IN THE IOWA DISTRICT COURT FOR POLK COUNTY

LARRY DAWSON, Plaintiff, v. MULTI-STATE LOTTERY ASSOCIATION and IOWA LOTTERY AUTHORITY, Defendants.	))))))))))	Case No. LACL134527 IOWA LOTTERY AUTHORITY'S BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

Defendant Iowa Lottery Authority ("Lottery") submits the following brief in support of its motion for summary judgment under Iowa R. Civ. P. 1.981.

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I. INTRODUCTION

Eddie Tipton did it.

That doesn't mean Larry Dawson gets more money.

Dawson bought a ticket in the Hot Lotto game in May 2011 and won $9.09 million, the annuity-value jackpot amount designated by Defendant Multi-State Lottery Association (MUSL), in the drawing on May 7. He claimed his prize by submitting a claim form and other associated paperwork to the Iowa Lottery on May 9, and the Lottery wired Dawson's winnings to his bank account two weeks later.

That's it. Those are the extent of Dawson's interactions with the Lottery before this lawsuit. But now, years later, he says the millions of dollars he received weren't enough.

His millions are insufficient, Dawson says, because Tipton, a former employee of MUSL, committed crimes by inserting extraneous software code into MUSL's computerized random number generators (RNGs). When activated, the software code enabled Tipton to "pre-run" an

upcoming lottery drawing on his computer ahead of time, record the results, and buy tickets with those numbers in hopes of winning the jackpot—even though any purchase Tipton made was illegal. *See* Iowa Code § 99G.31(2)(*h*) ("No ticket or share . . . shall be purchased by and no prize shall be paid to any officer, employee, agent, or subcontractor of any [lottery] vendor . . . ."); *State v. Tipton*, 897 N.W.2d 653, 663 (Iowa 2017) ("Tipton was ineligible to play the lottery.").

One such drawing, during which the code was active, occurred on December 29, 2010, and resulted in one ticket matching all six numbers—although it was never actually paid. The existence of a ticket matching all six numbers caused the jackpot amount to reset, as most lottery games do when a jackpot is hit. It then grew for three dozen more drawings until Dawson's win several months later.[1]

Dawson's theory, premised exclusively on a hypertechnical reading of definitions set forth in administrative rules, is that Tipton's criminal acts retroactively invalidate the drawing on December 29, 2010, meaning the money in the jackpot pool at that time should have rolled over to the next drawing and continued to roll *three dozen more times*, until Dawson's own win several months later. His theory is wrong, however, because the Iowa Code expressly says otherwise.

"An effort to unlawfully obtain millions of dollars in lottery winnings is a serious crime." *Tipton*, 897 N.W.2d at 688. This case looks beyond the crime to civil ramifications. However,

[1] The Court can take judicial notice of the 2011 calendar, including which dates fell on which days of the week. *See McIntosh v. Lee*, 10 N.W. 895, 895 (Iowa 1881) (taking judicial notice "that the tenth day of March, 1878, was Sunday"). Because the Lottery's game specific rule provided drawings would occur "each Wednesday and each Saturday" (Lottery Statement of Undisputed Facts ¶ 13), the drawing dates in 2011 were January 1, 5, 8, 12, 15, 19, 22, 26, and 29; February 2, 5, 9, 12, 16, 19, 23, and 26; March 2, 5, 9, 12, 16, 19, 23, 26, and 30; April 2, 6, 9, 13, 16, 20, 23, 27, and 30; and May 4. In other words, there were 36 drawings between December 29, 2010 and Dawson's win on May 7, 2011.

the legislature made the civil ramifications easy to identify by instructing the Lottery about exactly what to do with prize money when someone attempts to defraud the lottery. It provided that "[n]o prize shall be paid upon a ticket or share purchased . . . in violation of" chapter 99G—which Tipton's ticket was. Iowa Code § 99G.31(2)(*e*); *see also id.* § 99G.31(2)(*h*). It also provided that any prize purportedly won on a ticket purchased in violation of chapter 99G "shall constitute an unclaimed prize." *Id.* § 99G.31(2)(*e*). It further instructed the Lottery about how to budget and utilize unclaimed prizes. *See id.* § 99G.31(2)(*d*). And the Lottery followed the legislature's instructions after Tipton's claim was withdrawn in 2012, treating the December 29, 2010 Hot Lotto jackpot prize as unclaimed and utilizing Iowa's share of the prize accordingly.

Because the Lottery followed the legislature's instructions, all of Dawson's claims fail as a matter of law. *See Hofco, Inc. v. Nat'l Union Fire Ins. Co.*, 482 N.W.2d 397, 404 (Iowa 1992) (affirming summary judgment and rejecting "hypertechnical reliance on verbiage"). Put simply, when the Iowa Code says no prize shall be paid, that's the end of the matter regardless of administrative provisions. *See, e.g.*, *Schmitt v. Iowa Dep't of Soc. Servs.*, 263 N.W.2d 739, 745 (Iowa 1978) ("The plain provisions of a statute cannot be altered by administrative rule."); *Holland v. State*, 253 Iowa 1006, 1010, 115 N.W.2d 161, 163 (1962) ("[A]dministrative rules cannot go farther than the law permits."); *City of Mason City v. Zerble*, 250 Iowa 102, 109, 93 N.W.2d 94, 98 (1958) ("Administrative authorities . . . cannot create rights or liabilities which are clearly not within the expressed intent of the statute."); *see also Peters v. Ohio State Lottery Comm'n*, 587 N.E.2d 290, 298 (Ohio 1992) (rejecting a plaintiff's mistaken contention "that the rules and regulations of the lottery commission *alone* control the distribution" of prize money (emphasis added)). Adopting Dawson's argument "would create an unworkable and haphazard method" for determining and paying Lottery prizes. *Booker v. Rogers*, 628 N.E.2d 1192, 1195

(Ill. App. Ct. 1994); *accord Fullerton v. Dep't of Revenue Servs.*, 714 A.2d 1203, 1209 (Conn. 1998) ("The trial court correctly concluded that an adoption of the plaintiffs' interpretation would lead to confusion and an administrative burden that would interfere with the . . . ability effectively to operate the lottery."). Dawson's claims also fail for myriad other reasons, both procedural and substantive, described in detail below. The Lottery is entitled to judgment as a matter of law. *See Cunningham v. Kartridg Pak Co.*, 332 N.W.2d 881, 882 (Iowa 1983) (complimenting a plaintiff's ingenuity in attempting to construct novel legal theories but concluding "as a matter of law, defendant is entitled to summary judgment").

II. FACTS AND PROCEDURAL BACKGROUND

A. Lottery Organization and the Hot Lotto Game.

The Iowa Lottery Authority is an authority of the State that administers the State's lottery program. Iowa Code §§ 99G.2(2), 99G.4; Iowa Admin. Code r. 531—1.1. (Lottery Statement of Undisputed Facts [Lottery SOF] ¶ 1.) The Lottery is a "state agency" under Iowa Code chapter 17A, which means that chapter 17A is "the exclusive means" for challenging any agency action the Lottery takes. Iowa Code § 99G.4(1); *see* Iowa Code § 17A.19.

MUSL is an unincorporated nonprofit association, organized under Iowa Code chapter 501B, with its principal place of business in Urbandale, Iowa. (Lottery SOF ¶ 2.) All MUSL members, including the Iowa Lottery Authority, are state lottery authorities or agencies. (Lottery SOF ¶ 3.) MUSL facilitates and coordinates multi-jurisdictional lottery games among and on behalf of its members. (Lottery SOF ¶ 4.) In that respect, it functions as a vendor of the Iowa Lottery. (Lottery SOF ¶ 5.) At the times relevant to this case, one of the multi-jurisdictional games that MUSL administered and in which Iowa participated was Hot Lotto. (Lottery SOF ¶¶ 7–8.) *See Tipton*, 897 N.W.2d at 662.

To play Hot Lotto in 2010 and 2011, a player selected 6 numbers—the first five White Balls from a pool of 39, and the last number (the Hot Ball) from a pool of 19. (Lottery SOF ¶ 9.) A player could choose their own numbers ("manual play"), or allow the lottery terminal at which they purchased their ticket or tickets to assign numbers ("easy pick" or "quick pick"). (Lottery SOF ¶ 10.)

Hot Lotto ticket sales across all states participating in the game financed the jackpot prize. (Lottery SOF ¶ 11.) Tickets cost one dollar each. (Lottery SOF ¶ 12.) Drawings were held each Wednesday and Saturday. (Lottery SOF ¶ 13.) For each drawing date, MUSL designated the Hot Lotto grand prize and notified the states participating in the game of that prize amount. (Lottery SOF ¶ 14.) MUSL additionally announced the final jackpot prize in a press release following each drawing. (Lottery SOF ¶ 15.) After each three- or four-day drawing period, each state wired the applicable amount of jackpot prize funds it collected in that time to MUSL. (Lottery SOF ¶ 16.) MUSL, in turn, aggregated the jackpot prize amounts and, once a jackpot win occurred, ultimately wired that amount to the state where the winning ticket was sold, for payment to the prizewinner. (Lottery SOF ¶ 17.)

B. Dawson Wins Hot Lotto in May 2011.

On May 7, 2011, MUSL conducted a Hot Lotto drawing and issued a press release containing the winning numbers and the final jackpot prize of $9,090,000.00. (Lottery SOF ¶ 28.) Dawson won that jackpot prize because his ticket matched all six numbers announced in the press release. (Lottery SOF ¶¶ 6, 27–29.) He claimed that prize within days by submitting a claim form to the Iowa Lottery requesting a prize amount of $9.09 million. (Lottery SOF ¶¶ 30–32.) The Lottery validated Dawson's claim, approved it for payment, and wired the prize to his bank account following his election of a lump sum and deduction of required state and federal

taxes. (Lottery SOF ¶¶ 33–38.) *See* Iowa Code § 99G.31(2)(*i*). Dawson accepted the wire transfer without objection. (Lottery SOF ¶¶ 39–40.)

At the time Dawson won his jackpot, submitted a claim, and received the prize, the previous "winning" Hot Lotto jackpot—from December 29, 2010—remained unclaimed, and more than six months remained before the deadline to claim it. (Lottery SOF ¶¶ 22, 25–26, 43.) Dawson knew that prize was unclaimed at the time he won. (Lottery SOF ¶ 42.) However, Dawson did not claim in May 2011 that he was entitled to the December 2010 prize, and he never submitted any paperwork or sent any correspondence to the Iowa Lottery seeking that prize prior to filing this lawsuit. (Lottery SOF ¶¶ 39–41.)

All the Lottery knew in May 2011—when Dawson claimed and received his winnings—was that a ticket for December 29, 2010 was purchased and matched all six Hot Lotto numbers, that the Hot Lotto jackpot had reset, and that the prize would expire after one year. (Lottery SOF ¶¶ 19–25.) It did not know the ticket purchaser's identity, did not know if they would come forward, did not know if the ticket had been *legally* purchased, and did not know if the purchaser or owner of the ticket was eligible to claim it. (Lottery SOF ¶¶ 23, 25.) *See Tipton*, 897 N.W.2d at 662 (acknowledging the Lottery "knew where and when the winning ticket was purchased," but nothing more). Only months and years later did additional facts become known.

C. Last-Minute Prize Claim in Late 2011.

On December 29, 2011, just hours before the one-year deadline, local attorneys representing Crawford Shaw, the trustee of a trust organized offshore in Belize, presented the December 29, 2010 ticket to the Lottery. (Lottery SOF ¶ 44.) However, the Lottery did not immediately pay the prize and explained it would not do so unless Shaw or his attorneys disclosed the ticket's chain of ownership from the purchaser through Shaw. (Lottery SOF ¶ 45.)

That disclosure never occurred, and instead, on January 26, 2012, counsel unconditionally withdrew the claim for the December 2010 prize. (Lottery SOF ¶ 46.)

D. With No Timely Claim Pending, Prize Money Returns to the States.

January 26, 2012 was more than one year after December 29, 2010. (Lottery SOF ¶ 47.) Therefore, because no valid claim for the prize remained and the one-year claim period set forth in the game rules had expired, the Lottery could not pay the prize. (Lottery SOF ¶ 25.) Accordingly, the prize was now (literally) unclaimed, and so MUSL returned the money set aside for the December 29, 2010 prize to the respective states that participated in Hot Lotto. (Lottery SOF ¶ 48.) The amount of money each state received was the percentage of the December 29, 2010 jackpot prize that matched the percentage of Hot Lotto tickets sold in that state. (Lottery SOF ¶ 49.) Iowa received approximately $1.36 million. (Lottery SOF ¶ 50.)

After receiving money "in accordance with the rules of the multijurisdictional game," the Lottery used its share for future prizes or special prize promotions. Iowa Code § 99G.31(2)(*d*). It conglomerated the Hot Lotto money with other unclaimed prizes into a separate jackpot pool for a promotion in summer 2012 entitled Mystery Millionaire. (Lottery SOF ¶¶ 51–52.) The Mystery Millionaire promotion culminated in a live finale event at the Iowa State Fair in August 2012. (Lottery SOF ¶ 53.) At that event, the prize money was awarded to a handful of eligible winners, including a grand prize winner who received $1 million. (Lottery SOF ¶ 54.)

E. Years Later, Criminal Acts Come to Light.

Two years later, in October 2014, law enforcement officials publicly released surveillance video from the Hot Lotto ticket purchase in December 2010. (Lottery SOF ¶ 55.) They subsequently received multiple tips that the purchaser was Eddie Tipton. (Lottery SOF ¶ 56.)

Tipton was a MUSL employee, hired in 2003, and by 2005, his job included writing software code for use in computerized RNGs. (Lottery SOF ¶¶ 57–58.) In other words, a lottery industry insider with knowledge of the software used to draw numbers had purchased a ticket that, but for the Iowa Lottery's security protocols, could have netted him millions. Ensuing criminal proceedings eventually resulted in a guilty plea, confirmed that Tipton purchased the ticket in December 2010, and revealed additional detail about Tipton's criminal acts. (Lottery SOF ¶¶ 59, 70.) Importantly, the confirmation that Tipton himself bought the ticket in December 2010 reaffirmed that the Lottery was correct to consider the December 29, 2010 jackpot prize unclaimed.

Before knowing that Tipton purchased the ticket, the prize was literally unclaimed; no valid claim was made for it within one year of December 29, 2010. *See* Iowa Code § 99G.31(2)(*d*); *Tipton*, 897 N.W.2d at 662 ("Winning Hot Lotto tickets must be claimed within a year of purchase or the prize is forfeited."). But once Tipton was identified as the purchaser, the Iowa Lottery was *statutorily prohibited* from paying that prize to anyone; the Lottery had to treat any prize resulting from that ticket as unclaimed because the Code prohibited Tipton from purchasing it in the first place.

Section 99G.31(2)(*e*) prohibits employees of lottery vendors from purchasing lottery tickets if that person has "access to confidential information." Iowa Code § 99G.31(2)(*e*). MUSL is a lottery vendor and Tipton was a MUSL employee, so Tipton fits the first criteria of the statute. *See id.* (Lottery SOF ¶¶ 5, 57.) Further, because Tipton coded the software used to select numbers, he assuredly had access to confidential information. *See id.* (Lottery SOF ¶ 58.) Accordingly, he was ineligible to purchase tickets. *See id.* Therefore, the Lottery complied with the law by refusing to pay the prize and designating it unclaimed, because any purchase in

violation of the law (which Tipton's purchase was) means "[n]o prize shall be paid" on that ticket and any winnings are treated as unclaimed. *Id.* § 99G.31(2)(*e*).

F. The Technological Nitty-Gritty of Tipton's Extraneous Code.

Through the criminal investigation and proceedings, details about Tipton's criminal acts emerged. When Tipton wrote the software code, he did so only once; then, after undergoing third-party verification, it was installed on each subsequent computer. (Lottery SOF ¶¶ 64–68.) In one particular piece of the software, called a dynamic linking library (referred to in shorthand as a .DLL), Tipton inserted two extra lines of code that caused the RNG to use different methods of selecting numbers automatically if several conditions were met: it was the 147th, 327th, or 363rd day of the year; the drawing was after 9:00 P.M.; and the day of the week was either Wednesday or Saturday. (Lottery SOF ¶ 60.)

If the conditions were met and the extra command was activated, the different method the RNG would use to select numbers allowed Tipton to predict the numbers that would be selected for some drawings within a range of several hundred rather than several million possible combinations. (Lottery SOF ¶ 61.) He could do so by adjusting a test computer's time settings to the day and time of an upcoming drawing, running the software repeatedly on that test computer, and writing down every combination it generated. (Lottery SOF ¶ 62.) He could then utilize his written "test results" to fill in play slips and buy manual play tickets himself, or give the "test results" to friends and family so *they* could buy manual play tickets. But even then, Tipton did not know and could not predict precisely which six numbers the RNG would generate. (Lottery SOF ¶ 63.)

Standard practice in the lottery industry at the time Tipton first wrote the code (in 2004 or 2005) was to submit RNG software to a third-party vendor for review and certification before

utilizing that RNG software for a drawing. (Lottery SOF ¶ 65.) MUSL submitted Tipton's RNG code to a third-party vendor, Gaming Laboratories International (GLI), for certification. (Lottery SOF ¶ 65.) GLI certified the code random without flagging the extra routine in the .DLL. (Lottery SOF ¶¶ 65–66.) After receiving GLI's certification, MUSL began placing the code on RNGs it used to conduct drawings, including Hot Lotto. (Lottery SOF ¶ 67.) Hot Lotto began selecting numbers with a MUSL RNG on February 1, 2006. (Lottery SOF ¶ 68.)

Fast forward to December 2010. On December 29, MUSL notified Hot Lotto states that the jackpot that evening was $16.5 million (annuity value). (Lottery SOF ¶¶ 19, 21.) December 29, 2010 *also* matched all the criteria for activating Tipton's code: it was a Wednesday, the 363rd day of the year, and the drawing was to take place after 9:00 P.M. (Lottery SOF ¶¶ 18, 69.) And indeed, Tipton purchased a ticket that matched all six numbers—though he never saw a penny. (Lottery SOF ¶¶ 44–46, 70.)

G. This Lawsuit.

That's where Dawson comes in. Following the revelation that Tipton inserted extraneous code into the RNG software, Dawson sued both MUSL and the Iowa Lottery seeking a declaratory judgment and monetary damages under both tort and contract theories. (Lottery SOF ¶¶ 71–72.)[2] Dawson asserts Tipton's criminal acts retroactively invalidate the December 29, 2010 drawing, as though it never happened at all. If the drawing didn't happen, Dawson continues, the money would've stayed in the Hot Lotto jackpot pool and accrued for three dozen more drawings until he won several months later.

His claims fail for multiple reasons.

[2] A plaintiff in Colorado also filed a lawsuit against the Colorado Lottery, alleging (like Dawson) that Tipton's criminal acts entitled the plaintiff to additional prize money. (Lottery SOF ¶¶ 73–75.) The Colorado court granted the Colorado Lottery's motion to dismiss the case. (Lottery SOF ¶ 76.)

First, and most importantly, the Lottery is immune from suits like these under a specific provision in the Lottery enabling act. Once it pays a prize (including Dawson's), the Lottery "is discharged of *all liability*." Iowa Code § 99G.31(2)(*f*) (emphasis added). Any contract Dawson had with the Lottery unquestionably includes this proviso, and in electing the cash option, Dawson agreed that the one lump sum was *complete and total* payment. Furthermore, in a similar case in Colorado brought by a lottery prizewinner after Tipton's criminal acts, the court relied on the same language under Colorado law to dismiss the plaintiff's suit altogether. The Colorado court's reasoning is persuasive here, and is especially so because Dawson's case is much more attenuated. The plaintiff in the Colorado case won *in the same drawing* as a Tipton associate, not three dozen drawings and several months later.

Second, Dawson can't raise claims seeking prize money from the Lottery except through judicial review of agency action under Iowa Code chapter 17A. The Lottery is an agency for purposes of chapter 17A. Iowa Code 99G.4(1). Chapter 17A is the exclusive means of reviewing agency action. *Id.* § 17A.19. Paying a prize, not paying a prize, and the *amount* of any prize are all agency actions subject to chapter 17A's exclusivity provision, and so freestanding declaratory relief or common law claims like Dawson's are not cognizable. *See Reifschneider v. State [Reifschneider I]*, 969 P.2d 875, 876–77 (Kan. 1998) (concluding lottery players' "sole remedy" for a claim the Kansas Lottery owed them more than the jackpot it paid was judicial review); *Bretton v. State Lottery Comm'n*, 673 N.E.2d 76, 79–80 (Mass. App. Ct. 1996) (concluding a plaintiff who pled independent causes of action against the lottery did not present any issue "appropriate for direct judicial determination outside of" judicial review).

Third, Iowa Code chapter 501B, under which MUSL is organized, unambiguously prevents Dawson from recovering against the Iowa Lottery, a MUSL member, for MUSL's

organizational acts or omissions. Furthermore, Iowa Code section 613.19 establishes the Iowa Lottery is not liable for any claim based upon its acts or omissions as a MUSL member, which is everything Dawson alleges here.

Fourth, Dawson's contract claim fails because the possibility of receiving the December 29, 2010 Hot Lotto jackpot was never a term of any contract between Dawson and the Lottery. All contracts incorporate Iowa statutes, and those statutes provide that the December 29, 2010 Hot Lotto prize was *required* to be treated as unclaimed. *See Peters*, 587 N.E.2d at 299 (rejecting a plaintiff's claim because "the lottery commission [was] mandated by law" to take the action it did).

Fifth, Dawson's tort claims are barred by the economic loss doctrine. Dawson wasn't physically injured and no property was damaged or destroyed; he seeks damages in tort for purportedly lost profits. That measure of damages is cabined to a contract-based claim at most.

Sixth, even if Dawson's tort claims are cognizable and can bypass the economic loss doctrine, they fail as a matter of law under the public duty doctrine. Any duty the Lottery may have to Dawson is no different from the duty it has to any member of the public, and the Iowa Supreme Court has explained the government is not liable under those circumstances.

Finally, even if the Court concludes Dawson's claims clear all these hurdles, the claims must still be rejected because Dawson's alleged damages are purely speculative.

Regardless of Tipton, the legal consequences of his acts do not entitle Dawson to the money he now seeks. Dawson "had no right to this money at any point in time—not on the day he won, nor on the day the claim period expired" on the December 29, 2010 ticket, nor even after Tipton's arrest or guilty plea. *Booker*, 628 N.E.2d at 1195. The Lottery handled all applicable prize funds according to the Iowa Code's instructions. It is entitled to summary judgment.

III. SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate if "there is no genuine issue as to any material fact" such that "the moving party is entitled to judgment as a matter of law." Iowa R. Civ. P. 1.981(3). Summary judgment is the proper way to adjudicate "only the legal consequences of undisputed facts." *Homan v. Branstad*, 887 N.W.2d 153, 164 (Iowa 2016).

There is no genuine issue as to any material fact here. Tipton's criminal acts aren't disputed, but establishing them isn't the focal point. Rather, the real question is about their *legal effect*. *See Reifschneider v. State (Reifschneider II)*, 17 P.3d 907, 914 (Kan. 2001) (noting a winner's lawsuit seeking additional prize money was "a legal issue"). This case isn't about retrying Tipton, establishing how he was hired, or establishing how he committed his crimes. Instead, it asks what legal consequences occur *with respect to prize money* because of Tipton's misdeeds. *See Dacy v. Gors*, 471 N.W.2d 576, 578 (S.D. 1991) ("This case has fostered much media attention . . . . It seems clear to us that there is a vast misunderstanding of the precise legal issue presented before this court at this time."). On that question of law, "[t]here is no legal basis for awarding" Dawson the prize money from December 29, 2010. *Booker*, 628 N.E.2d at 1195. Dawson got the advertised prize, which is all he was owed. *Cf. Hall v. Bean*, 582 S.W.2d 263, 265 (Tex. Civ. App. 1979) (finding a breach of contract occurred when the plaintiffs won a boat race but the sponsor of the race "refus[ed] to give plaintiffs the advertised prize"). Accordingly, this case is proper for resolution at the summary judgment stage.

IV. ARGUMENT

A. The Lottery Was Discharged of All Liability Upon Wiring Dawson's Prize.

Once a prizewinner presents their ticket to the Lottery and the Lottery validates it, the Lottery pays "the designated prize to the holder of the ticket or share." Iowa Code § 99G.31(1).

The payment is important because chapter 99G unambiguously states the Lottery "is discharged of *all liability* upon payment of a prize." *Id.* § 99G.31(2)(*f*) (emphasis added). In other words, once "a prize is paid to a player, even if the player contends that he or she was entitled to a larger amount, the [Lottery is] . . . discharged of liability." *Ramesar v. State*, 617 N.Y.S.2d 259, 261 (Ct. Cl. 1994), *aff'd*, 636 N.Y.S.2d 950, 952 (App. Div. 1996). The statute is "intended to convey finality" by prohibiting prize adjustments years after they were initially paid. *Peterson v. Bd. of Trs.*, 625 N.W.2d 707, 710 (Iowa 2001); *see also Iowa Civil Rights Comm'n v. Deere & Co.*, 482 N.W.2d 386, 388 (Iowa 1992) (recognizing that a statute promoted finality in administrative actions).

Because "designated prize" is a statutory phrase, determining whether someone was paid the designated prize is a legal conclusion, not a factual one. And the answer is straightforward: MUSL designates the prize, notifies each state lottery what that prize is, and the lotteries act accordingly. (Lottery SOF ¶¶ 13–17, 20–24, 28.) The game rules themselves do not create a rigid mathematical formula for calculating the next drawing's jackpot. There is no factual dispute that MUSL announced the May 7, 2011 Hot Lotto jackpot as $9.09 million. (Lottery SOF ¶ 28.) Because that's the amount Dawson collected, the Lottery was discharged of all liability as soon as it paid him.

The Lottery's administrative rules further communicate to players that they may not contest their prize years later. Iowa Admin. Code rs. 531—11.1(2) ("By submitting a claim, a player agrees that the state, the lottery authority board, the lottery authority, and the officials, officers, and employees of each shall be discharged from all further liability upon payment of the prize."); 531—11.4 ("All liability of the state, the lottery authority board, the lottery authority, the chief executive officer, and the employees of the lottery terminates upon payment."); 531—

11.12 (subjecting all ticket purchases to chapter 99G, which includes the discharge-of-liability clause). The justification for discharging liability is evident: if prize winners can sue the lottery for more money years after their initial claim was processed, paid, and finalized, the Lottery "will be deluged with claims and the dockets of trial courts will pay the price of endless litigation." *State ex rel. Meyers v. Ohio State Lottery Comm'n*, 517 N.E.2d 1029, 1034–35 (Ohio Ct. App. 1986); *accord Molina v. Games Mgmt. Servs.*, 449 N.E.2d 395, 397 (N.Y. 1983) (applying a discharge-of-liability provision because "danger to the stability and success of the game is just as great if either [the State or its vendor] becomes bogged down in ticket disputes with disappointed players"). "To allow plaintiffs to open the door two years later" (or longer), "not only would fly in the face of the statute, but also would set off a chain of litigation, uncertainty and chaos well beyond the present action." *Stanfield v. Polk Cty.*, 492 N.W.2d 648, 653 (Iowa 1992).

The fact that Dawson claimed a prize from the Lottery in May 2011, the fact that he received a payment from the Lottery in May 2011, and the amount he received are all undisputed. Dawson submitted a claim form to the Lottery on May 9, 2011. (Lottery SOF ¶ 30.) That form includes Dawson's signature and requests a payment of $9,090,000.00. (Lottery SOF ¶¶ 31–32.) Dawson also elected a lump sum payment of that $9,090,000.00, and signed *another* form acknowledging that the reduction from annuity value to lump sum value represented "total and complete" payment of the prize to which he was entitled. (Lottery SOF ¶¶ 33–35.) The Lottery deducted taxes from the lump sum amount, as it must do under Iowa law (Iowa Code § 99G.31(2)(*i*)), and Dawson authorized a wire transfer in that amount. (Lottery SOF ¶¶ 36–37.) While Dawson disliked his obligation to pay taxes up front, he did not otherwise object to the amount he was paid. (Lottery SOF ¶¶ 38–41.) Section 99G.31 precludes him from doing so

now through this lawsuit. Dawson asked for a specific amount and the Lottery paid him that amount after deducting required taxes. The Lottery was discharged of all liability as soon as Dawson accepted the wire transfer.

Colorado features a similar statute discharging its lottery of all liability upon payment.[3] It was formerly codified at Colo. Rev. Stat. § 24-35-212(3) and in 2018 was reorganized to Colo. Rev. Stat. § 44-40-113(4). Recognizing the effect of that statute, a Colorado court recently dismissed a claim like this one, brought by a previous Colorado Lottery winner who asserted Eddie Tipton's misdeeds entitled him to additional payment:

> The plain reading of the [discharge-of-liability] statute is quite clear. Upon payment of any prize, [the Colorado Lottery and its director] are discharged from all liability. If any ambiguity in the statute exists, it is to discharge of liability with respect to other prize winners upon the payment of another claimant. That is not the situation here.
>
> For the purposes of this action, upon acceptance and appropriating a prize *without challenging the propriety of that prize*, the Plaintiff's own actions resulted in the waiver of liability against the Defendants . . . . [T]here is no basis in law for him to recover in this action as his . . . claims are barred by statute.

Massihzadeh v. Solano, No. 2017CV33699, at 6 (Colo. Dist. Ct. Feb. 13, 2018) (emphasis added). Unlike Dawson, the Colorado plaintiff matched the winning numbers *on the same day* as another "winner" related to Tipton—and yet the Court still correctly recognized that the plaintiff was not entitled to additional prize money. The Colorado court's reasoning is persuasive here.

The Iowa statute operates in the same fashion as in Colorado. Section 99G.31(2)(*f*), like a similar provision under New York law, was "enacted to prevent fraud, dissipation of funds by

[3] Many other states have similar provisions, either as statutes or as administrative rules. *See, e.g.*, Kan. Stat. § 74-8720(h); Code Md. Regs. §§ 36.02.04.06(E), 36.02.06.13(B); 961 Code Mass. Regs. § 2.28(2); 370 Neb. Admin. R. & Regs. § 602.06; 9 N.Y. Comp. Codes, Rules & Regs. § 5002.6; 3770 Ohio Admin. Code § 1-8-05; 61 Pa. Code § 811.26; Wash. Admin. Code r. 315-06-120(6). Accordingly, this type of provision is not an Iowa-only outlier.

excessive and protracted litigation, and to insure prompt payment of prizes." *Molina*, 449 N.E.2d at 398. Dawson received his prize in full and did not challenge the amount until filing this lawsuit. Under those circumstances, the statute bars his claims. The Lottery was discharged of all liability to Dawson in May 2011, and is therefore entitled to summary judgment here.

B. Challenges to Agency Action Must Occur Exclusively Under Chapter 17A.

Iowa Code chapter 17A is "the *exclusive* means by which a person . . . who is aggrieved or adversely affected by agency action may seek judicial review of such agency action." Iowa Code § 17A.19 (emphasis added). If the Lottery is an agency and its prize payments (or any of the other purportedly wrongful events Dawson identifies) are agency action, Dawson's *only* method for challenging the Lottery's action is under chapter 17A. *See Genetzky v. Iowa State Univ.*, 480 N.W.2d 858, 860 (Iowa 1992) ("If agency action was involved, then Genetzky should have pursued his remedy under Iowa Code chapter 17A."). He may "not maintain a separate cause of action for breach of contract" against the Lottery, *Fowles v. State*, 867 P.2d 357, 362 (Kan. 1994), nor can he maintain any other freestanding common law claim, including the declaratory judgment his petition seeks. *See, e.g.*, *Walsh v. Wahlert*, 913 N.W.2d 517, 525 (Iowa 2018) ("[T]he remedies provided by Iowa Code chapter 17A are exclusive [of] common law remedies."); *Salsbury Labs. v. Iowa Dep't of Envtl. Quality*, 276 N.W.2d 830, 835 (Iowa 1979) (concluding it would be inappropriate "if the provisions of section 17A.19 could be discarded . . . in favor of certiorari, declaratory judgment, or injunction"); *Grains of Iowa L.C. v. Iowa Dep't of Agric. & Land Stewardship*, 562 N.W.2d 441, 443–44 (Iowa Ct. App. 1997) (dismissing a petition for declaratory judgment that was "in effect, a lawsuit directed at an agency action"). The Court must resolve two questions: whether the Lottery is an agency, and whether the actions Dawson challenges are "agency action." The answer to both questions is yes.

The first one is easy: the legislature has expressly provided that the Lottery is an agency within the meaning of Iowa Code chapter 17A. Iowa Code § 99G.4(1).

The second question requires more analysis but still is ultimately a question of law with a clear answer. "Agency action" carries a broad definition that includes:

> the whole or part of an agency rule or other statement of law or policy, order, decision, license, proceeding, investigation, sanction, relief, or the equivalent or a denial thereof, or a failure to act, or any other exercise of agency discretion or failure to do so, or the performance of any agency duty or the failure to do so.

Id. § 17A.2(2). This definition is crucial to the Court's analysis. *See Allegre v. Iowa State Bd. of Regents*, 319 N.W.2d 206, 208 (Iowa 1982) (finding a challenged act was "clearly agency action" and rejecting a plaintiff's argument "in view of the statutory definition of agency action"), *modified by Papadakis v. Iowa State Univ. of Sci. & Tech.*, 574 N.W.2d 258, 260 (Iowa 1997).

No matter what Dawson challenges here, this definition encompasses it. For example, the Lottery's payment to Dawson is an order, decision, or relief. Any alleged failure to pay him more than he in fact received is either another decision or a denial of relief. And to the extent Dawson is challenging something else—for example, his allegation that the Lottery did not unilaterally micromanage MUSL to his liking—Dawson is unmistakably alleging the Lottery failed to act, exercised its discretion wrongly or insufficiently, or failed to perform a duty. *See id.* ("If Allegre is entitled to payment, the Board has a duty to see that payment is made. Failure to do so is failure to perform an agency duty under the definition of agency action.").

The fact that Dawson brings negligence claims further confirms both that he is challenging agency action and that chapter 17A is his exclusive remedy. Negligence claims allege that a defendant breached a duty, and under section 17A.2(2), failure to perform a duty constitutes agency action. *Compare Raas v. State*, 729 N.W.2d 444, 447 (Iowa 2007) (reciting

the elements of a negligence claim), *with* Iowa Code § 17A.2(2) (defining agency action to include failure to perform a duty). This significant overlap of terminology between negligence claims and the definition of agency action supports the notion that negligence claims against state agencies simply are not cognizable unless formulated under the judicial review provisions of chapter 17A.

So does the language and litigated history of the Iowa Tort Claims Act. Under Iowa Code chapter 669, the Lottery is a state agency. Iowa Code §§ 99G.4(1), 669.2(5). The Lottery can also sue and be sued in its own name. *Id.* § 99G.21(2)(*a*). But that "sue and be sued" authorization does not mean the Lottery can be sued *in tort*. *Id.* § 669.16. The Iowa Supreme Court has specifically held that section 669.16 "requires actions . . . to be brought against the state, not the agency . . . alleged to have been guilty of the wrongful conduct." *Jones v. Iowa State Highway Comm'n*, 207 N.W.2d 1, 2 (Iowa 1973). No tort cause of action lies against the Lottery itself. Dawson has not sued the State, nor does his petition ask for relief against the State. *Cf. id.* (disregarding "the misleading manner in which plaintiffs entitled their suit" because "the petition itself ask[ed] judgment against the state alone"). He has no cognizable tort claim against the Lottery, only a judicial review remedy under chapter 17A. That is why the definition of agency action includes performance or failure to perform an agency duty—because state agencies themselves can't be sued under the Iowa Tort Claims Act.

Beyond the bare statutory language, ample caselaw has explored how to determine whether a lawsuit challenges agency action. Iowa Code chapter 17A is an exclusive remedy if "the action or inaction of the agency in question bears a discernible relationship to the statutory mandate of the agency." *Ghost Player, L.L.C. v. State*, 860 N.W.2d 323, 328 (Iowa 2015); *accord Papadakis*, 574 N.W.2d at 260. The discernable relationship test harmonizes caselaw

decided over the last four decades, almost since the advent of the Iowa Administrative Procedure Act. *See Ghost Player*, 860 N.W.2d at 327–29.

There exists a dichotomy of agency actions: those bearing a discernible relationship to the agency's statutory mandate, and those bearing "scant relation to the agency's statutory mandate." *Jew v. Univ. of Iowa*, 398 N.W.2d 861, 864 (Iowa 1987). Agency actions not subject to freestanding causes of action include:

- The Iowa Commerce Commission's decision to grant a right of eminent domain to a utility company, *Kerr v. Iowa Pub. Serv. Co.*, 274 N.W.2d 283, 286–87 (Iowa 1979);
- The Department of Environmental Quality's decision to prohibit a company from depositing waste materials at a particular disposal site, *Salsbury Labs.*, 276 N.W.2d at 832, 836;
- A university's denial of tenure, *Genetzky*, 480 N.W.2d at 861; and
- The Department of Economic Development's decision not to issue tax credits to an applicant, *Ghost Player*, 860 N.W.2d at 328–29.

By contrast, agency action that bears a scant relation to the agency's statutory mandate—and that can therefore subject the agency to freestanding causes of action—is limited to civil rights claims, *Jew*, 398 N.W.2d at 864–65, wage disputes with the Board of Regents that are divorced from educational decisions like tenure, *Hornby v. State*, 559 N.W.2d 23, 24–25 (Iowa 1997), and the Regents' payments under a contract to build a sports arena, *Jones v. Iowa State Bd. of Regents*, 385 N.W.2d 240, 242 (Iowa 1986). The scant relation under those facts is evident. The Board of Regents serves an educational function, with some personnel functions (like tenure decisions) included. Construction contracts, civil rights claims, and employment

disputes beyond tenure are removed from the educational function the Board of Regents was created to fulfill.[4]

In contrast, this case much more closely resembles *Ghost Player*. There, the agency's decision whether to issue tax credits, and how much credit to approve, "squarely" fell within the discernible relationship test and the definition of agency action because "[t]he legislature mandated the [agency] to verify the eligibility of the credit and if verified issue the credit." *Ghost Player*, 860 N.W.2d at 329. A discernible relationship between the action and the agency's mandate existed because the legislature enacted "express statutory authorization" for the agency's tax-credit decisions. *Id.*

The same is true here. Lotteries' primary tasks are to administer games, determine what prizes to offer, and pay those prizes to valid claimants. This case is about those things; it isn't a civil rights dispute like *Jew* or even a vendor contract like *Jones*.[5] Just like the verification steps the agency took in *Ghost Player* before issuing state money to a third party who claimed it, the Lottery must verify the eligibility of claimed prizes and pay them only once verified. *See* Iowa Code § 99G.31(2). Dawson's challenge to the prize amount he received fits neatly with the *Ghost Player* plaintiff's challenge to the tax credit amount it received. Prize calibration and payment unquestionably bear a discernible relationship to the Lottery's statutory mandate. *See id.* §§ 99G.9(3)(*c*) (requiring the Lottery to develop policies about the number of prizes available

[4] Similarly, a civil rights claim against the Iowa Board of Nursing is cognizable outside of chapter 17A, both because civil rights claims are "not within the agency's exclusive province" and because the plain language of the Iowa Civil Rights Act allows lawsuits under that chapter, notwithstanding chapter 17A. *Chiavetta v. Iowa Bd. of Nursing*, 595 N.W.2d 799, 802–03 (Iowa 1999). No similar enabling legislation exempts claims against the Lottery from chapter 17A's exclusive judicial review remedy.

[5] Furthermore, *Jones* is of questionable value in any event, because the "intrafamily" test it uses to define agency action has been "replaced . . . with the discernible relationship test." *Ghost Player*, 860 N.W.2d at 329.

and the value of those prizes); 99G.9(3)(*d*) (granting the Lottery authority over how prizewinners are determined); 99G.9(3)(*e*)–(*f*) (granting the Lottery authority over prize payments); 99G.31(2) (setting forth prize verification and payment parameters, and instructions to follow in the event of certain contingencies); 99G.41 (authorizing the Lottery to offset state debts from prizes owed to winners); *see also Bretton*, 673 N.E.2d at 79–80 (concluding a player suing a lottery could only pursue judicial review, in part because the lottery was "authorized by statute to determine the types of lotteries and the sizes of prizes").

The conclusion that Dawson is really challenging agency action doesn't change even if Dawson's allegations do. For example, any allegation that the Lottery should not have joined MUSL, or that the Lottery should not have allowed MUSL to perform some drawing functions, or that the Lottery should not have allowed a computer RNG to be used, are all related to the administration of games—again, functions that bear a discernible relationship to the Lottery's statutory mandate. The legislature gave express instructions to the Lottery to develop policies and make decisions about lottery management and operation in Iowa, including which games to offer, Iowa Code § 99G.9(3)(*a*); the number of prizes available *and the value* of those prizes, *id.* § 99G.9(3)(*c*); and the "means of conducting drawings," including where drawings take place and what equipment is used, *id.* § 99G.9(3)(*h*). The legislature further endowed the Lottery with express statutory power to offer joint lottery games through agreements (like the agreement that established MUSL) with other states. *Id.* § 99G.21(2)(*f*). Additionally, the legislature expressly authorized the Lottery to enter cooperative agreements and share security duties for multijurisdictional lottery games, *id.* § 99G.35(1)(*a*); and authorized lottery security personnel both to inspect vendors and to monitor authority operations for compliance with security requirements, *id.* § 99G.35(1)(*b*), (*f*).

So, to the extent Dawson alleges that the Lottery *didn't* sufficiently inspect MUSL, a vendor, under section 99G.35(1)(*a*), he alleges a failure to perform an agency duty—which constitutes agency action under the plain language of section 17A.2(2). Agency action is only reviewable under chapter 17A. *See Hollinrake v. Monroe Cty.*, 433 N.W.2d 696, 700 (Iowa 1988) (concluding chapter 17A is exclusive when "the agency acted on legislatively prescribed authority"). "Once it is determined that appellants seek review of [an agency] order, the exclusivity of the [chapter 17A] judicial review provisions *can not be disregarded*." *Kerr*, 274 N.W.2d at 287 (emphasis added). Because everything Dawson says the Lottery did wrong in this case is agency action, and because the exclusive remedy for challenging agency action is judicial review, all of Dawson's freestanding causes of action must be dismissed as a matter of law.[6]

The Lottery raised this same argument in its motion to dismiss. In ruling on the motion to dismiss, the Court concluded, without addressing *Ghost Player*, that "the controversy" involved in this case is not agency action. Now that discovery has occurred, however, the Court should analyze *specific* actions under the *Ghost Player* "discernible relationship" framework. The Court's ruling on the motion to dismiss does not foreclose summary judgment on the exclusivity ground now. *See Concerned Citizens of Se. Polk Sch. Dist. v. City of Pleasant Hill*, 878 N.W.2d 252, 257 (Iowa 2016) (noting the district court denied the defendant's motion to

[6] Although in some cases the Court can construe parties' petitions as though they were petitions for judicial review, *see Salsbury Labs.*, 276 N.W.2d at 835, that is not possible in this case because Dawson did not serve his petition within ten days. *See* Iowa Code § 17A.19(2). Accordingly, even if Dawson's petition were construed as a petition for judicial review, it was not timely served, so the case must be dismissed entirely. *See Dawson v. Iowa Merit Emp't Comm'n*, 303 N.W.2d 158, 160 (Iowa 1981). Notably, because Dawson challenges "other agency action" here, dismissal would not foreclose a future petition for judicial review. *See* Iowa Code § 17A.19(3) (noting petitions challenging other agency action "may be filed at any time petitioner is aggrieved or adversely affected"). Instead, it would simply ensure that any future challenge to agency action proceeds under the proper statutory framework, with court review appropriately "circumscribed by the standards set forth in Iowa Code section 17A.19." *N. Natural Gas Co. v. Iowa Utils. Bd.*, 679 N.W.2d 629, 633 (Iowa 2004).

dismiss but later granted summary judgment); *Villarreal v. United Fire & Cas. Co.*, 873 N.W.2d 714, 718 (Iowa 2016) (noting the district court denied a motion to dismiss but later granted summary judgment on the grounds raised in the motion to dismiss). "The legal proposition rejected by the trial court on the motion to dismiss [can] be properly presented to the trial court again" now. *Gigilos v. Stavropoulos*, 204 N.W.2d 619, 622 (Iowa 1973).

MUSL's presence in this lawsuit does not prevent chapter 17A's exclusivity provision from applying to the Iowa Lottery.[7] Dawson cannot conflate his claims against MUSL with his claims against the Lottery to avoid the process set out for challenging agency action. Chapter 17A's exclusivity provision applied even when the plaintiffs sued *only* a private organization that had been granted eminent domain power by a government agency. *Kerr*, 274 N.W.2d at 286. Accordingly, if a person challenges agency action—and, under *Ghost Player*, determining whether an act or omission is "agency action" is a question of law—that person cannot sidestep chapter 17A simply by suing a private party either in addition to or instead of the agency. *See id.* Dawson's view that practical considerations override chapter 17A "misperceive[s] the proper relationships between courts and administrative agencies." *Bretton*, 673 N.E.2d at 679. As in *Kerr*, the fact that one party interacting with the agency is not subject to chapter 17A provides no "justification for pursuing a remedy outside [chapter 17A]" when the alleged wrongful acts are agency action. *Kerr*, 274 N.W.2d at 287. Indeed, the Iowa Supreme Court recently decided an appeal from a judicial review proceeding that alleged wrongdoing by a third party, compounded

[7] Dawson's efficiency concerns about pursuing a judicial review action against the Lottery and a parallel action against MUSL are especially unfounded because private parties can participate in chapter 17A proceedings. *See Filipelli v. Iowa Racing & Gaming Comm'n*, No. 16–0301, 2017 WL 1088101, at *2 (Iowa Ct. App. Mar. 22, 2017) (noting a person filed a petition for judicial review, the agency moved to dismiss, and a third party intervened to assert its own interest). Private parties can even participate *at the agency level*. *See Kopecky v. Iowa Racing & Gaming Comm'n*, 891 N.W.2d 439, 441 (Iowa 2017).

by what the petitioner believed to be an agency's erroneous interpretation of law—analogous to Dawson's allegations here that MUSL committed wrongdoing and the Iowa Lottery reached incorrect legal conclusions about how to handle funds and pay prizes. *See Abbas v. Iowa Ins. Div.*, 893 N.W.2d 879, 881–82 (Iowa 2017). The exclusivity provision applies in this case too, and entitles the Lottery to summary judgment.

Importantly, although the two concepts are often conflated, exclusivity is different from, and precedes, analysis of exhaustion. *See Oliver v. Iowa Power & Light Co.*, 183 N.W.2d 687, 691 (Iowa 1971) (differentiating between exclusivity and exhaustion, but acknowledging the "two doctrines are closely related"), *superseded by statute on other grounds*, 1981 Iowa Acts ch. 156, § 5. The first step is to analyze whether chapter 17A provides the exclusive remedy by determining whether the petitioner challenges agency action. If the petitioner challenges agency action, the case must either be construed as a petition for judicial review, or dismissed so that a petition for judicial review can be filed. Then, *once in the judicial review framework*, the Court can examine whether administrative remedies have been or are required to be exhausted. *See Walsh*, 913 N.W.2d at 524 ("[A]n exhaustion requirement may arise if the available administrative remedy is adequate *and* if the legislature . . . intended the administrative remedy to be exclusive." (emphasis added)). Exclusivity deals with causes of action; exhaustion deals with adequacy of remedy and following the process.

Underscoring the separate nature of exclusivity and exhaustion, even if the Court concludes Dawson "should not be faulted for failing to exhaust a review procedure that was not [expressly] provided by rule," *Hornby,* 559 N.W.2d at 25, he still cannot bring common law claims when those claims arise out of agency action. *Walsh*, 913 N.W.2d at 525 ("[C]ommon law claims . . . must be challenged through judicial review of agency actions pursuant to Iowa

Code chapter 17A."). The Indiana Court of Appeals has applied a similar rule in a lottery dispute, concluding that a player who sought a prize the lottery refused to pay him could not bring a direct breach-of-contract claim, but was entitled to judicial review without an exhaustion requirement when there was a question whether an adequate agency-level remedy existed. *Smith v. State Lottery Comm'n*, 701 N.E.2d 926, 933 (Ind. Ct. App. 1998).

The same principle applies here because exclusivity and exhaustion are separate considerations. In *Hornby*, a contract claim could proceed because the challenged action was *not* agency action bearing a discernible relationship to the agency's mandate. *See Hornby*, 559 N.W.2d at 25; *see also Ghost Player*, 860 N.W.2d at 328 (noting the suit in *Hornby* could proceed because there was "a separate statutory procedure designed to process wage claims"); *accord Walsh*, 913 N.W.2d 525 (finding no exclusive administrative remedy when a different statute "expressly creates an independent cause of action"). When the challenged action *is* agency action, however, the exclusive remedy is judicial review—even if no exhaustion requirement exists. *See Walsh*, 913 N.W.2d at 522 (noting the exhaustion doctrine can apply if governing statutes require exhaustion "before allowing *judicial review*" (emphasis added)). Unlike the claims addressed in *Hornby* and *Walsh*, lottery prize payments are agency action and there is no separate statutory scheme addressing lottery prize disputes, so the exclusive remedy here is judicial review, even if exhaustion is not required. *See Smith*, 701 N.E.2d at 932–33.

Recognizing that this case should be proceeding only through judicial review is consistent with analogous decisions from several other states. At its core, this is a prize dispute; Dawson claims he is entitled to money that the Lottery did not pay him. Courts addressing similar challenges in other states have concluded the proper analytical framework is judicial review or an administrative appeal. *See, e.g.*, *Fullerton*, 714 A.2d at 1204 (characterizing the

"sole issue in [an] administrative appeal" as whether plaintiffs were entitled to a prize from a previous drawing); *Smith*, 701 N.E.2d at 933 ("Smith's action is not a contract claim but rather an appeal from an agency order . . . ."); *Reifschneider I*, 969 P.2d at 877 (concluding plaintiffs could not bring a contract action to seek a prize payment from the Kansas Lottery because their "sole remedy for relief" was judicial review); *Bretton*, 673 N.E.2d at 79–80 (concluding when the "focus" of a plaintiff's claim was "whether the plaintiff is entitled to a prize of $50,000," "there was no issue presented . . . that [wa]s appropriate for direct judicial determination" outside of judicial review); *Triano v. Div. of State Lottery*, 703 A.2d 333, 336 (N.J. Super. Ct. App. Div. 1997) (affirming a lower court's ruling that a claim for lottery prizes was subject to administrative proceedings and "was not cognizable under the Tort Claims Act and the Contractual Liability Act"); *Granton v. Wash. State Lottery Comm'n*, 177 P.3d 745, 748 (Wash. Ct. App. 2008) (adjudicating a plaintiff's claim the lottery owed him prize money by "reviewing an administrative action"). Judicial review is Dawson's exclusive remedy here. The Lottery is entitled to summary judgment on all of Dawson's freestanding common law claims.

C. The Iowa Lottery is Not Liable Under Iowa Code Chapters 501B and 613.

MUSL is an unincorporated nonprofit association. *See* Iowa Code § 501B.2(8) (defining unincorporated nonprofit association). (Lottery SOF ¶ 2.) Its members are lottery authorities, agencies, and commissions from across the United States. (Lottery SOF ¶ 3.) However, "[a]n unincorporated nonprofit association is a legal entity distinct from its members and managers." Iowa Code § 501B.5(1). Members of MUSL, including the Iowa Lottery, are not agents of MUSL "solely by reason of being a member." Iowa Code § 501B.15.

Just as directors of corporations and members of LLCs are shielded from personal liability for the entity's conduct, members of nonprofit organizations under chapter 501B are not

liable for the organization's debts, obligations, or other liabilities, however they arise. Iowa Code § 501B.8(1). Instead, any member-specific liability must be because of the member's *own* conduct. Iowa Code § 501B.8(2).

In other words, Dawson's insistence that respondeat superior liability applies to the Lottery is flatly wrong. Under chapter 501B, in no event is the Iowa Lottery liable for *MUSL* acts. So if Dawson's claim is that MUSL should not have hired Tipton or did not adequately supervise Tipton, those are MUSL acts for which the Lottery is not liable. Even Dawson's main allegation—that *MUSL* should've carried prize funds over between drawings—is not something for which the Lottery can be liable because it was not a Lottery act. The only actions that chapter 501B does not shield with respect to the Lottery are the Lottery's own actions.

That's where Iowa Code section 613.19 kicks in. Section 501B.8(3) addresses members' liability *to the association* for their individual acts, without addressing liability to outside parties. Iowa Code § 501B.8(3). Section 613.19 fills in that gap and establishes the Iowa Lottery is not separately liable, even to outside parties like Dawson, for *any* "claim based upon" individual acts or omissions undertaken in its capacity as a MUSL member. Iowa Code § 613.19. Although there are some exceptions that can impose liability, none of them are met here; Dawson has never alleged the Lottery committed intentional misconduct or a knowing violation of the law—indeed, the fact he brings *negligence* claims says otherwise—and because of chapter 99G, any benefit the Lottery obtained from considering the December 29, 2010 Hot Lotto jackpot an unclaimed prize was not *improper* as a matter of law. *See* Iowa Code § 613.19.

The Lottery asserted these same arguments in its motion to dismiss, but the Court ruled on an entirely different question. The Court concluded *MUSL itself* is not shielded from liability for the Lottery's acts. (MTD Ruling at 9.) The Lottery's position addresses the converse:

whether these statutes shield *the Lottery*, both from liability for MUSL's organizational acts and from Dawson's claims generally. They do, and so summary judgment is warranted.

D. Any Contract with Dawson Is Subject to Chapter 99G's Prize Instructions.

Even if Dawson may bring a freestanding contract claim, and even if he actually had a contract with the Lottery, and even if the terms of his contract included the possibility of winning millions more than the advertised and designated jackpot,[8] his claim still fails. Any contract Dawson has with the Lottery "addresses an area of law regulated by a statute," so "the statutory provisions and restrictions are a part of the parties' contract." *Blackford v. Prairie Meadows Racetrack & Casino, Inc.*, 778 N.W.2d 184, 189 (Iowa 2010); *accord Thomas v. Progressive Cas. Ins. Co.*, 749 N.W.2d 678, 682 (Iowa 2008) ("[S]tatutory law may . . . affect the interpretation and validity of [contract] provisions."); *Cornick v. Sw. Iowa Broad. Co.*, 252 Iowa 653, 656, 107 N.W.2d 920, 921 (1961) ("[E]xisting statutes and the settled law of the land are part of every contract, and must be read into it as though it were specifically referred to therein."). That includes statutory provisions requiring the Lottery not to pay any prize arising from an illegally purchased or fraudulent ticket, and provisions instructing the Lottery to treat that money as an unclaimed prize. Iowa Code § 99G.31(2)(*b*), (*e*); *see also Curcio v. State Dep't of Lottery*, 164 So. 3d 750, 755 (Fla. Dist. Ct. App. 2015) (relying on "no prize may be paid" language in a statute to reject a plaintiff's contract claim); *Reifschneider II*, 17 P.3d at 914

[8] In contract law, "[i]nformation obtained . . . *after* [contract] formation does not expand the defendant's responsibility." Daniel P. O'Gorman, *Contracts, Causation, and Clarity*, 78 U. Pitt. L. Rev. 273, 306 (2017) (emphasis added). Any contract Dawson had with the Lottery—if he had one at all—was formed in May 2011 when he bought his ticket (and when the advertised jackpot prize was $9.09 million), and the contractual relationship ended when the Lottery paid him his prize weeks later. Any information the Lottery obtained about Eddie Tipton after Dawson claimed his prize did not damage Dawson. *See id.* The later discovery of Tipton's criminal acts does not somehow breach a contract after the fact; indeed, "the notion of a 'retroactive breach of contract' makes no sense." *Cent. Elec. Power Coop., Inc. v. Se. Power Admin.*, 338 F.3d 333, 339 (4th Cir. 2003).

(recognizing that the Kansas Lottery's authority to determine who receives prize money "is limited by the Kansas statutes"); *Brown v. State*, 602 N.W.2d 79, 90 (Wis. Ct. App. 1999) (concluding any contracts between players and the lottery "include, and are subject to, the statutes governing the lottery"). Because the Lottery followed those provisions, it did not breach any contract it may have had with Dawson, and it is therefore entitled to summary judgment.

Unlike the contract in *Blackford*, where the statute did not contain a provision addressing the litigated issue, here the legislature has spoken about how to handle lottery prize funds when the ticket purchase was illegal or fraudulent. *See Blackford*, 778 N.W.2d at 189; *see also* Iowa Code § 99G.31(2)(*b*), (*e*). *Even if* Dawson is right that administrative rules support his theory about when jackpot money carries over, on these facts the statute is more authoritative and controls the outcome. *See Simmons v. State Pub. Defender*, 791 N.W.2d 69, 88 (Iowa 2010) (refusing to enforce an administrative rule that was incorporated into a contract because the rule conflicted with a statute); *Iowa Civil Rights Comm'n*, 482 N.W.2d at 388 (declining to give effect to a rule because it would result in "conflict with a statutory provision"); *Iowa Elec. Co. v. Inc. Town of Winthrop*, 198 N.W. 14, 17 (Iowa 1924) (rejecting a plaintiff's position as "untenable" because it was "contrary to the plain terms of the statute" and "would render the statute meaningless and impotent"). Further, if Dawson relies on administrative rules, he may not do so selectively; those same rules provide that in purchasing a ticket, players acknowledge that chapter 99G applies. Iowa Admin. Code r. 531—11.12. And it is basic hornbook law both that parties cannot enter a contract contradicting a relevant statute and that administrative rules cannot authorize a result a statute prohibits. *See Exceptional Persons, Inc. v. Iowa Dep't of Human Servs.*, 878 N.W.2d 247, 252 (Iowa 2016); *Lee v. Grinnell Mut. Reinsurance Co.*, 646 N.W.2d 403, 406 (Iowa 2002) ("[W]hen a [contract] provision conflicts with a statutory

requirement, the [contract] provision is ineffective and the statute controls."); *Cornick*, 252 Iowa at 656–57, 107 N.W.2d at 922 ("[P]arties may not contract in defiance of a statute which regulates the subject matter of their agreement.").

If Dawson has a contract with the Lottery at all, that contract incorporates Iowa Code chapter 99G. Chapter 99G expressly provides that the Lottery cannot pay any prize resulting from Tipton's purchase and his criminal acts. That is true even if Tipton had been identified as the Hot Lotto purchaser immediately on December 29, 2010 or shortly thereafter. Accordingly, the Lottery did not breach any contract with Dawson, and it is therefore entitled to summary judgment.

E. The Economic Loss Doctrine Forecloses Dawson's Negligence Claims.

Even if Dawson may ignore chapter 17A and bring freestanding negligence claims, he may not recover on them. Dawson's negligence claims allege the Lottery's negligence caused him not to receive millions in prize money. That money Dawson purportedly lost is "an economic loss. No one was injured; no property was damaged or destroyed." *Annett Holdings, Inc. v. Kum & Go, L.C.*, 801 N.W.2d 499, 502 (Iowa 2011); *see also Neb. Innkeepers, Inc. v. Pittsburgh-Des Moines Corp.*, 345 N.W.2d 124, 126 (Iowa 1984) (characterizing "reduced income" as an economic loss); *Economic Loss*, Black's Law Dictionary at 626 (10th ed. 2014) (defining "economic loss" as "monetary loss such as lost wages or lost profits").

"As a general proposition, the economic loss rule bars recovery in negligence when the plaintiff has suffered only economic loss." *Annett Holdings*, 801 N.W.2d at 503; *accord Neb. Innkeepers*, 345 N.W.2d at 126 ("[A] plaintiff who has suffered only economic loss due to another's negligence has not been injured in a manner which is legally cognizable or compensable."). When a plaintiff alleges "purely economic damages, [that] plaintiff cannot

recover in tort." *Des Moines Flying Serv., Inc. v. Aerial Servs., Inc.*, 880 N.W.2d 212, 218 (Iowa 2016). Because the only harm Dawson alleges here is financial, the economic loss rule requires summary judgment on Dawson's negligence claims. *See Annett Holdings*, 801 N.W.2d at 506 (concluding the economic loss rule barred negligence claims, and affirming summary judgment on that basis); *see also Koehlinger v. State Lottery Comm'n*, 933 N.E.2d 534, 542 (Ind. Ct. App. 2010) (rejecting claims against a lottery that sounded in tort under the Indiana analog to the economic loss rule).

F. The Public Duty Doctrine Precludes Dawson's Negligence Claims.

Even if the economic loss rule does not bar Dawson's negligence claims, the public duty doctrine does. The public duty doctrine "precludes liability to individuals based on breach of a duty to the public at large." *Estate of McFarlin v. State*, 881 N.W.2d 51, 58 (Iowa 2016). The Iowa Supreme Court has "applied this doctrine . . . to preclude tort claims by individuals against the government." *Johnson v. Humboldt Cty.*, 913 N.W.2d 256, 260 (Iowa 2018); *see also, e.g.*, *Estate of McFarlin*, 881 N.W.2d at 64 ("The DNR had regulatory oversight duties for dredging for the benefit of the public at large. . . . [T]he district court correctly granted summary judgment based on the public-duty doctrine."); *Raas*, 729 N.W.2d at 449–50 (dismissing tort claims brought against the State by an individual who was "only a member of the public at large"); *Kolbe v. State (Kolbe I)*, 625 N.W.2d 721, 729–30 (Iowa 2001) (dismissing tort claims because the statutes upon which the plaintiffs based the State's alleged breach of duty "are for the benefit of the public at large"). The doctrine "applies when the state's duty is owed to the general public rather than to a particularized group of persons." *Estate of McFarlin*, 881 N.W.2d at 62. And it applies even when the plaintiff claims to have suffered more than the public at large. *See id.* at 53, 64 (applying the public duty doctrine to a wrongful death claim); *Johnson*,

913 N.W.2d at 258 (applying the public duty doctrine when the plaintiff sustained serious injuries in a car accident).

Dawson asserts negligence claims against the Lottery, but any duty the Lottery owed to him (if it owed any duty at all) is no different from the duty owed to the public. Accordingly, the public duty doctrine entitles the Lottery to summary judgment on Dawson's negligence claims.

It is unclear exactly what duty Dawson alleges *the Lottery* breached, because his petition speaks predominantly of MUSL actions—hiring Tipton, building RNGs, administering funds. But even boiled down to a purported duty to ensure the games are fair, that "would be a duty owed to *all*" Iowans. *Johnson*, 913 N.W.2d at 261; *see also* Iowa Code § 99G.2(3) (expressing the legislature's intent that the Lottery be entertaining, profitable, "operated with integrity and dignity," and "free from political influence"). "It would thus be a public duty." *Johnson*, 913 N.W.2d at 261; *see also IES Utils., Inc. v. Iowa Dep't of Revenue & Fin.*, 545 N.W.2d 536, 538–39 (Iowa 1996) (noting the "very purpose of an . . . agency" is to perform functions for the public's benefit); *Butler v. Kent*, 19 Johns. 223, 228 (N.Y. Sup. Ct. 1821) (finding any injury resulting from a lottery's alleged negligence in conducting a drawing was "common to all those who held tickets"). Therefore, it is not actionable unless Dawson "can establish, based on the unique or particular facts of this case, a special relationship" between himself and the Lottery. *Kolbe I*, 625 N.W.2d at 729. He cannot do so.

A special relationship only exists when the parties share some individualized fiduciary or custodial connection. It does *not* exist when the government makes decisions and takes action while exercising general regulatory oversight. *See Estate of McFarlin*, 881 N.W.2d at 64 (concluding the DNR's actions taken as part of its "regulatory oversight duties" involved only a public duty); *see also Kolbe I*, 625 N.W.2d at 729. And that's all Dawson alleges here.

Even a modest narrowing criterion does not defeat the public duty doctrine or create a special relationship. *See Estate of McFarlin*, 881 N.W.2d at 61 (rejecting "a special class of 'rightful users of the lake' for purposes of the public-duty doctrine"). Of course, not all Iowans play the Lottery, whether by choice or because the law prohibits them from doing so. *See* Iowa Code § 99G.30(3) (prohibiting underage play), 99G.31(2)(*g*)–(*h*) (prohibiting Lottery employees and Lottery vendor employees from purchasing Lottery tickets). But the subset of "lottery players" is not narrow enough to stand apart from "the public," so the public duty doctrine still applies. *See Kolbe v. State (Kolbe II)*, 661 N.W.2d 142, 146 (Iowa 2003) ("[T]here is no more of a special relationship between Shulte's physicians and Kolbes than there is between the physicians and the entire driving public. No relation exists between the physicians and Kolbes that is sufficiently close and direct to support a [negligence] claim against the physicians . . . .").

Indeed, the subset of Iowa Lottery players is much like the subset of people addressed in *Estate of McFarlin*. There, the Iowa Supreme Court applied the public duty doctrine because "*all* members of the public are free to use Storm Lake," even though not all of them did. *Estate of McFarlin*, 881 N.W.2d at 62. Several other cases apply the public duty doctrine on similar grounds, when all members of the public *could* participate, but did not. *See, e.g.*, *Johnson*, 913 N.W.2d at 261 (roads specifically in Humboldt County); *Kolbe I*, 625 N.W.2d at 728 (roads statewide); *Sankey v. Richenberger*, 456 N.W.2d 206, 207 (Iowa 1990) (location of a city council meeting). The same rationale applies here. The age limitation on lottery participation is analogous to the age limitation on drivers licenses—and "eligible drivers" is not a subset of people different from the public generally. *See Kolbe*, 625 N.W.2d at 728. Likewise, only some

people utilized the facilities offered by the DNR in *Estate of McFarlin*, and the public duty doctrine applied nonetheless. *See Estate of McFarlin*, 881 N.W.2d at 62.[9]

All the Lottery's decisions or actions that Dawson challenges in this case were part of the Lottery's general regulatory oversight. Therefore, any duty the Lottery owed is a public duty. And because Dawson has no special relationship with the Lottery, the public duty doctrine requires summary judgment on all his negligence claims.

G. If Dawson's Claims Survive, His Claimed Damages Are Too Speculative.

If any of Dawson's claims survive every other ground raised, the Lottery is still entitled to summary judgment because his claimed damages are too speculative.

There exists a "well-settled general tort principle that interference with the *chance* of winning a contest . . . presents a situation too uncertain upon which to base tort liability." *Youst v. Longo*, 729 P.2d 728, 730 (Cal. 1987); *see also Anderson v. Wapello Coal Co.*, 131 N.W. 684, 684–85 (Iowa 1911) ("[N]either court nor jury can properly indulge in conclusions which are at best matters of mere conjecture or mere speculation concerning possibilities. . . . Such inquiries are too vague and uncertain . . . to [be] the foundation of a legal right."). It is not so simple as recognizing that Dawson won the next Hot Lotto jackpot after December 29, 2010. Instead, ascertaining Dawson's damages would require finding it was more likely than not that *none* of the intervening thirty-six drawings would have resulted in a jackpot winner, or in the alternative, finding that if no "drawing" occurred on December 29, 2010, no drawing occurred the next 36

[9] Even the dissent in *Estate of McFarlin* supports the Lottery here. Unlike the geographically limited duty the dissent proposed in that case, any duty the Lottery owes runs "to members of the general public from Larchwood to Keokuk, Hamburg to New Albin, and everywhere in between." *Estate of McFarlin*, 881 N.W.2d at 68 (Hecht, J., concurring in part and dissenting in part). Indeed, the Lottery licenses retailers in all four of those corners of the state—"and everywhere in between." *Id.*; *see generally Find a Retailer*, Iowa Lottery, https://ialottery.com/Pages/AboutUs/FindARetailer.aspx (providing a search feature to find licensed lottery retailers by city or by zip code).

times either. *See Youst*, 729 P.2d at 731 ("Ascertainment of the amount of . . . damages apparently would require a finding as to the position in which [a horse] would have finished [in a race] but for defendant's interference."). Such a finding is too speculative to justify liability. *See St. Malachy Roman Catholic Congregation of Geneseo v. Ingram*, 841 N.W.2d 338, 352–54 (Iowa 2013) (concluding plaintiffs in a negligence action could not recover because the evidence of what a purported gift recipient would have received was too speculative to establish the fact or the amount of damages); *Shannon v. Hearity*, 487 N.W.2d 690, 693 (Iowa Ct. App. 1992) (denying recovery because the plaintiffs introduced only speculative evidence that they had been damaged in fact); *see also Youst*, 729 P.2d at 737 ("Deprivation of the *chance* of winning a horserace or any sporting event does not present a basis for tort liability . . . . [T]he probability that plaintiff's horse would have won the race is simply too speculative a basis for tort liability.").

CONCLUSION

Dawson won a $9.09 million jackpot. After electing a lump sum payment and withholding of required state and federal taxes, he received just over $4 million. No matter what Eddie Tipton did, that's all Dawson was ever entitled to receive. Because that's what he in fact received, the Court should grant summary judgment to the Lottery and award any other relief it deems proper under the circumstances.

Respectfully submitted,

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