

For nearly forty-five years, Dr. Henry Dick has worked at the Woods Hole Oceanographic Institution (“WHOI”). During that time, Dr. Dick has established himself as one of the leading authorities on the exploration and research of the earth’s upper mantle and ocean crust. In October 2019, Dr. Dick was falsely accused of engaging in sexually harassing behavior. WHOI and Senior Director of Human Resources and EEO Officer, Kathi Benjamin, then subjected Dr. Dick to an unfair, procedurally deficient, and discriminatory investigation into this false allegation, in violation of WHOI’s contractual obligations to Dr. Dick; falsely

concluded that Dr. Dick had engaged in harassing conduct; subjected Dr. Dick to discipline that is entirely disproportionate to the allegations made against him, disregarding the terms of Dr. Dick's tenure contract in doing so; and maliciously reported the false results of this unfair and discriminatory investigation to the National Science Foundation ("NSF"), Dr. Dick's primary source of funding for his research, irreparably harming Dr. Dick's previously stellar reputation in his field.

As a result of Defendants' conduct, Dr. Dick brings this action for damages for age discrimination in violation of the Age Discrimination and Employment Act ("ADEA"), 29 U.S.C. § 621 et seq. (Count I against WHOI); age discrimination in violation of the Massachusetts Fair Employment Practices Act, M.G.L. c. 151B § 4(1B), (4A), & 4(5) (Count II against WHOI and Ms. Benjamin); gender discrimination in violation of Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681, et seq. (Count III against WHOI); breach of contract (Count IV against WHOI); breach of the implied covenant of good faith and fair dealing (Count V against WHOI); tortious interference with advantageous relations (Count VI against WHOI and Ms. Benjamin); and defamation (Count VII against WHOI).

### **PARTIES**

1. Plaintiff Henry Dick, Ph.D. (hereinafter "Dr. Dick" or "Plaintiff") is an adult male resident of East Falmouth, Massachusetts. He was born on August 30, 1946 and, as of the time of this filing, is 74 years of age. Dr. Dick is employed by Defendant WHOI as a Senior Scientist with Tenure. At all relevant times, Dr. Dick was an employee of WHOI.

2. Defendant Woods Hole Oceanographic Institution (hereinafter "WHOI") is a Massachusetts not-for-profit corporation dedicated to ocean research, exploration, and education. Its principal office is located at 98 Water Street, Woods Hole, Massachusetts 02543. Upon

information and belief, WHOI employs over 900 employees. WHOI's employees include scientists and researchers. At all relevant times WHOI was Dr. Dick's employer.

3. Defendant Kathi Benjamin (hereinafter "Ms. Benjamin") is an adult female resident of Massachusetts. Ms. Benjamin is WHOI's Senior Director of Human Resources and EEO Officer. At all relevant times, Ms. Benjamin was an employee of WHOI.

### **JURISDICTION AND VENUE**

4. This court has original jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343, in that this is a civil action arising under the laws of the United States, and pendent jurisdiction for the related claims arising under state law pursuant to 28 U.S.C. § 1367(a).

5. Venue is proper in the district pursuant to 28 U.S.C. § 1391(b), because all Defendants reside in this district.

### **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

6. On March 10, 2020, Dr. Dick filed a Charge of Discrimination with the Massachusetts Commission Against Discrimination ("MCAD") and Equal Employment Opportunity Commission ("EEOC") (MCAD Docket No. 20BEM00911, EEOC Number 16C-2020-01311), asserting claims of unlawful age discrimination against Respondents WHOI and Ms. Benjamin. A date-stamped copy of the cover page of Dr. Dick's Charge of Discrimination is attached hereto as **Exhibit A1**.

7. By letter dated October 30, 2020, a true and accurate copy of which is attached hereto as **Exhibit A2**, Dr. Dick withdrew his Charge of Discrimination from the MCAD in order to file a private cause of action in civil court.

8. By letter dated November 23, 2020, a true and accurate copy of which is attached hereto as **Exhibit A3**, the MCAD dismissed Dr. Dick's Charge of Discrimination pursuant to Mass. Gen. Laws c. 151B, § 9, based on Dr. Dick's request to file an action in civil court.

9. Accordingly, at least 60 days before commencing this action, Plaintiff filed a charge of discrimination with the MCAD/EEOC alleging violations of the ADEA. Plaintiff's MCAD/EEOC charge arose out of many of the same facts alleged herein.

10. Dr. Dick has thus met all jurisdictional prerequisites to a civil action.

### **STATEMENT OF FACTS**

#### **Background Information Regarding Dr. Dick**

11. Dr. Dick is a 74 year old man. He obtained his B.A. from the University of Pennsylvania in 1969, his M. Phil. from Yale University in 1971, and his Ph.D. from Yale University in 1975.

12. Dr. Dick began working at WHOI as a post-doctoral investigator in 1975 as part of project FAMOUS, the first international collaboration to explore the Mid-Ocean Ridge. He was then hired onto WHOI's scientific staff in 1976 as an Assistant Scientist, a position he held until 1980. In 1980, WHOI appointed Dr. Dick to the position of Associate Scientist. In or about 1985 WHOI appointed Dr. Dick as Associate Scientist with Tenure. In 1990, WHOI appointed Dr. Dick to the position of Senior Scientist, a tenured position he holds to this day. Additionally, from 1988 to 2016, Dr. Dick served as Director of the highly successful W.M. Keck Geodynamics Program at WHOI. Dr. Dick has also served on many scientific committees, most notably two terms on the Program Committee for the American Association for the Advancement of Science.

13. Dr. Dick's tenure rights as a Senior Scientist with Tenure are set out in WHOI's "Appointments and Promotion Procedures for the Scientific and Technical Staffs and

Departmental Assistants” Policy or the “Blue Book.” See Blue Book re: Senior Scientist & Termination of Appointments, attached hereto as **Exhibit B1**. As a result of Dr. Dick’s tenure status, he may only be terminated “for cause” or as a result of “financial exigency.” Moreover, in the event of any “for cause” termination, WHOI must afford Dr. Dick with an appeal of that decision, a hearing on that appeal, and allow him to call and confront witnesses during that appeal.

14. In 2011, Dr. Dick was honored with an American Geophysical Union Harry H. Hess Medal for outstanding achievements in research of the constitution and evolution of Earth and other planets. More specifically, he was recognized for his “many discoveries, creative efforts and deep insights that have led to the modern understanding of the mantle melting and ocean crust formation along the global ocean ridges.”

15. In 2016, Dr. Dick was named a Fellow of the American Association for the Advancement of Science, the largest scientific organization in the world, for his seminal contributions toward understanding abyssal peridotites and their importance for understanding the Earth’s upper mantle. Dr. Dick is also a fellow of the Geological Society of America and the American Geophysical Union.

16. Dr. Dick’s research during his career has focused on how the Earth’s crust is formed at ocean ridges and, in particular, the relationship between mantle flow, melting and ridge tectonics. As noted on the WHOI website, “over his decades-long career, Dick’s studies of abyssal peridotites — fragments of the Earth’s mantle exposed on the ocean floor — has helped establish the present-day understanding of the evolution of the shallow mantle, the process of mantle melting, and the formation of the ocean crust.” (See <https://www.whoi.edu/press-room/news-release/henry-dick-aaas-2016-fellow/>.)

17. A critical component of Dr. Dick's research relies on participating and leading ocean research cruises. The purpose of these cruises is to collect data and survey the ocean floor.

18. Dr. Dick's primary source of funding for ocean research cruises is the National Science Foundation ("NSF"). The NSF is an independent federal agency created by Congress in 1950 to, among other things, promote the progress of science. (See <https://www.nsf.gov/about/>.)

19. Dr. Dick's relationship with the NSF is extremely important given its role in funding for scientific research. "With an annual budget of \$8.3 billion (FY 2020), the NSF is the funding source for approximately 24 percent of all federally supported basic research conducted by America's colleges and universities." (See <https://www.nsf.gov/about/>.) Dr. Dick has been a recipient of NSF funding, and has been in good standing with the NSF, since 1976.

20. Prior to the Cruise (referenced below), and over the course of his career, Dr. Dick has been chief scientist or co-chief scientist of fifteen ocean research cruises. (Additionally, Dr. Dick has also been a member of the science party on sixteen other ocean research cruises.) Dr. Dick is aware of no complaints related to those prior cruises.

#### **RV Thompson Cruise**

21. Dr. Dick was the Chief Scientist on a scientific research cruise in the Indian Ocean that took place between February 21, 2019 and March 28, 2019 (hereinafter referred to as the "Cruise") aboard the vessel the RV Thomas G Thompson ("RV Thompson").

22. The Cruise was funded by the NSF through a ship operations grant and cooperative agreement with the University of Washington's ("UW") School of Oceanography. Additional funding was provided directly by WHOI from funds awarded to WHOI for that purpose by Tongji University in China. The RV Thompson was scheduled for the Cruise under an arrangement with University-National Oceanographic Laboratory System ("UNOLS"). UNOLS

is an organization of 59 academic institutions and National Laboratories involved in oceanographic research and joined for the purpose of coordinating oceanographic ships' schedules and research facilities.

23. The Cruise had three primary elements/goals: 1) a multibeam, magnetics, and gravity survey taking roughly 50% of the science time; 2) seafloor sampling using a wire cable and dredge; and 3) Sentry AUV (autonomous underwater vehicle) surveys.

24. Dr. Dick was the Principal Investigator ("P.I.") for the proposal that led to the Cruise, and Chief Scientist for the expedition. Masako Tominaga, working for the Deep Submergence Laboratory at WHOI was co-P.I., but did not participate in the Cruise herself, sending a student instead. WHOI Senior Scientist Maurice Tivey was designated Senior Geophysicist and ran the geophysical survey at sea on the RV Thompson. The remaining senior individuals of the Scientific Party were German Co-Chief Scientist, Juergen Koepke, and Chinese Co-Chief Scientist Huaiyang Zhou.

#### **Pre-Cruise Planning**

25. Planning for the Cruise began in 2018. As Chief Scientist, Dr. Dick's primary pre-Cruise logistics/planning responsibilities were obtaining, organizing and preparing for shipment of the rock dredging equipment and curatorial supplies for shipboard rock description and imaging. In doing this, Dr. Dick was supported by Senior Research Assistant Ellen Roosen, Senior Research Specialist James Broda, and fourth year WHOI-MIT Joint Program student Ben Urann. Dr. Dick was also responsible for planning the track the Cruise would take to dredging sites (which would need to be updated and/or narrowed based on the geophysical mapping done on the first half of the Cruise).

26. While planning the Cruise, Dr. Dick was in regular communication with the senior members of the Scientific Party, representatives from the NSF and UNOLS, and UW employees including but not limited to, Meegan Corcoran, Port Captain, Douglas Russell, Manager of Marine Operations, Loren Tuttle, Supervisor Shipboard Science Support Group, and Su Tipple, Administrative Assistant (collectively referred to as “UW Planning Group”). Additionally, dredging technician Justin Smith participated in some pre-Cruise planning.

27. During pre-Cruise planning, Dr. Dick made proposals to the UW Planning Group for how the research would be conducted on the Cruise. A key element of the Cruise was dredging. Simply put, dredging is a method that is used to collect samples from the ocean floor that Dr. Dick would subsequently analyze and study. Dr. Dick proposed using power dredging on the Cruise (there are various types of dredging) due to anticipated rough weather conditions and rough topography in the area of the Indian Ocean where the Cruise would conduct research. Dredging is commonly referred to in the research sailing community as “the one thing you can do in rough weather,” and that was the plan. No objections were raised in any of the meetings where Dr. Dick proposed that the Cruise use power dredging, the last of which was attended by Mr. Smith.

28. For example, Dr. Dick raised the issue of power dredging in an email to Mr. Russell and Rose Dufor (NSF) in late November 2018. See November 29, 2018 Email from H. Dick to D. Russell, attached hereto as **Exhibit C1**. In that email, Dr. Dick explained to Mr. Russell that the plan was to power dredge and described the depths at which the team would be dredging. Mr. Russell conveyed his thanks for Dr. Dick’s proposal and positively noted his years of experience. “I certainly appreciate and respect all your experience and expertise on the subject of dredging. It helps me a lot knowing that I’ve sat next to you for many dredges in the Arctic including some



tough ones to recover. It was a great learning experience for me! I'm confident we'll get everything lined up so the cruise is a success." See **Exhibit C1**.

29. Dr. Dick also informed the UW Planning Group that the WHOI group was bringing six WHOI dredges for the Cruise, in addition to those provided by UW, because it expected to lose half of them due to the risks involved in dredging in the exceptionally rough terrain of the SW Indian Ridge and inclement weather, which again the WHOI group needed and had planned to use due to conditions in the southern Indian ocean. Again, no one from the UW Planning Group raised any issue with Dr. Dick's proposal.

30. Marine Technician Sonia Brugger's email containing her notes from August 30, 2018 confirms Dr. Dick conveyed his intention to the crew of the RV Thompson about his plans: "Notes: Dick Cruise . . . Lots of dredging in rough weather . . . Need dredges, at least 6." See August 30, 2018 Email from S. Brugger, attached hereto as **Exhibit C2**.

31. Dr. Dick stated that the Thompson would first survey the terrain to be dredged, then use this survey to plan the individual dredge stations, and Sentry dives when the weather permitted. During the pre-Cruise planning, Dr. Dick also conveyed that operation of the Sentry AUV was weather dependent (while dredging was much less so). Anticipating regular storms on a four day cycle, Dr. Dick proposed that the Cruise would stop mapping when it crossed over a suitable target for a Sentry dive, which would take up to a day, if there was a suitable weather window for its deployment. Dr. Dick stated that the RV Thompson would likely do this three times during the survey, and that he would pick specific sites and dredge in the area to utilize the Thompson during the Sentry AUV deployment. Again, Dr. Dick received no resistance to his pre-Cruise proposals from the UW Planning Group.

32. In sum, none of the proposals that Dr. Dick made during the pre-Cruise planning related to dredging, the use of equipment, or the scheduling of sea floor mapping were opposed by the UW Planning Group.

33. Contrary to the post-Cruise blame heaped on Dr. Dick, the UW pre-Cruise planning was clearly deficient and disorganized. For example, as early as May 2018, Doug Russell apologized to Dr. Dick for not responding to him: “Was digging through my emails and found that we did not answer this important question for you. *My apology for not getting you the info in timely fashion.*” See May 14, 2018 Email from D. Russell to H. Dick, attached hereto as **Exhibit C3** (emphasis added).

34. It was not until February 13, 2019, eight days before the Cruise, that Dr. Dick learned from RV Thompson Captain Russell DeVaney, whom he had been corresponding with for several weeks in advance of the Cruise, that Captain Eric Haroldson, and not Captain DeVaney, would be the captain during the Cruise. See February 13, 2019 Email from R. DeVaney to Dr. Dick, attached hereto as **Exhibit C4**. It was quite disconcerting to find out that the captain Dr. Dick had been working with during the pre-Cruise planning was not actually sailing the ship essentially one week before the ship left port. Captain Haroldson was not in the planning loop prior to the Cruise nor, upon information and belief, was he informed of Dr. Dick’s proposals on power dredging. While this was completely out of Dr. Dick’s control, this contributed to issues on the Cruise.

35. This was compounded by the fact that when Dr. Dick asked Captain Haroldson shortly after meeting him for the first time if he wanted Dr. Dick to give him and the crew a talk on the scientific objectives of the Cruise for the crew (which is a standard feature of every cruise Dr. Dick has been on); his response was “No.” However, Dr. Dick did give him a detailed

description of power dredging at the initial meeting on the subject when the RV Thompson left port, and then again in a discussion with the Captain attended by Mr. Smith.

**Issues Arise On The Cruise Due To The RV Thompson Crew's Inexperience With Dredging And Reluctant To Dredge In Rough Weather.**

36. During the Cruise, Dr. Dick's responsibilities were to oversee scientific operations on the RV Thompson carried out by the scientific party. Per the UW Sailing Orders, the UW marine technicians' primary purpose aboard The RV Thompson was "to maintain the ship's scientific equipment, assist the scientific party in its operation and facilitate expectations between the science party and the crew, in the labs as well as on deck." See February 14, 2019 Excerpt of Sailing Orders for TN-365 — Marion Rise, attached hereto as **Exhibit D1**. The marine technicians were deemed "critical in assisting the science party to communicate their procedures, missions and goals to [the Captain] and the crew both before and during all science operations." See **Exhibit D1**. (Emphasis added.) The marine technicians were even listed on the ship's manifest as members of the scientific party.

37. During the Cruise, issues arose due to disagreements between Dr. Dick and Mr. Smith over dredging techniques. (It is not uncommon during research cruises to have professional disagreements or for there to be tension from time to time.) Despite the fact that Dr. Dick had repeatedly proposed using power dredging and the UW Planning Group had been aware of this (including Mr. Smith) for months in advance of the Cruise, Mr. Smith insisted on using what the Cruise termed the "inch-worm" dredging technique. The inch-worm technique was an inefficient dredging technique because of the RV Thompson's weak bow thruster (a propeller-shaped system fitted on the bow) and could only be done in moderate to calm seas with wind speeds below fifteen-seventeen knots. Inch-worm dredging could not be performed efficiently in stormy or rough conditions, which, based on Dr. Dick's prior ocean cruises, were routinely

encountered in the southern oceans. As a result, Dr. Dick proposed more efficient power dredging, or alternatively more suitable drift dredging, both better techniques for the RV Thompson in view of its weak bow thruster and the difficult weather conditions encountered on the Cruise. It is Dr. Dick's understanding and experience that power dredging is the principal method used by the global oceanographic community. It is Dr. Dick's understanding based on his decades of experience that there is no consensus dredging method in the global oceanographic community, and that dredging is inherently not dangerous. Mr. Smith's allegations that dredging techniques other than the inch-worm method are unsafe are wholly unfounded, and for which he provided no support. In fact, Dr. Dick recently returned from a cruise on the German ship RV Sonne where an entirely different dredging method was used than either power dredging or the inch-worm method (without an acoustic pinger attached to the wire, laying 500 meter of wire directly on the seabed, and then pulling the dredge in). The crew of the RV Sonne informed Dr. Dick they had used this alternative dredging method over a thousand times without incident.

38. Inexplicably, Mr. Smith, and Cruise Captain Eric Haroldson, both insisted on using only the inch-worm technique during the Cruise. The time-consuming manner in which Mr. Smith and Captain Haroldson insisted on dredging, and their refusal to operate in rough weather, lowered dredging efficiency on the Cruise, resulting effectively in a loss of over 50% of the anticipated successful dredge hauls.

39. Based on the average number of dredges per day from previous cruises, with 14 days allocated for dredging, a minimum of 56 dredges should have been accomplished. However, adjusted for lost ship time for the evacuation of a sick scientist, this left 11 days for dredging, a minimum of 44 dredges. Because additional time was taken out of the Sentry program, it

increased overall dredging time to 12 days, meaning that at least 48 dredges should have taken place, with time for longer drags saved by power or drift dredging, resulting in a much higher success rate. Instead, because of the inefficient operation mandated by the weather constraints and the dredging technique Dr. Dick was forced to use, the Cruise completed just 31 dredges, and only 21 dredges recovered adequate samples (seven of the dredges came up empty and three retrieved less than one kilogram of rock); the lowest success rate for dredging of any cruise that Dr. Dick has ever been on.

40. Captain Haroldson wrote an email on March 3, 2019, describing the discussions that Dr. Dick had with him about dredging. Captain Haroldson's email flies in the face of his negative and critical post-Cruise comments about Dr. Dick and Mr. Smith's comments that Dr. Dick never informed them about his dredging plan. It also undermines their overblown comments that Dr. Dick was abusive and hostile to him and the crew. "This afternoon the Chief Scientist wanted to resume dredging, and was a little bit insistent on it. Winds are backing down slowly, but there is a 20-30 westerly swell that doesn't seem to want to diminish. After a couple hours off [sic] debate between myself and the Chief Scientist we were at bit of deadlock. *Justin Smith, myself, and the Chief Scientist did manage to reach a solution.*" See March 3 - 11, 2019 Email Thread between E. Haroldson, S. Brugger, S. Jackilee, & L. Tuttle attached hereto as **Exhibit D2**. (Emphasis added.) As noted by Captain Haroldson's email during the Cruise, Dr. Dick was merely a "little bit insistent" and a solution was reached regarding dredging.

41. After the Cruise, UW admitted that the crew it assembled had little experience with dredging. "Dredging is not something we've done much of in recent history so we have a lot of inexperienced people." See March 26, 2019 Email from D. Russell, attached hereto as **Exhibit D3**. The crew's lack of experience with dredging caused issues on the Cruise. When Dr. Dick

pointed out these issues as they significantly impacted the Cruise's objective during the Cruise and in his post Cruise assessment, the Crew of the RV Thompson turned against him and manufactured false claims of improper conduct.

**Members Of RV Thompson Crew and Marine Technicians Are Hostile And Resistant To Dr. Dick.**

42. When Dr. Dick attempted to explain to Mr. Smith why the Cruise should use power dredging (consistent with his proposal in pre-Cruise planning) or alternatively drift dredging, he (Mr. Smith) became defiant and resistant to using any other dredging technique. He insisted that any technique other than the inch-worm technique was unsafe; despite the fact that, based on Dr. Dick's experience, power dredging is the most widely used technique in the global oceanographic fleet, and that the Cruise had planned to use power dredging during the pre-Cruise meetings. This led to tensions on the Cruise between Mr. Smith and Dr. Dick.

43. At times during the Cruise, Mr. Smith was outwardly hostile to Dr. Dick and unwilling to cooperate with him. In fact, Mr. Smith admitted to Dr. Dick that he had never used any other dredging technique besides the inch-worm technique to dredge, and was thus unfamiliar with power dredging or drift dredging. Then, on one occasion, when Dr. Dick was trying to explain the value of learning more than one dredging technique, Mr. Smith yelled at Dr. Dick, although Dr. Dick did not respond in kind.

44. Dr. Dick also experienced issues with Captain Haroldson who proved to be difficult to approach. Despite Dr. Dick's proposals regarding dredging in rough weather, Captain Haroldson was reluctant to dredge in such conditions despite the fact that the area in which the Cruise was sailing and conducting research was known for having rough weather. Captain Haroldson claimed that he did not want to dredge in rough weather because he thought it unsafe (based, in part, on advice from Mr. Smith), and that he "didn't like to lose equipment that might be at risk,"

or words to that effect. This explanation made little sense as Dr. Dick informed the UW Planning Group during pre-Cruise planning by email and at the second planning meeting that WHOI was bringing six WHOI dredges for the Cruise, in addition to those provided by UW, because the WHOI group expected to lose half of them. (Although there was risk to the equipment, which the WHOI group had accounted for by bringing extra dredges, neither power nor drift dredging posed any additional risk to human safety based on Dr. Dick's experience from fourteen prior dredging cruises.) Indeed, Dr. Dick pointed out to Captain Haroldson that he had previously and routinely used power dredging under worse conditions safely and successfully. Despite this, and claiming in early March that a solution had been reached, he still completely dismissed Dr. Dick's plans.

45. The insistence by Mr. Smith to use the inch-worm dredging technique, and the Captain's reluctance to dredge in rough weather, caused substantial and costly delays which prevented the science party from achieving the Cruise's principle objectives. Based on the science log kept by the science watch, which provides an exact record of how time was spent each day, the calculated loss of time due to the inefficient style of dredging led to a loss of approximately seven days of ship time due to inefficiency. This loss of ship time is equivalent to approximately \$45,000 per day and \$35,000 per day for fielding the scientific party, for a total loss of approximately \$560,000.

46. At one point during the Cruise, in the early morning, Dr. Dick went to the science operations center (computer-lab) of the RV Thompson to find out about the status of dredging operations that were scheduled to begin that morning. Dr. Dick spoke with Marine Technician Sonia Brugger and asked why the dredging had not started yet despite the fact that the Cruise arrived at the location specified for the dredging an hour early. Ms. Brugger stated that she had

not woken up the marine technician to commence the dredging because dredging was not scheduled to begin for another hour. Dr. Dick explained to Ms. Brugger that the start time was merely an estimated time of arrival, and that dredging should have begun as soon as the Cruise reached the dredging location, particularly given all the dredging time that had been lost on the Cruise to that point. When Dr. Dick tried to explain to her the normal routine for such operations, Ms. Brugger curtly replied that “this is how we do it on the Thompson,” (which was surprising to Dr. Dick because the Thompson had not dredged in over seven years). When Dr. Dick tried again to explain, Ms. Brugger vehemently disagreed with him, became angry, and told him if he did not like it he should go speak with the Captain. After Ms. Brugger raised her voice at Dr. Dick, he also raised his voice at her to try to defend himself.

47. Ms. Brugger’s unwillingness to discuss this with Dr. Dick and/or convey Dr. Dick’s position to the Captain appeared to be in direct contradiction to the Captain’s Sailing Orders which stated that the Marine technician’s responsibilities included “assisting the science party to communicate their procedures, missions and goals” to the Captain. See **Exhibit D1**.

48. On another occasion during the Cruise, Dr. Dick stepped under some plastic tape on the deck in order to take a few quick pictures of an albatross that had landed in the water close to the ship’s stern. (The tape was up to prevent personnel from walking on deck when the dredge was on-bottom and the wire was under tension, and was left up because the Captain did not want science personnel on deck when the crew were trying to land the dredge on the deck after it had been raised from the seafloor; a process taking at least a half hour to one and a half hours, before it reached the sea surface.) Dr. Dick was aware that he was in no danger as there was only approximately 600 meters of wire left out in midwater (and therefore was not under sufficient tension to be dangerous), the ocean was calm, and the crew would not be attempting to land the



dredge on the deck for another 15 to 20 minutes. As Dr. Dick turned to go back behind the tape (he was likely out on the deck behind the tape for all of two minutes), Ms. Brugger, who, upon information and belief was not a crew member, yelled at him disrespectfully to get off the deck. Dr. Dick responded back to her that there was no safety issues with him being there at that time. Despite this, Ms. Brugger came up to him after he had left the taped-off area and began to berate him. In response Dr. Dick repeated that there was no safety issue based on his many years of experience with dredging, and stated that the Captain was going to get a negative cruise report for the constraints he had put on the dredging program. While Dr. Dick responded in a firm tone of voice to defend himself, he did not yell at Ms. Brugger (in fact, he had cracked a rib due to a fall earlier that morning, and was hardly in a state to be aggressive in anyway).

49. Contrary to the later overblown allegations, Captain Haroldson, in an in-Cruise email, merely described Dr. Dick during this interaction with Ms. Brugger as becoming a “little agitated” during this incident. See March 11, 2019 Email from E. Haroldson, attached hereto as **Exhibit E1**. There was no reference to Dr. Dick being hostile or inappropriate even though Captain Haroldson admitted he obtained his information from the crew at the time.

50. On a different occasion during the Cruise, while he was working in the RV Thompson’s science lab, Mr. Smith stood up at his desk in front of him and loudly mocked Dr. Dick by imitating him stating “I had done this before,” repeatedly in a whining voice. He did so in front of the other Marine Technicians and Dr. Dick’s colleagues in the science party. Dr. Dick was humiliated and embarrassed by Mr. Smith’s actions.

51. Demonstrating his hostility towards Dr. Dick, Mr. Smith sent an email during the Cruise about Dr. Dick to a friend (who was not on the Cruise) in which he referred to Dr. Dick as a “F\*\*\*ing dick” and that he had “a few words choice [sic]” for Dr. Dick when they got into an

argument. Mr. Smith also acknowledged that Dr. Dick has a “good heart” and “he’s actually gotten better as the trip [the Cruise] has progressed.” Evidencing his mocking tone of Dr. Dick, he wrote: “Just living the dream as the dredging tech for a real ass of a chief scientist! In fact his surname [sic] is Dickey and very fitting!” Mr. Smith also made seemingly ageist comments about Dr. Dick in emails. He referred to Dr. Dick as a “curmudgeon,” and made disparaging references to him preferring to use techniques from 40 years ago which are no longer implemented in “this day and age.” Incredibly, Mr. Smith also wrote after the Cruise that “Steve [Mr. Jackilee] nicely said” that Dr. Dick’s support of allegedly antiquated dredging was akin to “50 years ago black people sat at the back of the bus and women couldn’t vote – that still doesn’t make it right.” Mr. Smith’s endorsement of Mr. Jackilee’s heinous comparison of Dr. Dick’s preference of dredging techniques to racism and sexism speaks volumes of the utter lack of credibility of Mr. Smith’s (and Mr. Jackilee’s) allegations against Dr. Dick. Upon information and belief, WHOI spoke with both Mr. Smith and Mr. Jackilee as part of its “investigation” yet never questioned their credibility.

52. Despite these issues, Dr. Dick did his best to get along with everyone on the Cruise, including Mr. Smith, Captain Haroldson, and Ms. Brugger. Dr. Dick repeatedly tried to explain to Mr. Smith and Captain Haroldson the basis for his proposals. For example, on or around March 14, 2019, Dr. Dick offered to Mr. Smith (and Ms. Brugger and fellow marine technician Stephen Jalickee) to prepare and give them a more detailed preliminary cruise plan for the remainder of the Cruise to try to avoid further issues (which was very difficult to do without having previously mapped the terrain). Mr. Smith thanked him for his offer and Dr. Dick subsequently sent the three technicians the cruise plan on March 15, 2019. See March 14-15, 2019 Email Thread between J. Smith & H. Dick, attached hereto as **Exhibit E2**.

53. Dr. Dick left a chocolate on Ms. Brugger's workspace on two occasions (she was not there when he did it) as an attempt to mend fences with her. He did the same for the dredge technician on one of these occasions. He also complemented Ms. Brugger on her work, such as when she skillfully raised and lowered a heavy piece of equipment (communications pole).

**Dr. Dick Raises Well Founded Concerns With The Cruise.**

54. On March 26, 2019, two days before the end of the Cruise, Dr. Dick was contacted by email by James Austin of the UNOLS Fleet Improvement Committee ("FIC").

55. In response, Dr. Dick emailed Mr. Austin and explained the issues that were encountered on the Cruise, including the following:

Due to the clear reluctance to dredge in rough seas, the inability of the bow thruster to hold the ship in position for DP dredging in moderate and even light conditions, we had to abandon our southern survey region, and move to our northern survey region. This left us without accomplishing much of our objectives, and unable to make the key comparison between the southern and northern survey regions on the top of the Marion Rise, that would have allowed us to unequivocally demonstrate whether or not the Marion Rise is supported by a mantle plume. Moreover, in the area we did map, we had insufficient dredges to accurately pin down the extent of mantle outcrops on the seafloor - the main cruise objective.

March 2019 Emails from H. Dick to J. Austin, attached hereto as **Exhibit F1**.

56. Mr. Austin asked if he could share Dr. Dick's feedback with his colleagues on the FIC and Dr. Dick indicated that he could. Later that same day, Mr. Austin informed Dr. Dick that Mr. Russell (UW Manager of Marine Operations at UW) and member of the FIC, "was glad to get [Dr. Dick's] summary" regarding the Cruise. Dr. Dick then asked Mr. Austin if he could ask Mr. Russell to hold off on passing along Dr. Dick's summary to Captain Haroldson until the end of the Cruise. Dr. Dick explained that Captain Haroldson "is experienced, diligent, hardworking, and beloved of the crew. My take is simply that he is overly cautious when working in a place like the southern ocean, and was largely misled by an inexperienced technician, and not very

trusting of old scientists.” In other words, Dr. Dick clearly indicated that he was concerned about retaliation from the RV Thompson crew after his summary of the Cruise was made known to UW.

57. Dr. Dick was hardly the only member of the Scientific Party who had concerns about the RV Thompson crew. For example, Sean Kelley WHOI/Sentry Technician, in his Post Cruise Assessment Report to UNOLS (referred to herein as “PCAR”), gave a rating of “Poor” in response to how well the ship operator conducted pre-cruise activities (planning, coordination, and logistics) and shore support contributed to achieving the scientific objectives of this cruise. Mr. Kelley also described communications as “Poor” when asked to rate how well the officers and crew, and the manner in which the research vessel was operated contributed to achieving the scientific objectives of this cruise (communications, ship handling, deck procedures, attitude towards the science objectives, training, adequate number of crew, shipboard routine, etc.).

58. Similarly, Benjamin Urann WHOI Graduate Student, expressed frustration with the RV Thompson crew as follows: “Henry and I, along with the other experienced seagoing scientists aboard, grew frustrated as time went on and preventable/manageable challenges seemed to befuddle the crew.” See October 31, 2019 Email from B. Urann, attached hereto as **Exhibit F2**. Mr. Urann also described the crew as having a “very nonchalant attitude regarding timing— they never seemed to feel a sense of urgency (barring emergencies) to deploy science gear, whereas the science party, recognizing that ship time costs in excess of \$40K a day, felt compelled to be efficient.” **Exhibit F2**. Mr. Urann went on to note that Dr. Dick was professional and respectful to the crew. “Overall, I did not sense a hostile atmosphere aboard at any time — terse conversations were had, but so goes seagoing science. The crew did grow frustrated with Henry’s requests to change the ship’s protocols (Henry was correct, yet the crew was

inexperienced and afraid to do so), however he remained respectful to the crew and captain in all discussions I witnessed.” **Exhibit F2.**

59. Similarly, Scientific Party member Professor Vincent J. M. Salters, Chair - Department of Earth, Ocean and Atmospheric Science, Florida State University, also raised issue with inefficiencies by the crew. “Dr. Dick is demanding of the crew as he argues that ship time is extremely valuable and should not be wasted. It was thus hard for him to see that on TN365 so much time was wasted by the inefficient dredging method employed by Justin Smith and others. I have been on other cruises, some even further south and in similar or worse weather, where dredging was done differently and much more efficiently.” See November 24, 2019 Letter from V. Salters, attached hereto as **Exhibit F3.**

60. Dr. Zhou, like Dr. Dick, expressed disappointment with the dredging results, which was directly due to the ineffective technique that the RV Thompson Captain and the technicians insisted on using:

What a little disappoint for the cruise is that the effective of geologic dredge sampling in the cruise is not so expected, compared with other works in the cruise. Most of participants in the cruise are hard rock geologists whose work will definitely rely on the dredge to have samples or have as many samples as it is possible. However, I would like to say it seems too many unsuccessful dredges in the cruise. Base on my own experiences, and on other international cruise reports, my colleagues and I think we should have more dredge samples, even if in consideration of the sea state we had in the cruise.

See October 16, 2019 Email from H. Zhou to H. Dick, attached hereto as **Exhibit F4.**

61. Michael J. Cheadle, Associate Professor Geophysics at the University of Wyoming, another scientist on the Cruise, also supported Dr. Dick’s position that he was courteous with the Crew. See November 27, 2019 Letter from M. Cheadle attached hereto as **Exhibit F5.** Dr. Cheadle wrote that “at all times I was present, Henry Dick interacted professionally and courteously with the crew.” Dr. Cheadle, who was interviewed by Ms. Benjamin and Ms.

Humphris, informed them of same: “I clearly stated that Henry Dick was professional and courteous with crew members to my knowledge.” **Exhibit F5.** Dr. Cheadle informed Ms. Benjamin and Ms. Humphris when asked who else they should speak to, “I suggested that they needed to talk to the people (graduate students) who were present at the time of the alleged incident between Henry Dick and one of the marine techs.” **Exhibit F5.** Dr. Cheadle was surprised by WHOI’s unwillingness to speak to witnesses who had first-hand knowledge of the events, the “WHOI response was we don’t want to involve graduate students. I found this to be a contrast with the University of Washington investigation which appeared to interview all crew-members regardless of age or rank.” **Exhibit F5.**

62. Dr. Cheadle also noted that dredging issues were the root cause of frustration on the RV Thompson for all of the scientific party, the “dredging methodology and therefore overall efficiency during the cruise was, I think, the fundamental source of all problems. The reluctance of the dredging personnel to try alternative dredging methods, other than the dynamic positioning dredging method, and to operate only under restricted weather conditions, led to frustration across the whole scientific party.” **Exhibit F5.** Dr. Cheadle also pointed out that equipment issues further contributed to frustration, “Issues with preparedness and with equipment on the ship were a surprise to the science party and a source of frustration.” **Exhibit F5.** In short, dredging and equipment issues caused issues on the RV Thompson, not Dr. Dick.

**In Response To Dr. Dick’s Legitimate Concerns, The Crew Of The RV Thompson Manufactures Unfounded Claims Of Inappropriate Behavior Against Dr. Dick. WHOI Immediately Sides With UW Against Dr. Dick And Refuses To Consider Dr. Dick’s Version Of The Events Or Speak With His Witnesses.**

63. On April 6, 2019, Larry Madin, former WHOI Deputy Director and Vice President for Research, emailed Dr. Dick about an alleged “interpersonal incident” on the Cruise. Tellingly, he also directed Dr. Dick not to submit his UNOLS Post Cruise Assessment Report (“PCAR”)

until after he met with Dr. Dick. This was a highly unusual request as Mr. Madin was not a member of the Cruise. See April 6, 2019 – April 9, 2019 Email Thread between L. Madin, K. Benjamin, & H. Dick, attached hereto as **Exhibit G1**.

64. Dr. Dick responded to Mr. Madin that day that he was happy to meet but noted that his PCAR to UNOLS was going to be very negative because (as Dr. Dick wrote to him) “among many other things I am not used to techs who yell at people when they are asked a question. In 43 years of going to sea I have never had an experience like this. Maurice & Ben Urann who were both there can fill you in. You do not have to take my word for it.” This was the first of several times in which Dr. Dick identified witnesses for WHOI to speak with. For the most part, WHOI ignored his requests. See **Exhibit G1**.

65. On April 8, 2019, just two days after Mr. Madin’s request that Dr. Dick not submit his PCAR to UNOLS, Captain Haroldson submitted his PCAR to UNOLS that was (falsely) highly critical of Dr. Dick. For instance, Captain Haroldson falsely claimed that Dr. Dick proposed using unsafe dredging techniques, and that the Science Party, i.e., Dr. Dick, was constantly confronting the watch mates with changing instructions about where and when to dredge. Captain Haroldson made a further outrageous claim that Dr. Dick attempted to get the second and third mates to dredge his way in defiance of the Captain’s authority. Dr. Dick views this allegation by Captain Haroldson as a de facto charge against him of inciting mutiny. Dr. Dick vehemently denies this claim, and states that neither mate could do this as running the dredges occurs under the command of Mr. Smith, the dredge technician, who only reports to the Captain.

66. In a separate email, Captain Haroldson also accused Dr. Dick of “lik[ing] to wander to the area below the A-Frame during recovery or launch [of dredging] to observe” – and that he would need to speak to him about it. The only time Dr. Dick was under the A-frame and

observing the dredge being brought up, however, was at the Captain's invitation once early in the Cruise.

67. In a subsequent email exchange with Mr. Madin, Dr. Dick forwarded him his March 26, 2019 note to Mr. Austin (at UNOLS) about the Cruise. Dr. Dick also offered to bring a witness to the meeting so WHOI did not "have to take [his] word for it." In that email, Dr. Dick explained his professional disagreement with Ms. Brugger that occurred after he asked her why dredging had not begun after the RV Thompson reached the dredging location. Dr. Dick further described how Ms. Brugger became angry and raised her voice at him, and told him if he didn't like it he could go speak to the captain. Dr. Dick forthrightly explained how he raised his voice in response. He also identified members of the scientific watch as witnesses, including John Greene, a graduate student who attended the Cruise, as being around the area during this conversation. Upon information and belief, WHOI has not contacted Mr. Greene or any of the other members of the scientific watch. See **Exhibit G1**.

68. Dr. Dick separately identified another member of the scientific party who had experienced issues with Ms. Brugger. Senior Research Assistant Ellen Roosen (a member of the science party) sent an email to Mr. Madin and Ms. Benjamin describing an incident on the Cruise when Ms. Brugger was rude and disrespectful to her. "Herny [sic] Dick just stopped by and asked if I had witness his and Sonya's encounter aboard the R/V Thompson on Henry's recent cruise. While I did not witness this, I did have my own encounter with Sonya. I was working with a new computer and the business skype kept popping up. I had ask the other SSSG, who was up when I was, for help. They said that Soyna [sic] was better at doing this sort of thing, so I later asked her for some help with this issue. She snatched the computer from me, clicked a few buttons and thrust the computer back at me. I felt at the time that she are very abrupt and not



that helpful as what she did, didn't fix the problem.” See April 8, 2019 Email from E. Roosen to L. Madin & K. Benjamin, attached hereto as **Exhibit G2**. Upon information and belief, WHOI has not contacted Ms. Roosen about this incident.

69. Mr. Madin then responded to Dr. Dick’s email that he did not need to bring a witness to the meeting, that they already received some input (he did not identify who), and assured Dr. Dick that WHOI would follow up with the people he suggested. Contrary to Mr. Madin’s claim, upon information and belief, WHOI only contacted two of the numerous witnesses that Dr. Dick initially suggested that they speak to (Dr. Dick expected that he would be given more time by WHOI to provide the names of additional witnesses for its investigation but this never occurred).

70. Ms. Benjamin also separately and disturbingly responded specifically directing Dr. Dick not to submit any further information for WHOI’s investigation: “We have reviewed the emails you have sent regarding these events, so additional detailed emails are not necessary at this time *and should be avoided*.” (Emphasis added.) She also directed Dr. Dick not to ask witnesses to the events on the Cruise to provide information, “[r]eaching out to others on the cruise, and in particular anyone directly involved in whatever the incident was, *should be avoided*.” (Emphasis added.) This was astounding to Dr. Dick as, even though Ms. Benjamin claimed that “WHOI is not jumping to any conclusions about this situation,” she was directly preventing him from submitting information that would support his account of the events. More tellingly still, Ms. Benjamin further directed Dr. Dick not to say anything negative about UW in the future. “Likewise, making complaints about the cruise would not be a good idea at this time and could be misconstrued as a form of retaliation. To the extent that there were problems with the U of W Technicians or the vessel’s crew that need to be addressed it would be better to let us assist in raising these concerns through appropriate channels.” See April 8, 2019 Email from K.

Benjamin to H. Dick, attached hereto as **Exhibit G3**. Based on Ms. Benjamin's statements in this email, Dr. Dick believes that she had already made up her mind about how the investigation would conclude before it even began.

71. Dr. Dick's belief is supported by the fact that at around the same time Ms. Benjamin was silencing Dr. Dick, Ms. Benjamin began to contact the University of Washington about its investigation and remained in contact with them for months. However, there is no evidence that Ms. Benjamin or WHOI ever raised Dr. Dick's concerns with the University of Washington. Upon information and belief, at no time did Ms. Benjamin raise the issue with the University of Washington of the behavior of the marine technicians towards Dr. Dick that Dr. Dick had informed Ms. Benjamin of, or convey Dr. Dick's position on the events to the University of Washington.

72. Dr. Dick responded to Ms. Benjamin and Mr. Madin by again noting his willingness, per their instruction, to hold off on submitting his report to UNOLS. Dr. Dick also pointed out, however, that Captain Haroldson's PCAR to UNOLS was "definitely a form of retaliation for the initial summary of events I passed on to Jamie Austin, who presented them at the recent UNOLS conference." Dr. Dick also explained he would need eight hours to fully prepare the documentation of what occurred on the RV Thompson. He also urged WHOI to speak with "both the German and the Chinese Co-chief will back up my story in full, as will Maurice Tivey, Ellen Roosen, and Ben Urann here at WHOI. You can also contact the graduate student watch standers who were present (3 individuals) at the time of the argument between myself and the two techs, Sonia Brugger and Justin Smith."

73. Ms. Benjamin astonishingly responded (prior to speaking to Dr. Dick about the Cruise) by defending the crew, "U of W did not try to set the stage about anything." Ms. Benjamin then

told Dr. Dick not to prepare himself for the meeting with her and Mr. Madin and not to come with documentation. “There is no need to spend 8 hours preparing for a conversation with Larry and me. We are not at this time going to be reviewing documentation.” See **Exhibit G1**.

**From The Outset, Ms. Benjamin Was In Contact With UW About Its Investigation And Coordinated Aspects Of The WHOI Investigation With UW.**

74. By this time, Ms. Benjamin had already reached out to UW investigator, Joanne Wuitschick, seeking information about UW’s investigation. Ms. Benjamin asked to schedule a call with Ms. Wuitschick and Mr. Madin. On April 30, Ms. Benjamin followed up with Ms. Wuitschick seeking information about the investigation and referencing a call she had with Ms. Wuitschick around the same time.

75. On May 22, 2019, UW emailed the report to Ms. Benjamin. WHOI did not share the report with Dr. Dick at that time. To date, WHOI has never provided Dr. Dick with an unredacted version of the report.

76. On April 10, 2019, Dr. Dick met with Mr. Madin and Ms. Benjamin for one hour. They merely informed him that there had been a complaint and that there would be an investigation. They did not inform him of any specific allegations and did not allow him to respond substantively. This despite the fact they were well aware that UW was actively conducting an investigation. They never told him about it. UW clearly had their mind made up about Dr. Dick around the time they commenced the investigation. For example, on April 11, 2019, just days after first receiving notice of a complaint, UW employee Karin Nyrop, Director Claims Services, Compliance and Risk Services, sent an email indicating that on April 10, 2019, she attended a quarterly Marine Claims meeting. Ms. Nyrop claimed that Dr. Dick made derogatory remarks about women, disregarded safety protocols, and was hostile in response. This statement about

Dr. Dick shows that UW, approximately five weeks prior to issuing its report on Dr. Dick, and just days into its “investigation,” already made up its mind that he had committed the allegations.

77. Moreover, UW conducted its investigation by reviewing fifteen written statements from its employees and/or contractors, and only conducted a single interview, with Ms. Sonia Brugger. At no point did UW attempt to contact Dr. Dick during its investigation. WHOI was aware of this.

78. On or around April 17, 2019, Dr. Dick also sent a letter to the NSF describing why the Cruise was unable to achieve its primary scientific goals. See April 17, 2019 Letter from H. Dick to NSF, attached hereto as **Exhibit H1**. In essence, Dr. Dick explained that this was due to the reluctance of Captain Haroldson to dredge in rough weather, and the insistence of an inexperienced technician on using an ineffective dredging technique. He further explained how the inefficiencies and inexperience of the RV Thompson crew caused serious and extremely costly delays in the research process. See **Exhibit H1**. He then requested a replacement cruise.

79. In response, the NSF informed Dr. Dick that they did not have a ship available. Instead, the NSF proposed that it could either provide him with a \$100,000 supplement to the original grant for the Thompson cruise to participate on a follow up cruise on the German RV Sonne, or it would consider on short-notice, a new proposal for a larger sum. Dr. Dick therefore submitted a \$300,000 proposal for participating on the follow-on German cruise, which was approved. The fact that the NSF so quickly approved his proposal for this supplemental cruise which, in Dr. Dick’s experience is extremely rare, demonstrates the legitimacy of his issues with the UW/RV Thompson crew’s actions. (Indeed historically, it is Dr. Dick’s understanding that the Marine Geology and Geophysics NSF Program only funds 10% - 15% of the proposals under review at any one time.)

80. On or around April 18, 2019, Dr. Dick submitted his PCAR to UNOLS. A copy is attached hereto as **Exhibit H2**. Dr. Dick again explained the shortcomings of the Cruise.

81. Dr. Dick's accurate assessment of the Cruise contained in the PCAR is at the root of the bogus claims against him by the University of Washington. On March 11, 2019, shortly after Ms. Brugger inappropriately yelled at Dr. Dick for being on the deck and he subsequently informed her about his intent to give the Cruise a negative review, the crew of the RV Thompson and University of Washington employees put the wheels in motion to manufacture an unfounded negative assessment of Dr. Dick.

82. As Ms. Brugger wrote to Loren Tuttle, Supervisor, Shipboard Science Support Group, University of Washington (Mr. Tuttle was not on the Cruise):

“Among the things he informed me he plans on submitting a report to UNOLS about our horrible conduct and how the ship does not operate properly. Just wanted to let you know that he plans to leave us a 1-star yelp review . . .”

See March 3 - 11, 2019 Email Thread between E. Haroldson, S. Brugger, S. Jackilee, & L. Tuttle, at **Exhibit D2**. Mr. Tuttle responded:

Please do me a favor and make note of discussions with or comments from the current science party that are negative or derogatory. . . . It sounds like we may get a rough PCAR from this cruise through absolutely no fault of your own, and I would just like to have your perspectives”

*Id.* From this point forward, the crew of the RV Thompson, and the University of Washington support team, engaged in a concerted effort against Dr. Dick.

***UW Prejudges Dr. Dick And Initiates A Concerted Effort To Paint Him In A False Negative Light.***

83. On March 13, 2020, it was clear that Mr. Tuttle and University of Washington had made up their mind about Dr. Dick (without ever speaking with him or hearing his side of the story).

Mr. Tuttle wrote to Ms. Brugger, admitted he had no firsthand knowledge of the situation, but already determined that Dr. Dick was in the wrong: “*While I don't know the specifics of your interactions with Henry, I do understand that he was disrespectful* and that you were treated inappropriately. *That is completely wrong* and should never happen, and I’m sorry that you were the target of his disrespect.” Again, Mr. Tuttle made no effort to obtain Dr. Dick’s side of the story, and was driven by collecting information to oppose the negative review anticipated from Dr. Dick.

84. Ms. Brugger’s response on March 14, 2020 (before the post-Cruise witch hunt of Dr. Dick) also describes a far different situation. First, in tacit acknowledgement of how poorly she treated and behaved towards Dr. Dick, she anticipates that Dr. Dick is likely to convey how unprofessional she was to him: “I wouldn't be surprised if Henry is going to turn this into a ‘I was so nice to her and she kept acting mean to me’ situation in future reviews.” While acknowledging that the situation is improving and Dr. Dick was acting friendly towards her, she paradoxically takes issues with that as well: “Things are going betterish . . . He's been acting friendlier to me since he, Captain, and Stephen had a conversation. He's been trying to act super friendly and getting to know me which is awkward and he left chocolate at my desk the other night just for me which made Stephen and I uncomfortable.” Despite her admission that the situation was improving and Dr. Dick acting “super friendly” towards her, Ms. Brugger then claimed she was trying to avoid Dr. Dick. Ms. Brugger also later claimed in a written statement after the Cruise that Dr. Dick ignored her after his discussion with the Captain, which would have obviated the need to avoid him. Ms. Brugger also inconsistently claimed that Dr. Dick also gave Ms. Brugger angry looks while he was allegedly ignoring her. The clear inconsistencies in Ms. Brugger’s statements demonstrate her glaring lack of credibility.

85. Ms. Brugger in her written statement makes exaggerations and false statements designed to denigrate Dr. Dick and minimize her own actions. For example, in her email to Mr. Tuttle, she claimed that the plan for the Cruise on March 4, 2019, agreed upon by Dr. Dick along with Captain Haroldson, Mr. Smith, and Mr. Jackilee, was to start dredging at 4:00 a.m. In reality, the 4:00 a.m. time was merely an estimated time of arrival, and the plan was to dredge upon reaching the site. Ms. Brugger went on to claim that the RV Thompson “arrived at dredge site 30 minutes early after pulling up the magnetometer.” In fact, the RV Thompson arrived on station at 3:00 AM and the dredge did not get into the water until 4:21 a.m. (per the watch standers’ records). In other words Ms. Brugger conveniently minimized the time wasted by her actions, which was at least an hour based on the average time for deployment of the remaining dredges, or about \$8,000 worth of ship time.

86. Another example of Ms. Brugger’s efforts to negatively characterize Dr. Dick occurred with regard to Ms. Brugger’s description of the incident that took place between her and Dr. Dick on the deck of the RV Thompson. Ms. Brugger claimed that she saw Dr. Dick duck under the safety line, and called the bridge on her radio prior to asking him to leave because she was allegedly not comfortable with not having another crew member present given how allegedly aggressive Dr. Dick had been to her. In reality, Third Mate Schwartz’s post Cruise statement contradicts Ms. Brugger’s statement. Third Mate Schwartz stated that he and Able Seaman Hansen were the ones who noticed Dr. Dick on the deck (not Ms. Brugger) and radioed Ms. Brugger to ask Dr. Dick to leave the deck. Because there was no deck operation going on at the time, Dr. Dick understood he did not need protective gear at that time.

87. By April 1, 2020, University of Washington employee and Port Captain, Meegan Corcoran, *who was not on the Cruise*, took over University of Washington’s concerted and

orchestrated efforts to paint Dr. Dick in an unfair negative light in response to his negative assessment of the Cruise. For example, Ms. Corcoran wrote to Justin Smith on April 1, 2020:

Hello Justin,

I hope you are well and getting some rest after this last cruise. I wanted to reach out and ask you to write a summary about your experiences working the Henry Dick cruise. I have been told that you had some interesting interactions with Henry and that you might be open to sharing those in writing. *At this point, I am collecting documentation from several of the ship's crew in order to paint the picture about what really happened out here since Henry has been very vocal to NSF about his interpretation of what happened you know*, there are always two sides to every story. Could you please right about WHY we didn't power dredge or drift dredge your perspective? Also, can you please detail any inappropriate behavior you witnessed?

88. April 1, 2019 Email from M. Corcoran to J. Smith, attached hereto as **Exhibit 11** (emphasis added). Ms. Corcoran clearly was working in concert with the UW Investigator to procure witness statements, and speak with witnesses, despite being an alleged witness herself (Ms. Corcoran did not attend the Cruise.)

89. UW made no attempt to contact Dr. Dick in its “investigation.”

90. More than a month after Dr. Dick’s communications with UNOLS and the NSF, UW sent a letter to WHOI dated May 22, 2019 (referred to herein as the “UW Report”), claiming it had conducted an investigation and determined that he had allegedly, among other things, created a hostile work environment through verbal conduct and insistent behavior, and engaged in disrespectful behavior based on gender. (A redacted copy of the UW Report, which was only provided to Dr. Dick through counsel in November 2019, notably *after WHOI had already completed its investigation and imposed sanctions against him*, is attached hereto as **Exhibit 12.**)

The UW Report concluded that UW would only consider hosting Dr. Dick in the future as a Chief Scientist or a member of the science party if he agreed to watch certain training videos,



agree to adhere to WHOI's policies on harassment, and not retaliate against any crew member that he believed provided a statement.

91. The UW Report is not reliable based on its utterly one-sided approach. Notably, no one from UW ever contacted Dr. Dick to ask him about these allegations. Dr. Dick was never given an opportunity to respond to the allegations, review the witness statements taken by UW, or respond to the findings in the UW Report. UW only reviewed written statements, other than a single telephone interview with Ms. Brugger.

92. Prior to finalizing the UW report, Ms. Wuitschick solicited input and modification from two of UW's own witnesses, Ms. Corcoran and Mr. Tuttle (neither of whom were on the Cruise but both helped gather evidence against Dr. Dick). Among other things, Ms. Corcoran demonstrated her bias against Dr. Dick by intimating in her comments to the UW Report that Dr. Dick should be banned from sailing again on a UW vessel. Nevertheless, Ms. Corcoran was allowed to comment on and review the UW Report. WHOI chose to subsequently interview Ms. Corcoran as one of only three live interviews conducted of UW employees, and despite her absence on the Cruise.

93. The draft of the UW Report was also reviewed by Robert Kamphaus, Manager of Marine Operations at UW School of Oceanography. Like Ms. Corcoran and Mr. Tuttle, Mr. Kamphaus did not attend the Cruise. Despite not having any first-hand knowledge whatsoever, he urged Ms. Wuitschick to include a reference in the UW Report that Dr. Dick engaged in a hostile manner. In response, Ms. Wuitschick added the following to the UW Report: "Dr. Dick created a hostile work environment through his verbal conduct and insistent behavior." In other words, the reference to a hostile work environment was not in Ms. Wuitschick's original draft of the UW Report.

94. Mr. Tuttle subsequently reviewed the draft of the UW Report on Mr. Kamphaus' computer evidencing UW's concerted team approach to attempting to paint Dr. Dick in the most negative light possible.

95. Instead of allowing him an opportunity to participate in the UW investigation, UW sent the highly inaccurate and specious UW Report to WHOI, his current employer. WHOI was aware that UW did not solicit any input from Dr. Dick, yet it used the UW Report as conclusive evidence against him.

96. Given the wholly one-sided nature of the UW Report that was completely devoid of any due process for Dr. Dick, and the unsubstantiated allegations contained in the UW report, it is his belief that the UW was retaliating against him for his Cruise reports to UNOLS and the NSF.

97. Evidencing the bogus and retaliatory nature of the allegations against Dr. Dick, UW in its response to Dr. Dick's PCAR identified three Corrective Actions it will take on future cruises regarding placement of safety lines (this is related to the incident on deck with Ms. Brugger and Dr. Dick), purchase of certain equipment that was not on the RV Thompson (one of the issues identified by Dr. Dick), and ensuring pre-cruise planning addressed power needs for cruise equipment (another issue raised by Dr. Dick). In addition, the official response contained *two* Recommendations, and *nine* Improvement Actions regarding, *inter alia*, power issues, training for technicians on equipment, improvement by UW Marine operations of pre-cruise planning, and holding mid-cruise meetings to ensure. In short, these were all items that Dr. Dick appropriately took issue with in his PCAR and directly undermines the allegations by the RV Thompson Crew. See UW Response to H. Dick PCAR at pages 16-17, attached hereto as **Exhibit I3**.

**After Being In Possession Of The UW Report For Nearly Two Months, WHOI Only Briefly Provides Dr. Dick With A Redacted Version Of The UW Report Despite The Fact That The**

**UW Report Was Subsequently Released To Dr. Dick By UW In Response To A Public Records Request.**

98. On July 17, 2019, Dr. Dick met with Ms. Benjamin (who as stated above, had already told him to “avoid” submitting documents or contacting witness) and Dr. Susan Humphris (Dr. Humphris became Interim Deputy Director and Vice President for Research on June 1, 2019 as Dr. Madin retired) as part of WHOI’s “investigation” of the UW Report. This was the first time that he saw any version of the UW Report despite the fact that WHOI had the UW report for nearly two months.

99. To the best of his memory, the version of the UW Report that he was shown at that time is different than the redacted version subsequently provided to him by WHOI. With Ms. Benjamin and Ms. Humphris waiting outside the room, Dr. Dick spent only approximately thirty minutes to read the UW Report. Ms. Benjamin and Ms. Humphris then subjected Dr. Dick to intensive questioning for approximately three hours.

100. There is no credible reason for why WHOI refused to provide Dr. Dick with an unredacted copy of the UW report (it is a single-spaced document nearly ten pages long containing numerous allegations about him), or why WHOI refused to allow Dr. Dick to keep a copy of the UW Report. This is demonstrated by the fact that in the fall of 2020, UW produced the UW Report, including drafts, witness statements, and correspondence to Dr. Dick in response to a public records request by Dr. Dick. WHOI’s refusal to provide Dr. Dick with the unredacted UW Report (which UW determined was a public record) materially impeded Dr. Dick’s ability to respond to the allegations and demonstrates WHOI’s discriminatory and retaliatory animus and bad faith.

101. On Friday July 19, 2019, he met with Ms. Benjamin and Ms. Humphris at 2:00 PM and was again aggressively questioned for approximately three hours. Finally, on Friday August 2,

2019 at 10:00 AM, Dr. Dick was questioned by Ms. Benjamin and Ms. Humphris for an additional two hours. He was only allowed to see a copy of the complaint during the meetings, and Ms. Benjamin did not allow him to keep a copy. WHOI refused to speak with witnesses that Dr. Dick suggested.

**WHOI Allows The UW Investigator To Attend Its Interviews.**

102. On July 10, 2019, Ms. Benjamin emailed Ms. Wuitschick about scheduling interviews with Captain Haroldson and Mr. Smith. Ms. Benjamin then requested the opportunity to interview Mr. Jackilee instead of Mr. Smith. Ms. Benjamin also explained to Ms. Wuitschick that a WHOI attorney would not be present and that she and Interim Deputy Director (Susan Humphris) would be conducting the interview. WHOI allowed Ms. Wuitschick to attend the interviews conducted by her and Mr. Murray. Dr. Dick was not informed of the interviews or given the opportunity to attend.

103. On July 24, 2019, after being informed that Captain Haroldson and Mr. Smith were not available for interviews, Ms. Benjamin requested their written statements from Ms. Wuitschick. Dr. Dick was not informed of this, provided copies of such statements, or given an opportunity to respond directly to such statements.

104. On July 24, 2019, Ms. Benjamin interviewed Ms. Corcoran despite the fact that she did not attend the Cruise, and she was in charge of collecting negative information about Dr. Dick for UW. Ms. Wuitschick was allowed to and did attend this interview.

105. On July 25, 2019, Ms. Benjamin interviewed Mr. Jackilee. Ms. Wuitschick was allowed to and did attend this interview. Mr. Jackilee emailed Ms. Wuitschick after the interview and thanked her for being there. Ms. Wuitschick responded to Mr. Jackilee, "You did great."

106. On August 2, 2019, Ms. Benjamin interviewed Ms. Brugger. Ms. Wuitschick was allowed to and did attend this interview.

107. On August 21, 2019, Ms. Benjamin provided Ms. Wuitschick with an update on the status of WHOI's investigation, informing her that the "investigation has concluded" and she was "finalizing documentation." Dr. Dick was given no such update nor was his input sought prior to the finalization of the investigation.

**WHOI Takes Unjustified Adverse Action Against Dr. Dick.**

108. On October 28, 2019, Dr. Dick was called to a meeting with Richard Murray, the new Deputy Director and Vice President for Research, along with Ms. Benjamin, and Ms. Humphris. At that time, Dr. Dick was informed that he had violated numerous WHOI policies, and subjected to severe punishment. Despite the over two-month time period from when Ms. Benjamin informed UW that WHOI had concluded its investigation, Dr. Dick was not given an opportunity to respond to WHOI's findings in advance of WHOI's actions.

109. Dr. Dick was also given a letter dated October 28, 2019 (referred to herein as the "WHOI Report") which alleged that he: 1) created a harassing and hostile work environment through alleged inappropriate, unprofessional, and intimidating behaviors; 2) did not exhibit model leadership behavior reflective of my Chief Scientist Role; 3) did not adequately plan for the Cruise; 4) complained about and improperly challenged the Captain's authority; 5) made the female technician uncomfortable; 6) exhibited retaliatory behavior during the WHOI Investigation; and 7) that his demeanor during the WHOI investigation was defiant and non-apologetic. See WHOI Report attached hereto as **Exhibit J1**.

110. WHOI's finding that Dr. Dick allegedly did not plan adequately for the Cruise is directly contradicted by the existing volume of email communication between himself and UW, and his

participation in the two pre-Cruise meetings. Moreover, the plan that he outlined to UW, to first do the detailed mapping and then use that mapping to plan the dredging program, which was accepted by UW pre-Cruise and is based on industry-recognized practices, was rendered inoperable due to the Captain's constraints on dredging. This forced Dr. Dick to have to develop an entirely new plan that had to be drawn up on the fly on the Cruise. In addition, UW adopted Corrective Measures, and proposed multiple Recommendations and Considerations in response to Dr. Dick's concerns raised in his PCAR.

111. As a result of the Report, WHOI imposed the following disciplinary "Consequences" on Dr. Dick: 1) he will not be permitted to hold a leadership position such as Chief Scientist on any cruise or research vessel while employed by WHOI; 2) WHOI will report these findings to NSF and UW; 3) he received a 15% pay decrease and was not be eligible for a merit increase in 2020; 4) he will be required to take anger management training; 5) he will be required to watch a video on shipboard civility with Ms. Benjamin; 6) he will not retaliate nor seek to engage any RV Thompson crew members to identify who made statements; 7) he will be required to review and adhere to WHOI policies on respectful workplace and workplace harassment; 8) he will be required to review a UW training video entitled, "Preventing Sex Discrimination and Sexual Harassment in the Work Environment"; and 9) any future similar or related incidents will likely lead to termination of my tenure appointment. See **Exhibit J1**.

112. The conclusions in the WHOI Report are false, unsubstantiated, and or wildly exaggerated. For example, the WHOI Report claimed that Dr. Dick "did not adequately plan for or effectively communicate during the pre-cruise planning phase for the cruise, leaving the Port Captain and others with the perception that you [Dr. Dick] were treating the Port Captain [female] differently than her male counterparts."

113. There is no basis for this allegation. The pre-Cruise planning that he participated in was done primarily by email. At all times Dr. Dick responded to emails in an appropriate and professional manner. Moreover, had WHOI actually spoken to his suggested witnesses as he repeatedly implored them to do, they would have received confirmation that his pre-Cruise planning and communication was not only adequate but received positive reviews from members of the Scientific Party.

114. For example, Prof. Dr. Jürgen Koepke of Institut für Mineralogie - Leibniz Universität Hannover, Germany, praised his planning for the Cruise:

I was member of the scientific party of this cruise, and must say that Henry did an excellent job as chief scientist, and most particularly did a good job of working with the entire scientific party to make sure they all had input, and that they got along well together. This was not so easy because the scientific party was composed of three international working groups, beside the US group, a group from Germany and one from China, who all collaborated very well. The whole cruise was careful planned in all aspects, both in planning the scientific program, and in preparing for the dredging and geophysics program.

See Letter From J. Koepke, attached hereto as **Exhibit J2**.

115. Additionally, Dr. Dick was not solely responsible for the pre-Cruise planning. Responsibilities were divided up among numerous individuals associated with the Cruise. Dr. Tivey was responsible for planning the geophysical survey, and coordinated with Dr. Dan Fornari of WHOI in locating and shipping the geophysics gear to the ship. Dr. Tominaga did the same for Sentry working with the Sentry team leader Sean Kelley and Kevin P. Kavanagh of the Applied Ocean Physics & Engineering Department at WHOI. Professors Koepke and Zhou were responsible for organizing the German and Chinese contingents, and for their travel and equipment.

116. Moreover, from the WHOI side, all of the team's planning went well, shipment deadlines were met, and the necessary equipment and supplies arrived in Durban, South Africa for loading on the RV Thompson on time.

117. What did cause confusion and planning issues were UW's disorganized emails to Dr. Dick that were confusing and interfered with the pre-Cruise planning. For example, in the midst of receiving nearly 50 emails about the Cruise over a three-day period in August 2018, Dr. Dick was one of eleven people copied on an email that should have been sent to him directly as it contained key information about the Cruise Plan Form, directions to the UW website for personnel forms, etc.

118. Due to the confusion caused by UW, Dr. Dick reached out on several occasions to Mr. Russell to ensure that he received information from UW and was providing necessary information to UW in advance of the Cruise.

119. It was not until January 22, 2019, that he finally received an email request addressed directly to him for the documentation for the Cruise that he had been waiting for. In response, Dr. Dick acted quickly to provide UW with all requested information. See January 22, 2019 Email from H. Dick to L. Tuttle et al., with information on dredging and Cruise plan, attached hereto as **Exhibit J3**.

120. After the Cruise, UW proposed improvements to its pre-Cruise planning process, including an improved Cruise planning portal:

*“IMPROVEMENT ACTION 1: UW will update cruise planning references (web site) and enforce clear deadlines 6 months, 3 months, 1 month prior to cruise for submission of complete documentation. In addition, UW is working towards an improved cruise planning portal. This will include earlier identification of working areas and proper identification of EEZs . . .*



IMPROVEMENT ACTION 7: *UW Marine Operations will improve the cruise planning process by sharing meeting minutes with everyone involved to ensure everyone stays up-to-date.*

See UW Response to H. Dick PCAR, at **Exhibit I3** (emphasis added).

121. Any confusion caused by UW which led to any delays in Dr. Dick's emailing of information in no way demonstrates disparate treatment by him of female Port Captain Meegan Corcoran. WHOI even acknowledged in its report that his interactions with Ms. Corcoran were not gender based, yet astoundingly somehow still concluded that he had created a hostile work environment. Despite being an accuser of Dr. Dick, Ms. Corcoran directly participated in the UW investigation against him. WHOI was aware of Ms. Corcoran's participation.

122. The WHOI Report then took another wildly conclusory and unfounded leap that Dr. Dick alleged poor pre-Cruise planning (which he emphatically disputes) led to his high degree of frustration which led to his anger that created a hostile work environment on RV Thompson.

123. In reality, what occurred on the RV Thompson was that UW's own failings led to tension during the Cruise. In addition to the issues referenced above relating to using inefficient dredging techniques and refusing to conduct dredging in rough weather, UW also, upon information and belief:

- a. failed to obtain an International Traffic in Arms Regulation (ITAR) license for a piece of equipment (gravimeter) needed for the geophysical survey, despite being asked in, upon information and belief, fourteen separate emails from Dr. Fornari to do so beginning in August 2018;
- b. refused to take responsibility for ensuring that the USBL Pole, a critical component for operation of the Sentry was properly functioning and calibrated in

advance of the Cruise requiring an extensive correspondence and an additional pre-Cruise teleconference before they agreed to do so

- c. failed to get the manufacturer to service the trawl winch in advance of the Cruise, even though it was requested and UW agreed that they would do so at both pre-Cruise meetings. The slow winch speeds delayed the time to raise and lower the dredge and forced the Cruise to cancel seven dredges; and
- d. failed to test some of the ship's equipment until after the Cruise had already begun, leading to a malfunctioning camera needed for monitoring the dredge wire which led to an approximately 3-hour delay.

124. The Cruise also faced issues caused by UW failing to obtain/utilize the proper equipment on board the RV Thompson for dealing with potential problems with the dredging wire. In particular, the lack of the proper cutting tool where it was necessary to cut off a long length of damaged wire became a necessity on the Cruise, and the result was a significant loss of ship time. In another incident, there was a tangle in the wire above the dredge and the RV Thompson crew tried to recover the dredge with a clamp borrowed from the science party because they did not have that necessary equipment on board. Their procedure left loose coils of wire on the deck which potentially could have entangled a person if the clamp broke; which it did. (Fortunately, no one was hurt when the clamp broke.) Dr. Dick had seen this problem twice before on previous cruises and offered his guidance on how to address this problem, but Captain Haroldson and Mr. Smith refused to listen to his advice. Captain Haroldson reported this procedure as going without incident in his post Cruise communications, which clearly was not the case as noted by Mr. Smith's account of the incident, and Dr. Maurice Tivey (who lent the clamp to the RV Thompson Crew for the operation).

125. UW again acknowledged these issues in response to Dr. Dick's PCAR. For example, Improvement Action 6 is: "UW SSSGs will formulate a plan for a permanent installation of the USBL system, track calibration of the sensor, and ensure the technicians are trained on the integration and operation of the USBL system." See **Exhibit I3**. Improvement Action 2 is to ensure that "the new wire installed this summer (June-July 2019) is properly tensioned when loaded on the drum." *Id.*

126. Also contrary to the WHOI Report, Dr. Dick never challenged the Captain's authority. He appropriately disagreed with Captain Haroldson on the dredging techniques in his role as Chief Scientist, particularly given the tight schedule due to narrow weather windows that the Cruise was operating under. Again, the fact that the NSF had since funded his participation on a follow up cruise demonstrates the validity of his issues with the Cruise.

127. The WHOI Report also alleges that Dr. Dick made the female technician (Sonia Brugger) as well as her male colleague (Justin Smith) uncomfortable, which allegedly caused a hostile work environment. The WHOI report alleged that Dr. Dick made gender-based comments, left chocolates at her workspace, and alleged he told gender-based jokes.

128. In reality, the WHOI Report cited to an alleged single benign (entirely non-sexually motivated) comment Dr. Dick made and a single joke. With regard to the one comment referenced in the Report about moving "iron," Dr. Dick did make a statement to that effect about Ms. Brugger, but meant in a positive and non-sexual way. Dr. Dick repeated his sentiment in section four of his PCAR: "Within the technical parameters of their jobs, all but the dredging technician performed very well. In particular, Sonia Brugger performed well in deck operations, notably the efficient supervising, deployment, and retrieval of the communications pole that was raised and lowered every time Sentry was deployed." See **Exhibit H2**. The "communications

pole” in his written comments is the “iron” that he was talking about when Dr. Dick made the comment to Ms. Brugger (the female technician referenced above).

129. With regard to the joke Dr. Dick made, it amounted to a lighthearted comment regarding a berthing assignment mix up that placed a male and female member of the Chinese scientific party in the same cabin. After realizing the mix up, the male and female members of the Chinese Scientific party were quickly reassigned, addressing the problem.

130. Dr. Dick’s interactions with Ms. Brugger and others on the Cruise was respectful from the inception. In September 2018, months before the Cruise, Dr. Dick reached out to Ms. Brugger about berthing assignments. See February 17, 2019 Email Thread between H. Dick & S. Brugger, attached hereto as **Exhibit J4**. Dr. Dick made clear that he was sensitive to gender issues in terms of assigning rooms, acknowledged the workload Ms. Brugger would be under, and conveyed his desire to be as supportive as possible. “Recognizing that some people are uncomfortable sharing with the opposite sex, or sharing bathrooms with same, I am trying to balance it out so that I have the women sharing the same bathroom in adjoining staterooms. . . . I would like to accommodate you as much as possible. Thus I wanted to offer you your [sic] these choices before I start parceling out rooms to the scientific party.” Evidencing his collaborative approach, Dr. Dick wrote, “I am very much open to suggestions. . . . I would also appreciate any advice you can pass on to me on berthing or other matters that I need to consider.” *Id.* Dr. Dick’s interactions with Ms. Brugger and others on the Cruise were similarly respectful until Ms. Brugger and others were openly disrespectful and rude to Dr. Dick. As noted above, Dr. Dick left chocolate on Ms. Brugger’s workspace in a good faith attempt to mend fences with her after she had yelled at him on the deck and they had a disagreement over the safety procedures. The WHOI Report disregards the fact that Dr. Dick also left chocolates for others on the Cruise, and

as Mr. Brugger was not at her workspace when he left her the chocolate, he received no indication that his conduct was unwelcome in any way.

131. Specifically, Dr. Dick only left chocolates twice (not three – four times as alleged by Ms. Brugger and never just to her). The first time was when he brought chocolate down to leave for another crew member, the messman, which he left for her in the messman's mug in the kitchen. As he had one piece left, he thought it was an opportunity to leave Ms. Brugger his remaining piece as a peace offering. The next night, Dr. Dick brought down all the remaining candy he had, and distributed it to the watchstanders and science party. Mr. Jackilee was on duty at the time, thanked Dr. Dick for the candy, and said nothing when Dr. Dick put pieces on Ms. Brugger's and Mr. Smith's desks. Ms. Brugger's claim that Dr. Dick left her chocolates three to four times to try to harass her is simply false.

132. Further demonstrating that Dr. Dick did not create any sort of a hostile work environment towards Ms. Brugger (or anyone else) during the Cruise is the fact that on March 14, 2019, just two weeks before the end of the Cruise, and *after* the disagreement regarding the start of the dredging operations, Mr. Smith provided Dr. Dick with Ms. Brugger's email to send her his cruise plan for the remainder of the Cruise. See **Exhibit E2**.

133. The fact that the WHOI report grossly misstates that Dr. Dick made multiple comments and jokes when, even as alleged, at most he made a single non-sexual comment (regarding the communications pole), and a single lighthearted comment demonstrates the pretextual nature of WHOI's conduct.

134. The WHOI Report ignores the fact that Dr. Dick played the key role in assembling the research team which included five female scientists. For example, he recommended hiring a female scientist from England who applied for an open position as a student watch stander over

two male applicants. Dr. Dick also invited Ellen Roosen, the sample curator, with whom he worked with for years at WHOI, to join the Cruise. He also invited two female scientists from China (new assistant professors at Peking University and Tongji University in China).

135. The WHOI Report also absurdly alleged that Dr. Dick engaged in retaliatory behavior during the WHOI investigation when he attempted to defend himself in response to the intense questioning from Ms. Benjamin and Ms. Humphris. For example, Dr. Dick mentioned that he saw a graphic sexual image on Ms. Brugger's computer screen saver. Dr. Dick also indicated his belief that Ms. Brugger shared a cabin with Mr. Smith who seemed to be at the center of a number of these alleged complaints. (Dr. Dick later learned that this was incorrect, and immediately and forthrightly informed Ms. Benjamin of same.) He also stated his belief (as noted in his emails to Mr. Madin in early April 2019) that the UW Report is a retaliatory response to his cruise summary that he conveyed to Mr. Austin in late March 2019. The fact that the WHOI Report characterized Dr. Dick's attempts to defend himself in the investigation against unsubstantiated allegations which could destroy his career as "retaliation" evidences WHOI's gender bias, as well as the utter lack of credibility of the WHOI Report.

136. Similarly, the WHOI Report claims that Dr. Dick's demeanor during the investigation was "typically defiant and non-apologetic" as Dr. Dick did not accept or assume responsibility for his behavior. In essence, WHOI used the fact that Dr. Dick refused to admit to false allegations against him as further evidence of his wrongdoing.

137. The WHOI Report attempts to paint Dr. Dick as essentially terrorizing the crew members. As noted above, Dr. Dick was at the time seventy-three years old. Approximately seven years ago, he was diagnosed with facial melanoma. Dr. Dick was given three months to live. While he has beaten the odds, Dr. Dick has undergone numerous surgeries to remove a

cancerous tumor and endured intense and extremely painful radiation and long-term chemotherapy. In addition, Dr. Dick had his left knee replaced in 2017, and needed to have additional revision surgery on same the summer before the Cruise. With his current medical conditions, Dr. Dick is hardly an imposing physical presence.

138. Perhaps most revealing about the WHOI Report is its complete refusal to consider interviewing all but one of Dr. Dick's proposed witnesses. For example, upon information and belief, WHOI failed to interview any of the three scientist watch standers and marine geophysicist on duty who observed Dr. Dick's interactions with Ms. Brugger and Mr. Smith.

139. At the same time, WHOI was in regular contact with UW about the UW investigation, allowed UW employees to participate in scheduling and coordinating interviews of UW employees, and influence the process.

140. The witnesses Dr. Dick requested that WHOI contact but which they refused to do contradict the unfounded claims from the UW Report. For example, Mr. Urann described the mood on the ship as "one of an amicable nature." See **Exhibit F2**. Contrary to the UW Report and the WHOI Report, Mr. Urann also stated that the "science party remained on good working terms with the crew throughout" that Dr. Dick remained respectful to the crew at all times. **Exhibit F2**. An example of the positive relationship that Dr. Dick maintained with the crew is the fact that he paid out of his own pocket for a SENTRY Group t-shirt for any of crew member or scientific party member at the end of the Cruise. Most of the crew accepted this offer which cost Dr. Dick over \$800.

141. Dr. Zhou also affirmed the positive atmosphere on the cruise: "Besides of the dredges, my colleagues in our Chinese team were very happy in a friendly atmosphere in the cruise." See **Exhibit F4**.

142. Dr. Zhou, who acted as co-Chief Scientist on the Cruise, also commended Dr. Dick's diplomatic and problem-solving behavior on the Cruise. "With this email I would like to appreciate your great efforts to make the valuable achievements by cruise TN365 in Southwest Indian Ocean in this spring. . . . For the success of the cruise, I realized that you did a lot very careful and routine works to balance the different interests from different sides, and to solve some small conflict between their research conflicts from time to time. Our Chinese team (including two female scientists) is dealt with equal to other parties and bodies in all aspects in the cruise." See **Exhibit F4**; see also December 30, 2019 Letter from H. Zhou to R. Murray, attached hereto as **Exhibit J5**.

143. Upon information and belief, Daniel Brunelli, another scientist who attended the Cruise from the University of Modena (Italy), has expressed the following to Dr. Dick since the Cruise: Dr. Brunelli did not see anything out of the norm in terms of the interactions between Dr. Dick and the crew. While every cruise experiences a certain amount of tension, Dr. Brunelli described the mood on the ship as very happy, and that it was one of the most joyful cruises he has ever been on. Dr. Brunelli also stated that what stood out for him was the attitude and behavior of one Mr. Smith. He found Mr. Smith to be arrogant and disrespectful, particularly to Dr. Dick. When the dredging technique employed by the crew was ineffective and it wasted valuable time, Dr. Brunelli witnessed Dr. Dick patiently explain to Mr. Smith the benefits of alternative dredging techniques. In light of Mr. Smith's overt reluctance to consider another dredging technique, Dr. Brunelli pushed Dr. Dick to be more assertive with Mr. Smith, but Dr. Dick told Dr. Brunelli that the Cruise needed to be patient and that these things took time. See July 19, 2019 Email from D. Brunelli to H. Dick, attached hereto as **Exhibit J6**.



144. Similarly, Vincent J. M. Salters, Professor and Chair - Department of Earth, Ocean and Atmospheric Science, Florida State University, who attended the Cruise, also supports Dr. Dick's version of the events. "Although Dr. Dick was frustrated by the dredging operation, in my presence he was at all times professional and courteous to the crew including Mr. Smith. His interactions with Mr. Smith and others was friendly and in my view did not have a hint of harassment to any crew member or member of the scientific party. As department chair, I am attuned to harassment issues, including micro-aggressions. I have had training in harassment and bias issues as well as bystander training. Again, at no point before, during or after the cruise did I witness Dr. Dick act in a way that could have been interpreted as harassment to any one of the crew. See **Exhibit F3**.

145. Similarly, Dr. Koepke stated, "My experience on that cruise was that Henry was very friendly to all members of the scientific party and also to all members of the ship crew. I cannot imagine on which these allegations from which I heard are founded." See **Exhibit J2**.

146. In the face of all the evidence supporting Dr. Dick and contradicting the UW Report, comments made in the WHOI Report appear to reveal the true motivation behind WHOI's conduct. For example, the WHOI Report characterizes Dr. Dick's reliance on his decades of experience in explaining his actions to WHOI as "arrogance." The WHOI Report then ties this alleged arrogance and ineffectiveness to the number of years of Dr. Dick's experience with dredging operations (43 years) and that he had not led such a dredging cruise in eighteen years. These comments are false and suggestive of WHOI's bias against Dr. Dick based on his age and/or gender. This is especially so given that Dr. Dick has led multiple dredging cruises with similar objectives with no complaints whatsoever during this eighteen year period. (For example, in 2013 Dr. Dick planned and led a dredging program as a Co-Chief Scientist on the

Mid-Atlantic Ridge in 2013 that was identical to what had been originally planned for the Thompson cruise. Similarly, in 2015 Dr. Dick also served as Chief Scientist on an ocean drilling cruise of the prestigious International Ocean Discovery Program Expedition 360, also in the Indian Ocean. On that cruise, he oversaw an international scientific party with competing interests of over thirty members, coordinated their work with over twenty technical staff, interacted on a daily basis with the drilling superintendent and his personnel, and the Captain and crew of the Ocean Drilling Ship, JOIDES Resolution. Dr. Dick did not receive any complaints against him during these cruises.)

147. As noted above, numerous comments were made on the Cruise about Dr. Dick's preference for using an (alleged) outdated dredging technique and adhering to (alleged) outdated safety principles.

148. In addition, Deputy Director & Vice President for Research Larry Madin had previously stated to Dr. Dick in or around 2018 that "[Dr. Dick] was getting older and the world has moved on," and that "[Dr. Dick] needed to realize that and try to catch up with it," or words to that effect.

149. Moreover, in the January 2019 admissions cycle for the WHOI/MIT Joint Program in Geology and Geophysics, an extremely qualified student from Peking University, China, applied to be Dr. Dick's student at WHOI. Despite being second in his class in Earth Sciences at Peking University (which is an extremely selective university), WHOI rejected his application. This student was admitted to CalTech, possibly the most competitive and difficult to obtain admission to Earth Science graduate program in the US.) When Dr. Dick questioned WHOI about the basis for this, he was told by Dean Margaret Tivey that, among other things, he was not qualified, and that Dr. Dick "had a mentoring problem," or words to that effect. This allegation is baseless as

Dr. Dick has successfully served as a principle advisor and co-advisor for approximately ten successful US & international Ph.D. students over the course of his career, including three students who are currently in the process of finishing, or have just finished, their degrees. Upon information and belief, Dr. Dick's younger colleagues are not similarly refused students based on unfounded allegations of having "mentoring problems." On or around February 10, 2019, Dean Margaret Tivey also alleged that Dr. Dick did not have sufficient funds to cover the students' first two years at WHOI. Dr. Dick, in fact did have these funds at the time, and retains a considerable portion of them to this day.

150. Upon information and belief, Dr. Dick's younger colleagues had far more success in being awarded small discretionary salary grants from WHOI, which can be used by faculty for seed money for a new project, or for time to synthesize past work. Dr. Dick began to realize some years ago that, despite the high success rate of these proposals from younger faculty members, his proposals generally did not get funded. This, despite Dr. Dick's status as one of the most highly-cited scientists in the Institution. Dr. Dick's success rate was so low that he largely gave up submitting proposals as he determined it was futile.

151. WHOI's "consequences" are far more severe than those proposed by UW. UW requires that prior to consideration of Dr. Dick as a Chief Scientist in the future or as a member of a science party, Dr. Dick watch certain online trainings, read, review and agree to adhere to policies on harassment, and agree not to retaliate against anyone who made statements against him. In stark contrast, WHOI has imposed a 15% salary decrease, rendering Dr. Dick ineligible for a merit increase in 2020, and reported its findings to the NSF – in addition to what is being required by UW.

152. To date, Dr. Dick has suffered substantial lost wages due to WHOI's unjust reduction of his salary and denial of his merit increase for 2020. Dr. Dick's lost wages are ongoing.

153. WHOI's "Consequences" in the face of the unsubstantiated and retaliatory report by UW will further severely impact Dr. Dick's career. For example, WHOI will no longer allow him to take any leadership positions, which will significantly impact his ability to continue his research and career's work on ocean cruises.

154. WHOI's statement to NSF also has caused serious harm to Dr. Dick's professional reputation. Specifically, on February 28, 2020, upon information and belief, WHOI sent the following statement to the NSF:

"The Institution received a written complaint from the University of Washington reporting concerns that Dr. Henry Dick, had repeatedly *exhibited unprofessional behavior and conduct* when he was the Chief Scientist for the Marion Rise cruise [UNOLS TN365] on the RV Thomas G Thompson. The *unprofessional behavior and conduct* were reported to have occurred both during the pre-cruise planning and during the cruise itself. The Institution conducted an investigation and *Dr. Dick was found to have violated the Institution's Code of Conduct, Policy against Harassment, Respectful Workplace and Violence Prevention*. Appropriate action in keeping with the nature of these concerns is being addressed with Dr. Dick, including but not limited to: 1) *not permitted to hold a leadership position such as Chief Scientist on any cruise or research vessel while employed by the Institution*; 2) received an adjustment to his compensation; 3) *required to take Anger Management Training*; 4) required to complete identified trainings and re-read and acknowledge specific policies; 5) *reminded that there can be no retaliation*."

155. Dr. Dick emphatically disagrees with WHOI's statement to the NSF that he had violated any code of conduct or that the investigation revealed evidence to credibly support those findings. As detailed above, the investigation conducted by WHOI was woefully deficient, flawed, deprived Dr. Dick of any due process rights, and was motivated by age and/or gender discrimination. In light of his critical relationship with NSF, WHOI's communication to the Foundation containing its findings and the administrative actions taken against Dr. Dick, has

caused him significant professional and reputational harm, and interfered with his ability to perform his job duties.

156. On October 2, 2020, Dr. Dick received his annual evaluation for the period October 2019 to October 2020, which asserted that he was only “meeting expectations.” This despite the fact that the review acknowledged that Dr. Dick published nine papers over the past twelve months -- one of the most important metrics considered by WHOI. Upon information and belief, the fact that Dr. Dick filed an action for discrimination and opposed WHOI’s treatment of him regarding the Cruise caused this lower than merited evaluation. Despite WHOI imposing sanctions on Dr. Dick in October 2019, no mention was made of such discipline in Dr. Dick’s annual evaluation demonstrating the baseless nature of such discipline.

157. WHOI and Ms. Benjamin’s age and gender biased investigation and sanctions against Dr. Dick also caused him significant emotional distress.

**COUNT I**  
**VIOLATION OF THE AGE DISCRIMINATION AND EMPLOYMENT ACT,**  
**29 U.S.C. § 621 et seq.**  
**(Against Defendant WHOI)**

158. Plaintiff adopts and incorporates all of the above allegations herein.

159. By its actions described above, including but not limited to, effectively barring him from taking on new students, subjecting Dr. Dick to a woefully deficient investigation due to his age, holding his age against him during that investigation (*i.e.*, Deputy Director & Vice President for Research Larry Madin’s statements to Dr. Dick that “*he is getting older and the world has moved on,*” and that “*he [Dr. Dick] needed to realize that and to catch up with it,*” or words to that effect), reducing Dr. Dick’s salary by 15%, denying him a merit increase, and barring him from serving as Chief Scientist on future cruises (a central function of his position) based on this investigation, and reporting the false and discriminatory conclusions of the investigation to the

NSF (Dr. Dick's main source of funding for his research), Defendant WHOI discriminated against Dr. Dick in the terms and conditions of his employment as a result of his age in violation of the ADEA.

160. As a direct and proximate result of Defendant's discriminatory conduct in violation of the ADEA, Dr. Dick has suffered, and continues to suffer, monetary and/or economic damages, including, but not limited to, loss of past and future income, compensation, and benefits, for which Plaintiff is entitled to an award of damages, attorneys' fees, and costs.

161. The foregoing conduct, as alleged, constitutes a willful violation of the ADEA within the meaning of 29 U.S.C. § 626(b) and, as a result, Dr. Dick is entitled to liquidated damages.

**COUNT II**  
**VIOLATION OF THE MASSACHUSETTS FAIR EMPLOYMENT PRACTICES ACT,**  
**M.G.L. c. 151B § 4**  
**(Against Defendants WHOI and Ms. Benjamin)**

162. Plaintiff adopts and incorporates all of the above allegations herein.

163. By their actions described above, including but not limited to, subjecting Dr. Dick to a woefully deficient investigation due to his age, holding his age against him during that investigation (*i.e.*, Deputy Director & Vice President for Research Larry Madin's statements to Dr. Dick that "*he is getting older and the world has moved on,*" and that "*he [Dr. Dick] needed to realize that and to catch up with it,*" or words to that effect), reducing Dr. Dick's salary by 15%, denying him a merit increase, and barring him from serving as Chief Scientist on future cruises (a central function of his position) based on this investigation, and reporting the false and discriminatory conclusions of the investigation to the NSF (Dr. Dick's main source of funding for his research), Defendants WHOI and Ms. Benjamin discriminated against Dr. Dick in the terms and conditions of his employment as a result of his age in violation of M.G.L. c. 151B § 4(1B).

164. By her role in the above-referenced actions, including but not limited to instigating, participating in, and leading her/WHOI's age-biased investigation of Dr. Dick; failing to reveal her deep involvement with UW's deeply flawed investigation of Dr. Dick on which her/WHOI's investigation was improperly based; setting parameters for WHOI's investigation that ensured WHOI would discipline Dr. Dick (*i.e.*, directing Dr. Dick not to submit evidence or contact witnesses); holding Dr. Dick's age against him during that investigation; and subjecting Dr. Dick to harsh discipline based on his age; Ms. Benjamin aided and abetted discrimination against Dr. Dick in violation of M.G.L. c. 151B § 4(5); and coerced, threatened, intimidated, and interfered with Dr. Dick's rights granted by M.G.L. c. 151B to employment free of unlawful discrimination, in violation of M.G.L. c. 151B § 4(4A).

165. As a direct and proximate result of Defendants' discriminatory conduct in violation of the M.G.L. c. 151B, Dr. Dick has suffered, and continues to suffer, monetary and/or economic damages, including, but not limited to, loss of past and future income, compensation, and benefits, loss of personal and professional reputation, loss of community standing, and emotional distress and mental suffering, for which he is entitled to an award of damages, attorneys' fees, and costs.

**COUNT III**  
**VIOLATION OF TITLE IX OF THE EDUCATION AMENDMENTS OF 1972, 20 U.S.C.**  
**§ 1681, et seq.**  
**(Against Defendant WHOI)**

166. Plaintiff adopts and incorporates all of the above allegations herein.

167. Title IX of the Education Amendments of 1972, 20 U.S.C. § 1981, et seq., provides in relevant part that “[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”

168. WHOI is an educational program which receives substantial federal funding. (WHOI's mission statement, for example, reads: "The Woods Hole Oceanographic Institution is dedicated to advancing knowledge of the ocean and its connection with the Earth system through a sustained commitment to excellence in science, engineering, and *education*, and to the application of this knowledge to problems facing society." (Emphasis added).) Moreover, the Cruise received the major portion of its funding from NSF, a federal agency.

169. Title IX is enforceable through an implied private right of action affording an individual discriminated against due to his gender damages and equitable relief.

170. Courts recognize violations of Title IX claims under several theories including erroneous outcome and selective enforcement. Dr. Dick makes a claim of discrimination under the erroneous outcome and/or selective enforcement theories.

171. WHOI's actions in initiating its investigation and disciplinary proceedings against Dr. Dick were conducted in bad faith and based on his gender. WHOI based its decision to investigate Dr. Dick on UW's investigation and report, which critically did not even speak with Dr. Dick as part of that investigation. Moreover, Ms. Benjamin, who has on multiple occasions sought to discipline Dr. Dick based on false and/or unwarranted allegations, was deeply involved with UW's investigation, yet failed to disclose that involvement during WHOI's investigation.

172. By, among other things, relying on UW's already fatally defective investigation, WHOI and Ms. Benjamin conducted a flawed investigation and then relied upon that flawed investigation to come to an erroneous and biased conclusion. During its investigation, WHOI refused to provide Dr. Dick with a copy of the UW report in its un-redacted form, which prevented him from knowing who made the allegations about him, and who allegedly witnessed certain behavior, preventing him from materially responding. This, despite the fact that UW



provided the unredacted report to Dr. Dick in response to a public records request. WHOI never took into account or gave Dr. Dick the opportunity to present the statements of his colleagues who offered a conflicting viewpoint of the Cruise, for example those of Mr. Urann, Dr. Zhou, Dr. Koepke, and Dr. Brunelli. WHOI also ignored Dr. Dick's long track record of successfully running cruises without complaint. WHOI did not permit Dr. Dick to respond to statements made by witnesses interviewed by WHOI or confront witnesses, have counsel present, or participate in any hearing whatsoever. Moreover, the same individuals who investigated Dr. Dick also imposed the discipline against him.

173. WHOI and Ms. Benjamin's gender bias against Dr. Dick was a motivating factor in their failure to conduct a proper investigation leading to an erroneous outcome. WHOI and Ms. Benjamin immediately credited Ms. Brugger's account of the Cruise, yet by contrast, when Dr. Dick complained that he had seen a graphic sexual image on Ms. Brugger's screensaver, WHOI immediately dismissed his complaint and troublingly characterized same as "retaliation." Further, in its report, WHOI and Ms. Benjamin claimed that Dr. Dick was "typically defiant and unapologetic," a male, gender-based stereotypical accusation.

174. Due to Dr. Dick's gender, WHOI imposed sanctions on him that were excessively severe in violation of Title IX. Indeed, Ms. Benjamin, who as stated above harbored gender-based animus against Dr. Dick, subjected him to consequences that were far more severe than even those set by UW. UW required that that prior to consideration of Dr. Dick as a Chief Scientist in the future, he watch certain online trainings, read, review and agree to adhere to policies on harassment, and agree not to retaliate against anyone who made statements against him. In stark contrast, WHOI imposed a 15% salary decrease, rendering Dr. Dick ineligible for a merit

increase in 2020, barred Dr. Dick from serving in leadership positions or as Chief Scientist on future cruises and reported its findings to the NSF.

175. By its actions described above, Defendant WHOI has deprived Plaintiff, on the basis of his sex, of his Title IX rights, through the improper, malicious, sex-based initiation and conduct of its flawed investigation of him, and through its sex-based decision to subject him to harsh, unwarranted, and disparate discipline.

176. As a direct and proximate result of Defendant's discriminatory conduct in violation of Title IX, Dr. Dick has suffered, and continues to suffer, monetary and/or economic damages, including but not limited to, loss of past and future income, compensation, and benefits, loss of personal and professional reputation, loss of community standing, and emotional distress and mental suffering, for which he is entitled to an award of damages.

**COUNT IV**  
**BREACH OF CONTRACT**  
**(Against Defendant WHOI)**

177. Plaintiff adopts and incorporates all of the above allegations herein.

178. At all times relevant hereto, a "for cause" contractual employment relationship existed between WHOI and Dr. Dick thorough, *inter alia*, WHOI written policies and handbooks regarding tenured faculty members and handling of investigations of harassment.

179. As stated above, Dr. Dick's rights as a "Senior Scientist with Tenure" are set out in WHOI's "Blue Book." See **Exhibit B1**. As a Senior Scientist with Tenure, Dr. Dick's duties and responsibilities include that he "initiate, support and conduct independent research and also provide leadership, influence and advice that help promote the highest scientific standards and results within the Institution and the field, and contribute to the professional development of junior staff. Senior Scientists are expected to maintain a close liaison with their Department

Chair to aid and assist the Chair in planning the future development of the Department, to serve on national and international science planning and evaluation committees, and to both serve on and chair Institution committees.” See **Exhibit B1**.

180. As a result of his tenure status at WHOI, Dr. Dick can be terminated only for cause (*i.e.*, for “serious personal misconduct or serious lack of performance”) or due to financial exigency. Prior to any for cause termination, Dr. Dick is entitled to notice in writing of the reasons for any termination, two weeks to request an appeal, one month to prepare for that appeal if requested, a hearing on that appeal conducted by “the Executive Committee or at least 3 members of the Executive Committee who shall have authority to act for the Executive Committee, to have personal counsel present for advice at a hearing, and the right to confront and call witnesses at the hearing. See **Exhibit B1**.

181. By its conduct set forth above, including but not limited to, imposing unjust discipline on Dr. Dick, which negatively and materially interferes with his performance of his tenured position – *i.e.*, by reducing his base compensation by 15%, barring Dr. Dick from holding leadership positions and/or serving as Chief Scientist on future cruises, reporting its false investigative findings to the NSF, and stating that any future incident will “likely lead to termination of [his] tenure appointment,” – without meeting any of the procedural requirements in his tenure contract, Defendant WHOI breached its contractual relationship with Dr. Dick.

182. The terms of Dr. Dick’s contractual employment relationship regarding investigations of harassment are further set out in WHOI’s Investigation Policy. See Investigation Policy, attached hereto as **Exhibit K1**.

183. As set out in this Investigation Policy, when WHOI receives a complaint of harassment, “WHOI follows an investigatory model with recommendations made by the Lead Investigator

[appointed by the Director of Human Resources or the Director of Human Resources herself] to a Decision-maker (i.e. department Vice-President, Deputy Director, or President and Director), rather than an adjudication hearing form . . . The Lead Investigator will report conclusions of any investigation and any recommendations to the Decision-maker (e.g. relevant department chair, Vice-President, Deputy Director, or President and Director, or given less serious matters, a supervisor).” See **Exhibit K1**. Furthermore, “[i]t is the intent of this Investigation Policy *to provide a fair and appropriately comprehensive standard of investigation* for issues that may occur throughout the institution.” See **Exhibit K1**. (Emphasis supplied.)

184. WHOI’s investigation of Dr. Dick was conducted by Ms. Benjamin, Deputy Director for Research Larry Madin, Interim-Deputy Director for Research Susan E. Humphris, and the new Deputy Director for Research following Mr. Madin’s retirement, Richard W. Murray. See **Exhibit J1**. Upon information and belief, the investigation was conducted and the decision was made by the same individuals (*i.e.*, there was no independent decision-maker as required by the policy).

185. WHOI’s woefully deficient investigation did not provide a “fair and appropriately comprehensive standard of investigation” – WHOI’s investigation was based on a flawed investigation by the University of Washington, *which failed to even interview Dr. Dick*; Ms. Benjamin failed to disclose her deep involvement in the University of Washington’s Investigation when participating in WHOI’s investigation; Dr. Dick had *just 30 minutes* to review the University of Washington’s nine-page, single-spaced redacted report before interrogating him about its contents; failed to provide Dr. Dick with an un-redacted copy of that report; so he was unable investigate the ten pages of charges against him to prepare an adequate and fair response, interviewed only two of the eight total witnesses that Dr. Dick provided to

WHOI; and refused to consider any of the viewpoints from other members of the crew that directly conflicted with the accuser's narrative.

186. By its conduct set forth above, including but not limited to, failing to abide by the requirements of its Investigation Policy when conducting its investigation of Dr. Dick, Defendant WHOI breached its contractual relationship with Dr. Dick.

187. As a direct and proximate result of WHOI's breach of contract, Dr. Dick has suffered and continues to suffer economic harm and other damages, including but not limited to a material reduction in his salary, in an amount to be determined at trial.

**COUNT V**  
**BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING**  
**(Against Defendant WHOI)**

188. Plaintiff adopts and incorporates all of the above allegations herein.

189. Every contract in Massachusetts contains an implied covenant of good faith and fair dealing, including the contract between Dr. Dick and Defendant WHOI, as set out herein.

190. By its conduct set forth above, including but not limited to, intentionally conducting a flawed investigation of Dr. Dick which ignored evidence in conflict with its conclusions; by Ms. Benjamin's actions in failing to disclose her significant involvement in the prior, flawed University of Washington investigation in Dr. Dick; and by imposing harsh and discriminatory sanctions against Dr. Dick, WHOI breached its obligation of good faith and fair dealing.

191. By its actions in "investigating" Dr. Dick in violation of its Investigation Policy and disciplining Dr. Dick in violation of his tenure contract, WHOI acted in bad faith in breach of WHOI's promises implicit in the employment relationship to abide by its own policies.

192. As a direct and proximate result of Defendant's breach of the implied covenant of good faith and fair dealing, Dr. Dick has suffered and continues to suffer economic harm, including

but not limited to loss of income and loss of opportunity for future research Cruises, and other damages, in an amount to be determined at trial.

**COUNT VI**  
**TORTIOUS INTERFERENCE WITH ADVANTAGEOUS RELATIONS**  
**(Against Defendants WHOI and Ms. Benjamin)**

193. Plaintiff adopts and incorporates all of the above allegations herein.

194. Dr. Dick had an advantageous business relationship with the NSF, a federal government agency that provides funding for projects in the fields of science and engineering. Over his nearly 45 year career at WHOI, Dr. Dick has received numerous NSF awards for funding of his projects.

195. WHOI knew of Dr. Dick's advantageous business relationship with NSF.

196. Upon information and belief, WHOI reported the false results of its procedurally deficient, unfair, and discriminatory investigation of Dr. Dick to NSF, intending to and in fact interfering with Dr. Dick's advantageous relationship with NSF.

197. Upon information and belief, WHOI made this report to NSF in bad faith, with malice, and out of an improper purpose, including but not limited to discriminatory animus against Dr. Dick, for the purpose of harming Dr. Dick.

198. As a direct and proximate result of WHOI's conduct, Dr. Dick has suffered and continues to suffer economic harm, severe emotional distress, and other damages in an amount to be determined at trial.

199. Dr. Dick had an advantageous business and contractual relationship with his employer, WHOI.

200. Ms. Benjamin, as Senior Director of Human Resources and EEO Officer, knew of Dr. Dick's advantageous business relationship with WHOI.

201. Upon information and belief, Ms. Benjamin conducted a procedurally deficient, unfair, and discriminatory investigation that falsely painted Dr. Dick in a negative light, intending to induce WHOI to terminate Dr. Dick, and in fact inducing WHOI to harshly and unjustly discipline Dr. Dick.

202. Upon information and belief, Ms. Benjamin conducted this investigation in bad faith, with malice, and out of an improper purpose, including but not limited to discriminatory animus against Dr. Dick, for the purpose of harming Dr. Dick.

203. As a direct and proximate result of Ms. Benjamin's conduct, Dr. Dick has suffered and continues to suffer economic harm, severe emotional distress, and other damages in an amount to be determined at trial.

**COUNT VII**  
**DEFAMATION**  
**(Against Defendant WHOI)**

204. Plaintiff adopts and incorporates all of the above allegations herein.

205. WHOI's false statements to the NSF, including but not limited to that Dr. Dick "was found to have violated the Institution's Code of Conduct, Policy against Harassment, Respectful Workplace and Violence Prevention," harmed Dr. Dick in the eyes of his professional community and significantly damaged his personal and professional reputation.

206. WHOI's restriction on Dr. Dick serving in leadership positions and/or serving as Chief Scientist on future cruises, which implies to his peers and colleagues that he has been disciplined and/or engaged in misconduct, further harmed Dr. Dick in the eyes of his professional community and significantly damaged his personal and professional reputation.

207. The finding that Dr. Dick had violated WHOI's code of conduct and/or engaged in harassment was the product of an investigation and disciplinary process that was so flawed, that the Defendants could not reasonably rely upon it to arrive at anything close to the truth.

208. Even though Defendants were aware of the numerous contradictory accounts of the Cruise, and were informed by Dr. Dick and through counsel of the flawed nature of its investigation, Defendant intentionally and/or in reckless disregard for their falsity, published false statements about Dr. Dick to the NSF.

209. As a direct and proximate result of the false statements and conduct of all of the Defendants, Dr. Dick has suffered and continues to suffer economic harm, damage to his professional reputation, severe emotional distress, and other damages in an amount to be determined at trial.

#### **RELIEF REQUESTED**

**WHEREFORE**, Plaintiff Henry J.B. Dick, Ph.D. requests that this Court enter judgment against the Defendants and to award him all damages, including but not limited to back pay, front pay, emotional distress damages, punitive damages, attorney's fees, costs, interest and further relief to which he is entitled.

#### **JURY DEMAND**

The Plaintiff requests a trial by jury on all claims so triable.



Respectfully submitted,

HENRY DICK,  
By his attorneys,

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