMAND

Plaintiff demands a trial by jury on all issues within this amended complaint.

Respectfully submitted,

THE CHANDRA LAW FIRM, LLC

/s/ Subodh Chandra

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Certificate of Service

I certify that on March 11, 2015, my office filed the foregoing document using the Court's online-filing system, which will send a copy of the foregoing to all counsel of record.

/s/Subodh Chandra

One of the Attorneys for Plaintiff Giavonna Evans

STATE OF OHIO (DAS) CLASSIFICATION SPECIFICATION	<u>CLASSIFICATION SERIES</u> Program Administrator	<u>SERIES NUMBER</u> 6312
	<u>MAJOR AGENCIES</u> All Agencies	<u>EFFECTIVE</u> 06/30/2013

SERIES PURPOSE

The purpose of the Program Administrator occupation is to provide program direction by relieving superior of administrative duties.

At the first level, incumbents relieve superior of non-routine administrative duties & formulates & implements program policy or does all of the proceeding & supervises assigned staff. At the second level, incumbents relieve superior of variety of difficult administrative duties & formulates & implements program policy or does all of the proceeding & supervises assigned staff. At the third level, incumbents relieve superior of most difficult administrative duties & formulates & implements program policy or does all of the proceeding & supervises assigned staff.

Note: In order to determine whether position is assigned duties of specified administrative nature, compare duties assigned to position in question with those assigned to immediate supervisory position, identify duties that have been delegated to subordinate & scope & impact of those duties on overall program activities of unit, section, division or bureau. The higher the class level, it is expected that there will be an increase in the knowledge of the technical policies & procedures of the operational unit to include training &/or academic background commensurate with the immediate supervisor's assigned program.

Note: This series may be used within agency/institution &/or in community setting.

This classification series may not be used to cover any functions currently described by another existing classification specifically designed for the function.

<u>JOB TITLE</u>	<u>JOB CODE</u>	<u>PAY GRADE</u>	<u>EFFECTIVE</u>
Program Administrator 1	63122	10	02/26/2012

CLASS CONCEPT

The advanced level class works under general supervision & requires considerable knowledge of management principles/techniques, supervisory principles/techniques & agency policies & procedures regarding program activities of unit, section, division or bureau in order to provide program direction by relieving superior of non-routine administrative duties & formulate & implement program policy, or to do all of preceding & supervise assigned staff.

<u>JOB TITLE</u>	<u>JOB CODE</u>	<u>PAY GRADE</u>	<u>EFFECTIVE</u>
Program Administrator 2	63123	12	02/26/2012

CLASS CONCEPT

The first administrative level class works under administrative direction & requires thorough knowledge of management principles/techniques, supervisory principles/techniques & agency policies & procedures regarding program activities of unit, section, division or bureau in order to provide program direction by relieving superior of variety of difficult administrative duties & formulate & implement program policy, or to do all of preceding & supervise assigned staff.

<u>JOB TITLE</u>	<u>JOB CODE</u>	<u>PAY GRADE</u>	<u>EFFECTIVE</u>
Program Administrator 3	63124	14	02/26/2012

CLASS CONCEPT

The second administrative level class works under administrative supervision & requires extensive knowledge of management principles/ techniques, supervisory principles/techniques & agency policies & procedures regarding program activities of unit, section, division or bureau in order to provide program direction by acting for superior & by relieving superior of most difficult administrative duties & formulate & implement program policy, or to do all of preceding & supervise assigned staff.

EXHIBIT 1

<u>JOB TITLE</u>	<u>JOB CODE</u>	<u>B. U.</u>	<u>EFFECTIVE</u>	<u>PAY GRADE</u>
Program Administrator 1	63122	EX	02/26/2012	10

JOB DUTIES IN ORDER OF IMPORTANCE (These duties are illustrative only. Incumbents may perform some or all of these duties or other job-related duties as assigned.)

Acts for administrator (e.g., independently answers complex &/or confidential correspondence; conducts staff meetings to discuss rules & operating procedures relating to assigned area; monitors manpower needs & insures sufficient number of personnel to complete special assignments/ projects), serves as liaison between administrator & subordinates, transmits decisions & directives, represents administrator at meetings & conferences, formulates & implements program policy & assumes responsibility & authority in administrator's absence, or does all of preceding & supervises staff (i.e., assigned clerical, maintenance, security &/or lower-level administrative employees).

Researches & analyzes programs, procedures & policies; develops project proposals & program plans; provides technical advice to aid administrators in decision making.

Manages business functions of administrator's office; prepares & administers budgets; oversees maintenance of fiscal controls, authorizes expenditures & purchases; administers special programs & projects; coordinates specific auxiliary functions falling under authority of supervisor.

Performs public relations duties; researches & responds to inquiries & complaints; furnishes information & explains programs to public; writes position papers & reports; makes speeches & gives lectures; prepares news releases.

MAJOR WORKER CHARACTERISTICS

Knowledge of supervisory principles/techniques; business administration, management science or public administration; employee training & development*; interviewing*; public relations; budgeting. Ability to handle sensitive telephone & face-to-face inquiries & contacts with public & government; write letters, papers, reports & speeches & deliver speeches before general public; develop complex reports & position papers; define problems, collect data, establish facts & draw valid conclusions; calculate fractions, decimals & percentages; gather, collate & classify information according to established methods; establish friendly atmosphere as supervisor of work unit.

(*)Developed after employment.

MINIMUM CLASS QUALIFICATIONS FOR EMPLOYMENT

Completion of undergraduate core program in business administration, management science or public administration; 12 mos. trg. or 12 mos. exp. in supervisory, administrative &/or managerial position which involved limited research & public contact. If assigned to operate vehicles regulated by Section 4506.01 of Revised Code, applicants must also have valid commercial driver's license.

-Or completion of undergraduate core program in academic field commensurate with program area to be assigned per approved Position Description on file; 12 mos. trg. or 12 mos. exp. in supervisory, administrative, managerial &/or staff position which involved limited research & public contact. If assigned to operate vehicles regulated by Section 4506.01 of Revised Code, applicants must also have valid commercial driver's license.

-Or 36 mos. trg. or 36 mos. exp. in business administration, management science or public administration. If assigned to operate vehicles regulated by Section 4506.01 of Revised Code, applicants must also have valid commercial driver's license.

-Or equivalent of Minimum Class Qualifications For Employment noted above.

TRAINING AND DEVELOPMENT REQUIRED TO REMAIN IN THE CLASSIFICATION AFTER EMPLOYMENT

Not applicable.

UNUSUAL WORKING CONDITIONS

Not applicable.

<u>JOB TITLE</u>	<u>JOB CODE</u>	<u>B. U.</u>	<u>EFFECTIVE</u>	<u>PAY GRADE</u>
Program Administrator 2	63123	EX	02/26/2012	12

JOB DUTIES IN ORDER OF IMPORTANCE (These duties are illustrative only. Incumbents may perform some or all of these duties or other job-related duties as assigned.)

Acts for administrator (e.g., responds to programmatic issues/ needs of staff; leads/monitors task forces; plans, writes & implements departmental goals), serves as liaison between administrator & subordinates, transmits decisions & directives, represents administrator at meetings & conferences, assumes responsibility & authority in administrator's absence, interviews, hires, & counsels employees, manages office & auxiliary functions (e.g., maintenance, security, public information, personnel) & formulates & implements program policy, or does all of preceding & supervises assigned staff (i.e., clerical &/or lower-level administrative personnel).

Analyzes & evaluates programs, procedures & policies; provides technical advice to aid administrators in decision making.

Develops & coordinates public relations programs; researches & responds to inquiries & complaints; furnishes information & explains programs to public, legislators & news media; writes position papers & reports; makes speeches & gives lectures; prepares news releases.

Manages business function of administrator's office; prepares & administers budgets; establishes & oversees maintenance of fiscal controls; authorizes expenditures & purchases; develops & implements recruitment & training programs; develops & administers special programs & projects; prepares important documents, correspondence, directives & publications.

MAJOR WORKER CHARACTERISTICS

Knowledge of supervisory principles/techniques; business administration, management science or public administration; public relations; employee training & development; interviewing; public accounting. Ability to gather, collate & classify information about data, people or things; define problems, collect data, establish facts & draw valid conclusions; deliver speeches before government officials & general public; write, letters, papers & reports; handle sensitive telephone & face-to-face inquiries & contacts with general public; interview job applicants to determine work best suited to them.

MINIMUM CLASS QUALIFICATIONS FOR EMPLOYMENT

Completion of undergraduate core program in business administration, management science or public administration; 2 yrs. trg. or 2 yrs. exp. in supervisory, administrative &/or managerial position.

-Or completion of undergraduate core program in academic field commensurate with program area to be assigned per approved Position Description on file; 2 yrs. trg. or 2 yrs. exp. in supervisory, administrative &/or managerial position or staff position involving planning, research &/or policy/procedure development.

-Or 4 yrs. trg. or 4 yrs. exp. in business administration management science or public administration.

-Or 1 yr. exp. as Program Administrator 1, 63122.

-Or equivalent of Minimum Class Qualifications For Employment noted above.

TRAINING AND DEVELOPMENT REQUIRED TO REMAIN IN THE CLASSIFICATION AFTER EMPLOYMENT

Not applicable.

UNUSUAL WORKING CONDITIONS

Not applicable.

<u>JOB TITLE</u>	<u>JOB CODE</u>	<u>B. U.</u>	<u>EFFECTIVE</u>	<u>PAY GRADE</u>
Program Administrator 3	63124	EX	02/26/2012	14

JOB DUTIES IN ORDER OF IMPORTANCE (These duties are illustrative only. Incumbents may perform some or all of these duties or other job-related duties as assigned.)

Acts for administrator (e.g., provides program direction for staff; administers statewide agency programs; insures compliance with state & federal program requirements; advocates for legislation to enhance services/ programs related to assigned specialty), provides regular direction to division heads & other staff members, conducts staff meetings to discuss & execute policies & procedures, reviews proposals of division heads & other staff members & makes recommendations to administrator, assumes full responsibility & authority in administrator's absence, plans, directs & appraises work of administrator's office staff, including clerical & lower-level administrative employees, manages office auxiliary functions (e.g., maintenance, security, public information, personnel) & formulates & implements program policy, or does all of preceding & supervises assigned staff (i.e., clerical &/or lower-level administrative personnel).

Analyzes & evaluates programs, procedures & policies; develops & revises programs; provides technical advice to aid administrator in decision making.

Prepares & directs preparation of correspondence, reports, policy statements, legislative drafts; provides information on programs & policies to private organizations, government officials & general public.

Coordinates & monitors personnel & fiscal services of administrative unit; oversees & provides budget preparation & administration; orients & counsels new professional personnel; identifies staff training needs.

Represents administrator at meetings & conferences with state, federal & community agencies; speaks for administrator on policy matters.

MAJOR WORKER CHARACTERISTICS

Knowledge of business administration, management science or public administration; supervisory principles/techniques; public relations; employee training & development; budgeting. Ability to define problems, collect data, establish facts & draw valid conclusions; develop complex reports & position papers; handle sensitive face-to-face contacts with public & government officials; establish friendly atmosphere as supervisor of work unit.

MINIMUM CLASS QUALIFICATIONS FOR EMPLOYMENT

Completion of undergraduate core program in business administration, management or public administration; 36 mos. trg. or 36 mos. exp. in supervisory, administrative &/or managerial position.

-Or completion of undergraduate core program for academic field of study commensurate with program area to be assigned per approved Position Description on File; 36 mos. trg. or 36 mos. exp. in supervisory, administrative, managerial &/or staff position involving planning, research &/or policy/procedure development.

-Or 5 yrs. trg. or 5 yrs. exp. in business administration, management or public administration.

-Or 1 yr. exp. as Program Administrator 2, 63123.

-Or equivalent of Minimum Class Qualifications For Employment noted above.

TRAINING AND DEVELOPMENT REQUIRED TO REMAIN IN THE CLASSIFICATION AFTER EMPLOYMENT

Not applicable.

UNUSUAL WORKING CONDITIONS

Not applicable.

Performance Evaluation



Support Staff

NAME: Giavonna Evans
 DATE: Nov 1, 2012
 CLASS: _____

OFFICE: Product Development
 BUREAU: Online Products
 REVIEW TYPE: Special

PURPOSE

This Performance Evaluation is utilized to:

- Work toward attainment of the agency's mission, goals and objectives;
- Inform the employee of strengths, weaknesses and progress;
- Improve performance, productivity and develop employee skills;
- Strengthen work relationships;
- Develop the role of the supervisor as a supportive leader and counselor;
- Improve open communication;
- Recognize accomplishments and good work;
- Document employee performance;
- Encourage employee participation and joint input in the performance review process;
- Ensure that OLC policies and procedures are being consistently and fairly applied among all staff members.

RATING LEVEL DEFINITIONS

Outstanding (91-100)

Performance consistently exceeds job requirements. Outstanding employees are quality contributors who make a significant difference to the organization by achieving challenging objectives. Job performance is excellent and above and beyond what is expected of employees in this position. The employee is considered an essential contributor to the team's success. Employee requires minimal supervision.

Exceeds Expectations (81-90)

Performance exceeds job requirements. Employees that exceed expectations contribute to the organization at a level that is higher than what is expected for employees in this position. They are recognized as being essential to their job function. The employee requires less than standard supervision.

Meets Expectations (71-80)

Performance satisfies job requirements. Employees that meet expectations contribute to the organization at the level expected for this position. They are valued team members and individual contributors. The employee requires standard levels of supervision.

Needs Improvement (61-70)

Performance does not consistently satisfy job requirements. Employees that need improvement may understand the job requirements but do not consistently meet expectations, or their productivity for similar tasks is inconsistent. The employee requires standard to high levels of supervision depending on the particular task.

Unsatisfactory (51-60)

The employee consistently fails to satisfy job requirements. Unsatisfactory employees do not adequately contribute to the organization because they do not consistently meet the standards required for their job function. The employee consistently requires high levels of supervision.

If the total score of an entire category is unsatisfactory, a structured performance improvement plan, including a training itinerary, will be recommended.

All Employees:

Performance evaluations must be conducted annually and must be completed and signed by all parties by the review deadline.

Probationary Employees:

Performance of probationary employees will be reviewed twice. The first performance evaluation must be completed within thirty days of the conclusion of the first half of the probationary period. The second evaluation must be completed within thirty days of completion of the probationary period, unless the employee is given a probationary removal or reduction, in which case the final evaluation will be made at the time of removal or reduction. The final probationary evaluation must state whether the employee is to be retained or reduced.

Step Advancement:

The evaluation date for employees paid directly by warrant of the auditor of state shall be sixty days prior to the date on which the employee becomes eligible for step advancement consideration. An employee who is not recommended for step advancement shall not be reconsidered for step advancement sooner than six months from the date of the employee's most recent performance evaluation.

DIRECTIONS

Please evaluate the employee you supervise in the following categories based on the ratings as previously explained. Then, provide an explanation or cite a specific example in the comments section to substantiate your total score for each category. For example, if the employee works in the IT department and satisfactorily assists another employee (an internal customer) with his/her complicated computer problem, you could write about this event in the "Customer Service" comments section.

The elements for each category have been carefully written to apply to all sales staff; therefore, a "not applicable" response, which would detrimentally affect the total score, will not be accepted. All parts of this form must be completed prior to your scheduled annual review conference.

Also, be prepared to discuss the following topics during your annual review conference:

- Your employee's overall performance as defined in your present position description, including tardiness, attendance and safety.
- Your employee's present position description and any changes necessary to update it. If your present position description needs updating, you will need to bring suggested revisions to your annual review conference.
- Your employee's demonstration of general adherence to OLC policies, procedures and practices.
- Your professional strengths and weaknesses.
- The training programs that your employee attended during the last year and how they impacted his/her work performance and prepared them for future career goals.
- The training programs that your employee would like to attend during the upcoming performance evaluation year, and why you and they feel the training would improve their performance.
- Your employee's satisfaction with their job and any obstacles that may hinder this satisfaction or may cause unsatisfactory performance.

Part I

Read each element carefully. Rate the employee you supervise on a scale of 0-10 based on the rating level descriptions on the cover sheet. Tally all of the scores, and enter the total in the "Total Score" section. In the comments section, explain the reasoning for the total score. Finally, determine the percentage for each category by dividing the total score by the total points possible. Continue this process for all seven categories. Make sure a score for each element within each category is assigned because any "Not Applicable" (N/A) response will be counted as a zero, which will detrimentally affect the overall score and percentage. If completing electronically, use the drop down boxes to enter the scores. The file will automatically calculate the scores and percentage for each category and the overall score. If completing this form on-line, it must be printed upon completion. There is no provision to save the form while in process of completing or upon completion.

1. QUALITY AND EFFICIENCY

Recognizes problems and recommends solutions	8
Resolves conflicts professionally	8
Applies knowledge and judgement required for successful performance of job responsibilities	7
Completes work in an accurate, neat, well-organized and thorough manner with minimal supervision	7
Completes assignments in a timely manner and meets established deadlines	9
Is able to prioritize and perform multiple tasks	9
Demonstrates knowledge of the software packages required to perform job duties and gaming systems	9
SCORE	57
PERCENTAGE	81 %

COMMENTS:

Giavonna is truly a breath of fresh air. She brings a fresh set of opinions and is eager to provide her viewpoints. Gia is bright, talented, and very intelligent. She has surpassed my initial expectations. Giavonna's analytical skills are very developed and readily apply her knowledge within the department. Gia isn't shy to provide her viewpoint. She's quick and fully understands that which is given to her. She completes her work in an accurate and neat manner. Gia does not shy away from the challenges of Online Products, but dives into working on the task. If she is unsure, she doesn't hesitate to ask questions. Another one of her strengths, is the ability to take risks. Because of her capacity understand and process information, Gia isn't afraid to grab the bull by the horns and run.

I enjoy watching her work and absorb information like a sponge; she is very professional and has shown the ability to work with the vendor and other staff members. They too have responded well toward her and feels comfortable contacting her for information.

2. TEAMWORK & COOPERATION CATEGORY

Actively participates to contribute to the group effort	8
Cooperates with supervisors and responds well to direction and advice	8
Contributes suggestions to enhance overall productivity	9
Accepts and applies performance feedback	9
SCORE	34
PERCENTAGE	85 %

COMMENTS:

Not only does Gia participate in Online discussions, she has also endeared her presence with the Instant Ticket staff. Ron, from time to time, has asked for her opinion regarding game colors and styles. She is very cooperative and responds very well to direction. When Gia presents an idea or suggestion, I appreciate her creativity and her uncanny sense of what the Office of Product Development is charged to do regarding games, promotions, etc.

4. CUSTOMER SERVICE CATEGORY

Responds to internal and external customers in a respectful, accurate and timely manner	8
Develops and sustains productive customer relationships	9
Demonstrates willingness and ability to resolve customer's questions and concerns	8

SCORE	25	
PERCENTAGE	83	%

COMMENTS:

Over the course of the six months, slowly, I've given Gia more room to show her ability to address Online issues. She communicates with the vendor as well as internal and external customers. She's began the necessary steps to develop relationships with our marketing staff and information technology staff. They are receptive and work well with Gia.

5. COMMUNICATION CATEGORY

Demonstrates the ability to listen	9
Communicates accurate, appropriate and clear information in written and oral form	8
Immediately asks for clarification when there is the possibility of confusion	9

SCORE	26	
PERCENTAGE	86	%

COMMENTS

Gia has excellent communication skills. She's articulate, and when listening to others, she processes and internalize their information very well. Gia is never above asking for clarification if necessary.

6. FLEXIBILITY CATEGORY

Evaluates each situation and responds appropriately to the problems and issues involved	8
Adapts to new ideas and changes in the work environment	9
Is dependable and reliable	9
Demonstrates initiative and appropriately assumes ownership of situations	8

SCORE	34
PERCENTAGE	85 %

COMMENTS

Upon her first month in the department, I began to see a very bright and talented worker who was beginning to feel more and more comfortable in the department. While her previous job was very different than the Online Product Manager's responsibility, after six months, an outsider would believe she's always been the manager. Gia is very dependable and reliable. When asked to do any assignment or task, she never hesitates, complains, or refuses. Gia is now acting more and more of a manager. She owns every work and situation that she's involved with.

Part II

ADHERENCE TO SAFETY PROCEDURES

Check the following statements on the right to determine the employee's awareness and adherence of the agency's safety procedures.

- Demonstrates awareness of the safety rules and regulations
- Follows safety procedures without being reminded

OVERALL RATINGS

1. Quality & Efficiency	EXCEEDS EXPECTATIONS
2. Teamwork & Cooperation	EXCEEDS EXPECTATIONS
3. Customer Service	EXCEEDS EXPECTATIONS
4. Communication	EXCEEDS EXPECTATIONS
5. Flexibility	EXCEEDS EXPECTATIONS

SCORE	RATING
91 - 100:	OUTSTANDING
81 - 90:	EXCEEDS EXPECTATIONS
71 - 80:	MEETS EXPECTATIONS
61 - 70:	NEEDS IMPROVEMENT
51 - 60:	UNSATISFACTORY

Average Score: 83

EXCEEDS EXPECTATIONS

If unsatisfactory, Rater must create and attach a recommended training itinerary to notify the Human Resources Department of the employee's training needs. The itinerary should include a list of all subjects in which training is needed, as well as the target dates of completion for each subject.

Part III

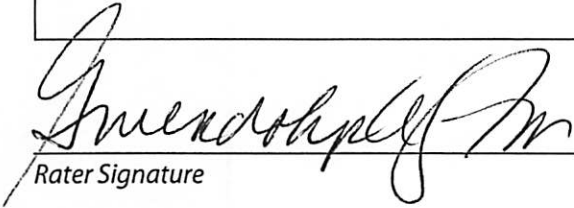
Sign and date this form above the appropriate line, and include additional comments if necessary.

COMMENTS

Giavonna is the right person for the Online Product Manager's job. She's bright, intelligent, articulate, eager, and dedicated. Above all, Gia has the character and integrity to be the Online Product Manager. I can't stress enough how Gia has given her all to become the product manager. She has fully immersed herself in every aspect of the Office of Product Development. And another positive, Gia has given the office a positive aura; it's been my pleasure working with Gia and given her the necessary tools and information to become a member of the department.

Giavonna will make phenomenal Online Product Manager; in fact, she will be successful at whatever she sets her sights on. It's in the best interest of the agency to offer the Program Administrator 3 position to Ms. Evans. With her talents, Gia is the future of the Ohio Lottery Commission and we cannot afford to lose such a tremendous and talented worker.

Please accept this as my unbiased endorsement for Ms. Giavonna Evans to become the Online Product Manager (PROGRAM ADMINISTRATOR 3).



Rater Signature



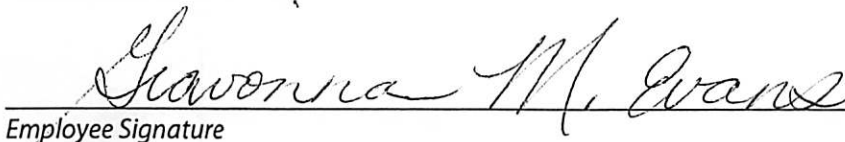
Date

Appointing Authority Signature

Date

COMMENTS

By signing, I agree that I have read the above comments. I have have not responded on an attached sheet of paper. My signature may not indicate agreement with the ratings. I understand that performance reviews may be appealed and that failure to sign this form waives my right to appeal.



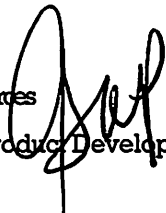
Employee Signature



Date



To: Dennis Berg, Executive Director
Elizabeth Popadiuk, Deputy Director of Human Resources
From: Gwendolyn A. Penn, Deputy Director of Product Development
Date: November 1, 2012
Re: Giavonna Evans



MEMORANDUM

As the Deputy Director of Product Development, I have had the pleasure of working with Giavonna Evans for the last six months. She has been a tremendous worker and an asset to our department. I would like to take this opportunity to recommend Giavonna for the position of Online Manager (PROGRAM ADMINISTRATOR 3).

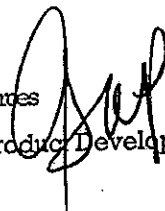
I feel confident that she will continue to succeed in her job duties. Giavonna is a dedicated worker and thus far her work has been exemplary. She has proven to be a take-charge person who is able to successfully develop plans and implement them.

Giavonna has done a great job assisting me in Online Products. She has exceeded expectations and continues to successfully demonstrate leadership ability; working with our online vendor and other departments within Lottery to create and promote quality products. She adjusts very well to a change of pace and of environment. Others that have worked with her have taken time to share their comments with me regarding her pleasant and encouraging attitude.

It is for these reasons that I offer high recommendations for Giavonna without reservation. Her drive and abilities will truly be an asset to this department. If you have any questions regarding this recommendation, please do not hesitate to contact me. Along with this recommendation is Ms. Evan's performance evaluation.



To: Dennis Berg, Executive Director
Elizabeth Popadiuk, Deputy Director of Human Resources
From: Gwendolyn A. Penn, Deputy Director of Product Development
Date: November 1, 2012
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Document ID: 07433164883

From: Penn, Gwen </o=ohio lottery
commission/ou=alpha/cn=recipients/cn=gpenn>
To: Berg, Dennis </o=ohio lottery
commission/ou=alpha/cn=recipients/cn=dberg>; Popadiuk,
Elizabeth </o=ohio lottery
commission/ou=alpha/cn=recipients/cn=ealex>
Cc:
Bcc:
Subject: Gia Evans
Date: Wed Nov 28 2012 23:48:03 EST
Attachments:

Good evening,

I'd like to schedule a meeting to discuss promoting Gia to the Online Manager's position. I recently sent my recommendation and evaluation to you both.

Gia has done and continues to do an exemplary job. She's very motivated and has the tenacity and aptitude to be an excellent Online Manager. She's truly part of the future of the lottery.

Liz, please let me know your availability and I'll follow-up with Traci regarding the Director's schedule.

Thank you both.

Gwen

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EXHIBIT 4

Document ID: 07433191902

From: Popadiuk, Elizabeth </o=ohio lottery
commission/ou=alpha/cn=recipients/cn=ealex>
To: Berg, Dennis </o=ohio lottery
commission/ou=alpha/cn=recipients/cn=dberg>
Cc:
Bcc:
Subject: RE: Gia Evans
Date: Thu Nov 29 2012 11:28:06 EST
Attachments:

Patty and I just met to discuss his issue. We have an outline and would like to officially notify Gwen (and then the group) in mid-December with a January transition. We would like to meet with you about a week before the meeting with Gwen to discuss and get your input.

Let me know your thoughts...

L

Liz Popadiuk
Director of Human Resources
The Ohio Lottery Commission

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-----Original Message-----

From: Penn, Gwen
Sent: Wednesday, November 28, 2012 11:48 PM
To: Berg, Dennis; Popadiuk, Elizabeth
Subject: Gia Evans

Good evening,

I'd like to schedule a meeting to discuss promoting Gia to the Online Manager's position. I recently sent my recommendation and evaluation to you both.

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Document ID: 07433191900

From: Berg, Dennis </o=ohio lottery
commission/ou=alpha/cn=recipients/cn=dberg>
To: Popadiuk, Elizabeth </o=ohio lottery
commission/ou=alpha/cn=recipients/cn=ealex>
Cc:
Bcc:
Subject: PDEV.
Date: Thu Nov 29 2012 12:05:14 EST
Attachments:

Ok,

Just arrange a meeting with you, I and Patty to discuss as needed.

Dennis

-----Original Message-----

From: Popadiuk, Elizabeth
Sent: Thursday, November 29, 2012 11:28 AM
To: Berg, Dennis
Subject: RE: Gia Evans

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Liz Popadiuk
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The Ohio Lottery Commission

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Print Form

BENCH DECISION AND AWARD
or NTA

ARBITRATOR: <i>Furman</i>	HEARING DATE: <i>3/24/14</i>
GRIEVANT: <i>Giavonna Evans</i>	GRIEVANCE #: <i>22-10-20131029-0004-01-04</i>
DEPARTMENT: <i>Ohio Lottery</i>	UNION: <i>OCSEA</i>
MANAGEMENT ADVOCATE: <i>Liz Popadiuk</i>	UNION ADVOCATE: <i>Michael Gee</i>

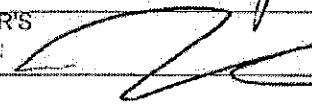
ISSUE

Was the grievant working out of class

20 DAY STAY -

AWARD

There are multiple instances of G's duties falling outside of her class specs but class do not. G is not resp for preparing & administering budget, she does maintain fiscal controls, & has no supervisory functions as it is a tech person operator. However G does have considerable use of action & judgment.

ISSUED AT: <i>Washington</i>	ARBITRATOR'S SIGNATURE: 
DATE: <i>3-24-14</i>	Grievant's Signature: _____
FOR DENIED WORKING SUSPENSIONS - Grievant's Choice Fine _____ OR Leave Reduction (pick one) Vacation _____ Personal _____ Comp Time _____	

in his position & spends 50% of his
work day doing duties such as - independent
research, direct contact w/ vendors,
attend[ing] mtg as repres of department,
attend[ing] mtg w/ other dept are he
peers but all higher level positions,
collaborate w/ Dep Dir work
in a position of trust & authority,
develop program plans.

The specific duties he does are:
- research & analyze programs
- proc, + policies
- co-develops prog proposal +
prog plans,
+ now tech advice to aid other
in decision making

GA
Grant

- co-ordinates spec prog + prog
- coord spec act functions
- research + report to mg + coord
- furnishes info & explain
prog to public
- writes reports papers + reports
- ~~states a test~~
- represents admin et