

19TH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

NUMBER 587369 DIVISION "23"

IVOR VAN HEERDEN, PH.D.,

VERSUS

BOARD OF SUPERVISORS OF LOUISIANA STATE UNIVERSITY,
AND AGRICULTURAL AND MECHANICAL COLLEGE,
BROOKS KEEL, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY,
ROBERT TWILLEY, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY,
GEORGE VOYIADJIS, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY, AND
DAVID CONSTANT, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY

PETITION FOR DECLARATORY, INJUNCTIVE,
AND MONETARY RELIEF AND JURY DEMAND

The Petition of Ivor Van Heerden, Ph.D., a resident of the full age of majority of
Livingston Parish, Louisiana, respectfully represents:

1.

The Defendants enumerated below are justly and truly indebted unto Petitioner for all sums
as are reasonable under the premises, punitive damages as allowed by law, attorney's fees, all costs
of these proceedings, legal interest thereon from the date of demand until paid, and all such other
relief to which Petitioner is entitled at law or in equity, including declaratory and/or injunctive
relief:

1. Board of Supervisors of Louisiana State University and Agricultural and
Mechanical College (hereinafter "LSU"), an entity domiciled in the Parish of East
Baton Rouge;
Brooks Keel, individually and in his official capacity, domiciled in the Parish of
East Baton Rouge;
3. Robert Twilley, individually and in his official capacity, domiciled in the Parish of
East Baton Rouge;
4. George Voyiadjis, individually and in his official capacity, domiciled in the Parish
of East Baton Rouge.
David Constant, individually and in his official capacity, domiciled in West
Louisiana Parish.

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19TH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA
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2.

On August 18, 1992, Petitioner was employed by Defendant LSU. At all pertinent times, Defendant LSU was Petitioner's "employer" within the meaning and intent of law and employed greater than 1000 employees. At all pertinent times, Defendants Keel, Twilley, Voyiadjis and Constant, were agents of and employed by Defendant LSU and had immediate and successively higher authority over Petitioner. At pertinent times, Sean O'Keefe, Harold Silverman, Michael Ruffner and Zaki Bassiouni were agents of and employed by Defendant LSU and had immediate and successively higher authority over Petitioner.

3.

Dr. van Heerden, an eminent disaster science specialist and hurricane researcher, is known worldwide for his best-selling and highly-acclaimed book, *The Storm*, in which he recounts the tragedy of Hurricane Katrina, the failed response by the Federal Emergency Management Agency ("FEMA") and other state and federal agencies. In *The Storm* and through public statements he made during and after Katrina, Dr. van Heerden charged the U.S. Army Corps of Engineers (the "Corps") with making serious engineering mistakes that caused multiple breaches in the system of levees that were supposed to protect New Orleans against hurricane-related flooding, resulting in some 90% of the flooding of New Orleans and a large percentage of the ensuing deaths and devastation. In response to Dr. van Heerden's public criticism of the Corps, the Defendants – LSU and the above-named administrators of the university and its College of Engineering ("CoE"), which rely on the federal government for the funding of research – have subjected Dr. van Heerden to a multi-year campaign of retaliation and retaliatory harassment. As is set forth in greater detail below, the Defendants retaliated against Dr. van Heerden by publicly branding him as incompetent and irresponsible, barring him from working with government agencies that needed and requested his expertise in later hurricane preparedness efforts, and ultimately terminated his employment with the university by manipulating the policies and procedures governing faculty appointments at LSU. Through this lawsuit, Dr. van Heerden seeks to correct this injustice, which not only violated his rights under the First and Fourteenth Amendments to the U.S. Constitution, the Constitution and laws of Louisiana and his contract with the university, but which also placed the bureaucratic interests of university officials above the health and safety of the millions of people who live in the path of the hurricanes that threaten the Gulf Coast every

year.

4.

At the time of Katrina, Dr. van Heerden had been a member of the faculty of CoE since October 1, 2000 and served since 2000 as Deputy Director of the LSU Hurricane Center. He had served also as Director of the LSU Center for the Study of Public Health Impacts of Hurricanes, having secured a \$3.65 million grant for the Center in 2002. Dr. van Heerden received his Ph. D. from LSU in Marine Sciences in 1983. He returned to LSU in 1993 as head of the Natural Systems Management and Engineering Program in the Center for Coastal, Energy, and Environmental Resources ("CCEER") and later transferred to the Louisiana Geological Survey ("LGS"). Dr. van Heerden's work during the 1990's focused on protection and restoration of the wetlands and barrier islands which historically had provided a vital buffer for southeastern Louisiana's natural, hurricane vulnerability.

5.

In 1998, Dr. van Heerden was part of a team sent by LSU to Honduras to attempt to assist following Hurricane Mitch. The trip brought him together with Dr. Marc Levitan of the Department of Civil and Environmental Engineering ("CEE") and led to the establishment of the LSU Hurricane Center and to transfer of Dr. van Heerden's position as Associate Professor--Research from LGS to CEE.

6.

The LSU system-wide policy, "Ranks, Provisions, and Policies Governing Appointments and Promotions of the Academic Staff" (PM-23), specifies that initial appointments of Associate Professors may be "for a specific term though not more than five (5) years of total service on that campus." PM-23 states: "Individuals paid from grant or contract funds do not acquire tenure through the passage of time but may become tenured only by specific individual recommendation through appropriate channels and approval by the President." PM-23 states: "*With the exceptions noted above* [pertaining to the maximum period of specific-term appointments and to individuals paid from grant or contract funds], *Associate Professors are tenured and are appointed for an indefinite period of time.*" (Emphasis added.) Regulations of the LSU System Board of Supervisors, § 2-7 likewise provide: "Persons holding a professorial rank (Professor, Associate Professor or Assistant Professor) *while being paid by a grant or contract* do not acquire tenure

through the passage of time but may become tenured only by specific individual recommendation through appropriate channels and approval by the President.”(Emphasis added); § 2-6 fn. 4 states: “Full-time faculty whose primary responsibility is conducting research and who normally are paid from grant or contract funds are to be appointed as Assistant Professor-Research, Associate Professor-Research The faculty in these ranks do not acquire tenure.” (Emphasis added.)

7.

While denominated “Associate Professor--Research,” Dr. van Heerden has since 1995 been paid from state funds and since 2002 on the same academic-year basis as other academic faculty members and never from grant or contract funds as are research faculty as defined by the University's governing policies. Prior to 1995, Dr. van Heerden had been paid from grant funds. Personnel action forms generated while Dr. van Heerden was paid from grant funds, but not thereafter, stated that his continued employment was contingent on the availability of adequate funding. While Dr van Heerden from time to time chose to generate “salary savings” by electing to be paid from grant funds, this is a fairly common practice among tenure-track and tenured faculty that does not affect the faculty member's hard-money status. The personnel action form that registered Dr. van Heerden's transfer to CEE effective October 1, 2000 specifically noted that his compensation would come from *state funds* and identified his position as a *teaching* position. PM-23's limited exception to tenure status for Associate Professors paid from grant or contract funds has accordingly not covered Dr. van Heerden's status at any time since 1995.

8.

Dr. van Heerden has worked since October 1, 2000, subject to a single position description. His specified duties have included 30% “basic and applied research”; 35% “program development and supervision in the area of natural disasters”; 20% “participation in academic programs” including “course development, instruction, research supervision, thesis and dissertation committee membership and seminars”; and 15% “technical assistance to state and federal agencies” Dr. van Heerden bore substantial teaching responsibilities at least until Chairman Voyiadjis advised him in October 2006 that he would no longer be allowed to teach. See para. 28, *infra*. Consistent with his position description, Dr. van Heerden developed and for several years taught a course entitled “Disaster Science and Management (DSM) 2000,” part of an undergraduate

concentration that LSU is currently expanding to include pursuit of a doctorate degree. He also taught civil engineering seminar courses for graduate students (CEE 7700) and supervised graduate students in CEE. The LSU Graduate Council approved Dr. van Heerden in 2004 for a three-year term as an Associate Member of the LSU Graduate Faculty. The documentation of his nomination, signed by Defendant Voyiadjis on July 12, 2004, lists his work assignment as 20% teaching, 30% research and 50% administration.

9.

Prior to Hurricane Katrina, the LSU administration and CoE were extremely pleased with Dr. van Heerden's contributions. In 2003, he underwent a formal review by the CEE faculty, documentation of which expressly identified the evaluation as conducted pursuant to the CEE faculty's review of "*tenure track faculty*." His performance was deemed satisfactory with regard to teaching, research and service – the three criteria prescribed for faculty evaluation by LSU personnel policies governing the evaluation of university faculty. See "Criteria for Evaluating Academic Performance, and Policy and Procedures on Faculty Appointment, Performance Evaluation, Reappointment/Non-reappointment, Promotion and Tenure, Appeal Procedures," LSU Policy Statement No. PS-36 (Revision No. PS0036.R05, July 1, 1997) (referred to hereinafter as "PS-36"). The review recommended his reappointment for a three-year term.

10.

In the years prior to Katrina, Dr. van Heerden took the lead in introducing cutting-edge storm surge modeling which proved capable of accurately predicting the surge expected from a hurricane of any given strength approaching any section of the Gulf Coast. He also led multidisciplinary analysis of the broad array of complex problems including *e.g.*, evacuation, public information, contamination of air, water and soil, housing, stray animals, potential fatalities, infectious disease, etc., as necessary to prepare for and respond effectively to a major storm. By letter of March 17, 2005, then Dean Zaki Bassiouni congratulated Dr. van Heerden on behalf of CoE on securing funding for Gulf Coast surge modeling and declared: "Your commitment to excellence is evidenced by this appointment, as is your dedication to teaching, research, and professional service." Dr. Bassiouni continued: "Through your professional service and academic outreach, you have extended your own knowledge to enhance the lives of others, in addition to motivating your students to follow your lead. We take pride in the

accomplishments of our bright and talented faculty members such as yourself, who are an asset to the College as well as the University.”

11.

In Dr. van Heerden’s own words, he was among the “more notorious Cassandras” in warning of the apocalypse that awaited New Orleans from a direct hit by a major storm due to the combination of the City’s natural vulnerability and the progressive diminution of barrier-island and wetland buffers. *See, The Storm* at 8. Because it veered eastward just prior to landfall and turned out to be far less powerful than expected, Hurricane Katrina was not that storm. Nevertheless some 85% of New Orleans lay under water on August 29, 2005 due to flooding from breaches of several levee walls which had been designed and engineered by the Corps. In the midst of the Katrina emergency, LSU Vice Chancellor Harold Silverman stated to Dr. van Heerden and others at the Hurricane Center that their operational support to federal and state agencies during the storm emergency was “okay” but that what really excited him was “federal dollars.”

12.

In the weeks after Katrina, Corps officials insisted that the storm surge from Katrina “had overtopped and overwhelmed their Grade A levees.” *See, e.g., The Storm* at 9. Dr. van Heerden minced no words in disputing the Corps’ explanation. The initial report of Dr. van Heerden’s disagreement with the Corps’ explanation and his assertion of the Corps’ responsibility for the extent of death and devastation appeared in a *Washington Post* article on September 21, 2005. The article quoted Dr. van Heerden’s rejection of the Corps’ assertion that the levees were overtopped by extraordinary storm surges (“We are absolutely convinced that those flood walls were never overtopped”) and his statement that “the real scandal of Katrina [was] the ‘catastrophic structural failure’ of barriers that should have handled the hurricane with relative ease.” M. Grunwald & S Glasser, “Experts say Faulty Levees Caused Much of Flooding,” *Washington Post* (Sept. 21, 2005).

13.

In October 2005, Dr. van Heerden was appointed to head the nine-member State of Louisiana Forensic Data Gathering Team, known as “Team Louisiana,” which was established under auspices of the Louisiana Department of Transport and Development (“DOTD”) to

investigate the causes of the extensive flooding and the ensuing death and devastation. The New Orleans *Times-Picayune* noted that Dr. van Heerden had “questioned initial Army Corps of Engineers statements that the 17th Street and London Avenue canal breaches were caused by water topping the levee walls” and that his “theory that the pressure of floodgates within the canals somehow caused the walls to buckle has gained credence over the past two weeks. . . .” M. Schleifstein, “Louisiana Group Studies Levee Failure,” *Times-Picayune* (Oct. 12, 2005). The state’s contract with LSU was run through the CoE. In addition to Dr. van Heerden and five other LSU faculty members, the team included three independent engineers. As team head and the designated official spokesperson, Dr. van Heerden received scores of inquiries from the media regarding the flooding in New Orleans. His comments, as quoted in national newspaper and television reports, were highly critical of the Corps for its levee and flood wall construction policies and designs with particular reference to the breached 17th Street, London Avenue and Industrial Canal levees.

14.

On November 2, 2005, Dr. van Heerden testified before the U.S. Senate Committee on Homeland Security and Governmental Affairs regarding Team Louisiana’s preliminary findings. He stated:

Preliminary findings by the State of Louisiana Forensic Data Gathering Team are that in the case of the 17th Street Canal, London Ave Canal and the Industrial Canal, levee collapse and flood breaching reflected unstable soil conditions and a lack of foundation support and water percolation seals, given the soft, porous and highly organic nature of the soils.

Testimony of Ivor van Heerden, Committee on Homeland Security and Governmental Affairs, U.S. Senate, November 2, 2005, 1.

15.

Dr. van Heerden concluded that failure of the levees “was due to a design that did not account for the very weak nature of the soils” or “the very high porosity and permeability of these soils.” He described the levee design as “a geotechnical engineering failure.” Dr. van Heerden placed the onus for the failure of the levees squarely on the Corps. He testified: “Not to have given the residents the security of proper levees is inexcusable.”

16.

Dr. van Heerden elaborated on his assertions regarding the Corps’s culpability for most of

the flooding in New Orleans in *The Storm*. See, e.g., Chapters 4 (“Levees Lite”), 9 (“The Score on the Corps”), 10 (“The Investigation”) and the “Afterword,” which appeared in the 2007 paperback edition). He disputed the Corps’ evolving explanations and attempted self-justifications in *The Storm* and also in invited contributions to refereed journals and journals of national and international reputation. These articles included: “The Failure of the New Orleans Levee System During Hurricane Katrina and Public Policy Needs for the Future,” *Forum on Public Policy*, Vol 3, Number 4 (2007); “The Failure of the New Orleans Levee System Following Hurricane Katrina and the Pathway Forwards,” *Public Administration Review*, a special issue on *Administrative Failure in the Wake of Hurricane Katrina* (2007); “The Failure of the New Orleans Levee System and the Pathways Forward,” *National Wetlands Newsletter*, Vol 29, Number 5 (2007); and most recently, “How a Navigation Channel Contributed to Most of the Flooding of New Orleans During Hurricane Katrina,” *Public Organiz Rev* (2009) 9:291-308. Published by Springer.

17.

On December 1, 2005, the *New York Times* reported Team Louisiana’s preliminary findings “that the 17th Street Canal was built with too little regard for the inherent weakness of the soil under the canal banks” and that “[s]imilar conditions . . . existed at the sites of the two other major levee breaches in metropolitan New Orleans.” The *New York Times* quoted Dr. van Heerden as follows: “It should have been obvious,” said the deputy director of the Louisiana State University Hurricane Center, Ivor van Heerden, the leader of the investigative group, known as Team Louisiana.” The article continued: “The devastation of New Orleans was a disaster waiting to happen because of a significant flaw in levee design by the Army Corps of Engineers, according to preliminary findings from the official Louisiana team investigating the Hurricane Katrina flooding.” J. Schwartz and C. Drew, “Louisiana’s Levee Inquiry Faults Army Corps,” *New York Times* (Dec. 1, 2005).

18.

As described in the *Washington Post* on March 22, 2007, Team Louisiana’s final report concluded that the “design and construction of the New Orleans hurricane levee system was flawed because the Army Corps of Engineers ignored warnings about the power of potential storms and made critical engineering miscalculations” “The ‘Team Louisiana’ report echoed many of the

findings of previous engineering inquiries but offered them in sometimes sterner terms, while highlighting some of the political forces that affected the flood system's formation." "The problem is that hurricane protection has no lobbyists," said Ivor van Heerden, a hurricane researcher at Louisiana State University, who led the team."

19.

Corps officials reacted negatively to Dr. van Heerden's criticisms, and made their views known to the LSU administration and CEE who were sensitive to potential ill feeling from the Corps, which was historically an important funding source for the CoE and other components of LSU. The *New York Times* later described an angry email message from Dr. Roy Dokka of CEE to LSU administrators in October 2005. According to the *Times*, Dokka stated that Corps personnel had complained to him about Dr. van Heerden's criticism. Dr. Dokka's email to the LSU administrators stated that he was "greatly concerned" about what he termed "the deluge of irresponsible reports to the media being spewed by a small number of mainly non-tenure track faculty regarding what may or may not have caused flooding in New Orleans." He stated, "I am asked how so-and-so's irresponsible behavior is tolerated" and urged that the "cowboys" needed to be "reigned [sic] in." J. Schwartz, "Ivor van Heerden's 'Storm' Draws Fire at L.S.U.," *New York Times* (May 30, 2006). To this end, Vice Chancellor Harold Silverman and Defendant Twilley attempted unsuccessfully to intercede with the Louisiana Governor's office to prevent the Team Louisiana study from going forward under Dr. van Heerden's leadership. The state Attorney General's office, however, insisted that the study proceed without regard to attempted interference by the LSU administration.

20.

Soon after the Dokka email and Dr. van Heerden's Senate testimony, then Vice Chancellors Silverman and Ruffner called Dr. van Heerden to a meeting and admonished him for his public criticisms of the Corps. They charged that his criticisms of the Corps jeopardized LSU's prospects for federal funding. In addition, they accused him of lacking the expertise needed to comment on the Corps' engineering of the breached levees, notwithstanding the fact that his statements reflected the input of Team Louisiana engineers. The vice chancellors warned Dr. van Heerden that LSU did not want to be associated with "placing blame" on the Corps for the flooding and devastation that had occurred in the aftermath of Katrina. Dr. van Heerden

reasonably perceived their statements as threats to his job, and as an improper infringement on his academic freedom and his constitutional right to freedom of speech on matters of vital public concern. Accordingly, he promptly memorialized the statements in an email he sent to the vice chancellors on November 15, 2005. Ruffner acknowledged Dr. van Heerden's note but did not dispute his account of statements made to him by Ruffner and Silverman at the meeting.

21.

Dr. van Heerden persisted in his efforts to analyze the causes of the flooding in New Orleans and the ensuing death and devastation. In *The Storm* and the Afterword to the 2007 edition, in articles in scholarly journals, in conference presentations (including a number of keynote talks), in testimony before legislative and other public bodies, in countless responses to media inquiries, and by assisting parties in litigation against the Corps, Dr. van Heerden maintained his position that the Corps' engineering failures were to blame for 90% of the flooding and some 50% of the associated deaths (the remaining 50% of the deaths being attributable to FEMA's failed response). *See, e.g., The Storm* at 293 (Afterward). Dr. van Heerden held his ground despite the ongoing efforts of the chancellor's office and CoE to silence him.

22.

Shortly after *The Storm's* release in May 2006, the *New York Times* drew attention to the LSU administration's attempts, through Vice Chancellors Silverman and Ruffner, to stifle Dr. van Heerden's criticisms of the Corps. "[A]s leader of the state's team of investigators of the disaster," the *Times* recalled, Dr. van Heerden had "helped reveal the flaws in design, construction and maintenance of the city's hurricane protection system that contributed to the destruction." The newspaper reported that Dr. van Heerden's "outspokenness" made him a "hero" to "many in Louisiana," but had "gotten him called on the carpet [at the University] for threatening the institution's relationship with the federal government and the research money that comes with that." The *Times* noted Dr. Dokka's email stating that Corps personnel had complained to him about Dr. van Heerden's criticisms and urged that he be reined in.

23.

Other newspapers and media outlets picked up this story as well, and reported on LSU's treatment of Dr. van Heerden as a troubling incursion on academic freedom. *See, e.g.,* Editorial, "Do not Silence Scholars," *Baton Rouge Advocate*, June 2, 2006. Vice Chancellor Ruffner

responded, however, with a letter to the *New York Times* in which he asserted that Dr. van Heerden had “no professional credentials or training” to discuss the engineering of levees. M. Ruffner, “Free Speech and Katrina,” *New York Times*, June 7, 2006.

24.

The *Advocate* subsequently published a letter by LSU Professor A.R.P. Rau that criticized LSU’s upper administration and described its attack on Dr. van Heerden as a dangerous violation of academic freedom. Writing on behalf of forty-eight LSU professors and the LSU chapter of the American Association of University Professors (“AAUP”), Dr. Rau pointed out that detailed studies had vindicated Dr. van Heerden’s criticisms of the Corps, and noted that “the attempt to muzzle a professor seems to have been motivated by worries that criticism of powerful men and agencies may jeopardize federal funding to LSU.” The letter declared, “Academic freedom means that faculty members are free to investigate and discuss issues. It is not the role of administrators, or individual colleagues, to proscribe areas of inquiry to faculty members.” A.R.P. Rau, Letter to the Editor, “Supporting Academic Freedom at LSU,” *Baton Rouge Advocate*, June 28, 2006.

25.

The LSU *Daily Reveille* ran an editorial calling on Dr. Ruffner to apologize to Dr. van Heerden. Editorial, “Time for an Apology, Dr. Ruffner,” *Daily Reveille*, July 6, 2006. Dr. Ruffner did not apologize.

26.

Dr. Mark Levitan, then Director of the Hurricane Center, demanded his own meeting with Vice Chancellor Ruffner at which he challenged the University’s assertion that Dr. van Heerden lacked the necessary expertise to address the levee failures. Dr. Levitan pointed out that Dr. van Heerden had overseen research at the center that had successfully estimated the potential for hurricane storm surge. He further stressed that the state forensic investigation of Katrina that Dr. van Heerden led had included a team of scientists and civil engineers. Dr. Ruffner, who was unable to dispute Dr. van Heerden’s expertise, nonetheless responded that Dr. van Heerden was “causing problems with the Hurricane Center and *if he were no longer part of the center, things would probably be better for the Hurricane Center on campus*” (emphasis added).

27.

In July 2006, Dr. Brooks Keel replaced Dr. Silverman as Vice Chancellor for Research and Economic Development. Shortly thereafter, Robert Twilley, Director of LSU's Coastal Systems and Society Initiative since late 2005, was appointed Associate Vice Chancellor for Research and Economic Development. In this capacity, Dr. Twilley was given responsibility for all LSU programs involving coastal restoration and the study of hurricanes. Dr. Twilley promptly took steps to marginalize Dr. van Heerden and to put him on an ever tighter leash.

28.

On October 15, 2006, CEE Chairman Voyiadjis apprised Dr. van Heerden of a new personnel policy which, he said, would thenceforth govern the terms of Dr. van Heerden's employment. Under the new policy, Dr. Voyiadjis stated, Dr. van Heerden would no longer be allowed to teach, would be allowed to hold only a one-year appointment, and would be judged exclusively based on his research, and not on the combined criteria of teaching, research and service prescribed for academic faculty by PS-36. On October 26, 2006, when Dr. van Heerden requested all documentation related to his position in CEE, Chairman Voyiadjis sent him a package which included, for the first time, the purported new policy, which was marked "Revised Draft 10.18.05").

29.

The CoE had promulgated the new policy regarding research faculty a year earlier in October 2005, unbeknownst to Dr. van Heerden during the initial turmoil engendered by his criticisms of the Corps. Dean Bassiouni and other CoE leaders, in collaboration with LSU administrators had prepared an unsigned draft policy governing CoE research faculty. The new policy, which was marked "Revised Draft 10.18.05," recited that all CoE research faculty were to be paid going forward through "external financial support . . . to defray 100% of the salary and related expenses"; that these faculty would be allowed to teach "only on a limited basis" and then only "for additional compensation" and not "during regular hours unless annual or unpaid leave is granted for the classroom time"; and that all research appointments would be for one year unless external funding guaranteed support for a longer, fixed period of time. The new policy stated that all research faculty appointment contracts must include the statement, "[c]ontinued employment contingent upon availability of adequate external funding."

30.

By its own terms, however, the new personnel policy could not apply to Dr. van Heerden or to the position he had occupied since 2000. He held an academic appointment and not a research appointment and thus was not subject to the policy. In addition, the terms of Dr. van Heerden's employment made it clear that he was not within the research faculty to which the new policy applied. His salary had since 1995 been, and would continue to be, paid from state funds and not from external financial support. He had always taught during regular hours, he had never taken leave to teach or taught outside regular hours, and he had never received any compensation beyond his state salary. Moreover, taking leave would have been impossible for Dr. van Heerden because he held an academic appointment, which did not provide for annual leave.

31.

The LSU administration and CoE leadership subjected Dr. van Heerden to the policy governing research faculty not because it legitimately applied to him which it could not, but rather to penalize him for his criticisms of the Corps. CoE proceeded to apply the new procedure to Dr. van Heerden, albeit selectively. It changed the criteria for his performance evaluations to the sole criterion of research, removed his teaching responsibilities, and began issuing him fixed-term appointments of a single year at a time.

32.

At the same time, LSU's treatment of Dr. van Heerden remained incompatible with his supposed research faculty status. LSU continued to pay Dr. van Heerden from state funds as it did with other academic appointees and continued to employ him on an academic-year schedule. The University never provided Dr. van Heerden with a new position description specifying that his duties would henceforth involve solely or predominantly research. It never supplanted his October 2000 position description which specified research as being only a *minority* component of his duties, or in any other manner reclassified him as "research" faculty. While the 2005 draft policy required all research faculty appointment contracts to include the statement, "[c]ontinued employment contingent upon availability of adequate external funding," LSU never inserted this language into Dr. van Heerden's contracts nor could it inasmuch as Dr. van Heerden continued to be paid out of state funds. The policy also states, "Since research faculty are non-tenured faculty, they shall be reviewed annually by tenured faculty of the department." But even though the new

policy was purportedly in place as of October 18, 2005, Dr. van Heerden received no faculty review in 2006 or 2007, and received his first such review under the new policy in early 2008. As these facts show, LSU and CoE did not properly reclassify Dr. van Heerden as a part of the research faculty. Instead, they took parts of a policy that was designed to govern research faculty but that would significantly harm Dr. van Heerden by removing important responsibilities and making his employment less secure, and selectively imposed those terms on him even though his academic appointment provided for greater responsibilities and greater job security.

33.

In the meantime, the LSU administration and CoE continued to take retaliatory actions against Dr. van Heerden to discredit and marginalize him. For example, late in 2006, then Chancellor Sean O'Keefe declined a request to support Dr. van Heerden's nomination for the 2007 National Wetlands Award, a prestigious honor that the Environmental Law Institute, with the support of the Corps and other federal agencies, presents annually for demonstrated excellence in wetland conservation. Hazel Sinclair, a local wetlands activist who herself had recently received the award, attempted to mobilize support for Dr. van Heerden's nomination based, among other things, on his role in the forensic investigation concerning the failure of the New Orleans levees.

34.

Support for the nomination was readily forthcoming from a number of prominent figures, including Secretary of Transportation and Development Johnny B. Bradberry, Dr. Levitan, Dr. B.G. Bea, professor of civil and environmental engineering and Associate Director of the Center for Catastrophic Risk Management at the University of California (Berkeley), and Dr. van Heerden's colleagues at the LSU Hurricane Public Health Center. CNN Anchor Anderson Cooper, who had covered the Katrina disaster, said, "Ivor van Heerden is . . . a hero. He spoke out when others stayed silent. He warned of dangers that others ignored. He continues to fight for the future of the wetlands and of Louisiana."

35.

While these important voices for wetlands conservation were quick to support Ms. Sinclair's efforts to secure support for Dr. van Heerden's nomination, she encountered a roadblock with the LSU administration. On December 14, 2006, Ms. Sinclair called Chancellor O'Keefe's office to ask for LSU's support for the nomination. Chancellor O'Keefe's assistant, Deborah

Richards, responded enthusiastically and promised to check and get back in touch with Ms. Sinclair.

36.

Ms. Sinclair's request generated a revealing flurry of emails among Chancellor O'Keefe, Vice Chancellors Silverman and Keel, and Associate Vice Chancellor Twilley. "We would not want this award to justify his potentially misguided view of service/science," Keel wrote to Twilley. He advised Chancellor O'Keefe that "we need to be careful giving Ivor our 'official stamp of approval' in light of some of the negative reactions he has generated." Ms. Sinclair followed up after not hearing from the chancellor's office, and on her third call the assistant informed her that Chancellor O'Keefe would be unable to support Dr. van Heerden's nomination. Ms. Sinclair received no direct communication from the chancellor or any other administrator explaining why LSU was withholding its support for the nomination.

37.

Another chain of emails reflecting the LSU administration's animus against Dr. van Heerden for his continued criticism of the Corps followed coverage in the *Washington Post* and other media of Team Louisiana's release of its final report, which was highly critical of the Corps, in mid-March 2007. Vice Chancellor Keel forwarded the list of media reports to Twilley and Silverman with the ominous note: "see below several articles on Ivor's 'Team Louisiana' report. How will this affect our efforts?"

38.

Also in March 2007, Dr. van Heerden joined four other LSU academics in writing a letter to Louisiana Governor Blanco and Corps Commander Carl A. Strock taking issue with aspects of a proposed "Comprehensive Master Plan" that was under development by Louisiana and the Corps for the restoration of the Louisiana Coastal Zone. Associate Vice Chancellor Twilley had at first excluded the five LSU academics from the state's Science and Engineering Review Team ("SERT"), which he had assembled. Twilley thereafter invited all but Dr. van Heerden and one other, Paul Templet, to join the team.

39.

Dr. Twilley's continued exclusion of Dr. van Heerden from the SERT meeting reflected the LSU's administration's retaliatory animus towards faculty who had spoken out with criticisms

of the Corps. A few months earlier, Randy Hanchey of the state Department of Natural Resources had told Dr. van Heerden and Paul Kemp, who was then employed with the LSU Hurricane Center, that they would never be allowed to participate in the SERT planning process because they had “taken on the Corps.” Mr. Hanchey’s understanding was consistent with the condemnation of Dr. van Heerden that the vice chancellors expressed in email exchanges among themselves. In a May 23, 2007, email to Dr. Keel with the subject line “Update on Science Capacity Building,” Dr. Twilley complained that he was being wrongly blamed for opposing an aspect of the project criticized by Louisiana coastal experts but which was favored by a particular state senator. “*Think they confused me with Ivor?*” Dr. Twilley quipped. *Where is the cyanide pill?*” Dr. Keel replied by email, “[W]e need to be sure they know the difference between Ivor and the rest of LSU. Were you wanting cyanide for you . . . or Ivor??”

40.

In April 2007, soon after release of Team Louisiana’s final report, attorneys for the plaintiffs in litigation against the United States and the Corps relating to the Mississippi River Gulf Outlet (“MR-GO”) asked Dr. van Heerden to serve as an expert witness. In addition to the Corps’ engineering errors regarding the breached levees, Dr. van Heerden had spoken and written critically of the Corps’ design and maintenance of MR-GO, which, combined with the Intracoastal Waterway, had produced a “funnel” with its spout emerging just east of New Orleans, exposing the City to the brunt of a storm surge from Lake Borgne to the east. *See, e.g., The Storm at 79-83.* Dr. van Heerden submitted a request for permission to testify pursuant to the established LSU procedure, but received no response to his request despite his follow-up over a period of months.

41.

One of the attorneys for the plaintiffs raised the plaintiffs’ need for Dr. van Heerden’s testimony directly with Chancellor O’Keefe, and reported back that the chancellor stated that Dr. van Heerden would be *fired* if he testified against the Corps. According to the attorney, Chancellor O’Keefe said that LSU “does not want Ivor or anyone else associated with LSU to testify against the Corps.” The attorney stated: “They just don’t want their people front and center in such politically charged conflicts, especially in a capacity that opposes the current Republican regime.” In the end, the defendants prohibited Dr. van Heerden from testifying as an expert witness. This unwarranted action directly interfered with Dr. van Heerden’s ability to earn

income and directly affected his reputation and standing in the community.

42.

Although barred from testifying, Dr. van Heerden nonetheless aided the plaintiffs by serving as a non-testifying expert, and became highly visible to Corps representatives in that capacity at depositions that began in early 2009. The litigation, In re Katrina Canal Breaches Consolidated Litigation, C.A. No. 05-4182 (E.D. La), has since resulted in a comprehensive opinion in which the federal district court agreed with Dr. van Heerden's criticisms of the Corps in relation to MR-GO. The Court found:

The Corps' lassitude and failure to fulfill its duties resulted in a catastrophic loss of human life and property in unprecedented proportions. The Corps' negligence resulted in the wasting of millions of dollars in flood protection measures and billions of dollars in Congressional outlays to help this region recover from such a catastrophe. Certainly, Congress would never have meant to protect this kind of nonfeasance on the part of the very agency that is tasked with the protection of life and property.

Findings of Fact and Conclusions of Law at 111 (November 18, 2009).

43.

In the Afterword to the 2007 edition of the *The Storm*, which the publisher released on the second anniversary of Katrina, Dr. van Heerden predicted what lay ahead for him as an employee of LSU:

I have lost my right to teach; likewise, public outreach and administering big projects are no longer part of my job description at the LSU Hurricane Center. My contract has been restricted to one-year renewals, down from three, and my state salary support could be taken away at any moment. When this paperback edition is published for the second anniversary of the Katrina tragedy, I have no idea where, or even if, I will be working in my chosen field.

The Storm at 306. Dr. van Heerden's concerns proved prescient.

44.

LSU's efforts to marginalize Dr. van Heerden continued with the approach of hurricane season in the summer of 2007, efforts that the chancellor's office advanced by placing Dr. Twilley in charge of storm-surge modeling as head of a new Coastal Environmental Risks Assessment ("CERA") modeling group from which Dr. van Heerden, although Deputy Director of the Hurricane Center, was excluded. On August 2, 2007, Dr. van Heerden emailed LSU's computer center to alert it of the Hurricane Center's need for immediate, on-demand access to dedicated computer resources, which it would likely need in order to perform storm-surge runs for the state Emergency Operations Center and the state police as it had done in previous years. Preempting a

response by the computer center, Vice Chancellor Keel, whom Dr. van Heerden copied on the email, replied that any emergency commitment of computer resources would “*need to be coordinated*” through his office to “*keep any potential confusion to a minimum.*” He stated that Associate Vice Chancellor Twilley would henceforth “*be making that call on my behalf.*” Dr. Levitan asked why Dr. van Heerden was not on the CERA team for surge modeling. Dr. Twilley answered tellingly that he “*would be fired*” if Dr. van Heerden were on the team.

45.

Early in 2008, the CEE faculty reviewed Dr. van Heerden's performance and recommended his reappointment. In reaching this decision, the faculty adhered to the instruction of CoE Dean Bassiouni to limit its review to Dr. van Heerden's research, and not to base the review on the combined criteria of research, teaching and service prescribed by PS-36, notwithstanding that teaching and service remained elements of Dr. van Heerden's position description. Pursuant to the faculty's recommendation, CoE appointed Dr. van Heerden's for an additional one-year term. Dr. Levitan, who served on the promotions and tenure committee and was privy to its discussions, told Dr. van Heerden that but for the department's limiting its review to the criterion of research, as the draft personnel policy for research faculty mandated, he believed the faculty would have recommended Dr. van Heerden's promotion with a pay increase of 15 to 20%.

46.

LSU again excluded Dr. van Heerden from the CERA surge modeling team in 2008, demonstrating the continuing retaliatory animus of LSU officials towards him. In addition, shortly before the 2008 hurricane season began, Associate Vice Chancellor Twilley warned Dr. Levitan that Dr. van Heerden would be *fired* if he spoke to the media regarding surge modeling. Dr. Levitan conveyed the LSU administration's threat to Dr. van Heerden. As Hurricane Gustav approached the coast on August 28, 2008, however, it became evident that CERA's surge model was producing unreliable results. Dr. Kevin Robbins, who was serving under Twilley's direction as LSU's representative at the Louisiana Emergency Operations Center (“EOC”), called Dr. van Heerden, urgently seeking help in making sense of CERA's surge data. The surge modeling team and the EOC – and, by extension, the public – were in such great need of Dr. van Heerden's expertise that Dr. Levitan and Dr. Robbins met with Dr. Twilley on August 30, 2008, and urged

him to grant Dr. van Heerden access to LSU computers to make independent runs of the surge data using the model that the Hurricane Center had used to make accurate predictions in prior years. Dr. Twilley allowed Dr. van Heerden to use a cluster of LSU computers (not LSU's supercomputer), but made it clear that he did so only grudgingly, telling Drs. Levitan and Robbins, "I don't want to see the guy; I don't want to hear from him; I don't want to be in the same room with him." Seeing for himself the LSU administration's animus towards Dr. van Heerden, Dr. Robbins asked Dr. van Heerden to come to the EOC to assist in making sense of the data, in Dr. Robbins' words, "even if Robert [Twilley] fires me for this." Dr. van Heerden agreed, and proceeded to provide vital assistance at the EOC throughout the Gustav crisis, again supplying the state with accurate and reliable storm surge information.

47.

While struggling to interpret the CERA data on August 31, 2008, Dr. van Heerden wrote to Rick Luetlich at the University of North Carolina, one of the originators of the surge-modeling code previously used at the LSU Hurricane Center, and asked if Dr. Luetlich had performed surge runs for Gustav that he could share with the EOC. Apparently as a security precaution, Luetlich wrote to Twilley asking if Dr. van Heerden was "for real." Twilley responded by slurring Dr. van Heerden as one of the supposed "crazies" who had come out in relation to Hurricane Gustav.

48.

Dr. Robbins' post-storm report for the EOC on Gustav, confirmed that CERA's "[m]odel results suffered from inconsistencies that created lack of confidence in its credibility," but noted that the "[m]odel runs from the LSU ADCIRC predecessor model . . . provided more realistic results due [to] a better representation of surface and elevations," and helped "to identify and clarify problems with the CERA version." In other words, it was Dr. van Heerden's use of the original LSU Hurricane Center model, and not the work of the CERA team from which the administration had excluded him, that provided the state with accurate storm surge predictions as a very dangerous hurricane approached the Gulf Coast. On September 6, 2008, Dr. Robbins emailed Dr. Levitan his view of the value of the CERA team's work. "The current CERA model," he wrote, "was, in my opinion, a disaster. Until we correct the grid elevations and test it against more stable and accurate models I do not think that it should be used."

49.

Hurricane Ike, an unusually large storm that ended up leaving over 100 dead on the U.S. Gulf coast, approached the coastline a short time after Gustav. On or about September 8, 2008, not long before the storm made landfall near Galveston, Dr. van Heerden received instructions from Dr. Twilley, relayed by Dr. Levitan, that Dr. van Heerden was not to perform surge runs, as the difficulties with Dr. Twilley's CERA model had supposedly been resolved. It soon became evident, however, that the CERA model was underestimating the storm surge. When Dr. Robbins informed Dr. van Heerden of this problem, Dr. van Heerden again conducted independent data runs, producing valid results that he posted on the Hurricane Public Health Center's webpage at the request of numerous agencies and relief groups, and which the which *Times Picayune* reproduced on its webpage. Dr. van Heerden received numerous emails expressing appreciation for this work, including from Garret Graves, coastal chief for Louisiana Governor Bobby Jindal.

50.

In addition to generating storm surge data during the 2008 hurricane season, Dr. van Heerden advised the Governor's office that summer, at its request, regarding the safety of the various levee systems in southeastern Louisiana. This required Dr. van Heerden to generate surge data. During both Guatav and Ike, Dr. van Heerden worked closely with the Governor's Office of Coastal Activities, headed by Mr. Graves, and with levee board officials and various Parish presidents, by interpreting storm surge, stream gage, and tide data and advising these public officials on potential overtoppings of levees. In connection with this work, Dr. van Heerden was housed at the state EOC, sharing a cubicle with U.S. Senators Landrieu and Vitter. He also actively advised the Louisiana State Police, DOTD and the Fire Chief of New Orleans concerning storm surge and the levee systems.

51.

Dr. Twilley reacted angrily to the fact that Dr. van Heerden continued to respond to the requests of government officials who sought out his expertise, and who were no doubt aware of the shortcomings of Dr. Twilley's CERA model. During September 2008, Dr. Twilley ordered Dr. van Heerden to remove his independent data from the Hurricane Health Center webpage. Dr. Twilley told the *Times Picayune* that he had received complaints from the National Weather Service which, he said, wanted Dr. van Heerden's data removed from the Hurricane Public Health Center website. "Scientists Looking for Better Ways to Predict Storm Surge," *Times Picayune*,

September 20, 2008. In fact, contrary to Dr. Twilley's explanation to the *Times Picayune*, the National Weather Service had not complained, and had no complaints, about Dr. van Heerden's storm surge data or its presence on the website.

52.

On March 6, 2009, Dr. van Heerden submitted his performance-review package in support of his application for reappointment for an additional year. The package reflected Dr. van Heerden's especially strong productivity during the previous year in the generation of articles for peer-reviewed research publications. Without awaiting the CoE faculty's review and recommendation as required by PS-36 or the imminent arrival of a new Dean of CoE, Interim Dean David Constant met with Dr. van Heerden on April 9, 2009 and presented him with a letter dated April 3, 2009 stating that his appointment would not be renewed. When Dr. van Heerden asked him why, in the presence of AAUP representative Professor Charles Delzell, Dean Constant declined to give a reason but admitted that the decision was not performance-related. He also acknowledged that Dr. van Heerden had criticized the Corps in his capacity as a private citizen and not pursuant to his official duties on behalf of LSU.

53.

As support for this decision, the CEE tenured faculty conducted a purported review of Dr. van Heerden's performance, but, contrary to the University's governing procedures, did so only *after the* Interim Dean had made the decision not to renew Dr. van Heerden's appointment. Of 16 participating members of the CEE faculty, four voted for a recommendation of reappointment, eight reportedly opposed, and four abstained.

54.

Unless overturned, the non-renewal decision will bring an end to Dr. van Heerden's LSU employment at the close of his terminal year on May 21, 2010.

55.

At all times pertinent hereto, Petitioner van Heerden enjoyed a clearly established right guaranteed by the First Amendment to the United States Constitution, through 42 U.S.C. § 1983, to speak freely on matters of public concern, including the fact that the Corps's errors in the design and engineering of the levees protecting New Orleans caused the majority of the deaths and devastation that Katrina caused in and around the city. He also had a clearly established, First

Amendment right to protest, complain about, and report the illegal retaliation that the defendants subjected him to for airing his criticisms of the Corps.

56.

Petitioner van Heerden lawfully exercised his First Amendment rights to speak freely on matters of public concern, including the Corps's errors in the design and engineering of the levees protecting New Orleans, which caused the majority of the deaths and devastation that Katrina caused in and around the city, and the illegal retaliation that the defendants subjected him to for airing his criticisms of the Corps.

57.

Defendants LSU, Keel, Twilley, Voyiadjis, and Constant violated Petitioner's clearly established rights by retaliating against and harassing him on account of his exercise of his First Amendment rights in speaking publicly, through his statements to journalists, in Congressional testimony, and in his book *The Storm* and other writings, about the Corps's errors in the design and engineering of the levees protecting New Orleans, which caused the majority of the deaths and devastation that Katrina caused in and around the city, as well as on account of his protests, complaints, and reports of unlawful retaliation.

58.

Specifically, and without limitation, Defendants LSU, Keel, Twilley, Voyiadjis, and Constant violated Petitioner's First Amendment rights by excluding him from participation in storm surge modeling carried out under the auspices of LSU; by stripping him of the opportunity to teach at LSU; by purporting to remove him from a tenure track; by removing him as deputy director of the LSU Hurricane Center; by harassing him for engaging in protected activity; and by refusing to renew his appointment as Associate Professor--Research.

59.

The motivation behind the aforesaid retaliation against Petitioner van Heerden was the Defendants' animus towards him for statements critical of the Corps for its responsibility for the majority of the death and devastation in New Orleans incident to Hurricane Katrina.

60.

Petitioner van Heerden's interest in exercising his First Amendment rights and the public's right to be informed about the fault of the Corps and the effects of its engineering errors in relation

to the New Orleans levees far outweigh any hypothetical "interest" that Defendants may have in illegally suppressing Petitioner's speech on a matter of prominent public concern. Petitioner van Heerden's exercise of his First Amendment rights was entirely outside of his job duties and responsibilities.

61.

The actions of the Defendants, Keel, Twilley, Voyiadjis, and Constant, to deprive Dr. van Heerden of his First Amendment rights were taken under color of state law within the meaning of 42 U.S.C. § 1983, for which said Defendants are liable.

62.

The Defendants, LSU, Keel, Twilley, Voyiadjis, and Constant, knew or should have known that retaliation against a public employee for disclosing matters of public concern is illegal. Through their actions to deprive Petitioner van Heerden of his constitutional rights, said Defendants exhibited an evil motive or intent and extreme reckless disregard of, and callous indifference to, Petitioner's constitutionally protected rights. Thus, said Defendants are liable unto Petitioner for punitive damages as allowed by Federal law.

63.

At all times pertinent hereto, Petitioner enjoyed clearly established rights to his good name, reputation, and standing in the community (liberty interest), to life, liberty, and the pursuit of happiness, including his ability to obtain gainful employment, and to public employment guaranteed to him pursuant to the Fourteenth Amendment to the United States Constitution.

64.

Defendants LSU, Keel, Twilley, Voyiadjis, and Constant violated Petitioner's clearly established rights by excluding him from participation in storm surge modeling carried out under the auspices of LSU; by stripping him of the opportunity to teach at LSU; by purporting to remove him from a tenure track; by removing him as deputy director of the LSU Hurricane Center; by harassing him; by publicly abasing his reputation as a scientist and scholar; by refusing him the ability to work in gainful employment on account of his engagement in protected activity; by refusing to allow Petitioner to testify in a Federal proceeding and to earn a living; and by refusing to renew his appointment as Associate Professor Research. Petitioner was afforded no name-clearing hearing prior to said Defendants' public dissemination of the defamatory, libelous,

and slanderous statements regarding Petitioner's professional and personal competency.

65.

The actions of the Defendants, LSU, Keel, Twilley, Voyiadjis, and Constant, to deprive Dr. van Heerden of his Fourteenth Amendment rights were taken under color of state law within the meaning of 42 U.S.C. § 1983 for which said Defendants are liable.

66.

The Defendants, LSU, Keel, Twilley, Voyiadjis, and Constant, knew or should have known that harassing, terminating, and abasing Petitioner's reputation and standing in the community violated Petitioner's clearly established Fourteenth Amendment rights. Through their actions to deprive Petitioner van Heerden of his constitutional rights, said Defendants exhibited an evil motive or intent and extreme reckless disregard of, and callous indifference to, Petitioner's constitutionally protected rights. Said Defendants are thus liable unto Petitioner for punitive damages as allowed by Federal law.

67.

Based on the terms of LSU's governing documents, the duration of his service and his compensation solely from hard money, Dr. van Heerden had a property interest in continued employment under the law of Louisiana which is protected by the Due Process Clause of the Fourteenth Amendment to the United States Constitution, through 42 U.S.C. § 1983.

68.

As a matter of Due Process, Dr. van Heerden was entitled, as a condition of possible termination of employment, to prior notice of charges and an opportunity to be heard, and was subject to removal only for good and just cause. At all times relevant to this Complaint, Petitioner van Heerden's right to Due Process was clearly established under the Fourteenth Amendment and by judicial precedent.

69.

Notwithstanding that LSU has denominated Dr. van Heerden as an Associate Professor--Research and thus purportedly not on a tenure track, the express terms of its governing policy stated in PM-23 establish that Associate Professors "are tenured and are appointed for an indefinite period of time" subject only to two limited exceptions, neither of which can even conceivably apply to Dr. van Heerden. First, fixed-term appointments of Associate Professors

are allowed for a period up to five years (*four* years at the Baton Rouge campus under PS-36). Second, as stated in PM-23, “[i]ndividuals paid from *grant or contract funds* do not acquire tenure through the passage of time but may become tenured only by specific individual recommendation through appropriate channels and approval by the President.” Despite his position’s denomination, Dr. van Heerden was not subject to the “research faculty” exception in the Board of Supervisors regulations for the additional reason that he was engaged only secondarily in research functions, which made up only 30% of his job duties according to his position description. His status is therefore necessarily governed by the rule of PM-23 that Associate Professors “*are tenured and are appointed for an indefinite period of time.*”

70.

As of October 2006, when Chairman Voyiadjis told Dr. van Heerden that he was henceforth to be governed by the October 2005 draft policy and would be eligible for fixed, one-year term appointments only, neither exception to the tenure rights of Associate Professors applied to Dr. van Heerden. He had not since his transfer to CoE in 2000, and indeed not since 1995, been paid from grant or contract funds. He had been employed in fixed-term appointments at the Baton Rouge campus for more than the four year total allowed by PS-36 as an exception to tenured appointment and indeed for more than the five year total set by PM-23 for other campuses. He was by that point *de facto* a tenured faculty member with a property interest in appointment for an indefinite period of time.

71.

Like any other public employee, a professor who demonstrates a property interest in continued employment is constitutionally entitled under the Fourteenth Amendment to due process, including notice of charges and a hearing to determine the existence of good cause for termination of his employment. That being the case, the decision to terminate Dr. van Heerden’s employment without a notice of charges stating the cause therefor, and without opportunity for a prior hearing, violated his constitutional right to due process.

72.

The actions of the Defendants, LSU, Keel, Twilley, Voyiadjis, and Constant, deprived Dr. van Heerden of his Fourteenth Amendment rights to Due Process. All such actions were taken under color of state law within the meaning of 42 U.S.C. § 1983 and said Defendants are thus

liable unto Petitioner pursuant to 42 U.S.C. §1983.

73.

The Defendants, Keel, Twilley, Voyiadjis, and Constant, knew or should have known that depriving a public employee of a property interest in continued employment without Due Process is illegal. Through their actions to deprive Petitioner van Heerden of his constitutional rights, said Defendants exhibited an evil motive or intent and extreme reckless disregard of, and callous indifference to, Petitioner's constitutionally protected rights. Thus, said Defendants are liable unto Petitioner for punitive damages as allowed by Federal law.

74.

LSU's decision not to renew Dr. van Heerden's contract violates his contractual rights under LSU's governing policies. First, as a tenured faculty member, Dr. van Heerden was protected from termination under the Board of Supervisors' Bylaws, Article VIII, sections 4 and 5, Faculty Handbook at 30-31, except based on good and sufficient cause. Good cause for Dr. van Heerden's termination is manifestly lacking. In apprising Dr. van Heerden of the non-renewal decision, the Interim Dean himself admitted that the decision was not based on Dr. van Heerden's performance.

75.

CoE's purported application of the research faculty policy to Dr. van Heerden violates express terms of the Board of Supervisors Regulations, PM-23 and PS-36. The maximum probationary periods set by LSU's governing standards accord with, and are more stringent than, the 1940 Statement of Principles on Academic Freedom and Tenure promulgated by the AAUP, which suggests a maximum of seven years probation. Being outside the research faculty exception, having passed his faculty's tenure track review in 2003 and having served more than the maximum probationary period established by the system-wide and campus-wide standards, Dr. van Heerden was entitled to tenure *de facto* for an indefinite period and was not legitimately subject to a discretionary decision regarding a further fixed-year appointment.

76.

Independent of Dr. van Heerden's *de facto* tenure right, Defendants violated the then-governing procedures for reappointment and non-reappointment for non-tenure track faculty

as well, as set forth in PS-36. Section V.B.1 of PS-36 requires that at the first step of the process, the dean “notifies all chairs of the submission timetable for reappointment/non-reappointment recommendations.” The candidate is to be notified of eligibility for reappointment and provided with the opportunity to submit documentation and supporting material for the reappointment file. The second step, as directed by section V.B.2, is a review by the candidate’s department, resulting in the department’s recommendation. The department chair is responsible for ensuring that all pertinent material is accessible to the eligible voting faculty. Section V.B.2 specifies that the eligible voting faculty will meet to vote on reappointment; that a “written advisory and evaluative faculty report regarding each candidate will be provided to the chair”; and that the candidate “may prepare a formal letter of response for inclusion with the reappointment file submitted for review beyond the department.” Section V.B.3 (“College Review and Recommendation”) specifies that the dean will *only then* “review and make reappointment recommendations upon review of the recommendation by the departmental faculty.”

77.

PS-36 thus prohibits the dean from putting the “cart” of decision “before” the horse of faculty review and recommendation. The Interim Dean’s non-renewal decision, which he made before the faculty reviewed Dr. van Heerden’s file and issued its recommendation, violated Dr. van Heerden’s rights under PS-36, which specifically required the dean to make such a decision based on the review and recommendation of the tenured faculty of CCE.

78.

With respect to Associate Professors and Professors, Section V.B.3 of PS-36 states: “In the case when re-appointment is the recommendation . . . a conference with the dean will be held in a timely manner. At the conference, the candidate will receive a written statement outlining reasons for her/his recommendation.” The Interim Dean’s decision not to reappointment Dr. van Heerden violated PS-36 in that the Interim Dean refused to provide Dr. van Heerden with a statement of reasons when he and Professor Delzell requested such a statement.

79.

Even if it were legitimate to limit the review of Dr. van Heerden’s performance to a consideration of his research, and not his teaching or service, the faculty review nevertheless gave inadequate consideration to Dr. van Heerden’s research publications. The faculty review drew a

false and novel distinction between research addressed to “public policy topics” and “research papers dealing with engineering and/or science where hypotheses are developed, tested, and evaluated.” The majority acknowledged that Dr. van Heerden had published three peer-reviewed journal papers during the period of May 2008 and April 2009; that additional papers had been accepted for publication or were under review; that he had been principal or co-principal investigator for three active projects with combined funding of \$266,000; and that he had presented at eight conferences or other invited presentations. The majority nonetheless dismissed Dr. van Heerden’s publications as addressing only “public policy topics,” even though these publications, in fact, applied the pertinent science and appropriate methodology in a quantitatively rigorous manner, and fully satisfied the majority’s description of acceptable research papers.

80.

The faculty majority contrived the distinction between “public policy” and “research” publications for the purpose of raising the bar for Dr. van Heerden and to find a basis, however false, for supporting the Interim Dean’s already-announced decision not to renew Dr. van Heerden’s appointment. LSU never informed Dr. van Heerden that it would evaluate him based on a criterion under which publications addressed to public-policy issues would be deemed non-compliant. To Dr. van Heerden’s knowledge, no other faculty member in CEE has ever been evaluated based on such a distinction.

81.

The faculty minority correctly criticized the majority for applying an “unwritten rule” in its review of Dr. van Heerden and for not communicating that rule to the candidate. No such rule was conveyed by Chairman Voyiadjis’ April 2008 letter regarding Dr. van Heerden’s reappointment in 2008. The minority pointed out, moreover, that the National Science Foundation, which is the premier supporter of scientific research in the United States and a substantial funder of scientific research at CoE, sponsors work toward publications “presenting research and education results in formats useful to policy-makers, members of Congress, industry, and broad audiences” and “providing information for policy formulation by Federal, State or local agencies.” The publications that the majority incorrectly dismissed plainly satisfy the standard for NSF-sponsored research.

82.

Defendant LSU is thus liable unto Petitioner for breach of contract, for which Petitioner specifically sues for herein.

83.

The Defendants herein publicly stated that Petitioner was incompetent, that he had disseminated "irresponsible" and wrong information to the public, that he had misled the public, and that he lacked scientific expertise. These statements by the Defendants were untrue and constituted libel, slander, and defamation for which Petitioner sues for herein.

84.

Petitioner shows that Defendants' untrue statements were undertaken with malice directed toward Petitioner.

85.

Petitioner additionally shows that Defendants conspired with one another to deter Petitioner, by threats and intimidation directed at Petitioner, from testifying and/or providing evidence in Federal and State proceedings and to bring about the termination of his employment with LSU in retaliation for his exercise of rights under the First Amendment and without due process in violation of his constitutional rights as set forth above. The Defendants, Keel, Twilley, Voyiadjis, and Constant, knew or should have known that conspiring to retaliate against a public employee for disclosing matters of public concern and to violate his constitutional right to due process is illegal. Defendants, Keel, Twilley, Voyiadjis, and Constant are thus liable unto Petitioner pursuant to 42 U.S.C. §1985 for which Petitioner sues for herein. Through their actions to deprive Petitioner van Heerden of his constitutional rights, said Defendants exhibited an evil motive or intent and extreme reckless disregard of, and callous indifference to, Petitioner's constitutionally protected rights. Thus, said Defendants are liable unto Petitioner for punitive damages as allowed by Federal law.

86.

Petitioner shows that Defendant LSU engaged in illegal reprisal directed at Petitioner on account of Petitioner's providing testimony and evidence to the State of Louisiana, the Louisiana Governor's Office, the United States Congress, the Courts of this State, and the Federal Courts, all of which were conducting an investigation, hearing, or inquiry into violations of law. Petitioner

further shows that Defendant LSU engaged in illegal reprisal directed at Petitioner on account of Petitioner's objections and refusals to participate in an employment action or practice in violation of Louisiana Constitution Article I, §§ 2, 3, 4, 5, 7, 9 and the United States Constitution and Federal law. Petitioner further shows that Defendant LSU engaged in illegal reprisal directed at Petitioner on account of Petitioner's disclosure and/or threatened disclosure of workplace acts or practices in violation of state law, specifically, violations of Louisiana Constitution Article I, §§ 2, 3, 4, 5, 7, 9, and La. R.S. 23:967.

87.

On account of its reprisal directed at Petitioner, Defendant LSU is thus liable unto Petitioner pursuant to La. R.S. 23:967, for which Petitioner specifically sues for herein.

88.

Petitioner shows that Defendants' actions and deliberate inactions set forth herein were extreme, outrageous, sudden, and unexpected and caused Petitioner severe and extreme emotional distress. The Defendants are thus liable unto Petitioner for intentional infliction of emotional distress for which Petitioner sues for herein.

89.

As a result of the situation sued upon herein, Petitioner sustained damages which include, but are not limited to, extreme and severe emotional distress, mental anguish, humiliation and embarrassment, past and future lost wages and benefits, loss of his good name, reputation, and standing in the community, lost employment capacity, lost employment opportunities, past and future medical and/or psychological expenses, and all such other damages as will be more fully shown at trial of this matter and all for which Petitioner sues for herein.

90.

Petitioner is entitled to and desires an award of attorney's fees against Defendants, LSU, Keel, Twilley, Voyiadjis, and Constant pursuant to Federal law.

91.

Petitioner is entitled to and desires an award of attorney's fees against Defendant LSU pursuant to La. R.S. 23:967.

92.

Petitioner is entitled to and desires an award of all such other relief, specifically including

declaratory and/or injunctive relief, to which he is entitled at law or in equity.

93.

Petitioner is entitled to and desires trial by jury of this matter.

WHEREFORE, Petitioner, Dr. Ivor van Heerden, prays for trial by jury and after due proceedings are had that there be judgment herein in his favor and against Defendants, Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, Brooks Keel, individually and in his official capacity, Robert Twilley, individually and in his official capacity, George Voyiadjis, individually and in his official capacity, and David Constant, individually and in his official capacity jointly and in solido as allowed by law, for all sums as are reasonable under the premises, punitive damages as allowed by law, attorney's fees, all costs of these proceedings, legal interest thereon from the date of demand until paid, and all such other relief to which Petitioner is entitled at law or in equity, including declaratory and/or injunctive relief.

Respectfully submitted,

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PLEASE SERVE:

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Brooks Keel, individually and in his official
capacity, VIA LONG ARM SERVICE
Office of the President
Georgia Southern University
P.O. Box 8033
Statesboro, GA 30460

Robert Twilley, individually and in his
official capacity, at his place of employment
LSU
3257 Ener, Coast & Env. Bldg
139 David Boyd
Baton Rouge, LA 70803
(225)578-8810

George Voyiadjis, individually and in his
official capacity, at his place of employment
LSU, Civil & Env. Engr
3508 B Patrick Taylor Hall
Baton Rouge, LA 70803
(225) 578-8668

David Constant, individually and in his
official capacity, at his place of employment
LSU, Graduate School
119 David Boyd
Baton Rouge, LA 70803
(225) 578-3885

19TH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

NUMBER _____ DIVISION "____"

IVOR VAN HEERDEN, PH.D.,

VERSUS

BOARD OF SUPERVISORS OF LOUISIANA STATE UNIVERSITY
AND AGRICULTURAL AND MECHANICAL COLLEGE,
BROOKS KEEL, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY,
ROBERT TWILLEY, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY,
GEORGE VOYIADJIS, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY
AND
DAVID CONSTANT, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY

VERIFICATION

STATE OF LOUISIANA
PARISH OF EAST BATON ROUGE

BEFORE ME, Notary Public, personally came and appeared:

Ivor van Heerden, Ph.D.

a resident of the full age of majority of Livingston Parish, Louisiana, who upon being duly sworn did depose and state that he is the Petitioner in the above and foregoing Petition, that he has read same, and all facts and allegations contained therein are true and correct.

Ivan Heerden

SWORN TO AND SUBSCRIBED before me, Notary Public, this 9 day of February, 2010.
