

STATE OF INDIANA ) ST. JOSEPH COUNTY SUPERIOR COURT  
 ) SS: 71D05-1903-PL-000074  
COUNTY OF MARION ) CAUSE NO. \_\_\_\_\_

JANICE CERVELLI, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 THE CORPORATION OF ST. )  
 MARY'S COLLEGE, NOTRE DAME, )  
 )  
 Defendant. )

### **PLAINTIFF'S COMPLAINT FOR DAMAGES**

The Plaintiff, Janice Cervelli, by counsel, for her Complaint for Damages against the Defendant, the Corporation of St. Mary's College, Notre Dame, states as follows:

#### **PARTIES**

1. At all times mentioned herein, the Plaintiff, Janice Cervelli ("Cervelli") was a resident of St. Joseph County, Indiana.
2. At all times mentioned herein, the Corporation of St. Mary's College, Notre Dame ("SMC"), was and is a domestic nonprofit corporation formed in the State of Indiana with its principal place of business in St. Joseph County, Indiana.

#### **BACKGROUND AND FACTUAL ALLEGATIONS**

3. On February 17, 2016, Cervelli entered into a confidential Employment Agreement with the defendant SMC, pursuant to which she agreed to serve as President of SMC. (A true and accurate copy of the Employment Agreement is

attached to the Verified Written Request to Prohibit Public Access as Ex. 1, filed contemporaneously with this Complaint).

4. Subject to certain termination provisions, the term of Cervelli's employment as President was to commence June 1, 2016 and continue through May 31, 2021.

5. Under Section 4 of the Employment Agreement, Cervelli's employment could be terminated "for cause," "without cause," or by resignation.

6. SMC has not terminated Cervelli's employment "for cause," nor has there ever been any grounds to do so.

7. Section 5 of the Employment Agreement provided for annual reviews of Cervelli's performance by the Chair and Vice-Chair and the Full Board Trustees of SMC. Cervelli had reviews in 2017 and 2018, both of which were favorable.

8. Nevertheless, despite these two favorable reviews and despite a lack of any reason to terminate her for cause, in late September 2018, SMC Board of Trustee Chair Mary Burke asked Cervelli to resign from her position as President.

9. On or about September 30, Burke presented Cervelli with an undated and unsigned separation agreement and stated that the Board was calling for her immediate resignation pursuant to the terms of the proposed agreement. The representation that the Board was interested in terminating Cervelli was not true, or at least not two-thirds of the full Board as required.

10. Burke demanded that Cervelli review and accept the agreement by October 5, when she would announce Cervelli's resignation at a Faculty Assembly Meeting and College Assembly or the Board would terminate her without cause.

11. At the September 30 meeting, Burke instructed Cervelli not to report to work and to tell everyone that she was on sick leave, which was not true. Burke also suggested that Cervelli indicate that she was resigning because her mother needed more care, which was also not true. Cervelli was also told to resign her position as a full tenured professor without cause and without compensation.

12. On October 8, 2018, the Notre Dame and SMC student newspaper ("The Observer") quoted Chair Burke as follows,

However, Burke did address several rumors regarding Cervelli's resignation. *Burke said it was solely Cervelli's decision and not the result of internal pressure to resign.* "There's probably lots of different pieces to it," Burke said. "So, it was her decision, *her decision alone to resign*, and we respect her privacy as to why the reasons were." Burke said while she cannot say with certainty Cervelli did not leave due to health reasons, she appears to be in "good health." "I've spoken with her, she sounds in good health, she says she's in good health, but who knows why?" Burke said. "There's probably a thousand reasons to pull together, and I think we have to respect her privacy on it as well."

13. Similarly, the South Bend Tribune reported on October 9 that Burke said that Cervelli had resigned "*due to reasons she chose not to disclose*" and that "*the board had no issues with Cervelli's performance and didn't influence her decision.*" That is not true.

14. Burke also told the Tribune that "*It came as a surprise*" when "*Cervelli called her last week to convey the news.*" The Tribune further reported that Burke

said she “*asked Cervelli if ‘there was something we could do’ to keep her at the college but her decision to resign was firm.*” Such a phone call never occurred.

15. The truth is, the *only reason* that Cervelli resigned was pressure from Burke (and apparently the other Board members who were in cahoots with her).

16. Cervelli did not resign for health reasons or any other personal reasons. Cervelli loved her job at SMC, she did it well,<sup>1</sup> and she would have preferred to continue as President of SMC.

17. On or about November 15, 2018, Cervelli and SMC entered into a confidential agreement, in which Cervelli resigned from her position as President of SMC effective December 31, 2018. (A true and accurate copy of the resignation agreement is attached to the Verified Written Request to Prohibit Public Access as Ex. 2. (“Settlement Agreement”)).

18. As stated in the Settlement Agreement, Cervelli indicated a willingness to resign her position as President “in lieu of a not for cause termination and in return for the consideration set forth in [the] Agreement....”

19. Pursuant to Section 3 of the Agreement, the parties agreed that as of January 1, 2019, Cervelli would “continue her position as a tenured member of the faculty and she shall be paid in accordance with Section 11 of the Employment Agreement.” (Section 3).

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<sup>1</sup> For example, in the same Observer article cited above, it also stated that Burke said that “[Cervelli brought in a really good class this year... You know, 406 [students] is a really good entering class. So the budget’s in good shape. Financially, we are in strong shape.” Burke also reportedly stated, “There were no milestones that were not met by President Cervelli.”

20. Section 11 of the Employment Agreement states that she would be paid “in an amount equal to the highest paid professor at Saint Mary’s.”

21. On October 2, 2018, SMC’s Director of Human Resources sent an email to Ms. Cervelli with a “breakdown of the highest and lowest paid Professors by Rank” (hereinafter referred to as the “October 2<sup>nd</sup> Email”). In entering into the Settlement Agreement, Cervelli relied on the reported salary of the highest paid professor.

22. In the Settlement Agreement, SMC also agreed to pay Cervelli certain severance pay and benefits for twelve months, beginning January 1, 2019.

23. Specifically, on or about February 1, 2019 and March 1, 2019, Ms. Cervelli should have been paid monthly gross wages in the same amount paid to the highest paid professor (as reflected in the October 2<sup>nd</sup> Email) as her wages for the months of January and February 2019, respectively.

24. SMC has not paid Ms. Cervelli her salary for her services as a tenured member of the faculty for those months.

25. In addition, SMC has refused to recognize Cervelli’s status as a tenured faculty member.

26. SMC has conducted searches and hires of visiting and junior faculty in Art and Environmental Studies, superseding its obligation to Cervelli as a sitting tenured Full Professor.

27. SMC has obstructed Cervelli’s ability to fulfill her responsibilities as a faculty member and to prepare and receive guidance on course development, course proposals, and other academic policy by:

- a. Failing to identify faculty assignments for Cervelli in teaching, research, or service.
- b. Failing to provide her with an office.
- c. Banning Cervelli's attendance at Faculty Development Day, Department of Art Faculty Meetings, and any other meetings of the college, accompanied by threats of action if disregarded.
- d. Canceling and postponing meetings with the Department Chair of Art and Environmental Studies Program to review course proposal and Disciplinary Standing materials prior to stated deadlines and limiting her ability to respond to requirements.
- e. Requiring all Cervelli correspondence to go through Interim-Provost, causing unnecessary delay and additional work.
- f. Excluding her from the College faculty roster.
- g. Removing Cervelli from the FAC-STAFF list serve of the college, thus banning her from receiving emails containing important announcements regarding college policies, events, and faculty development opportunities.
- h. Blocking Cervelli from Faculty link and Registrar page of the SMC intranet portal, and thus access to essential information on academic policy and faculty support services.
- i. Directing SMC staff (HR Director and CIO) not to respond to Cervelli's repeated requests for meetings, information, and support to which she is entitled as an employee and tenured faculty member.
- j. Monitoring of Cervelli's movements and statements on campus.

#### **COUNT I DECLARATION OF RIGHTS AND INJUNCTION**

28. Cervelli incorporates by reference each and every one of the paragraphs above.

29. While Section 7 of the Settlement Agreement contained a covenant not to sue, claims for breach of the Settlement Agreement and claims arising after the

effective date of the Settlement Agreement were specifically excepted from the covenant not to sue.

30. A justiciable controversy has arisen between Ms. Cervelli and St. Mary's regarding their rights and obligations under the Settlement Agreement between them, including a) Ms. Cervelli's status as a tenured faculty member; b) Ms. Cervelli's right to receive compensation and employment benefits as a tenured faculty member; c) Ms. Cervelli's right to reinstatement to the faculty; and d) Ms. Cervelli's right to continuing severance payments under the Settlement Agreement.

31. Ms. Cervelli requests a "speedy hearing" on the declaration of rights and obligations, which the Court may grant under Ind. Trial Rule 57.

32. Ms. Cervelli seeks a declaration that:

- She is entitled to tenure, all compensation and employment benefits (including accrued leave) as a tenured faculty member;
- She is entitled to an injunction reinstating her to the St. Mary's faculty and continued employment until her resignation or retirement;
- She is entitled to all unpaid compensation and employment benefits and prejudgment interest from the date of St. Mary's breach of contract.
- She is entitled to continued severance payments under the Settlement Agreement.
- She will receive such other just relief as determined by the Court.

## **COUNT II – BREACH OF CONTRACT**

33. Cervelli incorporates by reference each and every one of the paragraphs above.

34. SMC has breached the Settlement Agreement by failing to pay Cervelli the amount of money she was entitled to be paid as a tenured member of the faculty for the months of January and February 2019.

35. In addition, SMC has breached the Settlement Agreement by refusing to recognize Cervelli's status as a tenured faculty member as outlined above.

### **COUNT III BREACH OF DUTY OF GOOD FAITH AND FAIR DEALING**

36. Cervelli incorporates by reference each and every one of the paragraphs above.

37. There is a legal duty implied in the Employment Agreement and the Settlement Agreement that the employer (SMC) will act in good faith with its employee (Cervelli).

38. SMC has breached its duty of good faith and fair dealing in refusing to pay Cervelli her salary as a tenured professor, refusing to recognize Cervelli's status as a tenured faculty member, and in obstructing Cervelli's ability to fulfill her responsibilities as a tenured faculty member as outlined above.

39. In addition, SMC has breached its duty of good faith in attempting to prevent Ms. Cervelli from disclosing that she is a tenured member of the faculty and by trying to shield this fact from the community and the public.

40. SMC has attempted to use the confidentiality agreement as a sword to prevent Cervelli from telling others that she is a tenured full professor and faculty member. As a result, the students, faculty, and other members of the Saint Mary's College community are confused and left in the dark about Cervelli's status.

41. SMC has also effectively prevented Cervelli from correcting the prior misrepresentations made by Chair Burke to the public.

42. As a result of SMC's breach, Cervelli has suffered both economic and emotional harm. She has effectively lost her job at SMC as well as her livelihood. She has also suffered emotional distress.

**COUNT IV – VIOLATION OF INDIANA'S WAGE PAYMENT STATUTE  
[I.C. § 22-2-5-1 AND I.C. § 22-2-5-2]**

43. Cervelli incorporates by reference each and every of the paragraphs above.

44. The amounts that Cervelli was entitled to be paid as a tenured member of the faculty, but which have never been paid, as described above, constitute unpaid "wages" and "an amount due" to her from SMC as those terms are used in I.C. § 22-2-5-1 and I.C. § 22-2-5-2.

45. On January 31, 2019, Cervelli's counsel sent a certified letter to SMC demanding payment of Cervelli's unpaid wages.

46. To date, SMC has not paid Cervelli the unpaid wages to which she is entitled, including wages for the months of January and February at the amount equivalent to that paid to the highest paid professor.

47. SMC has not acted in good faith in refusing to pay the wages owed to Cervelli. SMC has no reasonable basis to deny her the amounts owed.

48. By failing to pay Cervelli the correct sums to which she was rightfully entitled to be compensated for the work that she performed for SMC during January

and February within ten (10) days of the letter demanding payment of same, the Defendant SMC has violated I.C. § 22-2-5-1 and I.C. § 22-2-5-2.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Janice Cervelli prays for a judgment against SMC including:

1. Reinstatement to the position of tenured professor (with all the rights and privileges of that position) until resignation or retirement or, in the alternative, an amount sufficient to compensate her for buying out her tenure;
2. An award of economic and compensatory damages, prejudgment interest, and costs;
3. With respect to Count IV, an amount equal to the amount of unpaid wages, plus an additional 10% of these amounts for each day that these amounts remain unpaid, not to exceed a total of double the amount that is due and owing to her; for the costs of this action; for reasonable attorney fees; for all other reasonable costs of collection;
4. A declaration of Ms. Cervelli's rights and SMC's obligations.
5. All other just and proper relief in the premises.

### **JURY DEMAND**

Plaintiff respectfully requests a trial by jury.

Respectfully submitted,

/s/ Carol Nemeth Joven  
Carol Nemeth Joven, Atty. No. 18091-53A  
PRICE WAICUKAUSKI JOVEN & CATLIN, LLC

Hammond Block Building  
301 Massachusetts Avenue  
Indianapolis, Indiana 46204  
Tel. (317) 633-8787  
Fax (317) 633-8797  
[cnemeth@price-law.com](mailto:cnemeth@price-law.com)

ATTORNEYS FOR PLAINTIFFS