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M. G. Gunn  
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May 12, 2016

Idaho State Treasurer's Office  
Attn: Clerk and/or Secretary  
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Boise, Idaho 83720

Secretary of State Lawrence Denney  
700 W. Jefferson St., Suite 205  
Boise, Idaho 83720

Filed May 12, 2016  
**LAWRENCE DENNEY**  
Secretary of State  
  
Lisa Mason  
BY

**NOTICE OF TORT CLAIM**

In accordance with the provisions of Idaho Code §§ 6-901 *et. seq.*, notice is hereby given of the tort claims of Deputy Treasurer Christopher Priest against the Idaho State Treasurer's Office ("STO"), an executive department of the State of Idaho as enumerated in Idaho Code § 67-801.

Mr. Priest began employment with the STO's Investment Division in February 2006. Mr. Priest's employment was terminated on November 20, 2015. Mr. Priest's current address and address for the prior six months is 1579 East Ionia Street, Meridian, Idaho 83642.

Mr. Priest's termination violated the Idaho Protection of Public Employees Act ("IPPEA"), Idaho Code § 6-2101 *et. seq.* Specifically, Mr. Priest was terminated in direct retaliation for communicating in good faith the existence of extensive waste of public funds/manpower and illegality in the STO.

Mr. Priest's claims include retaliatory termination in violation of the IPPEA, his attorney's fees and costs in pursuing this action, and any other legal claims which might be subsequently discovered. Mr. Priest's damages are ongoing as he has not secured full-time employment, but do not total less than \$207,460.00.

**A. Waste of Public Funds and Manpower in the STO**

**1. Tax Anticipation Notes**

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Each year since 1982, the State of Idaho has issued Tax Anticipation Notes (“TAN”), which are one year, interest-bearing debt obligations used to finance current operations in anticipation of future tax receipts. Like a bond offer, issuance of the TANs may require several services, such as bond counsel, financial advising, underwriting, and a paying agent. The STO customarily utilized the same providers for these services, selected personally by Treasurer Ron Crane.

As far back as 2005, the TAN investment proceeds were invested by Idaho Trust Bank, not the STO Investment Division, at an annual fee of approximately \$75,000.00. Idaho Trust Bank’s investment of the TAN proceeds required minimal transactions and accounting. The Investment Division, including Mr. Priest, as an intellectual exercise tracked how it would invest the TAN proceeds “in-house” and found that it could equal or better Idaho Trust Bank’s yield on TAN proceeds investment. Use of the Investment Division and its salaried employees to invest TAN proceeds would save the STO the cost of hiring Idaho Trust Bank to do the same. The Investment Division, including Mr. Priest, informed Laura Steffler, Treasurer Crane’s Chief of Staff, of the unnecessary cost incurred by hiring Idaho Trust Bank to invest TAN proceeds. Ms. Steffler informed the Investment Division that, per Treasurer Crane, the hiring of Idaho Trust Bank to invest TAN proceeds was not open to discussion. The Investment Division is aware that several investors and highly-ranked executives at Idaho Trust Bank are personal friends and campaign donors of Treasurer Crane.

In the spring of 2014 the Investment Division, including Mr. Priest, unanimously recommended to Treasurer Crane to invite competitive bidding for TAN servicing providers. This was not the first time the Investment Division had made such a recommendation to Treasurer Crane. The Investment Division had studied the issue and concluded that significant cost savings could be realized by the STO by seeking competitive bidding from numerous providers for TAN servicing. Treasurer Crane personally approved Requests for Information seeking competitive bids for all aspects of TAN servicing. Treasurer Crane, however, precluded the Investment Division from sending RFIs until after his re-election campaign in the fall of 2014. Treasurer Crane informed the Investment Division that he was counting on TAN service providers to support his campaign, and he could not risk offending them prior to his campaign.

After Treasurer Crane’s re-election, the Investment Division sent RFIs for the TAN services. Treasurer Crane, however, precluded the Investment Division from publishing a Request for Information regarding the TAN financial advising service. Treasurer Crane informed the Investment Division he could not offend Cheryl Cook, the financial advisor he had hired with regards to prior TAN issuances. Treasurer Crane informed the Investment Division that Ms. Cook’s political support was essential.

The Investment Division, including Mr. Priest, analyzed the numerous responses from bond underwriters to the Request for Information. The responses contained bids setting forth drastically divergent structure and fee proposals from various competitive bidders. Treasurer Crane awarded the TAN underwriting contract to the same underwriter the STO had utilized for years, despite the existence of numerous, more cost-effective bids. The Investment Division, including Mr. Priest, objected to the waste represented by this selection, which was estimated to be hundreds of thousands of dollars for this single, annual transaction. Treasurer Crane declined to reconsider his award of the TAN underwriting bid.

Treasurer Crane subsequently ordered the Investment Division to permanently abandon its oft-delayed Request for Information regarding the TAN financial advisor service. Treasurer Crane awarded the TAN financial advising contract to Ms. Cook, the same financial advisor the STO utilized for years, with no bidding process. The Investment Division learned that Ms. Cook had informed Treasurer Crane that she would not support him if STO opened the TAN financial advising service to competitive bidding. The Investment Division, including Mr. Priest, objected to the waste represented by this selection, which was estimated to be hundreds of thousands of dollars.

Furthermore, the Investment Division learned that Ms. Cook was not registered with the Municipal Securities Rulemaking Board. The Investment Division, including Mr. Priest, informed Treasurer Crane of Ms. Cook's lack of MSRB registration, and Treasurer Crane informed the Investment Division that he had asked Ms. Cook and she informed him that MSRB was not required to TAN financial advising services. Shortly thereafter, Ms. Cook registered with the MSRB.

## 2. Mike Tracy

The STO serves as the administrator Unclaimed Property ("UCP"), which safeguards unclaimed assets and property in Idaho. The Investment Division, including Mr. Priest, in the process of an internal audit learned that UCP paid Mike Tracy approximately \$2,000.00 per month for public relations services, in addition to another \$2,000.00 per month paid to Mike Tracy by the STO for other services. The Investment Division inquired of UCP regarding the services provided by Mr. Tracy. UCP informed the Investment Division that they had given up asking Mr. Tracy for PR help or press releases, because when UCP had done so, Mr. Tracy had provided outdated and irrelevant form press releases. Mr. Tracy also wrote press releases for the rest of the STO, including the Investment Division. The Investment Division, including Mr. Priest, was forced to re-write Mr. Tracy's press releases from whole cloth nearly without fail.

The Investment Division proposed opening up for competitive bidding UCP public relations services to Treasurer Crane. Treasurer Crane refused to do so, at a cost of thousands of

dollars to the taxpayers. UCP continued to pay Mr. Tracy for public relations services, and wrote its own press releases.

### 3. Smart Women, Smart Money & Leann Sullivan

Smart Women, Smart Money is a non-profit, 501(c)(3) organization that hosts an annual conference dedicated to women's financial literacy and acumen. Treasurer Crane was the original organizer of the conferences. During audit of fiscal years 2008-10, the audit concluded that it was inappropriate for any STO resources, funds, or employee time to be spent on Smart Women, Smart Money.

In the last few years and subsequent to the audit findings, the STO has been permitted to make annual donations not to exceed \$10,000.00. Over the last few years the entirety of the STO's \$10,000.00 annual donation has been made to the Smart Women, Smart Money conference.

LeAnn Sullivan is employed by the STO as executive assistant to Treasurer Crane. Ms. Sullivan is also the director and registered agent for Smart Women, Smart Money. Subsequent to the audit findings, during working hours at the STO Ms. Sullivan works exclusively on matters regarding Smart Women, Smart Money and, with Treasurer Crane's blessing, pressures STO employees to perform work, during working hours, regarding Smart Women, Smart Money. Ms. Sullivan performs no function in the STO aside from her work regarding Smart Women, Smart Money. Despite being employed as Treasurer Crane's executive assistant, Ms. Sullivan rarely, if ever, possesses any knowledge of Treasurer Crane's schedule, commitments, or whereabouts.

The Investment Division, including Mr. Priest, informed Treasurer Crane of the waste represented by the Ms. Sullivan's diversion of STO payroll and employee resources to Smart Women, Smart Money, but Treasurer Crane informed the Investment Division that there were no issues with regards to Smart Women, Smart Money or Ms. Sullivan.

### 4. QED Accounting System

In 2006 Mr. Priest traveled to the headquarters of QED, the software company providing the accounting software utilized by the STO, for training. As part of his training, Mr. Priest and QED employees attempted to duplicate various historical Local Government Investment Portfolio ("LGIP") securities transactions. In doing so, Mr. Priest and the QED employees found substantial manipulations of the amortization and accretion of LGIP securities. The QED employees indicated that the transactions were anomalous.

Upon returning, Mr. Priest inquired and learned that the STO had been utilizing a single broker for many years to purchase LGIP securities, and the brokerage premiums were so

substantial that manual override of the automatic amortizations was required. Mr. Priest informed Ms. Steffler of the wastefulness of such exorbitant premiums, and Ms. Steffler dismissed the concerns as a QED software issue and informed Mr. Priest that Treasurer Crane would not examine the matter further.

#### 5. Movement of Distressed Assets for Credit Rating Purposes

In 2008 and 2009 the STO moved and reallocated distressed LGIP and Diversified Bond Fund ("DBF") assets to IDLE portfolios for the purposes of manipulating LGIP and DBF credit ratings from Standard & Poor's. John McCune, C. F. A., the manager of the DBF portfolio advised against the movement and reallocation of distressed assets for credit rating purposes. Mr. McCune advised that such movement was violative of Generally Accepted Accounting Principles and potentially unethical or even illegal.

The Investment Division, including Mr. Priest, advised the STO of their concerns regarding the potential waste that could be caused by movement and reallocation of distressed assets for credit rating purposes. The Investment Division stated its position that Treasurer Crane should first obtain an opinion from the Attorney General's office. Treasurer Crane refused to do so.

Distressed assets with potential unrealized losses approaching \$40 million were moved and reallocated. IDLE investors realized losses and were powerless in regards thereto because Idaho law requires IDLE participants to invest through the STO. Had the distressed assets remained in the LGIP and DBF pools and realized losses, however, a resultant credit ratings downgrade would have likely caused a run on the LGIP and DBF pools.

#### 6. Securities Lending Mediation

In early 2012, Treasurer Crane, Ms. Steffler, and two members of the STO Investment Division, accompanied by two deputy attorney generals, traveled to Oakland to mediate with Victory Capital, a securities lending agent and subsidiary of Key Bank. Victory Capital had purchased securities for the STO that failed to comply with a securities lending agreement between the STO and Victory Capital. Julie Weaver, a deputy attorney general, strongly advised the STO to hire outside counsel experienced in complex securities matters to attend the mediation. Treasurer Crane refused to hire outside securities counsel to attend the mediation.

Unbeknownst to the STO Investment Division representatives and the deputy attorney general, Treasurer Crane agreed privately with Bill Allen, investment manager of Victory Capital, to resolve the matter. The deal struck by Treasurer Crane and Mr. Allen was highly favorable to Victory Capital. The Investment Division, including Mr. Priest, raised its concern that the deal with Victory Capital would waste taxpayer funds. Treasurer Crane admitted to Mr.

Priest that a securities lawyer should have been retained for the mediation. Ms. Steffler admitted to Mr. Priest, and Treasurer Crane later confirmed, that they hoped the deputy attorney general lacking experience in securities matters would “rubber stamp” the deal without knowing better.

Subsequently, in 2015, Mr. Priest asked Treasurer Crane for permission to hire outside counsel to review the STO’s past securities lending holdings, particularly the distressed assets, as the STO’s ownership of such assets might entitle it to compensation based on settlement agreements with ratings agencies. The outside counsel reviewed the STO’s past securities lending holdings and informed Mr. Priest that the STO was eligible for compensation. The STO, however, could not file for compensation directly as the securities lending holdings had been actually held by Victory Capital. Mr. Priest desired to pursue a claim against Victory Capital to recover compensation for lost taxpayer value, but the settlement agreement Treasurer Crane agreed with Bill Allen, without the benefit of knowledgeable outside securities counsel, precluded the STO from pursuing any claims, and thereby recovering value for taxpayers, against Victory Capital.

#### 7. Eide Bailey Audit

In 2014 Eide Bailey conducted an external audit of the STO’s investment portfolios. Upon completion, Treasurer Crane was required to sign the audit in order to complete it and make the audit a public document. Treasurer Crane refused to meet with the accounting team conducting the audit in order to finalize and sign the audit. Mr. Priest inquired of Treasurer Crane why the audit was not being completed. Treasurer Crane informed Mr. Priest that he did not want the information contained in the audit to be made public until after the forthcoming election.

#### 8. Department of Financial Management

In August 2015 the Division of Financial Management (“DFM”) investigated the legality of the STO investing the funds belonging to certain State agencies. Specifically, the DFM alerted the Endowment Fund Investment Board (“EFIB”) that the STO was precluded by law from investing on its behalf. The STO was in possession and investing funds belonging to the EFIB.

Mr. Priest discussed the issue with Ms. Steffler and recommended divesting the STO of EFIB funds. Ms. Steffler, however, disregarded Idaho code and instructed Mr. Priest to do the same. Ms. Steffler edited accounting records to reflect that EFIB funds invested by the received no interest. Ms. Steffler also informed Mr. Priest that it would make no sense to alter practices because Treasurer Crane would appear before the Idaho legislature if necessary to seek amendment of the relevant Idaho code provisions to permit the STO’s investment of the EFIB funds in question.

9. Fiscal Year 2016 Legislative Services Audit

During a fiscal year 2016 audit conducted by the Legislative Services Office (“LSO”), several members of the STO Investment Division, including Mr. Priest, answered questions truthfully and honestly regarding issues in the STO. As a result of these responses, the LSO auditors asked Treasurer Crane and Ms. Steffler specific, pointed questions regarding some of the issues discussed herein.

Subsequently, Ms. Steffler confronted the STO Investment Division, including Mr. Priest, and explicitly and scathingly admonished them for responding honestly and forthrightly to the LSO auditors. Ms. Steffler indicated that above all else, the Investment Division was required to support and protect Treasurer Crane and make him look as good as possible.

10. TAN Trip Expenses

On numerous occasions members of the Investment Division, including Mr. Priest, would accompany Treasurer Crane on trips related to TAN issuances. Treasurer Crane and the Investment Division would often be treated to meals by private companies. The private companies set strict limits on the amounts that could be spent on meals.

Over the objections of the Investment Division, including Mr. Priest, Treasurer Crane would routinely exceed the allowable amount, and the STO would be billed for the difference. Treasurer Crane would either use taxpayer funds to pay the excess, or he would beseech the private companies to characterize the excess as a campaign donation.

**B. Mr. Priest’s Termination**

In early November 2015 another member of the STO Investment Division, who served as the secretary for the independent Investment Advisory Board (“IAB”), took issue with the manner in which Treasurer Crane was requiring him to edit the IAB meeting minutes in order to more favorably portray Treasurer Crane. The rest of the Investment Division supported their colleague.

Treasurer Crane and Ms. Steffler informed the members of the Investment Division, including Mr. Priest, that they had been subordinate in numerous instances, citing, *inter alia*, the TAN Requests for Information, securities lending mediation and settlement, reallocation of distressed assets, Smart Women Smart Money, the Eide Bailey audit, and the LSO FY 2016 audit. Ms. Steffler informed the Investment Division, including Mr. Priest, that their job was to support Treasurer Crane unequivocally, without question, in every instance, regardless of what was asked of them. The Investment Division requested a group meeting with Treasurer Crane and Ms. Steffler, which was denied.

On Thursday, November 5, 2015 MS. Steffler informed each member of the Investment Division, including Mr. Priest, that they had until the close of business on Friday, November 6, 2015 to meet individually with herself and Treasurer Crane and convince them why their employment should not be terminated and reaffirm their loyalty to Treasurer Crane. A true and correct copy of the correspondence received by each member of the Investment Division from Ms. Steffler is attached hereto as Exhibit A.

Mr. Priest declined to meet with Ms. Steffler and Treasurer Crane. Mr. Priest was placed on administrative leave effective Friday, November 6, 2015. Mr. Priest's employment was terminated on Friday, November 20, 2015.

### **C. Tort Claims**

The termination of Mr. Priest's employment violates the IPPEA, I. C. § 6-2101 *et. seq.* The IPPEA is designed "to protect the integrity of government by providing a legal cause of action for public employees who experience adverse action from their employer as a result of reporting waste and violations of a law, rule or regulation." I.C. § 6-2101. *See also Mallonee v. State*, 139 Idaho 615, 619, 84 P.3d 551, 555 (2004).

The IPPEA explicitly protects public employees from adverse employment action in certain instances:

(1) (a) An employer may not take adverse action against an employee because the employee, or a person authorized to act on behalf of the employee, communicates in good faith the existence of any waste of public funds, property or manpower, or a violation or suspected violation of a law, rule or regulation adopted under the law of this state, a political subdivision of this state or the United States. Such communication shall be made at a time and in a manner which gives the employer reasonable opportunity to correct the waste or violation.

(b) For purposes of subsection (1)(a) of this section, an employee communicates in good faith if there is a reasonable basis in fact for the communication. Good faith is lacking where the employee knew or reasonably ought to have known that the report is malicious, false or frivolous.

(2) An employer may not take adverse action against an employee because an employee participates or gives information in an investigation, hearing, court proceeding, legislative or other inquiry, or other form of administrative review.

(3) An employer may not take adverse action against an employee because the employee has objected to or refused to carry out a directive that the employee reasonably believes



violates a law or a rule or regulation adopted under the authority of the laws of this state, political subdivision of this state or the United States.

(4) An employer may not implement rules or policies that unreasonably restrict an employee's ability to document the existence of any waste of public funds, property or manpower, or a violation, or suspected violation of any laws, rules or regulations.

I. C. § 6-2104.

“To present a prima facie case for retaliatory discharge under the Whistleblower Act, the plaintiff must show: ‘(1) he was an ‘employee’ who engaged or intended to engage in protected activity; (2) his ‘employer’ took adverse action against him; and (3) the existence of a causal connection between the protected activity and the employer’s adverse action.’” *Black v. Idaho State Police*, 155 Idaho 570, 573, 314 P.3d 625, 628 (2013) (quoting *Van v. Portneuf Med. Ctr.*, 147 Idaho 552, 558, 212 P.3d 982, 988). An “adverse action” means to “discharge, threaten or otherwise discriminate against an employee in any manner that affects the employee’s employment, including compensation, terms, conditions, location, rights, immunities, promotions or privileges.” § 6-2103(1).

Mr. Priest, an STO employee, repeatedly and in good faith engaged in protected activity by communicating the constant waste of taxpayer funds and resources by the STO and Treasurer Crane, including, but not limited to, the following instances:

- (1) Hiring of outside providers for TAN services through closed, non-competitive bidding;
- (2) Hiring of Mike Tracy to provide PR services for the STO;
- (3) Diversion of STO resources to Smart Women, Smart Money;
- (4) Use of a single broker to purchase LGIP securities at exorbitant premiums;
- (5) Movement and reallocation of distressed assets from LGIP and DBF funds for credit ratings purposes, causing losses to IDLE;
- (6) Agreeing unfavorable settlement with Victory Capital that precluded recovery of compensation for past distressed assets and intentional use of inexperienced deputy attorney general to “rubber stamp” wasteful and unfavorable settlement;
- (7) Delaying disclosure of Eide Bailey audit solely for campaign purposes;
- (8) Illegal investment of certain EFIB funds;

(9) Giving honest and forthright answers during the LSO FY 2016 audit;

(10) TAN trip expenses;

Mr. Priest conveyed each of these instances of waste or illegality to Treasurer Crane and Ms. Steffler in good faith. Mr. Priest desired nothing more than for the STO to optimize its efficiency and cease its wasteful conduct for the benefit of the State of Idaho and its taxpayers. The STO possessed more than ample opportunity to remedy the waste and illegality brought to its attention by Mr. Priest. Yet Mr. Priest was stymied at every turn and ultimately terminated solely and directly because he engaged in activity protected by the IPPEA. Accordingly, the termination of Mr. Priest's employment violated the IPPEA.

Please do not hesitate to contact me if you have any questions or concerns, and I look forward to discussing this matter further.

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'M. Gunn', with a horizontal line extending to the right.

Matthew G. Gunn