

INDIANA COMMERCIAL COURT

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

IN THE MARION SUPERIOR COURT

CAUSE NO.

GOLARS, LLC, DALEEN1, INC., SAIL)
CAPITAL INVESTMENTS, LLC, WARREN)
TRAVEL PLAZA, INC., and UNITED STATES)
SMALL BUSINESS OWNERS ASSOCIATION)
LLC, on behalf of themselves, and all others)
similarly situated,)

Plaintiffs,)

-vs-)

THE INDIANA DEPARTMENT OF)
ENVIRONMENTAL MANAGEMENT and)
DOUGLAS R. LOUKS, individually and in his)
official capacity as IDEM OFFICE OF LAND)
QUALITY, DEPUTY ASSISTANT)
COMMISSIONER,)

Defendants.)

CLASS ACTION COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES AND DEMAND FOR JURY TRIAL

William C. Wagner, #16542-64
Thomas A. Barnard, #4011-49
Seth M. Smoker, # 35369-49
TAFT STETTINIUS & HOLLISTER LLP
One Indiana Square, Suite 3500
Indianapolis, Indiana 46204-2023
Telephone: (317) 713-3500

Counsel for Plaintiffs

Gregory F. Zoeller, # 1958-98
General Counsel
Golars Environmental Engineering
15755 North Point Blvd
Noblesville, IN 46060
Telephone: (317) 500-0000

Counsel for Plaintiff Golars, LLC

Table of Contents

INTRODUCTION	1
PARTIES	5
JURISDICTION AND VENUE	8
STATEMENT OF FACTS	9
A. The Excess Liability Trust Fund, which pays for the cost to clean up gasoline leaks from registered underground storage tanks, is supposed to operate in an open, transparent, and orderly manner.....	9
B. Louks maliciously targeted Golars by claiming that its clients (new Americans of Indian descent) were not eligible for ELTF reimbursement unless they signed Agreed Orders to be personally liable for the cleanup costs (contrary to existing law), including all costs in excess of the Fund’s \$2,500,000 cap per site.	14
C. Louks maliciously targeted Golars by denying 100% of more than 40 claims on the grounds that Golars failed to demonstrate that its work was “reasonable and cost effective,” even though IDEM had a long history of reimbursing close to 100% of all of Golars’ claims before Louks became UST Branch Chief; Golars submitted its work plans to IDEM, which approved the proposed work as reasonable and necessary; and Golars performed the work according to the pre-approved plans, the work was reasonable and cost effective, and Golars performed the work on the expectation of reimbursement.	21
D. Louks maliciously targeted Golars in a dispute between Golars and a former gas station owner over ELTF reimbursement eligibility, even though Louks previously wrote that IDEM should not pick sides and IDEM did not have the legal authority to enforce an agreement between the parties.....	26
E. Louks maliciously targeted Golars by preemptively issuing “No Further Action” orders in an effort to cut off Golars’ cleanup activities, which resulted in high levels of hazardous substances and known human carcinogens from leaking USTs at 30 sites, in direct contravention to IDEM’s purpose of protecting human health and the environment.....	28
F. IDEM has deprived Golars’ access to Louks’ emails, texts, and other records concerning his malicious targeting of Golars and its clients regarding the allegations of this complaint.	32
CLASS ALLEGATIONS	34
Five Distinct Classes.....	34
Issue Classes	40
CLAIMS FOR RELIEF	42
Count I – Injunctive Relief	42
Count II – 42 U.S.C. § 1983 Equal Protection.....	43
Count III – 42 U.S.C. § 1983 Equal Protection	44
Count IV – Defamation.....	45
Count V – Commercial Disparagement.....	46

Count VI – Fraudulent Inducement	46
Count VII – Tortious Interference with Contractual Relationships.....	48
Count VIII – Tortious Interference with Prospective Business Relationships	49
Count IX – In the Alternative, Punitive Damages Against Louks.....	50
PRAYER FOR RELIEF	50
JURY DEMAND	51

INDEX OF EXHIBITS

- 1 Tort Claims Notice
- 2 EPA Benzene Hazard Summary
- 3 Excess Liability Trust Fund, Second Notice of Comment Period, LSA Doc. No. 15-231
- 4 ELTF Reimbursement Suspension Policy
- 5 OEA Daleen1 Inc. Decision
- 6 Attorney General Opinion on Eligible Party Issue
- 7 Louks' Email Dated February 15, 2018
- 8 Warren Travel Plaza Inc. Agreed Order (Signed)
- 9 OEA Keystone Petroleum Inc Decision
- 10 Site Contamination Left In Place

Plaintiffs Golars, LLC (“Golars”), Daleen1, Inc. (“Daleen1”), Sail Capital Investments, LLC (“Sail”), Warren Travel Plaza, Inc. (“Warren”), and United States Small Business Owners Association LLC (“USSBOA”), individually and on behalf of other similarly situated individuals (collectively “Plaintiffs”), by counsel, bring this Class Action Complaint for Injunctive Relief and Damages and Demand for Jury Trial against Defendants Indiana Department of Environmental Management (“IDEM”) and Douglas R. Louks (“Louks”), individually and in his official capacity as IDEM Office of Land Quality (“OLQ”) Deputy Assistant Commissioner. Plaintiffs seek to obtain redress for all persons injured by Defendants’ conduct. Plaintiffs allege as follows based on personal knowledge as to their own actions and experiences, and as to all other matters, upon information and belief, including an investigation conducted by their attorneys and their review of publicly available information:

INTRODUCTION

1. This case arises out of business related torts and environmental claims arising from a breach of legal obligations between the Plaintiff business entities and a State entity and employee trusted in overseeing and administering State trust assets.

2. Golars is an environmental engineering and consulting firm that is certified by the State of Indiana as a Minority and Women’s Business Enterprise (MBE/WBE). Golars combines the experience and expertise of veteran engineers, geologists, scientists, environmental risk managers, and project specialists to serve its clients’ needs. Many of Golars’ clients are new Americans of Indian descent, who own and operate independent retail gas stations and convenience stores. These owner-operators provide “essential services” under Governor Holcomb’s Executive Orders for the Coronavirus Disease 2019 Outbreak, as they provide vital access to gasoline and food to rural and low income Hoosiers during the current pandemic.

3. Beginning in early 2018 and continuing through the filing of this lawsuit, Louks, in his individual capacity and in his official capacity as IDEM OLQ Branch Chief of the Underground Storage Tank Branch and later as Assistant Deputy Commissioner, has maliciously targeted Golars and its clients by depriving them of their due process rights to seek reimbursement for the reasonable and necessary cost of corrective action to pay for the investigation and remediation of soil, groundwater, and vapor contamination resulting from gasoline released from leaking registered underground storage tank (“UST”) systems from the Excess Liability Trust Fund (“ELTF or “Fund”).

4. The first thing Louks did to maliciously target Golars and its clients, many of whom are new Americans of Indian descent, was to demand that the clients sign an agreement (Agreed Orders) to accept personal liability for the corrective actions, including any costs in excess of the ELTF cap, when these clients had no statutory liability or responsibility for the corrective actions. When Golars objected to IDEM’s demands on behalf of its clients because IDEM’s actions were arbitrary and capricious and had not been published or adopted through the proper rule making process, Louks did not relent but instead had the new and unlawful “ELTF Reimbursement Suspension Policy” (the “Policy”), published on IDEM’s website. (The Policy was published on June 4, 2018, *see* <https://www.in.gov/idem/tanks/2349.htm>, last visited May 13, 2020.)

5. Some of Golars’ clients, including some of the named Plaintiffs, and members of the Class entered into such Agreed Orders because of IDEM’s and Louks’ coercive demands and fraudulent misrepresentations even though they knew IDEM’s Policy was unlawful, while others refused and had their ELTF claims improperly denied. Golars’ client, Daleen1, challenged IDEM’s application of the Policy by appealing IDEM’s claims denial to the IDEM Office of Environmental Adjudication (“OEA”). Not only did the OEA declare that IDEM’s Policy was unlawful, but the

Indiana Attorney General also issued an opinion that the Policy was unlawful under Indiana law. IDEM did not appeal the OEA ruling.

6. Despite the OEA ruling and Attorney General opinion declaring the Policy to be unlawful, IDEM has not rescinded the Policy, removed the Policy from its website, or rescinded the Agreed Orders that were signed by Golars' clients and other members of the Class, and IDEM has only made partial payments of ELTF claims for Golars' clients and other members of the Class who refused to enter into the Agreed Orders..

7. The second thing Louks did to maliciously target Golars and its clients was to deny 100% of their claims on grounds that Golars failed to prove that its work was "reasonable and cost effective." Existing case law holds that when a consultant submits its invoices and work product, e.g., a site investigation report or a corrective action work plan, the consultant has established a prima facie case for payment from the ELTF. If the administrator denies the ELTF claim, they administrator is required to provide the claimant with a written explanation of all the reasons for the denial of reimbursement. IDEM rejected Golars' invoices and work product, including work for activities expressly made known to and approved by IDEM, in a completely arbitrary and capricious manner, depriving Golars and its clients of thousands of dollars for services performed over the past two years. This pre-approved work was important and necessary to investigate and/or remediate environmental contamination at UST-related sites, yet IDEM rejected Golars' claims.

8. The third thing Louks did to maliciously target Golars and its clients was to issue "No Further Action" orders and take other administrative actions, such as demanding that the clients agree to the recording of Environmental Restrictive Covenants ("ERCs") limiting their use of their own properties, and to immediately stop cleanups of sites where substantial contamination remains and where licensed professionals recommended that additional work be performed to

protect people working at the properties and adjacent property owners and tenants. Gasoline contains many hazardous substances including benzene, which is a known human carcinogen. IDEM has strict regulations in place for remediating properties with benzene contamination in soil, groundwater, and vapor, including imposing a residential groundwater screening limit of 5 parts per billion (“ppb”). Louks has directed IDEM project managers to issue No Further Action orders on 30 sites owned by Golars’ clients where the amount of known benzene groundwater contamination is greater than 1,000 ppb, with one site having more than 9,000 ppb of benzene contamination in groundwater, including significant benzene contamination at the border of an adjacent residential property. Many of these properties are in low income areas of Indiana. These improper No Further Action orders have effectively and substantially eliminated Golars and class members’ ability to recover corrective action expenses from the ELTF.

9. The fourth thing Louks did to maliciously target Golars and its clients was to delay the payment of claims for projects where IDEM claim reviewers have already decided that payment is owed. Under Indiana law, approved ELTF claims must be paid within 45 days. Golars and its clients have more than 30 claims totaling over \$800,000 where IDEM has refused to comply with the law and issue timely payment.

10. Golars and its clients have exhausted their administrative remedies. And as a result of Louks’ actions, IDEM’s ELTF claim reviewers have applied tactics that Louks used to maliciously target Golars and its clients to other ELTF applicants and their environmental consultants. USSBOA, which represents more than 900 of Indiana’s 1,400 independently owned and operated retail gas stations and convenience stores, has joined this lawsuit for itself and others similarly situated, to seek injunctive relief and damages against Louks and IDEM for their actions.

11. As discussed further below, numerous defined classes have been harmed by the Defendants' conduct. As a result, Plaintiffs seek injunctive relief and to recover damages from IDEM's unlawful suspension of ELTF reimbursement payments; baseless and vindictive denials and delays of reimbursement claims; and violations of their rights to equal protection under the law. Golars, Daleen1, Sail, Warren, and USSBOA also seek damages for defamation, commercial disparagement, fraudulent inducement, tortious interference with their contractual relationships, and tortious interference with their business relationships as a result of Louks and IDEM's actions described below.

12. This action is brought against IDEM under the Indiana Tort Claims Act. This action is also brought against Louks personally pursuant to Ind. Code § 34-13-3-5 for his malicious, willful, and wanton actions that have caused losses to the plaintiffs, and against Louks under 42 U.S.C. § 1983 for retrospective relief (in his individual capacity) and future injunctive relief (in his official capacity as Deputy Assistant Commissioner of the OLQ that oversees the Fund). On behalf of themselves and the proposed classes defined below, Plaintiffs seek injunctive relief as well as an award of statutory damages to the class members and monetary damages to be determined at trial, together with costs and reasonable attorneys' fees.

PARTIES

13. Plaintiff Golars is an Indiana limited liability company located at 15755 North Point Blvd., Noblesville, IN 46060.

14. Plaintiff Daleen1 is an Indiana corporation located at 6455 W. Washington St., Indianapolis, IN 46241. The owner during the relevant time period, Jayesh Patel, is an independent gas station owner of Indian origin. The remediation on Daleen1's site has been held up for a year. IDEM shut down the remediation system, stopped the cleanup, and demanded that Daleen1 agree

to the filing of an ERC on the property. IDEM requested that Mr. Patel enter into an Agreed Order with IDEM in order to be eligible for reimbursement from the ELTF, but Mr. Patel refused. Mr. Patel was not able to refinance or sell the gas station due to the contamination on the site. In the end, he had to sell the property on a land contract because the buyer could not obtain a mortgage due to the contamination on the property. IDEM is now asking for a No Further Action order on the site even though there is over 1,370 ppb of benzene in the groundwater at the border of the property.

15. Plaintiff Sail is an Indiana Limited Liability Company located at 3135 East Thompson Rd., Indianapolis, IN 46227. The owner during the relevant time period, Om Narla, is an independent gas station owner of Indian origin. The remediation on Sail's site has been held up for a year, and IDEM has now demanded that the remediation work be stopped permanently. IDEM stopped the cleanup and demanded that Sail agree to the filing of an ERC on the property. IDEM requested that Mr. Narla enter into an Agreed Order with IDEM in order to be eligible for reimbursement from the ELTF, but Mr. Narla refused. Mr. Narla has not been able to refinance or sell the gas station due to the contamination on site. IDEM is now asking for No Further Action order for the site even though there is over 5,640 ppb of benzene in groundwater at the border of the property.

16. Plaintiff Warren is an Indiana corporation located at 7270 S. Warren Rd., Warren, IN 46792. The owner during the relevant time period, Kulwinder Singh, is an independent gas station owner of Indian origin. The remediation on Warren's site has been held up for a year. IDEM has stopped the cleanup, and demanded that Warren agree to the filing of an ERC on the property. IDEM requested that Mr. Singh enter into an Agreed Order with IDEM in order to be eligible for reimbursement from the ELTF and he agreed. Mr. Singh was led to believe that entering into this

Agreed Order would allow for full ELTF cost reimbursement and would not impact third party liability, neither of which was true. Mr. Singh has not been able to refinance or sell the gas station due to the contamination on site. IDEM has refused to allow the site to be remediated, and has instead recommended a strategy of leaving the contamination in place with monitoring even though the site has a groundwater concentration for benzene of 2,840 ppb.

17. Plaintiff USSBOA is an Indiana Limited Liability Company located at 15755 North Point Blvd, Noblesville, IN 46060. USSBOA advocates for the professional growth of gas station and convenience store owner-operators by focusing on three core principles: collaboration, education, and advocacy. It works to promote the entrepreneurial success of its members and economic development of their communities. Its members include over 900 of the 1,400 independently owned gas stations/convenience stores in Indiana. USSBOA brings this suit on behalf of its members. Its members would otherwise have standing in their own right having been harmed by the Defendants' actions. Its members includes Plaintiffs Daleen1, Sail, and Warren. The interests that USSBOA seeks are germane to the organization's purpose of promoting the entrepreneurial success of their members. Neither the claims asserted, nor the relief requested requires the participation of individual members in this lawsuit.

18. Defendant IDEM is an Indiana governmental entity that is headquartered at Indiana Government Center North 100 North Senate Avenue, Indianapolis, IN 46204 and carries out its functions throughout the State of Indiana.

19. Defendant Louks at all relevant times has been a resident and citizen of the State of Indiana. At all relevant times, Defendant Louks was engaged in the complained of conduct while acting within the scope of his employment and under color of state law. Defendant Louks is sued in his individual capacity and as agent and/or employee of Defendant IDEM.

JURISDICTION AND VENUE

20. IDEM is an agency of the State of Indiana and Louks, through his individual and official capacity at IDEM, has caused damage and violated Plaintiffs' rights through actions and omissions occurring in the State of Indiana. Therefore, this Court has jurisdiction over Defendants pursuant to Indiana Trial Rules 4.4(A)(1) and 4.4(A)(2).

21. Venue is proper because IDEM is a governmental organization with its principal office located within this county pursuant to Indiana Trial Rule 75(A)(5).

22. This Court has jurisdiction to hear the case because Plaintiffs have fulfilled the requirements under the Indiana Tort Claims Act by providing a Tort Claims Notice to the Defendants.

23. On May 14, 2019, the Tort Claims Notice was sent to the Office of the Attorney General, the Indiana Political Subdivision Risk Management Commission, and the Indiana Department of Environmental Management. (*See Ex. 1.*)

24. The Notice asked, among other things, for IDEM to declare the Policy invalid. *Id.* at 17.

25. A denial of this tort claim is a prerequisite to suit.

26. To date, there has been no approval of Plaintiffs' tort claim.

27. A tort claim is deemed denied if the government entity fails to approve the claim in its entirety within ninety days. IC § 34-13-3-11.

28. Suit cannot be initiated against a governmental entity unless the claim has been denied in whole or in part. IC § 34-13-3-13.

29. The Indiana Tort Claims Act “operates as an unequivocal statement of Indiana’s consent to be sued in tort provided certain qualifications—including notice—are fulfilled.”

Oshinski v. N. Ind. Commuter Transp. Dist., 843 N.E.2d 536, 544 (Ind. Ct. App. 2006).

30. Plaintiffs attempted to work with the Defendants to resolve their dispute without filing suit, but it was to no avail.

31. Plaintiffs have fulfilled the necessary prerequisites under the Indiana Tort Claims Act in order to file suit.

32. Plaintiffs have exhausted their administrative remedies and are entitled to file suit.

STATEMENT OF FACTS

A. The Excess Liability Trust Fund, which pays for the cost to clean up gasoline leaks from registered underground storage tanks, is supposed to operate in an open, transparent, and orderly manner.

33. Many businesses, including gas stations, use USTs to store gasoline. Tanks made of steel can corrode and leak over time, and any tank and associated piping can impact the environment and affect Hoosiers if it is not properly installed, operated, and maintained. Leaking USTs and their associated piping can not only contaminate soil, surface water, and ground water, but can also release dangerous vapors into overhead buildings.

34. Benzene, Toluene, Ethylbenzene and Xylenes (collectively known as BTEX) are constituent chemicals found mainly in petroleum products such as gasoline.

35. Large amounts of BTEX can enter into the environment from leaking USTs, overfills of storage tanks, fuel spills from auto accidents, and from landfills.

36. BTEX compounds easily move through soils and can make their way into the groundwater, contaminating public and private sewer and water systems, and the soils.

37. The USEPA has classified benzene as a known human carcinogen for all routes of exposure. (Ex. 2.)

38. Acute (short-term) inhalation exposure of benzene in humans may cause drowsiness, dizziness, headaches, as well as eye, skin, and respiratory tract irritation, and, at high levels, unconsciousness. *Id.*

39. Chronic (long-term) inhalation exposure of benzene in humans has caused various disorders in the blood, including reduced numbers of red blood cells and aplastic anemia, in occupational settings. *Id.*

40. Reproductive effects have been reported for women exposed by inhalation of benzene, and adverse effects on the developing fetus have been observed in animal tests. *Id.*

41. Increased incidence of leukemia have been observed in humans occupationally exposed to benzene. *Id.*

42. Benzene is a volatile organic compound that can generate vapors.

43. Vapor intrusion occurs when sub-slab contaminants enter into overhead buildings.

44. Vapor intrusion can result in building residents being exposed to dangerous levels of contaminants. (See <https://www.in.gov/idem/cleanups/2357.htm> & [https://www.epa.gov/vaporintrusion/what-vapor-intrusion.](https://www.epa.gov/vaporintrusion/what-vapor-intrusion))

45. The United States Environmental Protection Agency (“USEPA”) has established 5 ppb as the Maximum Contaminant Level (“MCL”) for benzene in groundwater.

46. Federal and state regulations for USTs promote the safe storage and handling of these products. The IDEM OLQ enforces Indiana’s UST regulations, and is supposed to ensure adequate cleanup of contamination from leaks and spills. See <https://www.in.gov/idem/tanks/>.

47. IDEM, through the OLQ, manages ELTF. ELTF is a dedicated state trust fund that serves, in part, as a financial responsibility mechanism for owners and operators of regulated USTs, to satisfy liabilities for corrective actions, and to provide a source of money for the indemnification of third party claims. IC § 13-23-7-1(a). ELTF is funded, in part, by fees collected from owners and operators of registered USTs.

48. The owner or operator of an UST is liable to the state for the actual costs of any corrective action from a leaking UST. IC § 13-23-13-8(a). And, IC § 13-23-13-8(b) provides, in relevant part, that a person who “(1) pays to the state the costs described under subsection (a); or (2) undertakes corrective action resulting from a release from an UST, regardless of whether the corrective action is undertaken voluntarily or under an order issued is entitled to receive a contribution from the person who owned or operated the UST at the time the release occurred.”

49. The ELTF program provides a mechanism for the cost reimbursement of emergency measures, investigations, corrective actions, and ELTF indemnity claims resulting from eligible releases from USTs. Eligible parties and persons assigned the right of reimbursement by an eligible party may apply to IDEM to receive cost reimbursements from ELTF.

50. The OLQ is supposed to manage ELTF in accordance with Indiana statutes and regulations promulgated by the Underground Storage Tank Financial Assurance Board at 328 IAC 1.

51. Over the past 28 years, ELTF has promulgated regulations governing what expenses the Fund covers, the types and number of claims for corrective actions that may be paid from the Fund, and eligibility requirements. Originally, the regulations granted access to the Fund to only tank owners or operators. However, subsequent regulations granted access to the Fund to property owners and environmental consultants who were assigned the right to access the Fund by

eligible tank owners or operators. 328 IAC 1-3-1 (1992). This was important because at many sites, corrective action is still required even if the tanks have been closed or removed.

52. ELTF has a regimented process and requirements that corrective actions be cost effective (328 IAC 1-3-1.3); provide for prioritization of claims (328 IAC 1-4-1); and is supposed to provide complete fairness and transparency in the processing, review, and payment of claims, e.g. 328 IAC 1-2-3 [“claims shall be paid in the order received...”]; 328 IAC 1-4-1(c)(6) [“Claims in the same category will be paid in chronological order according to the date and time received by the administrator as indicated by the date and time stamped by the administrator on the claim submitted to the administrator.”]; and 328 IAC 1-4-1(e) [“Claims determined to be unreimbursable may be revised and resubmitted to the fund. The date and time of the revised claim for the purposes of subsection (c)(6) shall be based on the date and time that the fund administrator received the revised claim as indicated by the date and time stamped by the administrator on the claim submitted to the administrator.”].

53. At all relevant times of this action, under IC § 13-23-4-4(a), the OLQ, as the administrator of ELTF, was required to pay claims that are: (1) for costs related to eligible releases; (2) submitted by eligible parties; and (3) submitted in accordance with IC § 13-23-8 and IC § 13-23-9. For purposes of IC § 13-23, an “eligible” party means:

- a. an owner, as defined in IC § 13-11-2-150;
- b. an operator, as defined in IC § 13-11-2-148(d) and IC § 13-11-2-148(e);
- c. a former owner or operator of an UST;
- d. a transferee of property upon which an UST is located; and
- e. a transferee of property upon which an UST was located but from which the UST has been removed.

IC § 13-11-2-62.5.

54. For purposes of ELTF reimbursement, an eligible party may assign the right to receive payment of an ELTF claim to another person (“Assignee”). IC § 13-23-8-4(b). The regulations state that “Fund access [to ELTF reimbursement] is limited to eligible parties and those assigned the right of fund access by an eligible party.” 328 IAC 1-3-1(a). In other words, eligible parties and persons assigned the right to reimbursement by an eligible party, such as environmental consultants, may apply to IDEM to receive cost reimbursements from ELTF to pay for corrective actions resulting from leaking USTs. The intent of Indiana’s UST and ELTF statutes is to encourage remediation of petroleum-contaminated sites.

55. Under ELTF, eligible parties and Assignees may seek reimbursement for their cleanup costs up to the ELTF cap of \$2,500,000 per site. Eligible parties are required to pay a deductible (an amount that varies based on a number of factors) and are then eligible for reimbursement of their corrective action costs up to the \$2,500,000 cap.

56. Under ELTF, current property owners, including owners of sites from which leaking UST systems had been removed, are eligible for reimbursement of their cleanup costs without the current property owner having any personal liability for the corrective action.

57. During the 2016 session of the Indiana General Assembly, the Indiana legislature amended the ELTF program through Senate Bill 255, enacted as Public Law 96-2016, with the intended goals, in part, of expanding eligibility criteria and increasing the maximum amount of ELTF payments.

58. According to IDEM, “Public Law 96-2016 amended ELTF statutory definitions in IC § 13-11-2 and ELTF eligibility, claim, and administrative requirements in IC § 13-23 with the goals of expanding eligibility criteria, increasing the maximum amount of ELTF payments, and

improving the overall administration of the ELTF program.” (Excess Liability Trust Fund, Second Notice of Comment Period, LSA Doc. No. 15-231, a copy of which is attached as Ex. 3.)

59. After enactment of P.L. 96-2016, IDEM then proposed modifying its rules to have “[c]hanges to the requirements for access to ELTF and payment of ELTF claims, which will allow more eligible parties and eligible releases to apply for payment from ELTF.” *Id.* (discussing the basic purpose and background of the proposed rulemaking).

60. However, in early to mid-2018, IDEM, acting at the direction of Louks, who was then the IDEM Branch Chief for the Underground Storage Tank Branch of OLQ, began to unlawfully withhold Fund access to eligible parties and Assignees.

B. Louks maliciously targeted Golars by claiming that its clients (new Americans of Indian descent) were not eligible for ELTF reimbursement unless they signed Agreed Orders to be personally liable for the cleanup costs (contrary to existing law), including all costs in excess of the Fund’s \$2,500,000 cap per site.

61. In early 2018, Louks began to maliciously target Golars by twisting existing law to unlawfully cut off ELTF claims from Golars’ clientele, who are primarily new Americans of Indian descent. Louks unilaterally redefined the qualifications for Fund reimbursement and claimed that Golars’ clientele did not qualify.

62. Justin Barrett, then Golars’ Deputy General Counsel (and former IDEM lawyer), objected to Louks’ actions for failure to follow the proper rulemaking process.

63. In response, Louks published what became known as IDEM’s “ELTF Reimbursement Suspension Policy” (the “Policy”) to the IDEM OLQ ELTF announcements page. *See* <https://www.in.gov/idem/tanks/2349.htm>, last visited April 29, 2020. (A copy of the ELTF Reimbursement Suspension Policy is attached as Ex. 4.)

64. IDEM, acting by and through Louks, began to fraudulently induce parties to enter into Agreed Orders under the Policy by stating that they had to do so under existing law.

65. The Policy states that “a Party applying for ELTF reimbursement must be the [Responsible Party or “RP”] *or* someone assigned the rights to ELTF reimbursement *from* an RP.” *Id* at 4. This was not true because Indiana Code § 13-11-2-62.5 (4) and (5) defines an “eligible party” permitted access to the ELTF as “a transferee of property upon which a UST is located,” and “a transferee of property upon which a UST was located from which the UST has been removed.” There is no statutory obligation that a responsible party must assign its rights to ELTF reimbursement to a transferee under IC 13-11-2-62.5 (4) and (5) to be entitled to reimbursement. (*See Exs. 5 & 6.*)

66. IDEM, acting by and through Louks, sought to undermine the legislature’s intent as expressed in Public Law 96-2016 and the effect of IDEM’s new rules as expressed in LSA Document # 15-231, attached as Ex. 3, in order to reduce the number of eligible parties, curtail the amounts of ELTF payments, and in particular drive Golars out of business.

67. Under the pretense of wanting “[t]o ensure that IDEM is communicating with and reimbursing the appropriate parties,” IDEM began unilaterally to impose new standards on ELTF eligibility that undermined Indiana law and IDEM’s previously stated intentions. IDEM through Louks unilaterally changed the rules on ELTF eligibility and communicated those changes through the June 2018 letter attached as Ex. 3.

68. To reach his misguided and unlawful goals, Louks decided to purposely misinterpret the clear and unmistakable words in the legal definition of an “eligible party.” Louks, acting under IDEM’s authority, wrote:

The rule for ELTF access (328 IAC 1-3-1) and “eligible party” definition (IC 13-11-2-62.5) identify the parties IDEM *could possibly* reimburse; **not** the parties that will appropriately be reimbursed in every circumstance.

(Ex. 3, p. 4) (Italics and bold in original).

69. For properties that once had USTs but the tanks had been removed, Louks demanded that subsequent property owners enter into an Agreed Order with IDEM, in which they assumed personal liability, to be eligible for cost reimbursement from ELTF, even though no such orders are required under IC § 13-11-2-62.5, or its preceding statutes, or 328 IAC 1-3-1(a).

70. Louks knew that this was not a proper reading of the law and said as much in an email prior to drafting the Policy. (Ex. 7.) Louks stated in the email to a prior owner of an UST that IDEM did not have the authority to demand that the current property owner perform a cleanup because the current owner does not have liability for corrective actions. Louks also stated that the only way the current owner could be liable is if they assumed liability under an Agreed Order with IDEM. *Id.*

71. IDEM and Louks fraudulently induced parties to enter into these Agreed Orders by promising them that, once they signed an Agreed Order, all costs and claims submitted for ELTF reimbursement would be processed in accordance with applicable rules and guidance. (Ex. 8.) However, even after entering into Agreed Orders, IDEM continued to improperly deny the parties' ELTF claims in violation of the applicable rules and guidance.

72. IDEM and Louks fraudulently induced parties to enter into Agreed Orders under the Policy by promising that "An assumption of corrective action liability by a party does not impact third party liability; the RP retains third party liability even after another party assumes corrective action responsibility." (Ex. 4 at 5.) In truth, the Agreed Orders are silent on this point meaning that it offers parties entering into Agreed Orders under the Policy no protection from third party liability claims.

73. IDEM and Louks also fraudulently induced parties to enter into the Agreed Orders under the Policy by promising that "Unless also an RP, a party with potential liability for corrective

action is no longer liable for corrective action once a transaction affecting ownership or operation occurs.” *Id.* In truth, the Agreed Orders state that “No transfer of any ownership interest in the Site, or any UST which may remain at the Site, shall affect the liability assumed by the Respondent herein. Respondent retains the liability assumed herein even after transfer of any such ownership interest.” (Ex. 8, p. 2, ¶ 11.) So while a party may have thought they would no longer have liability for the corrective action if they sold the property under the Policy, the Agreed Order holds them liable along with their “officers, directors, successors, assigns, trustees, and receivers,” and regardless if there is a change “in owner, operator, corporate, or partnership status” of the party. (Ex. 8, p. 2, ¶ 10.)

74. Eligible parties such as subsequent property owners or Assignees typically have no personal liability for corrective actions needed to address petroleum release from USTs under Indiana law. Such liability stays with the owner or operator of the USTs at the time that the release occurred.

75. Louks not only demanded, as a condition of Fund reimbursement, that subsequent property owners (who otherwise had no liability) enter into Agreed Orders in which they accepted personal liability for corrective actions, but added insult to injury by requiring the owners to agree to be personally liable *above* the ELTF cap limit of \$2.5 million for the cost of the corrective action.

76. IDEM fraudulently induced parties to enter into Agreed Orders by failing to state in the Policy that parties entering into the Agreed Orders would bear liability for all corrective action costs exceeding the ELTF cap until IDEM decides to issue a No Further Action order. Although the Policy is silent on this point, the Agreed Orders under the Policy state “Respondent further understands that the corrective action liability it is assuming is not limited by the

availability of ELTF funding.” (Ex. 8, p. 2, ¶ 7.) This means that not only is the party entering into the Agreed Order subject to all liability for corrective action costs above the \$2.5 million cap, but IDEM retains the discretion to decide when the corrective action activities are complete and No Further Action is needed.

77. Once IDEM implemented the Policy, subsequent property owners either refused to assume liability through Agreed Orders (whereupon their claims were denied) or signed the unlawful Agreed Orders under fear and compulsion of, among other things, IDEM’s refusal to pay for the cost of the corrective actions and facing potential third party personal injury and property damage claims.

78. IDEM and Louks’ intent under the Policy was to unlawfully impose personal liability on a transferee for the remaining corrective action until IDEM determined that the corrective action was completed, even if the total costs of the corrective action exceeded the amount of reimbursable costs subject to the ELTF cap of \$2.5 million.

79. Owners who purchase contaminated property can, under certain circumstances, avoid liability as a bona fide prospective purchaser (“BFPP”). 42 U.S.C. § 9601.

80. Through the Policy, Louks and IDEM’s policy undercut a purchaser’s ability to assert the BFPP defense to liability for the release.

81. In February 2019, IDEM’s OEA rejected IDEM’s unfounded and unlawful Policy adopted by Louks. (See Ex. 5.)

82. Daleen1 challenged IDEM’s denial of reimbursements for eligible costs in the OEA case captioned *In the Matter of: Objection to the Notice of Excess Liability Trust Fund Reimbursement Suspension, ELTF #199609531/FID # 12211, Former Phillips 66 Station No. 27300, Daleen1, Inc.*, Cause No. 18-F-J-4996.

83. There, IDEM denied Daleen1's request for reimbursement for corrective action costs even though Daleen1's environmental consultant (Golars) presented IDEM a proposed work scope outlining the work to be performed as reasonable and necessary; IDEM had previously reviewed and expressly approved the work to be performed finding it reasonable and necessary; and the environmental consultant performed the work relying on IDEM's approval and expectation of reimbursement.

84. After the work was performed, IDEM refused to reimburse the costs for the work that had been performed, pursuant to the Policy, because Daleen1 refused to sign IDEM's proposed Agreed Order.

85. IDEM's proposed Agreed Order would have required Daleen1, who was otherwise not responsible for the corrective action costs, to be personally and individually liable for the entire costs of the corrective action, even if those costs exceeded the statutory cap of the ELTF.

86. On January 20, 2019, the Indiana Attorney General issued an opinion stating that nothing in the statutes or rules promulgated by IDEM narrowed the application of access to the ELTF to fewer than those listed in the statute, including a transferee of property and those assigned the right to receive payment under the ELTF from an eligible party. (Ex. 5, ¶ 14, citing Ex. 6.) IDEM's and Louks' Policy is inconsistent, and cannot be reconciled, with the Attorney General's opinion.

87. On February 27, 2019, OEA issued its Findings of Fact, Conclusions of Law and Final Order ("Daleen1 Order"), attached as Ex. 5.

88. In the Daleen1 Order, OEA stated that "IDEM does not have the legal authority to impose conditions upon eligibility that are not spelled out in the applicable statutes, even if, in IDEM's view, those conditions constitute good public policy." (Ex. 5, ¶ 20.)

89. Further, in the Daleen1 Order, OEA stated:

Applying the rules of statutory construction, the definition of eligible party is clear. Daleen1 is an eligible party and is not required to be liable in order to receive reimbursement. Any other interpretation would render the language of [IC § 13-2-11-62.5] meaningless. Further, IDEM's interpretation is not entitled to any significant weight as (1) it is a relatively recent interpretation and (2) is not found in any regulation or nonrule policy document. 328 IAC 1-3-1(a) bolsters this conclusion. In addition, while not binding, the Attorney General's opinion is consistent with this decision and reinforces the conclusion that I.C. § 13-23-7-1 does not impose an additional requirement of liability. While IDEM's goals have merit, this Office must interpret the statutes as written.

(Ex. 8, ¶ 21.)

90. IDEM chose not to ask the Office of the Attorney General to seek judicial review of the Daleen1 Order and is now bound by the OEA Daleen1 Order.

91. In Plaintiffs' Notice of Tort Claim, Plaintiffs formally requested IDEM to rescind its Policy. (Ex. 1, p. 17.)

92. Despite the OEA's Daleen1 Order finding that the Policy was unlawful, IDEM has refused to rescind the Policy.

93. To date, IDEM has not rescinded its Policy, which is still available on its website. (*See* https://www.in.gov/idem/tanks/files/eltf_announcement_20180604.pdf, last reviewed on April 29, 2020.)

94. To date, IDEM has taken no action to rescind any of the Agreed Orders entered into by eligible parties as a result of the Policy.

- C. **Louks maliciously targeted Golars by denying 100% of more than 40 claims on the grounds that Golars failed to demonstrate that its work was “reasonable and cost effective,” even though IDEM had a long history of reimbursing close to 100% of all of Golars’ claims before Louks became UST Branch Chief; Golars submitted its work plans to IDEM, which approved the proposed work as reasonable and necessary; and Golars performed the work according to the pre-approved plans, the work was reasonable and cost effective, and Golars performed the work on the expectation of reimbursement.**

95. Before Louks became the UST Branch Chief, IDEM for many years regularly reimbursed close to 100% of Golars’ ELTF claims finding that the work was preapproved, was performed correctly, and was “reasonable and cost effective.”

96. Around the same time of IDEM’s adoption of the Policy, Louks directed ELTF claim reviewers to deny 100% of Golars’ claims for more than 40 claims where IDEM had previously reviewed and approved Golars’ proposed work plans, Golars performed the work according to the plans, the work was reasonable and cost effective, and Golars had a reasonable expectation of reimbursement.

97. After Golars’ CEO was recognized by the IBJ in 2018 as an up and coming business professional, Louks began to target Golars to deny its claims and put it out of business in regards to ELTF claims.

98. Upon information and belief, Louks directed ELTF claim reviewers to deny all of Golars’ claims for 100% of the amounts claimed under the feigned basis that Golars failed to prove that the work was “reasonable and cost effective,” a practice that IDEM had never imposed on Golars and did not impose on other environmental consultants’ claims at the time.

99. Barrett again objected, expressing to Louks that IDEM had never defined what constitutes “reasonable” or “cost effective” activities, so that Louks’ actions were arbitrary and capricious. Louks ignored this and continued to maliciously target Golars’ reimbursement claims.

100. By law, IDEM is required to provide specific reasons for the denial of reimbursement claims, especially after an environmental consultant submits its work product and invoices detailed the cost for such work product.

101. IDEM has never imposed any particular standards for what constitutes “reasonable” and “cost effective” corrective action in order to provide guidance to eligible parties and Assignees seeking claims for reimbursement.

102. The UST Financial Assurance Board (“FAB”) was established under IC § 13-23-11 and is responsible for promulgating cost guidelines and standards such as defining what would constitute “reasonable” and “cost effective.”

103. The FAB is required by law to meet twice a year but has not done so since 2018, leaving eligible parties operating in the dark about what is reasonable and cost effective for the work they are performing.

104. Beginning in mid-2018, under Louks’ direction, IDEM’s ELTF claim reviewers began applying “the failure to prove ‘reasonable and cost effective’ defense” to certain other similarly situated environmental consultants as targeted by Louks.

105. Louks directed ELTF claim reviewers to deny 100% of Golars’ claims for Golars’ failure to prove that the work was reasonable and necessary, even though IDEM had previously approved of Golars’ work plans, Golars performed the work according to the plans, the work was reasonable and cost effective, and Golars performed the work with the expectation of payment.

106. Pursuant to IC § 13-23-8-4(c), not more than forty-five (45) business days after an ELTF claim is submitted, the ELTF administrator is required to do one of the following:

- a. Approve the ELTF claim and forward the claim to the auditor of the state for payment.
- b. Send to the claimant a written notice that:

- i. States that a correction, a clarification, or additional information is needed before the ELTF claim can be approved; and
- ii. Provides a clear explanation:
 1. Of the correction, clarification, or additional information that is needed; and
 2. Of why it is needed.
- c. Deny the claim and provide the claimant with a statement of the reasons for the denial.

IC § 13-23-8-4(c).

107. If the ELTF administrator denies an ELTF claim, the administrator is obligated to provide the claimant with a written explanation of all the reasons for the denial of the reimbursement. IC § 13-23-9-2. Instead, Golars was receiving blanket denials of its ELTF claims without an explanation of all the reasons for the denials.

108. On multiple occasions, Louks communicated to Golars' staff that IDEM would not reimburse Golars' claims at its historical rates, and that Golars would be "lucky" to see reimbursement of half of the costs it was seeking. This has resulted in some unreimbursed invoices for IDEM preapproved work to remain unpaid for more than 400 days.

109. Louks directed IDEM staff not to even review Golars' technical reports, some of which have not been reviewed for over 300 days. The delay in approving technical reports means Golars is unable to submit its invoices for payments, requiring it to pay and carry the costs for subcontractors and utility vendors.

110. As of April 23, 2020, Golars had more than eight hundred thousand dollars (\$800,000) in claims submitted to IDEM more than 45 days ago (some as late as 100 days ago), where IDEM has failed or refused to pay the claims, contrary to IC § 13-23-8-4(c).

111. IDEM has failed to issue prompt payment on the following 29 claims as of April 23, 2020 as described in the table below:

<u>Project</u>	<u>Invoice</u>	<u>Submitted</u>	<u>Requested</u>	<u>Days</u>	<u>AR Notes</u>
E-16047	19-246	10/31/2019	\$3,443.99	114	20200408 - Sent to accounting on 3/26/2020.
E-15026	19-266	11/15/2019	\$6,845.25	104	20200408 - Reviewed on 11/25/2019.
E-15041	19-244	11/15/2019	\$17,827.18	104	20200408 - Reviewed on 2/13/2020.
E-17003	19-271	11/15/2019	\$12,961.09	104	20200408 - Reviewed on 12/10/2019.
B-IN-11016	19-229	12/6/2019	\$12,957.10	89	20200408 - Reviewed on 12/20/2019.
B-IN-11016	19-248	12/6/2019	\$13,106.70	89	20200408 - Reviewed on 12/19/2019.
E-10008	19-284	12/6/2019	\$60,554.54	89	20200408 - Reviewed on 1/06/2020.
E-16058	19-287	12/6/2019	\$108,338.61	89	20200408 - Reviewed on 1/07/2020.
E-17035	19-282	12/6/2019	\$28,582.05	89	20200408 - Reviewed on 1/06/2020.
E-15028	19-286	12/12/2019	\$19,979.48	84	20200408 - Reviewed on 1/06/2020.
E-15043	19-268	12/12/2019	\$14,036.91	84	20200408 - Reviewed on 1/08/2020.
E-17017	19-289	12/12/2019	\$39,186.12	84	20200408 - Reviewed on 12/31/2019.
B-IN-11016	19-292	12/20/2019	\$17,488.17	79	20200408 - Reviewed on 1/13/2020.
E-11013	19-261	12/31/2019	\$19,767.68	71	20200408 - Reviewed on 1/15/2020.
E-14017	19-296	12/31/2019	\$46,852.64	71	20200408 - Reviewed on 2/13/2020.
E-16009	19-299	12/31/2019	\$31,506.29	71	20200408 - Reviewed on 1/21/2020.
E-17026	19-240	12/31/2019	\$78,979.77	71	20200408 - Reviewed on 1/16/2020.
E-15017	19-304	1/10/2020	\$2,007.75	64	20200408 - Reviewed on 1/28/2020.
B-IN-11007	19-298	1/17/2020	\$14,216.44	59	20200408 - Reviewed on 1/31/2020.
B-IN-11010	19-293	1/17/2020	\$25,363.15	59	20200408 - Reviewed on 1/31/2020.
E-10012	19-302	1/17/2020	\$11,289.13	59	20200408 - Reviewed on 2/13/2020.
E-13016	19-303	1/17/2020	\$20,643.30	59	20200408 - Reviewed on 2/05/2020.
E-17027	19-272	1/17/2020	\$8,154.43	59	20200408 - Reviewed on 1/30/2020.
E-09001	20-001	1/31/2020	\$16,378.20	49	20200408 - Reviewed on 2/11/2020.
E-10008	19-301	1/31/2020	\$15,587.14	49	20200408 - Reviewed on 2/13/2020.
E-14005	20-008	1/31/2020	\$18,073.76	49	20200408 - Reviewed on 2/12/2020.
E-14007	20-012	1/31/2020	\$12,067.29	49	20200408 - Reviewed on 2/13/2020.
E-16008	18-375	1/31/2020	\$74,882.35	49	20200408 - Claim not reviewed.
E-17010	19-288	1/31/2020	\$50,131.39	49	20200408 - Reviewed on 2/14/2020.

112. Golars' line of credit assumes that IDEM will pay its ELTF claims within the statutory 45-day period.

113. IDEM's intentional failure to promptly issue payment on these claims has all but exhausted the funds Golars' uses to cover the costs for approved remediation efforts performed by it and its subcontractors.

114. Golars continues to receive denials of entire claims by IDEM while some other consultants are having most or all of their claims paid.

115. Golars has raised its concerns to IDEM program staff. IDEM's response has been to stop posting payments on its publicly available electronic file cabinet, the Virtual File Cabinet ("VFC"), so that Golars would no longer be able to see when other consultants are paid their reimbursement claims.

116. Upon information and belief, Louks made false statements about Golars to former owners and operators of UST systems, environmental consultants, and others. Louks' false statements included his assertion that Golars had engaged in criminal activity by submitting ELTF claims in which it was not entitled to reimbursement and in violation of the False Claims Act. As a result of Louks' defamatory statements, Golars suffered public humiliation, loss of its professional reputation, and damages.

117. When Golars submitted status letters to IDEM requesting updates on reimbursement requests for filing in VFC, IDEM would retaliate against Golars by instead posting to the VFC erroneous and defamatory communications about Golars.

118. On one occasion, when Golars tried to submit VFC status letters, Louks came out of his office, told the receptionist to stop time-stamping the status letters, and to not accept any of Golars' letters, even those letters previously time-stamped as "Received".

119. Louks further threatened the receptionist that she would lose her job if she continued to time-stamp the Golars' status letters as "Received" or otherwise accept them for filing in the VFC.

120. Louks' threats to the receptionist were made in front of a Golars employee who was delivering the status letters to IDEM for filing in the VFC.

121. IDEM's refusal to accept Golars' filings damaged Golars because it unlawfully interfered with Golars' ability to be reimbursed from the Fund.

122. ELTF rules are designed to process reimbursement claims in a fair and transparent manner, with preference for priority claims, and all similarly situated claims must be processed in chronological order.

123. Under Louks' direction, IDEM has instead managed the Fund in an unlawful manner with the intent to deprive Golars and the named Plaintiffs of their rights to due process to access the Fund for reimbursement of the costs of corrective actions.

124. Louks' actions are especially damaging to Golars and other similarly situated environmental consultants, who are small business owners, because, as former UST Branch Section Chief and present OLQ Deputy Assistant Commissioner, Louks influences and controls the manner and speed at which work plan submissions, corrective action activities, claims for reimbursement of costs, and the ultimate site cleanup goals are processed, reviewed, and approved or denied.

125. IDEM has maliciously targeted Golars and, more recently, other environmental consultants not of Louks' liking for the arbitrary and capricious denial of 100% of their claims in an effort to deny their claims and prevent them from doing work covered by the ELTF.

D. Louks maliciously targeted Golars in a dispute between Golars and a former gas station owner over ELTF reimbursement eligibility, even though Louks previously wrote that IDEM should not pick sides and IDEM did not have the legal authority to enforce an agreement between the parties.

126. Upon information and belief, Louks disparaged Golars by claiming that Golars' conduct of seeking reimbursement for corrective actions was not only unlawful, but criminal under Louks' unlawful interpretation of the ELTF statutes.

127. Louks knew IDEM did not have the authority to pick sides or enforce agreements between private parties per his own written correspondence, but still chose to maliciously target Golars to squelch its ELTF claims at a site formerly owned and operated by Sunoco Inc. (“Sunoco”). (Ex. 4.)

128. Louks and IDEM intentionally denied Golars’ ELTF claims for corrective action at a property formerly owned and operated by Sunoco. Golars had been assigned the right to seek reimbursement of its claims by an eligible party, Keystone Petroleum Inc. (“Keystone”). Keystone appealed IDEM’s actions as being against the law. The OEA agreed with Keystone and held that IDEM could not deprive Keystone, or Golars as their Assignee, of its right to seek reimbursement from the Fund on the basis claimed by IDEM. *In the Matter of: Objection to the Denial of Excess Liability Trust Fund Claim, ELTF #199607527/FID #9574, Former Pappy’s Sunoco Station, Keystone Petroleum Inc., Cause No. 19-F-J-5071.* (See Ex. 9.) Not only did IDEM intentionally interfere with Golars’ attempt to seek reimbursement, but it sought to intentionally interfere with Golars’ contractual relationship with its client, who had assigned Golars the right to reimbursement. *Id.*

129. The OEA ultimately ruled that IDEM did not have the authority to enforce the prior agreement between private parties and that Golars’ client, Keystone, clearly fell under the definition of “eligible party” as a “transferee of property” and therefore had the right to seek reimbursement. *Id.*

130. IDEM, again, did not appeal the OEA’s decision in the Sunoco matter and is now bound by the decision.

131. Golars and its client suffered damages as a result of IDEM’s unlawful actions in the Sunoco matter, including delayed payment of its ELTF claims and having to incur thousands

of dollars in attorneys' fees and expenses that it should not have incurred but for IDEM's malicious conduct toward Golars and its client.

- E. Louks maliciously targeted Golars by preemptively issuing “No Further Action” orders in an effort to cut off Golars’ cleanup activities, which resulted in high levels of hazardous substances and known human carcinogens from leaking USTs at 30 sites, in direct contravention to IDEM’s purpose of protecting human health and the environment.**

132. Louks, acting in his individual capacity and/or official capacity as then-Branch Chief for the OLQ UST Branch and presently in his role as OLQ Deputy Assistant Commissioner, has implemented policies and procedures at IDEM to prevent Golars from performing corrective actions to address soil, groundwater, and/or vapor contamination at 30 ELTF sites by causing program managers to issue “No Further Action” orders for those sites.

133. No Further Action letters are supposed to be issued by IDEM when no further corrective action is required. Specifically, IDEM is supposed to issue No Further Action Letters after the successful implementation of a remediation work plan that brings contamination within acceptable risk-based levels, or the exposure resulting from the contamination is adequately controlled.

134. In 2009, Indiana House Enrolled Act 1162 was enacted into law, pursuant to which IC § 13-25-5-8.5 was amended (effective July 1, 2009) to allow IDEM to authorize site closures based on site specific risk assessments that take into account site specific factors, including remedial measures, restrictive covenants, and environmental restrictive ordinances that: (A) manage risks; and (B) control completed or potentially exposure pathways.

135. Upon information and belief, between 2009 and 2017, IDEM rarely if ever issued No Further Action orders on ELTF sites where contaminants on-site, including benzene, were at or above residential screening levels in groundwater at the boundary of an adjacent property,

especially where an Indiana-licensed geologist or environmental engineer provided a professional opinion that additional remediation activities were necessary to reduce the risks to human health and the environment for either on-site or off-site human receptors exposed to the contamination.

136. Before 2018, when Louks began to aggressively close ELTF sites through the issuance of No Further Action orders, IDEM would rarely grant a consultant's request to close an ELTF site where the groundwater concentration of benzene at the boundary of an adjacent property was at or above 28 ppb, with greater reluctance to grant such a request where the adjacent property was used for residential purposes.

137. IDEM's pre-2018 reasoning for requiring ELTF sites to be remediated to the extent that benzene concentrations at an adjacent property line is at or below screening levels was to ensure that adjacent property owners and residents were not exposed to contamination that presented an unacceptable risk to human health or the environment.

138. Prior to Louks' practice of encouraging the issuance of No Further Action orders for ELTF sites, IDEM relied on the opinions of its geologists, environmental engineers, and risk assessors to calculate site specific risks to be used in determining the acceptability of site closures.

139. Louks is not qualified as an environmental engineer, geologist, or risk assessor to decide from a scientific basis whether a contaminated site should be issued a No Further Action order.

140. Louks has no college degrees or professional certifications in biology, chemistry, the fate and transport of contaminants in the environment, microbiology, immunology, toxicology, neurology, or medicine. Louks earned college degrees in classical and medieval studies, business, and law.

141. Louks has instituted policies and procedures to mandate the issuance of No Further Action orders at ELTF sites even where licensed geologists and environmental engineers have expressed their professional opinions that additional environmental remediation is necessary to mitigate the risk to human health and the environment from contaminants. (*See Ex. 10.*)

142. The impact from IDEM's issuance of a No Further Action orders is to prevent any additional cleanup of contamination. The impact of IDEM's issuance of No Further Action orders to Golars is that it is intended to prevent Golars from doing any additional work at a site, even when that work is reasonably necessary. The impact of IDEM's issuance of a No Further Action order to Golars' clients is that IDEM is leaving their sites with high levels of contamination placing them at risk for third party lawsuits and diminishing the expected values of their property as they are being deprived of appropriately conducted corrective actions to which they are entitled as eligible parties under Indiana law.

143. Louks has demanded the issuance of No Further Action orders at ELTF sites where Golars is acting as the environmental consultant for the property owner where benzene contamination in on-site groundwater is present at unacceptable levels. (*See https://www.in.gov/idem/cleanups/files/remediation_closure_guide.pdf*). This includes a site where over 10,000 ppb of benzene exists in groundwater, and the concentration at the boundary of the adjacent property has exceeded hundreds of ppb.

144. Louks' actions in demanding the issuance of these No Further Action orders has resulted in the improper closures of remediation efforts at 30 ELTF sites in Indiana, placing Hoosiers' health and environment at risk, for the sole purpose of closing sites where Golars is the property owners' consultant of choice in an effort to cause economic harm to Golars.

145. Pursuant to IC § 13-25-5-8.5(b), the remediation objectives for each hazardous substance and any petroleum on a site is to be based on:

- a. Background levels of hazardous substances and petroleum that occur naturally on the site; or
- b. An assessment of the risks pursuant to subsection (d) posed by the hazardous substance or petroleum presently found on the site taking into consideration the following:
 - i. Expected future use of the site.
 - ii. Measurable risks to human health, natural resources, or the environment based on the:
 3. The activities that take place; and
 4. Environmental impact;on the site.

IC § 13-25-5-8.5(b).

146. For IDEM, under IC § 13-25-5-8.5(d), the risk based remediation objectives shall be based on one (1) of the following:

- a. Levels of hazardous substances and petroleum calculated by the department using standard equations and default values for particular hazardous substances or petroleum.
- b. Levels of hazardous substances and petroleum calculated using site specific data for the default values in the department's standard equations.
- c. Levels of hazardous substances and petroleum developed based on site specific risk assessments that take into account site specific factors, including remedial measures, restrictive covenants, and environmental restrictive ordinances that:
 - i. Manage risk; and
 - ii. Control completed or potential exposure pathways.

IC § 13-25-5-8.5(d).

147. In passing these statutes, the Legislature clearly envisioned a data and scientifically-driven analysis when deciding whether a site warranted No Further Action.

148. Despite lacking any scientific college degrees and certifications, Louks took it upon himself to judge that many sites were deemed suitable for No Further Action orders contrary to

the levels of contamination still present at the sites, and contrary to the opinions of licensed geologists, environmental engineers, and risk assessors.

149. On one or more occasions, despite the recommendations from licensed engineers, geologists, and other professionals that additional cleanup work was necessary, Louks directed IDEM staff to improperly stop all cleanup and monitoring activities and issue “No Further Action” orders and Environmental Restrictive Covenants to cut off Golars’ ELTF claims.

150. These sites that have been improperly deemed to need No Further Action are located throughout the State of Indiana.

151. IDEM knows of the dangers of leaving these contaminants on ELTF sites, yet Louks has insisted closing these sites through No Further Action orders, which has prevented those sites from being appropriately remediated.

152. Louks’ decision to direct the issuance of “No Further Action” orders (in an effort to put Golars out of business for ELTF claims) and leave high levels of contamination from hazardous substances, including those known to cause cancer in people, at 30 Indiana sites presents an unacceptable health risk to Hoosiers.

153. Many of the 30 sites that Louks targeted for the issuance of “No Further Action” orders are in areas where the populations have limited means and resources and are deserving of environmental justice.

F. IDEM has deprived Golars’ access to Louks’ emails, texts, and other records concerning his malicious targeting of Golars and its clients regarding the allegations of this complaint.

154. On September 5, 2019, Plaintiffs, through counsel, requested public records of email correspondence from IDEM pursuant to Indiana’s Access to Public Records Act.

155. On information and belief, Louks has stated to one or more people that Golars was “raping the Fund” and he falsely accused Golars of criminal conduct based on Louks’ unlawful interpretation of the ELTF reimbursement statute.

156. Plaintiffs have submitted a public access to information request for Louks’ communications that reference the word “raped” with third parties and internally at IDEM. The latter request was based on Plaintiffs’ reasonable belief that IDEM representatives may have similarly used such language in discussions with other environmental consultants. Other consultants are reluctant to speak up out of fear of being targeted by Louks and IDEM.

157. Plaintiffs provided IDEM the names of the senders and recipients, the keywords or topics of the emails expecting to receive, and a time frame of when the emails would have been sent.

158. Plaintiffs have no assurance that the search for responsive documents will be performed adequately. Plaintiffs expected IDEM’s Office of Legal Counsel or some other independent person would perform the search for responsive documents, but were told that Louks, who has orchestrated the campaign of official harassment to Golars, would be tasked to search his own emails for responsive communications and that no one would review the adequacy of his search. IDEM has said Louks pulled “responsive” communications, which were being reviewed by IDEM’s Office of Legal Counsel, yet no documents have been produced.

159. Plaintiffs have followed up numerous times requesting updates from IDEM as to the status of the request.

160. Two hundred and fifty two (252) days have lapsed since the information request was submitted and the filing of this Complaint, and Plaintiffs have not received any of the requested public records.

161. On April 6, 2020, Plaintiffs, through counsel, filed a formal complaint with the Office of the Public Access Counselor stating that IDEM's unreasonable delay is as a violation of the Public Records Act.

162. While the Public Access Counselor is supposed to decide the merits of Golars' request and IDEM's objections, Golars has in the meantime, been deprived of relevant records that, upon information and belief, may have been wrongfully withheld or destroyed.

CLASS ALLEGATIONS

163. Plaintiffs bring this action under Rule 23 of the Indiana Rules of Trial Procedure on behalf of themselves and all others similarly situated. Plaintiffs seek to represent five distinct classes defined as follows.

164. Pursuant to Indiana Trial Rule 23(A), Plaintiffs bring this action on behalf of themselves and on behalf of the following classes:

Five Distinct Classes

- **Class 1:** All eligible parties, as defined in IC § 13-11-2-62.5 (4)¹ and (5)², from January 1, 2018 to present, who entered into Agreed Orders, as required by the Policy³, and have not had their Agreed Orders rescinded by IDEM.
- **Class 2:** All eligible parties, as defined in IC § 13-11-2-62.5 (4) and (5), from January 1, 2018 to present, who had their ELTF claims denied because they refused to enter into Agreed Orders, as required by the Policy.

¹ A transferee of property upon which a UST is located.

² A transferee of property upon which a UST was located but from which the UST has been removed.

³ The use of Policy in each of the class definitions refers to The ELTF Reimbursement Suspension Policy.

- **Class 3:** All Assignees, as permitted under IC § 13-23-8-4(b)⁴, from January 1, 2018 to present, who had their ELTF claims denied because of the Policy.
- **Class 4:** All eligible parties, as defined in IC § 13-11-2-62.5 (4) and (5), and Assignees, as permitted under IC § 13-23-8-4(b), from January 1, 2018 to present, who had their ELTF claims for technical report preparation costs denied as not being “reasonable and cost effective.”
- **Class 5:** All eligible parties, as defined in IC § 13-11-2-62.5 (4) and (5), and Assignees, as permitted under IC § 13-23-8-4(b), from January 1, 2018 to present, who received No Further Action orders from IDEM without having requested the issuance of such No Further Action orders.

165. Excluded from each defined Class are any employees of IDEM. Plaintiffs reserve the right to modify or amend each of the Class definitions, as appropriate, during the course of this litigation.

166. **Numerosity.** The members of each Class are so numerous that individual joinder of all Class members is impracticable. While Plaintiffs are informed and believe that there are hundreds of class members that are eligible parties and more than a dozen class members that are Assignees, the precise number of Class members is unknown to Plaintiffs but may be ascertained from IDEM’s books and records. Class members may be notified of the pendency of this action by recognized, Court-approved notice dissemination methods, which may include U.S. Mail, electronic mail, internet postings, and/or published notice.

167. **Existence and Predominance of Common Questions of Law and Fact.** This action involves common questions of law and fact, which predominate over questions affecting individual

⁴ An eligible party may assign the right to receive payment of an ELTF claim to another person.

Class members. Some of the questions of law or fact that predominate in this matter include, but are not limited to, the following:

- a. Whether IDEM's demand that eligible parties, as defined in IC § 13-11-2-62.5 (4) and (5), enter into Agreed Orders, as required by the Policy, was unlawful;
- b. Whether eligible parties, as defined in IC § 13-11-2-62.5 (4) and (5), who entered into Agreed Orders, as required by the Policy, are entitled to have those Agreed Orders rescinded because the Policy was unlawful;
- c. Whether IDEM's denial of ELTF claims presented by eligible parties, as defined in IC § 13-11-2-62.5 (4) and (5), who refused to enter into Agreed Orders, as required by the Policy, was unlawful;
- d. Whether eligible parties, as defined in IC § 13-11-2-62.5 (4) and (5), who refused to enter into Agreed Orders, as required by the Policy, are entitled to have their ELTF claims processed;
- e. Whether IDEM's denial of ELTF claims presented by Assignees, as permitted under IC § 13-23-8-4(b), because of the Policy was unlawful;
- f. Whether Assignees, as permitted under IC § 13-23-8-4(b), who had their ELTF claims denied because of the Policy are entitled to have their ELTF claims processed;
- g. Whether IDEM's denial of ELTF claims presented by eligible parties, as defined in IC § 13-11-2-62.5 (4) and (5), and Assignees, as permitted under IC § 13-23-8-4(b), from January 1, 2018 to present, who had their ELTF

claims for technical report preparation costs denied as not being “reasonable and cost effective” was unlawful;

- h. Whether eligible parties, as defined in IC § 13-11-2-62.5 (4) and (5), and Assignees, as permitted under IC § 13-23-8-4(b), from January 1, 2018 to present, who had the entirety of their ELTF claim report preparation costs denied as not being “reasonable and cost effective” are entitled to have their ELTF claims re-evaluated;
- i. Whether IDEM’s issuance of No Further Action orders to eligible parties, as defined in IC § 13-11-2-62.5 (4) and (5), and Assignees, as permitted under IC § 13-23-8-4(b), who did not request issuance of such No Further Action orders was unlawful;
- j. Whether eligible parties and Assignees, who received but did not request the issuance of No Further Action orders are entitled to have the issuance of the No Further Action orders re-evaluated;
- k. Whether Louks’ actions were taken within the course and scope of his official capacity at IDEM;
- l. Whether any of the Classes suffered Class-wide damages;
- m. Whether there is a mathematical formula to award such Class-wide damages; and
- n. Whether Plaintiffs and the Class are entitled to an award of reasonable attorneys’ fees, interests, and costs.

168. **Typicality.** Plaintiffs’ claims are typical of the claims of the Class members for each Class because Plaintiffs and other Class members are all similarly affected by Defendants’

issuance of the Policy. This includes the refusal to rescind Agreed Orders and the refusal to process claims of eligible parties and Assignees; denying the entirety of eligible parties' and Assignees' ELTF claim report preparation costs for not being "reasonable and cost effective;" and issuance of No Further Action orders where eligible parties and Assignees did not ask for the issuance of No Further Actions orders.

169. Plaintiffs are advancing the same claims and legal theories on behalf of themselves and all the Class members. Plaintiffs are representative of the Class and have standing to advance these claims because they were subject to and damaged by the Defendants' conduct as set forth in greater detail throughout this Complaint.

170. ***Adequacy of Representation.*** Plaintiffs are adequate Class representatives because Plaintiffs have been harmed by the unlawful actions of the Defendants, wish to obtain redress for the wrongs that have been done to Plaintiffs and Class members, and also want to ensure that the Defendants are not allowed to continue this unlawful conduct towards others that are similarly situated. Plaintiffs will fairly and adequately protect the interests of the Class members and do not have interests that conflict with or are antagonistic to the interests of other Class members. Plaintiffs have retained competent counsel that have substantial experience in complex class action litigation, including experience acting as class counsel in environmental litigation.

- **Class 1 Representatives.** Plaintiff Warren is an adequate class representative because it was an eligible party as defined IC § 13-11-2-62.5 (4) and (5) during the relevant time period and entered into Agreed Orders with IDEM due to the Policy. Warren's Agreed Order has not been rescinded.
- **Class 2 Representatives.** Plaintiffs Daleen1 and Sail are adequate class representatives because they were eligible parties as defined in IC § 13-11-2-62.5 (4) and (5) during the

relevant time period and had their ELTF claims denied because they refused to enter into Agreed Orders, as required by the Policy.

- **Class 3 Representatives.** Plaintiff Golars is an adequate class representative because it was an Assignee, as permitted under IC § 13-23-8-4(b), during the relevant time period, and had its ELTF claims denied because of the Policy.
- **Class 4 Representatives.** Plaintiffs Golars, Daleen1, Sail, and Warren are adequate class representatives because they were eligible parties, as defined in IC § 13-11-2-62.5 (4) and (5), or were Assignees, as permitted under IC § 13-23-8-4(b), during the relevant time period who had their ELTF claims for technical report preparation costs denied as not being “reasonable and cost effective.”
- **Class 5 Representatives.** Plaintiffs Golars, Daleen1, Sail, and Warren are adequate class representatives because they were eligible parties, as defined in IC § 13-11-2-62.5 (4) and (5), or were Assignees, as permitted under IC § 13-23-8-4(b), during the relevant time period and received No Further Action orders from IDEM without having requested the issuance of such No Further Action orders.

171. ***Superiority.*** A class action is superior to all other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. Individual litigation creates a potential for inconsistent or contradictory judgments and increases the delay and expense to all parties and the court system. Furthermore, even if Class members could afford such individualized litigation, the court system would be overwhelmed by such redundant litigation of the same factual and legal issues set forth in the Complaint. Separate actions by individual members of the Class would risk inconsistent or varying adjudications with respect to individual members of the Class which would establish

incompatible standards of conduct for Defendants. Separate actions would also risk adjudications with respect to individual Class members which would, as a practical matter, be dispositive of the interest of other Class members not parties to the adjudication, or substantially impair or impede their ability to protect their interests. By contrast, the class action device provides the benefits of adjudication of these issues in a single proceeding, economies of scale, and comprehensive supervision by a single court, and presents no unusual management difficulties under the circumstances here.

Issue Classes

172. Pursuant to Indiana Trial Rule 23(C)(4)(a), Plaintiffs in the alternative seek certification of the following issues:

- **Class Issue 1.** Whether the Policy was unlawful.
- **Class Issue 2.** Whether IDEM's demand that eligible parties, as defined in IC § 13-11-2-62.5 (4) and (5), enter into Agreed Orders, as required by the Policy, was unlawful.
- **Class Issue 3.** Whether eligible parties, as defined in IC § 13-11-2-62.5 (4) and (5), who entered into Agreed Orders, as required by the Policy, are entitled to have those Agreed Orders rescinded because the Policy was unlawful.
- **Class Issue 4.** Whether IDEM's denial of ELTF claims presented by eligible parties, as defined in IC § 13-11-2-62.5 (4) and (5), who refused to enter into Agreed Orders, as required by the Policy, was unlawful.
- **Class Issue 5.** Whether eligible parties, as defined in IC § 13-11-2-62.5 (4) and (5), who refused to enter into Agreed Orders, as required by the Policy, are entitled to have their ELTF claims processed.

- **Class Issue 6.** Whether IDEM’s denial of ELTF claims presented by Assignees, as permitted under IC § 13-23-8-4(b), because of the Policy was unlawful.
- **Class Issue 7.** Whether Assignees, as permitted under IC § 13-23-8-4(b), who had their ELTF claims denied because of the Policy are entitled to have their ELTF claims processed.
- **Class Issue 8.** Whether IDEM’s denial of ELTF claims presented by eligible parties, as defined in IC § 13-11-2-62.5 (4) and (5), and Assignees, as permitted under IC § 13-23-8-4(b), who had their ELTF claims for technical report preparation costs denied as not being “reasonable and cost effective” was unlawful.
- **Class Issue 9.** Whether eligible parties, as defined in IC § 13-11-2-62.5 (4) and (5), and Assignees, as permitted under IC § 13-23-8-4(b), who had their ELTF claims for technical report preparation costs denied as not being “reasonable and cost effective” are entitled to have their ELTF claims re-evaluated.
- **Class Issue 10.** Whether IDEM’s issuance of No Further Action orders to eligible parties, as defined in IC § 13-11-2-62.5 (4) and (5), and Assignees, as permitted under IC § 13-23-8-4(b), who did not ask for the issuance of such No Further Action orders was unlawful.
- **Class Issue 11.** Whether eligible parties and Assignees, who received but did not request the issuance of No Further Action orders are entitled to have the issuance of the No Further Action orders re-evaluated.
- **Class Issue 12.** Whether Louks’ actions were taken within the course and scope of his official capacity at IDEM.
- **Class Issue 13.** Whether any of the Classes suffered Class-wide damages.
- **Class Issue 14.** Whether there is a mathematical formula to award such Class-wide damages.

- **Class Issue 15.** Whether Plaintiffs and the Class are entitled to an award of reasonable attorneys' fees, interests, and costs.

173. Maintaining this action as a class action to adjudicate these particular issues is advantageous and economic because these issues are common to each of the five Classes even if other issues in the case need to be litigated separately by each Class or Class member.

174. A class action is best suited to resolve this controversy because the cause of the damages is a single course of conduct by the Defendants which is identical for each of the Plaintiffs.

CLAIMS FOR RELIEF

Count I – Injunctive Relief

175. Each preceding paragraph is incorporated herein by reference.

176. Plaintiffs seek injunctive relief in the form of an Order requiring that:

- a. IDEM formally rescind the Policy;
- b. IDEM remove the unlawful Policy from its website or prominently indicate that the Policy has been declared unlawful and has been rescinded;
- c. IDEM formally rescind each Agreed Order that IDEM wrongfully required from eligible parties, as defined in IC § 13-11-2-62.5 (4) and (5), under the Policy;
- d. IDEM process ELTF claims submitted by eligible parties, as defined in IC § 13-11-2-62.5 (4) and (5), and Assignees, as permitted under IC § 13-23-8-4(b), that IDEM refused to process under its Policy;
- e. IDEM re-evaluate ELTF claims submitted by eligible parties, as defined in IC § 13-11-2-62.5 (4) and (5), and Assignees, as permitted under IC § 13-23-8-4(b), who

had their ELTF claims for technical report preparation costs denied as not being “reasonable and cost effective;”

- f. IDEM re-evaluate its issuance of No Further Action orders where No Further Action orders were not requested;
- g. IDEM declare that it will not take retribution against Plaintiffs and the Class members for their lawful actions of challenging IDEM’s unlawful policy and practices; and
- h. IDEM follow all regulatory and statutory procedures for implementing determinations for reasonableness and cost effectiveness, including notice and public comment.

177. Accordingly, with respect to the injunctive relief, Plaintiffs, on behalf of themselves and the proposed Classes, prays for the relief set forth below.

Count II – 42 U.S.C. § 1983 Equal Protection

178. Each preceding paragraph is incorporated herein by reference.

179. Plaintiff Golars brings this Equal Protection claim under 42 U.S.C. §1983 for retrospective relief as a class of one against Defendant Louks in his individual capacity for his actions taken to deliberately deprive Golars and its clients (mostly new Americans of Indian descent) from their ability to receive payment from the ELTF.

180. Louks is a powerful public employee and has singled out Golars in particular for disparate treatment out of sheer vindictiveness and has orchestrated a campaign of official harassment directed against Golars out of sheer malice unrelated to any legitimate state objective.

181. Louks intentionally treated Golars vindictively and differently from other similarly situated environmental consultants. There are environmental consultants who routinely receive

100% of their claims for reimbursement even though Golars, employing the same practices, has had 100% of its claims rejected.

182. Louks refused to accept Golars' status letters for filing purely because they were from Golars and has made a number of vindictive and false accusations about Golars' business practices, including that Golars was engaging in criminal acts, had violated the False Claims Act, and was "raping the Fund."

183. Louks has targeted Golars because of the number of claims it submitted to ELTF for reimbursement and because of personal animosity towards its owners being new Americans of Indian descent.

184. The pattern of conduct by Louks towards Golars was not a legitimate exercise of discretion, but rather was undertaken with malice, willfulness, and reckless indifference to Golars' rights.

185. Louks' mistreatment of Golars has damaged its reputation in the industry and damaged it financially.

186. Accordingly, with respect to Count II, Plaintiff Golars prays for the relief set forth below.

Count III – 42 U.S.C. § 1983 Equal Protection

187. Each preceding paragraph is incorporated herein by reference.

188. Plaintiffs Daleen1, Sail, Warren, and USSBOA bring this Equal Protection claim under 42 U.S.C. § 1983 for retrospective relief against Defendant Louks in his individual capacity for his actions taken.

189. Daleen1, Sail, Warren, and many of USSBOA members are clients of Golars.

190. Louks has singled out members of a vulnerable class for unequal treatment.

191. Golars' clientele, listed above in paragraph 191, consists primarily of owner-operators of Indian descent. As a result of Louks' vindictiveness and animosity towards Golars, Louks has also singled out Golars' clientele for unequal treatment.

192. Louks victimized Daleen1, Sail, Warren, and USSBOA based on their membership in a certain class of individuals.

193. Louks treated Daleen1, Sail, Warren, and USSBOA differently than other similarly-situated individuals not belonging to the class of Daleen1, Sail, Warren, and USSBOA.

194. The differential treatment of Daleen1, Sail, Warren, and USSBOA was intentional and arbitrary, motivated by nefarious and discriminatory purposes, and was not rationally-related to any governmental interest.

195. Louks' actions were objectively unreasonable, and undertaken with malice, willfulness, and reckless indifference to the rights of others, including Daleen1, Sail, Warren, and USSBOA.

196. Louks' mistreatment of Golars' clientele was vindictive and damaged their reputations in the industry and damaged them financially.

197. As a direct and proximate result of the foregoing conduct of Louks, Daleen1, Sail, Warren, and USSBOA suffered harm.

198. Accordingly, with respect to Count III, Plaintiffs Daleen1, Sail, Warren, and USSBOA pray for the relief set forth below.

Count IV – Defamation

199. Each preceding paragraph is incorporated herein by reference.

200. Plaintiff Golars bring this claim against Defendants IDEM and Louks.

201. Defendants made false statements of material fact about Golars with the intent to defame its reputation within IDEM, within its industry of environmental consultants, and with its clientele, including that it engaged in criminal acts, it violated the False Claims Act, and that it “raped the Fund.”

202. Defendants’ communications set forth in rhetorical paragraph 204 were made with malice and were intended to cause financial damage to Golars.

203. Upon information and belief, Louks’ communications set forth in rhetorical paragraph 204 were published in emails by Louks and on IDEM’s VFC.

204. Accordingly, with respect to Count IV, Plaintiff Golars prays for the relief set forth below.

Count V – Commercial Disparagement

205. Each preceding paragraph is incorporated herein by reference.

206. Plaintiff Golars brings this claim against Defendants IDEM and Louks.

207. Defendants published false statements about Golars, including that it had engaged in criminal conduct, violated the False Claims Act, and it “raped the Fund,” with the intent to harm Golars’ economic interests and cause it to lose business and suffer financial and reputational damages.

208. Defendants knew or should have known that the published false statements were likely to harm Golars’ economic interests.

209. Accordingly, with respect to Count V, Plaintiff Golars prays for the relief set forth below.

Count VI – Fraudulent Inducement

210. Each preceding paragraph is incorporated herein by reference.

211. Plaintiffs Warren and USSBOA bring this claim against Defendants IDEM and Louks.

212. Defendants fraudulently induced Warren and USSBOA members to enter into Agreed Orders under the Policy by stating they had to do so under existing law.

213. Warren and USSBOA members were not required by law to enter into the Agreed Orders.

214. Defendants promised Warren and USSBOA members that after they entered into the Agreed Orders that all of their costs and claims submitted for ELTF reimbursement would be processed in accordance with applicable rules and guidance.

215. Defendants promised Warren and USSBOA members that after the entered into the Agreed Orders that the assumption of corrective action liability would not impact third party liability and that the responsible party would retain third party liability even after another party assumes corrective action responsibility.

216. Defendants promised Warren and USSBOA members that after the entered into the Agreed Orders that, unless they were also a responsible party, a party with potential liability for corrective action would no longer be liable for corrective action once a transaction affecting ownership or operation occurs.

217. Defendants failed to state in the Policy to Warren and USSBOA members that after they entered into the Agreed Orders they would bear liability for all corrective action costs exceeding the ELTF cap until IDEM decides to issue a No Further Action order.

218. Defendants' promises were fraudulent misrepresentations specifically meant to induce Warren and USSBOA members into entering into the Agreed Orders.

219. As a result of Defendants' conduct, Warren and USSBOA members have been harmed.

220. Accordingly, with respect to Count VI, Plaintiffs Warren and USSBOA pray for the relief set forth below.

Count VII – Tortious Interference with Contractual Relationships

221. Each preceding paragraph is incorporated herein by reference.

222. Plaintiffs Golars, Daleen1, Sail, Warren, and USSBOA bring this claim against Defendants IDEM and Louks.

223. Golars, Daleen1, Sail, Warren, and USSBOA had valid and enforceable contracts with suppliers, customers, financial institutions, and/or governmental entities.

224. Defendants knew of the existence of these valid and enforceable contracts.

225. Defendants' actions of refusing to reimburse ELTF claims IDEM was legally required to pay and forcing Golars, Daleen1, Sail, Warren, and USSBOA into Agreed Orders that were contrary to law intentionally intended to induce breaches of these contracts.

226. Defendants' actions were contrary to law and unjustified because they were based on an unlawful interpretation of what constitutes an eligible party for ELTF reimbursement.

227. Defendants' actions forcing those who should not have been liable for corrective actions to enter into the Agreed Orders making them liable was also contrary to law and unjustified.

228. Golars, Daleen1, Sail, Warren, and USSBOA suffered damages as a result of Defendants' wrongful inducement of breaches of these contracts.

229. Accordingly, with respect to Count VII, Plaintiffs Golars, Daleen1, Sail, Warren, and USSBOA pray for the relief set forth below.

Count VIII – Tortious Interference with Prospective Business Relationships

230. Each preceding paragraph is incorporated herein by reference.

231. Plaintiffs Golars, Daleen1, Sail, Warren, and USSBOA bring this claim against Defendants IDEM and Louks.

232. Golars, Daleen1, Sail, Warren, and USSBOA had valid business relationships with suppliers, customers, financial institutions, and/or governmental entities.

233. Defendants knew of the existence of these relationships through their dealings with each of the Plaintiffs.

234. Defendants' actions of refusing to reimburse ELTF claims IDEM was legally required to pay and forcing Golars, Daleen1, Sail, Warren, and USSBOA into Agreed Orders that were contrary to law intentional interfered with these relationships.

235. Golars, Daleen1, Sail, Warren, and USSBOA relied on the reimbursement that was already approved by in order to continue conducting their business with suppliers and customers.

236. The Agreed Orders caused interference with their relationships with financial institutions because those that agreed to enter into them took on liabilities on the property that adversely affected the value of that asset.

237. Defendants' actions were contrary to law and unjustified because they were based on an unlawful interpretation of what constitutes an eligible party for ELTF reimbursement.

238. Defendants' actions forcing those who should not have been liable for corrective actions to enter into the Agreed Orders making them liable was also contrary to law and unjustified.

239. Golars, Daleen1, Sail, Warren, and USSBOA suffered damages as a result of Defendants' wrongful interference with these relationships.

240. Accordingly, with respect to Count VIII, Plaintiffs Golars, Daleen1, Sail, Warren, and USSBOA pray for the relief set forth below.

Count IX – In the Alternative, Punitive Damages Against Louks

241. Each preceding paragraph is incorporated herein by reference.

242. While Plaintiffs Golars, Daleen1, Sail, Warren, and USSBOA allege and maintain that Louks was acting within the scope of his employment with IDEM when he decided to engage in the malicious conduct described above, if this Court rules that Louks was acting outside of the scope of his employment Plaintiffs alternatively allege as follows:

243. Louks at all time was acting outside the scope of his employment with IDEM when he purposely decided to engage in the malicious conduct aimed at Golars, Daleen1, Sail, Warren, and USSBOA, as described in this Complaint.

244. Louks' actions were willful and wanton and displayed reckless disregard for the health and safety of Hoosiers throughout the State of Indiana.

245. Accordingly, with respect to Count IX, Plaintiffs Golars, Daleen1, Sail, Warren, and USSBOA pray for punitive damages and relief set forth below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, by counsel, respectfully request that this Court enter judgment against Defendants and in favor of Plaintiffs and each Class, and that the Court:

1. Certify each of the Classes as defined above, appointing Plaintiffs as class representatives and the undersigned as class counsel, and order that Notice of this action be given to the Classes;

2. Declare that the Policy is unlawful;

3. Award injunctive and equitable relief as necessary to protect the interests of the Plaintiffs, including:
 - a. Rescinding the fraudulently induced Agreed Orders demanded by IDEM under the Policy;
 - b. Ordering IDEM to process the ELTF claims of eligible parties Assignees whose claims were refused by IDEM because of the Policy;
 - c. Ordering IDEM to re-evaluate ELTF claims who had their ELTF claims for technical report preparation costs denied as not being “reasonable and cost effective;” and
 - d. Ordering IDEM to re-evaluate its issuance of No Further Action orders where No Further Action orders were not requested;
4. Order Defendants to pay Plaintiffs and the Classes an amount that will fully and fairly compensate them for their past and prospective damages;
5. Order Defendants to pay Plaintiffs and the Classes pre- and post-judgment interest, as allowable by law, and their reasonable attorneys’ fees, costs, and other litigation expenses;
6. Enjoin IDEM from taking retribution against Plaintiffs for their lawful actions of challenging IDEM’s unlawful policy and practices;
7. Follow all regulatory and statutory procedures for implementing determinations for reasonableness and cost effectiveness, including notice and public comment; and
8. Award Plaintiffs all further relief that is just and proper.

JURY DEMAND

Plaintiffs respectfully demand trial by jury on all issues so triable.

[SIGNATURE NEXT PAGE]

Respectfully Submitted,

/s/ William C. Wagner

William C. Wagner, #16542-64
Thomas A. Barnard, #4011-49
Seth M. Smoker, # 35369-49
TAFT STETTINIUS & HOLLISTER LLP
One Indiana Square, Suite 3500
Indianapolis, Indiana 46204-2023
Telephone: (317) 713-3500
Email: wwagner@taftlaw.com
Email: tbarnard@taftlaw.com
Email: ssmoker@taftlaw.com

Counsel for Plaintiffs

/s/ Gregory F. Zoeller

Gregory F. Zoeller, # 1958-98
General Counsel
Golars Environmental Engineering
15755 North Point Blvd
Noblesville, IN 46060
Telephone: (317) 500-0000
Email: gzoeller@golars.com

Counsel for Plaintiff Golars, LLC