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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

DANIEL DEVINE,

Plaintiff,

Case No. 2015- 149016 -CK

v

Hon. JUDGE BOWMAN

BLOOMFIELD TOWNSHIP, a Michigan municipal corporation, and **LEO SAVOIE**, an individual,
Jointly and Severally,

Defendants.

SOMMERS SCHWARTZ, P.C.
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There is no other pending or resolved civil action arising out of the transaction or occurrence alleged in the complaint.

COMPLAINT AND DEMAND FOR TRIAL BY JURY

NOW COMES Plaintiff, DANIEL DEVINE (“DEVINE”), by and through his attorneys, SOMMERS SCHWARTZ, P.C. and for his Complaint against Defendants, BLOOMFIELD TOWNSHIP (“Township”) and LEO SAVOIE (“SAVOIE”), states as follows:

PARTIES

1. Plaintiff, DEVINE, is an individual residing in the Township of Bloomfield, Oakland County, Michigan.

2. Defendant, BLOOMFIELD TOWNSHIP, is a Michigan municipal corporation and conducts business in the Township of Bloomfield, Oakland County, Michigan.

3. Defendant, SAVOIE, is an individual who resides in the Township of Bloomfield, Oakland County, Michigan.

JURISDICTION AND VENUE

4. The amount in controversy is in excess of Twenty-Five Thousand (\$25,000.00) Dollars and is otherwise within the jurisdiction of this Court pursuant to MCL § 600.601 and MCL § 600.605.

5. Venue is proper in this judicial circuit pursuant to MCL § 600.1621.

GENERAL ALLEGATIONS

6. DEVINE is 54 years old, married and the father of four children.

7. A college and law school graduate, DEVINE became licensed to practice law in 1987.

8. In 1999, DEVINE was appointed by the BLOOMFIELD TOWNSHIP Board of Trustees to become its Treasurer.

9. As BLOOMFIELD TOWNSHIP Treasurer, DEVINE is responsible for overseeing money belonging to the township, collecting money owed to the Township and paying over and accounting for money pursuant to the Township Board orders. (MCL § 41.76)

10. DEVINE's responsibilities as BLOOMFIELD TOWNSHIP's Treasurer include the collection of real estate and personal property taxes, the investment of Township funds and

oversight of the administration of the Township's pension and certain other employee benefit plans. In addition, DEVINE is also involved in negotiating labor contracts with the Township's unionized employees. Further, he has historically been involved in the creation and implementation of the Township's annual budget. Finally, DEVINE has performed many other administrative duties including, but not limited to, serving on the Township's strategic planning committees.

11. In 2000, the BLOOMFIELD TOWNSHIP voters elected DEVINE to continue as Treasurer and subsequently, reelected him to that position three additional times.

12. On May 24, 2011, BLOOMFIELD TOWNSHIP entered into a written employment contract with DEVINE (the "Contract", a copy of which is in Defendants' possession) which provides in relevant part as follows:

- a. The Contract term runs from April 1, 2011 until March 31, 2017 (paragraph 12).
- b. The Contract incorporates the BLOOMFIELD TOWNSHIP Employee Handbook (paragraph 2, a copy of which is in Defendants' possession).
- c. DEVINE "shall serve in your [his] current position subject to the will of the electorate expressed by a majority of voters in regularly scheduled elections, or unless recalled pursuant to lawful procedure governed by prevailing law or until you leave the employment of the Township by resignation, retirement or death (paragraph 10).

13. DEVINE has performed his duties as BLOOMFIELD TOWNSHIP's Treasurer in an exemplary manner as demonstrated by the Township's consistently strong financial position and performance.

14. During DEVINE's tenure as Treasurer, BLOOMFIELD TOWNSHIP has been one of only a handful of municipalities in Michigan to earn and maintain a triple AAA bond rating despite the recent severe recession and declining tax revenues. The Township has consistently maintained a balanced budget while providing excellent services to its residents. Further, in 2005,

through DEVINE's involvement in collective bargaining agreement negotiations and an arbitration victory, the Township changed from a defined benefit pension plan to a defined contribution plan for its employees which resulted in it saving hundreds of millions of dollars in future years. Also, through DEVINE's involvement in collective bargaining agreement negotiations, the Township revised its health care programs for both current and former employees which saved it millions of dollars and will continue to do so in future years.

15. During DEVINE's tenure as Treasurer, he achieved accreditation as a Certified Public Finance Administrator, Michigan Certified Professional Treasurer and a Certified Public Funds Investment Manager. These certifications are only awarded to those select few finance professionals who based upon their experience and advanced education regarding prudent investment strategies and effective budgeting of tax dollars earn these accreditations.

16. BLOOMFIELD TOWNSHIP is a community in the northern half of Oakland County, which is 95 percent residential. It is 26 square miles in size and has a population of approximately 41,000 (as of the 2010 census).

17. SAVOIE was elected to the BLOOMFIELD TOWNSHIP Board of Trustees in 2004.

18. In 2011, David Payne, the Township's then current Supervisor, announced his retirement with 15 months of his term of office remaining.

19. The Supervisor is the Township's chief assessor and is the keeper of the Township's books, assessment rolls and other papers. (MCL § 41.61 & MCL § 41.62) In addition, the Supervisor's duties include moderating Board meetings. (MCL § 41.72a)

20. In 2011 DEVINE and SAVOIE both sought the Board's appointment to become the Township's next Supervisor. On July 25, 2011, the Board selected SAVOIE to succeed Payne as Supervisor.

21. As BLOOMFIELD TOWNSHIP's Supervisor, SAVOIE has engaged in an ongoing campaign to retaliate against DEVINE for having reported violations of law or regulations by Defendants to public bodies.

22. In recent months, SAVOIE has intensively solicited and conspired with other members of BLOOMFIELD TOWNSHIP's Board of Trustees and BLOOMFIELD TOWNSHIP department heads, managers and other employees to aid and support him in pursuing retaliatory actions intended to destroy DEVINE's reputation and ability to effectively function as the Treasurer and ultimately, to oust him from the Treasurer position.

23. Defendants engaged in a series of aggressive, provocative and retaliatory actions against DEVINE which include, but are not limited to, the following:

- a. On April 13, 2015 at a BLOOMFIELD TOWNSHIP Board of Trustees meeting, SAVOIE proposed that the Treasurer position be reduced from a full-time job to part-time job. SAVOIE claimed that a full-time Treasurer is unnecessary and making the position part-time would save taxpayers \$125,000/year in salary and benefits. SAVOIE made this proposal without any prior independent review or analysis of the Treasurer position or any of the other executive positions within BLOOMFIELD TOWNSHIP government (i.e. Supervisor, Clerk etc.). Further, SAVOIE viciously attacked DEVINE by falsely accusing DEVINE of "carelessly" performing his job duties and failing to "perform a full range of administrative duties".
- b. On April 29, 2015 SAVOIE barged into DEVINE's private office and closed the door behind him. Angry and emotionally upset, SAVOIE proceeded to berate, harangue and lambast DEVINE for having filed a campaign finance complaint with the Michigan Secretary of State in August 2014 relating to SAVOIE's campaign finance committee having illegally accepted a corporate contribution from one of BLOOMFIELD TOWNSHIP's highest paid service vendors. Loud, red-faced, and visibly shaking, SAVOIE complained about DEVINE having filed the complaint. Concerned that SAVOIE was about to physically assault him, DEVINE stepped away from SAVOIE so as to have a conference table between them.

c. On July 13, 2015 BLOOMFIELD TOWNSHIP Board of Trustees passed a “Resolution of Censure of Dan Devine, Township Treasurer” (“Censure Resolution”) for the purpose of triggering the statutory processes (MCL § 168.369) permitting the Governor to remove DEVINE as Treasurer (a copy of the Censure Resolution is in Defendants’ possession). Claiming a “series of irregularities attributable to the Township Treasurer” and conduct by DEVINE that “brought both ridicule and embarrassment” to BLOOMFIELD TOWNSHIP, BLOOMFIELD TOWNSHIP censured DEVINE for “official misconduct” based on the following:

- 1) “Falsely stating that the Township Supervisor had approved a \$30,000.00 bonus for a retired employee;
- 2) Baseless allegations that the Supervisor had kidnapped his daughter;
- 3) Baseless allegations to the Secretary of State that the Supervisor had violated campaign finance laws and had accepted a bribe from a long-time vendor;
- 4) Questionable investment decisions relating to the fees payable to Schwartz and Company;
- 5) Conduct causing department heads and employees to feel uneasy and threatened in a potentially unsafe work environment as a result of the Treasurer’s conduct.”

24. The Michigan Whistleblowers’ Protection Act (“WPA”), MCL § 15.362, provides as follows:

An employer shall not discharge, threaten, or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment **because the employee, or a person acting on behalf of the employee, reports or is about to report, verbally or in writing, a violation or a suspected violation of a law** or regulation or rule promulgated pursuant to law of this state, a political subdivision of this state, or the United States **to a public body** . . .

(Emphasis added).

25. At all material times, DEVINE was an employee within the meaning of the WPA, MCL § 15.361.

26. At all material times, BLOOMFIELD TOWNSHIP was DEVINE’s employer within the meaning of the WPA, MCL § 15.361.

27. At all material times, SAVOIE was employed as the Township's Supervisor and acted as an agent of BLOOMFIELD TOWNSHIP within the meaning of WPA, MCL§ 15.361.

28. DEVINE engaged in protected activity under the WPA by reporting violations and/or suspected violations of law by Defendants to public authorities and as a result, Defendants retaliated against him by way of the Censure Resolution and other actions intended to destroy DEVINE's reputation and ability to effectively perform his duties as Treasurer and ultimately, to oust him from his employment as the Treasurer.

29. The Censure Resolution contains numerous false and groundless allegations against DEVINE and on its face, is evidence of Defendants' retaliatory conduct toward DEVINE in violation of the WPA.

30. DEVINE denies stating that the Township Supervisor had approved a \$30,000.00 bonus for a retired employee. In the fall of 2013, SAVOIE entered into an arrangement to continue paying the Township's retiring Finance Director for 6 months after his retirement date. The stated purpose of continuing this retired employee on the payroll was to complete specific special projects and assist with the transition of the new Finance Director. One of the specific projects assigned to the retired Finance Director, was to complete an updated employee handbook, which as of the current date has never been completed. Nevertheless, SAVOIE approved payments to the former employee in the amount of \$31,747.50. Trustee Buckley (not DEVINE) raised questions about the payments to the retired employee at the April 13, 2015 Board meeting.

31. On May 1, 2015 DEVINE went to the BLOOMFIELD TOWNSHIP police and reported that his 24 year old daughter was missing and may have been kidnapped in violation of Michigan law (MCL § 750.349). DEVINE's daughter had gone missing and was not responding to telephone calls or text messages. The daughter's employer informed DEVINE that she had not

shown up for work that day (which was uncharacteristic of her) and the employer urged DEVINE to go to the police. After making numerous efforts to locate her (i.e. contacting local hospitals), DEVINE communicated his concerns to the BLOOMFIELD TOWNSHIP police. DEVINE informed the police that SAVOIE is trying to “run” DEVINE out, recently coming into his office and acting like he (SAVOIE) was “losing it” toward DEVINE and causing DEVINE to fear for his and his family’s safety. Later that day, the daughter was found safe and unharmed. On or before May 6, 2015 the BLOOMFIELD TOWNSHIP police informed SAVOIE of DEVINE’s kidnapping report.

32. On August 15, 2014 DEVINE filed a complaint with the Michigan Department of State in which he alleged that SAVOIE’s campaign finance committee known as “Retain Leo Savoie Bloomfield Township Supervisor”, accepted a \$2,500.00 contribution from a company, Hubbell, Roth & Clark, Inc. (“HR&C”). Corporate campaign contributions to campaign finance committees are illegal under Michigan law (MCL § 169.254, MCL § 169.204 & MCL § 169.271). DEVINE asserted that the contribution was made shortly before the Board of Trustees took up consideration of a 1.2 million dollar sewer extension project known as “Upper Long Lake Estates Long Pointe Drive Sanitary Sewer Extension”. HR&C was to act as consulting engineer for this sewer extension project, overseeing the work on behalf of the Township and being paid fees for services rendered by the Township. Further, DEVINE asserted both to the Michigan Department of State and the BLOOMFIELD TOWNSHIP Board of Trustees, that the funding for this sewer extension project violated BLOOMFIELD TOWNSHIP ordinances (Sec. 38.256). SAVOIE was the primary and most vigorous advocate in favor of this sewer extension project and was the swing vote in its eventual approval. The Township Board approved the sewer extension project on June 23, 2014 and rejected DEVINE’s attempt to seek a motion to reconsider its approval of the project

on July 14, 2014. The Michigan Department of State investigated DEVINE's complaint for approximately 10 months prior to issuing a decision on May 6, 2015. In its 4 page opinion (a copy of which is in Defendants' possession), the Michigan Department of State found that SAVOIE had not violated the campaign finance statutes by receiving the \$2,500 payment from HR&C, but made no finding as to DEVINE's bribery allegation.

33. Since 2006, Gregory J. Schwartz & Company ("Schwartz") has provided BLOOMFIELD TOWNSHIP with investment advisory services in connection with its employee pension fund and other employee benefit plans pursuant to a written contract approved by the Board of Trustees (a copy of this "2006 Contract" is in Defendants' possession). In November 2013, BLOOMFIELD TOWNSHIP issued \$80,300,000 in bonds to fully fund its closed Defined Benefits pension plan. Schwartz was directed by BLOOMFIELD TOWNSHIP to invest the bond proceeds on behalf of the pension fund and pursuant to the 2006 Contract, Schwartz was paid \$491,153.00 ("concession fees") by the mutual fund managers in connection with the Township's investments. DEVINE worked closely with Schwartz relative to the investments and ongoing oversight of the funds. The Township Board of Trustees ultimately approved all of Schwartz' investment recommendations. In December 2013, SAVOIE raised questions as to whether Schwartz was overcompensated for its services and on behalf of BLOOMFIELD TOWNSHIP, and without DEVINE's knowledge and the Board's approval, he retained the Miller Canfield Law Firm and Shepherd Kaplan (the "investigators") to investigate the matter. On July 14, 2014, the investigators issued a report (a copy of which is in Defendants' possession) finding that Schwartz' fees were "reasonable", not "excessive" and "consistent with the amount that would have been paid to any broker for the placement of these same mutual funds." BLOOMFIELD TOWNSHIP paid the investigators \$17,574.75 for their report.

34. After SAVOIE's unsuccessful effort to make DEVINE's Treasurer job a part-time position, he retained (without any prior approval or even consultation with the entire Board of Trustees), Dr. Lewis G. Bender for the purpose of analyzing the Township's organization. At a mid-June 2015 meeting, Bender orally summarized his preliminary findings stating that all the department heads (who report directly to SAVOIE) distrusted and disliked working with DEVINE. At that meeting, SAVOIE appeared to be enraged with DEVINE stating that he (DEVINE) would never be on the "team" and complaining about DEVINE for having filed the campaign finance complaint against him with Michigan Department of State. As of August 2015, BLOOMFIELD TOWNSHIP paid Bender at least \$8,000.00 and to date, Bender has not produced a written report of his findings.

35. As a direct result of DEVINE engaging in the protected activity as described above, Defendants intentionally discriminated and retaliated against DEVINE and otherwise violated his rights under the WPA in ways which include, but are not limited to, destroying DEVINE's reputation and ability to effectively function as the Treasurer, approving the Censure Resolution and falsely claiming "official misconduct" so as to oust him from his employment as the Treasurer.

36. As a direct and proximate result of Defendants' unlawful actions, DEVINE sustained damages including, but not limited to, loss of career opportunities, mental and emotional distress and loss of reputation and esteem in the community.

WHEREFORE Plaintiff requests that this Court enter a Judgment in his favor. Plaintiff requests that this Court enjoin Defendants from further retaliatory actions against him. In addition, Plaintiff requests a money judgment in his favor for damages for loss of career opportunities, diminishment of business and personal reputation, emotional and mental distress, and attorney fees and costs.

DEMAND FOR TRIAL BY JURY IS HEREBY MADE

/s/ Daniel D. Swanson
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Dated: September 9, 2015

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DEMAND FOR TRIAL BY JURY

NOW COMES Plaintiff, DAN DEVINE, by and through his attorneys, SOMMERS SCHWARTZ, P.C., and hereby demands a trial by jury relative to the above matter.

/s/ Daniel D. Swanson
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Dated: September 9, 2015