

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS**

Michael R. Cuenca,

Plaintiff

vs.

CASE NO. 98-4180-SAC

**University of Kansas,
Myron A. Kautsch, Individually,
James K. Gentry, Individually
Robert E. Hemenway, Individually
David E. Shulenburger, Individually
Rose A. Marino, Individually
Theodore P. Frederickson, Individually
Richard S. Musser, Individually
Robert R. Basow, Individually
Maurice L. Bryan, Jr., Individually
Susanne Shaw, Individually**

Defendants.

SECOND AMENDED COMPLAINT

COMES NOW, the Plaintiff, Michael R. Cuenca, *pro se*, and for his second amended cause of action against the University of Kansas, pursuant to **Rule 15(a)** of the Federal Rules of Civil Procedure, and by reason of leave of the court states as follows:

JURISDICTION

1. This is an action for damages and to secure protection of and to redress deprivation of rights secured by the First Amendment of the Constitution of the United States, the Fourteenth Amendment of the Constitution of the United States, Title VII of the Civil Rights act of 1964, as amended 42 U.S.C. § 2000-3 et seq. (Supp. II, 1972) (hereinafter Title VII), providing for relief against discrimination in employment on the

basis of ethnic background and national origin; 42 U.S.C. § 1981, providing for the redress of deprivation of the right to make and enforce contracts and to the full and equal benefit of all laws as is enjoyed by white citizens; 42 U.S.C. § 1983, providing for redress of violations of the First Amendment of the United States Constitution and the Equal Protection clause of the Fourteenth Amendment of the United States Constitution; 42 U.S.C. § 1985(3), providing for redress of conspiratorial denials of Constitutional rights and violations of federal Civil Rights statutes; and 42 U.S.C. § 1986, providing for redress of failures to prevent illegal 42 U.S.C. § 1985(3) conspiracies.

2. Plaintiff, a Filipino-American of Hispanic descent, who is a native of and a resident of the State of Kansas, filed a charge of discrimination against defendant University of Kansas with the Kansas Human Rights Commission ("KHRC") and Equal Employment Opportunity Commission ("EEOC") on or about April 4, 1997, complaining of acts of racial discrimination and retaliation alleged herein. A notice of Right to Sue Letter was received by Plaintiff on or about July 16, 1998 and the original complaint was filed within the time period specified therein on October 9, 1998. Plaintiff filed a second EEOC complaint on or about August 14, 2000. A notice of Right to Sue Letter was received by Plaintiff on or about September 27, 2001. As such, Plaintiff has complied fully with all prerequisites to jurisdiction in this Court under Title VII.

3. Jurisdiction of the Court is proper under § 706(f)(3) of Title VII, 42 U.S.C. § 2000e-5(f)(3). In addition, jurisdiction of this court is invoked pursuant to 28 U.S.C. § 1331 (federal question), and 28 U.S.C. § 1343 (Civil Rights), 28 U.S.C. § 1337 (Acts of Congress regulating commerce).

4. Compensatory damages are sought pursuant to 42 U.S.C. § 2000e-5(g) and 42 U.S.C. § 1981, 42 U.S.C. § 1983, 42 U.S.C. § 1985(3), 42 U.S.C. § 1986.

5. Punitive damages are sought against Robert E. Hemenway, David E. Shulenburger, Myron A. Kautsch, James K. Gentry, Rose A. Marino, Maurice L. Bryan, Jr., Theodore P. Frederickson, Richard S. Musser, Robert R. Basow, and Susanne Shaw, individuals, pursuant to 42 U.S.C. § 1981, 42 U.S.C. § 1981(a), 42 U.S.C. § 1983, 42 U.S.C. § 1985(3), 42 U.S.C. § 1986.

6. Costs and Attorney's Fees may be awarded pursuant to 42 U.S.C. § 2000e-5(g), 42 U.S.C. § 1981, 42 U.S.C. § 1983, and Fed. R. Civ. P. 54.

VENUE

7. This action lies properly in the District of Kansas pursuant to 28 U.S.C. § 1391(b) as the unlawful employment practices complained of herein occurred within the District of Kansas and because all defendants reside in the District of Kansas.

PARTIES

8. Plaintiff Michael R. Cuenca is a citizen of the United States of America and a resident of the State of Kansas.

9. Defendant University of Kansas (hereinafter **UNIVERSITY OF KANSAS**) is an educational institution with its campus and facilities located in the State of Kansas and regularly employs more than 15 people.

10. Defendants Robert E. Hemenway, David E. Shulenburger, Myron A. Kautsch, James K. Gentry, Rose A. Marino, Maurice L. Bryan, Jr., Theodore P. Frederickson, Richard S. Musser, Robert R. Basow, and Susanne Shaw (hereinafter defendant **HEMENWAY**, defendant **SHULENBURGER**, defendant **KAUTSCH**, defendant **GENTRY**, defendant **MARINO**, defendant **BRYAN**, defendant **FREDERICKSON**, defendant **MUSSER**, defendant **BASOW**, and defendant **SHAW**) are individuals and are citizens of the United States of America and residents of the State

of Kansas and are either current or former employees of the University of Kansas who are named as party defendants in their individual capacities.

FACTS COMMON TO ALL COUNTS

11. Michael R. Cuenca was hired by the University of Kansas on or about August 16, 1994 as a tenure-track Assistant Professor of Visual Communications in the School of Journalism. Plaintiff has more than twenty-six (26) years of professional experience in journalism. During his term of employment at the Defendant University of Kansas, Plaintiff distinguished himself as an academic and professional by writing internationally published books, criticism, and commentaries in his areas of expertise, by earning prestigious national awards for his creative research and development work, by producing teaching materials that have been distributed worldwide and utilized by his peers throughout his field, and by becoming the first faculty member of the Defendant's School of Journalism to be awarded a research grant from the National Endowment for the Humanities.

12. Throughout Plaintiff's term of employment at Defendant University of Kansas, Plaintiff participated actively as a member and leader of Civil Rights groups and coalitions. Plaintiff was a member of the KU Coalition Against Racism, served as chair of the University's Human Relations Committee, and took part in the minority focus groups conducted to determine the minority faculty's perceptions of the workplace climate. During the spring of 1998, Plaintiff co-founded the Kansas University Sexism & Racism Victims Coalition, which actively conducted an aggressive media, political, and legal campaign opposing the continuation of Defendant University of Kansas' historical tradition of exclusion of minorities and women faculty and staff from employment and promotion. In the time since his termination by Defendant University of Kansas, and

directly as a result of the plaintiff's Civil Rights research and activism in Defendant University of Kansas' workplace, Plaintiff has been recognized by the U.S. government as an expert in statistical determinations of academic workplace discrimination.

13. On or about April, 1997, Michael R. Cuenca filed complaints with the Equal Employment Opportunity Commission (EEOC) and the Kansas Human Rights Commission (KHRC), charging **UNIVERSITY OF KANSAS** with racial discrimination and retaliation.

14. On or about October, 1998, Michael R. Cuenca filed suit in federal court, alleging race-based discrimination and retaliation against Defendants University of Kansas, Kautsch, and Gentry.

15. Plaintiff followed and fulfilled the specific published and long-followed guidelines and criteria required to receive award of permanent tenure in the School of Journalism and the University of Kansas. Notwithstanding, Plaintiff was denied permanent tenure by the School of Journalism and the Defendant University and was terminated in May 2001.

Summary of Case

16. Defendant Myron A. Kautsch was the Dean of the School of Journalism at the time of Plaintiff's hiring. During the employment search process, even before the Plaintiff had worked a single day in Defendant's workplace, Defendant Kautsch and Defendant Frederickson, as chair of the respective search committee, discriminated against the Plaintiff. Although the damage to the Plaintiff brought by the initial discrimination against him was minimal and outweighed by his hiring, it established the existence of a discriminatory attitude toward the Plaintiff, which continued throughout his employment. The subsequent accumulation of negative effects of the initial and

ongoing discrimination and the seven years of resulting litigation, enmity, institutional turmoil, and burden on the courts, could have been halted when the situation was brought to the attention of Defendants Kautsch, Bryan, Marino, Shulenburg, and Hemenway in 1995 and 1996.

17. However, during this period, Defendant University of Kansas was found out of compliance with Executive Order 11246 by the U.S. Office of Federal Contract Compliance Programs, which requires certain equal employment opportunity protections and monitoring. Being found out of compliance with EO 11246 can result in an employer being debarred from receiving any federal funds. The University of Kansas is highly dependent upon federal funds, which in 2000 represented 74% (\$107,359,822) of their external funding awards for research projects. To satisfy their compliance deficiencies, Defendant University of Kansas undertook measures to comply with record-keeping and reporting. Defendant University of Kansas also undertook measures to suppress the evidence of their lack of compliance with EO 11246 and their historic and continuing underutilization of protected-class applicants and employees.

18. Additionally, Defendant University of Kansas learned during this time through its own internal focus groups and through an increase in the number of administrative and legal complaints, that there was widespread discontent among its minority faculty with the conditions of employment and with opportunities for equal employment opportunity. Defendant University of Kansas suppressed their own study and hid the information from the public and their employees, relying on deceptive tactics to withhold the information under the Kansas Open Records Act.

19. Coincidental to this atmosphere of verifiable underutilization of protected-class applicants and employees, the widespread perceptions of a discriminatory

workplace climate among the minority faculty, increased legal and administrative actions, the potentially devastating loss of federal funds, and the Defendants' efforts to hide the problems and silence dissent, Plaintiff approached Defendant Kautsch and made an initial, informal attempt to seek relief from the discrimination he perceived as being directed at himself. Plaintiff perceived that he was being discriminated against, even though he was unaware of the previous discrimination that had occurred during his employment process, and he was unaware of the administrative efforts to conceal any evidence of the negative workplace climate for its minority employees. Defendant Kautsch, rather than dealing constructively and positively with the situation, reacted hastily and angrily, thereby setting in motion a series of administrative mistakes and deliberately retaliatory actions by Defendants Kautsch, Gentry, Hemenway, Shulenburger, Marino, Bryan, Shaw, Frederickson, Musser, and Basow undertaken to save face for the involved managers and administrators, to hide the minority faculty's concerns from the public and the federal government, to avoid legal liability, and to silence the Plaintiff's Civil Rights leadership either through constructive discharge or eventual contractual termination. From the time of the Plaintiff's initial, internal complaints of discrimination until the present, Defendants and their legal counsel have retaliated against the Plaintiff through a concerted campaign of publicly and privately insulting, downgrading and demeaning the Plaintiff's character, competence, and professional accomplishments intended to rationalize their discrimination against the Plaintiff and to counter his charges of ongoing discrimination and retaliation against the Plaintiff and other employees. Defendants and their legal counsel have retaliated against the Plaintiff by deliberately and willfully subjecting him to more than six years of

persecution, hyper-scrutiny, professional insecurity, and emotional assault intended to bully and oppress the Plaintiff into silence.

20. Each of these individual Defendants obtained, placed, approved and/or deliberately ignored direct evidence of discrimination and retaliation and denial of due process in the Plaintiff's tenure review materials, including (1) a discriminatory, inappropriate, and irrelevant attack on the Plaintiff's personal appearance, (2) a complaint from at least one external reviewer that important elements of the Plaintiff's professional record had been omitted, and (3) a direct, written statement that the Plaintiff should be denied tenure specifically because of his Civil Rights-related advocacy, which was blatantly retaliatory and violated the Plaintiff's rights under the First Amendment of the United States Constitution, as well as Title VII and 42 U.S.C. § 1981 et seq.

All Individual Defendants

21. Defendants Kautsch, Gentry, Hemenway, Shulenburger, Marino, Bryan, Shaw, Frederickson, Musser, Basow, and as many as 25 additional unnamed co-conspirators, illegally conspired, violating 42 U.S.C. § 1985(3), in that they individually and collectively acted with like-mindedness and a common goal of effectively denying the Plaintiff's Fourteenth Amendment rights to equality and equal protection of the law by relying on a campaign of class-based discrimination and retaliation against the Plaintiff, with the eventual and ultimate common goal of justifying termination of the Plaintiff's continued employment at Defendant University, as retaliation against his Constitutionally and statutorily protected speech and activism.

Defendants University of Kansas and Myron A. Kautsch

22. After the initial discrimination during the Plaintiff's pre-employment process, and between the time of the Plaintiff's hire in August 1994 and defendant

Kautsch's resignation effective May 1997, Defendant Kautsch continued to discriminate against the Plaintiff. In December of 1995, Defendant Kautsch took offense after Plaintiff complained directly to him that he was not allowing Plaintiff an equal opportunity to perform his job responsibilities. Defendant Kautsch immediately and illegally retaliated against the Plaintiff for asserting his First Amendment Constitutional rights and his rights to equal employment opportunity and protection from retaliation provided by Title VII and 42 U.S.C. §1981 et seq.

23. Defendant Kautsch's intentional and illegal actions included (1) retaliating against the Plaintiff by initiating an adverse employment action in the form of extreme and unauthorized employment termination measures, through which Plaintiff was denied due process, harassed, humiliated and publicly disparaged by defendant Kautsch; (2) the placement of the Plaintiff on a special probationary review under which the Plaintiff was expressly to be denied his First Amendment Constitutional rights to freely express discontent and dissent and his Title VII rights to protected speech; (3) the denial of the Plaintiff's equal employment opportunity for increased income and responsibility as director of the Integrated Media Lab; and (4) an attempt to conspire with other School of Journalism personnel to terminate the Plaintiff after a contrived, retaliatory negative performance evaluation.

Defendants University of Kansas and James K. Gentry

24. Upon being hired as the Dean of the School of Journalism, defendant Gentry assumed the leadership role in the conspiracy to deny the Plaintiff's Constitutional and other Civil Rights through his eventual termination. From July of 1997 through the Plaintiff's termination in May of 2001, Defendant Gentry continued the discrimination and retaliation against the Plaintiff and engaged in a pattern and practice

of deception and misrepresentation designed to justify the eventual termination of the Plaintiff. Defendant Gentry violated Plaintiff's First Amendment Constitutional rights, his Fourteenth Amendment Constitutional rights, and his right to equal employment opportunity as provided in Title VII and 42 U.S.C. §1981 et seq.

25. Defendant Gentry's actions included (1) denying the Plaintiff an equal employment opportunity during the search to fill the high-profile New Media Leader position; (2) discriminating and retaliating against the Plaintiff by excluding the Plaintiff from School of Journalism activities that were within his professional and academic expertise and responsibilities; (3) ignoring, degrading and demeaning the Plaintiff's professional and academic accomplishments; (4) denying the Plaintiff's Fourteenth Amendment rights to due process and equal protection by personally corrupting the Plaintiff's tenure application review; (5) retaliating against the Plaintiff by misrepresenting School of Journalism policy and practice to justify a retaliatory complaint against the Plaintiff; (6) retaliating against the Plaintiff by ordering the Plaintiff to vacate his office three months prior to his termination date, and (7) willfully neglecting to prevent the illegal 42 U.S.C. § 1985(3) conspiracy.

Defendants University of Kansas and Theodore P. Frederickson

26. Defendants Theodore P. Frederickson, Richard S. Musser, and Susanne Shaw are or were the three most senior professors in the Defendant University of Kansas' School of Journalism. During the time of Plaintiff's employment, Defendant Frederickson acted as the Plaintiff's direct supervisor. Prior to the Plaintiff's formal complaint of race-based illegal discrimination and retaliation, Defendants Frederickson and Musser were the Plaintiff's two most ardent supporters. After the Plaintiff's formal complaint of race-based discrimination and retaliation, Defendants Frederickson and

Musser retaliated against the Plaintiff and participated in the illegal conspiracy by acting to professionally discredit the Plaintiff and eventually to deny the Plaintiff's due process during his application for continued employment with Defendant University of Kansas.

27. Defendant Frederickson intentionally and illegally retaliated against the Plaintiff, violating his First Amendment Constitutional rights, his Fourteenth Amendment Constitutional rights, his rights under Title VII and 42 U.S.C. §1981 et seq.

28. Defendant Frederickson's illegal actions included (1) verbally threatening the Plaintiff with retaliation for complaints of race-based discrimination, (2) attempting to coerce the Plaintiff into ceasing to exercise his First Amendment Constitutional right to dissent and his right to Title VII-protected speech, (3) retaliating against the Plaintiff by misrepresenting School of Journalism policies to justify a retaliatory complaint against the Plaintiff, (4) publicly attacking the Plaintiff's exercise of his Constitutional right to freedom of speech and his support for Civil Rights activities.

Defendants University of Kansas and Richard S. Musser

29. Defendant Musser intentionally and illegally retaliated against the Plaintiff, violating his First Amendment Constitutional rights, his Fourteenth Amendment Constitutional rights, his rights under Title VII and 42 U.S.C. §1981 et seq.

30. Defendant Musser acted illegally when, as chair of the promotion and tenure committee, he denied the Plaintiff's right to due process, equality, and equal protection under the law by deliberately and willfully misrepresenting the Plaintiff's character, competence, and actual record of accomplishment in the Plaintiff's tenure review and by deliberately failing to act to prevent illegal actions that constituted the illegal 42 U.S.C. § 1985(3) conspiracy.

Defendants University of Kansas and Robert R. Basow

31. Defendant Basow intentionally and illegally retaliated against the Plaintiff, violating his First Amendment Constitutional rights, his Fourteenth Amendment Constitutional rights, his rights under Title VII and 42 U.S.C. §1981 et seq.

32. Defendant Basow acted illegally when, as chair of the promotion and tenure committee, he denied the Plaintiff's right to due process, equality, and equal protection under the law by deliberately and willfully misrepresenting the Plaintiff's character, competence, and actual record of accomplishment in the Plaintiff's tenure review and by deliberately failing to act to prevent the illegal actions that constituted the illegal 42 U.S.C. § 1985(3) conspiracy.

Defendants University of Kansas and Susanne Shaw

33. Along with Defendants Frederickson and Musser, Defendant Shaw is or was one of the three most senior faculty members of Defendant University of Kansas' School of Journalism. Defendant Shaw is Executive Director of the Accrediting Council on Education in Journalism and Mass Communications (hereinafter ACEJMC), which is the body responsible for the accreditation of all schools of journalism in the country.

34. Defendant Shaw intentionally violated Plaintiff's Fourteenth Amendment Constitutional rights by acting to deny him due process during his tenure review.

35. Defendant Shaw acted intentionally and illegally when she denied the Plaintiff's right to due process and equal protection by conspiring with Defendant Gentry, during the Plaintiff's tenure review, to obtain negative external reviews of the Plaintiff's academic record from among her like-minded, close ACEJMC associates.

Defendants University of Kansas and Maurice L. Bryan, Jr.

36. After the Plaintiff filed complaints with the Equal Employment Opportunity Commission (EEOC) and the Kansas Human Rights Commission (KHRC), charging University of Kansas with racial discrimination and retaliation, Defendant Bryan, who was the Defendant University of Kansas' Director of Equal Opportunity throughout the employment of the Plaintiff, retaliated against the Plaintiff by suspending his office's own internal investigation of the Plaintiff's complaint in June, 1997. As the Defendant University of Kansas' Director of Equal Opportunity, Defendant Bryan was the employee hired specifically to prevent and eliminate denials of equal employment opportunity and to protect the rights of minority employees. Defendant Bryan's failure to prevent or take a stand against the ongoing denials of the Plaintiff's Civil Rights and the illegal 42 U.S.C. § 1985(3) conspiracy, was a violation of 42 U.S.C. 1986.

37. Defendant Bryan's intentional and illegal acts include (1) retaliating against the Plaintiff by violating his Fourteenth Amendment Constitutional rights to due process and equal protection, his Title VII rights and his rights to equal employment opportunity under 42 U.S.C. §1981 et seq. by suspending his office's internal investigation of the Plaintiff's claims of discrimination and retaliation, (2) refusing to consider the Plaintiff's complaint that he had been denied tenure because of discrimination and retaliation, and (3) violating 42 U.S.C. §1986, by willfully neglecting to prevent the illegal 42 U.S.C. § 1985(3) conspiracy.

Defendants University of Kansas and Robert Hemenway and David Shulenburger

38. Defendant Hemenway is or was Chancellor of Defendant University of Kansas, and is or was the chief executive officer of the institution. Defendant Shulenburger is or was Provost of Defendant University of Kansas and is or was chief

academic officer and chief operating officer of the institution. At all times since December of 1995, Defendants Hemenway and Shulenburg have been aware of and have approved of, either tacitly or explicitly, the acts of discrimination and retaliation against Plaintiff, the corruption of the Plaintiff's application for promotion and continued employment, and the denial of Constitutional rights of the Plaintiff. Defendant Hemenway and Shulenburg were responsible for the ultimate approval of the termination of the employment of the Plaintiff. Each was fully aware of the Plaintiff's repeated internal and external complaints and assertions that his employment and Constitutional rights were being violated and each deliberately ignored those complaints and assertions as retaliation against the Plaintiff for his opposition to their administration of Defendant University of Kansas.

39. Under the leadership of Defendants Hemenway and Shulenburg, and with their full and complete knowledge, Defendant University of Kansas has a verifiable pattern and practice of class-based discrimination against minority applicants for employment and promotion, a verifiable pattern and practice of retaliation against employees who publicly assert their equal employment opportunity rights and/or the equal employment opportunity rights of others, a verifiable pattern and practice of denial of due process during internal discrimination complaints, and a verifiable pattern and practice of denial of due process and equal protection during promotion and tenure application reviews and appeals. These factors have led to a significant increase in the number of legal actions taken against Defendant University of Kansas, which reflects the continuing disregard for employee rights in the Defendants' workplace and which is unnecessarily burdening the Courts.

40. Defendants Hemenway's and Shulenburger's intentional and illegal actions included (1) retaliating against the Plaintiff for filing external grievances by removing his original internal administrative grievance from the Office of Equal Opportunity and assigning it to the Office of the General Counsel, (2) denying Plaintiff due process by refusing to allow him to review the complete contents of his tenure application and expecting him to sign it without such review, (3) denying Plaintiff equal protection and due process during his internal tenure appeal by ordering and/or allowing their legal counsel to direct the actions of the supposedly faculty-governed internal promotion and tenure appeal committee, (4) denying the Plaintiff's rights under Title VII and EO 11246 by not providing an internal mechanism for appealing denials of promotion and/or tenure on grounds of discrimination and/or retaliation, (5) willfully acting to approve the termination of the Plaintiff, (6) violating 42 U.S.C. § 1985(3) by conspiring, through deliberate indifference and/or direct order, to allow personnel under their supervision to deny the Plaintiff's First Amendment Constitutional rights, his Fourteenth Amendment Constitutional rights, and his rights to equal employment opportunity under Title VII and 42 U.S.C. §1981 et seq., and (7) violating 42 U.S.C. §1986 by willfully neglecting to prevent the actions that constituted the illegal 42 U.S.C. §1985(3) conspiracy.

Defendants University of Kansas and Rose A. Marino

41. Defendant Marino is or was Defendant University of Kansas' Associate General Counsel. Defendant Marino was responsible for determining the legality of the Defendants' actions throughout the Plaintiff's employment, including the determination of whether actions taken by the Defendants were retaliatory. Defendant Marino violated Plaintiff's First Amendment Constitutional rights, his Fourteenth Amendment

Constitutional rights, his rights to equal employment opportunity under Title VII and 42 U.S.C. § 1981 et seq. by discriminating and retaliating against him in retaliation for his internal and external complaints of discrimination and retaliation and for his leadership of Civil Rights activism in Defendant's workplace.

42. Defendant Marino's willful and intentional actions included (1) harassing, threatening, and insulting the Plaintiff and otherwise attempting to bully Plaintiff into silence, (2) directing the Office of Equal Employment Opportunity to suspend and/or to refuse to consider the Plaintiff's internal complaints, (3) denying Plaintiff due process during internal complaints of discrimination and retaliation, (4) neglecting to prevent the illegal 42 U.S.C. § 1985(3) conspiracy, and (5) publicly attacking the Plaintiff for his legal action against Defendants.

43. Defendants **ROBERT E. HEMENWAY, DAVID E. SHULENBURGER, MYRON A. KAUTSCH, JAMES K. GENTRY, MAURICE BRYAN, THEODORE P. FREDERICKSON, RICHARD S. MUSSER, ROBERT R. BASOW, AND SUSANNE SHAW** have deliberately and willfully, with like-minded and common goals, and acting with malice towards Plaintiff and with conscious disregard of Plaintiff's rights, violated the Plaintiff's Civil Rights and his Constitutional rights.

44. By targeting the Plaintiff for termination in retaliation against his visible and public role as a Civil Rights leader in their workplace, Defendants **ROBERT E. HEMENWAY, DAVID E. SHULENBURGER, MAURICE L. BRYAN, JR., AND ROSE A. MARINO** have irreparably harmed the Plaintiff and all protected-class employees of Defendant University of Kansas by willfully and deliberately acting to effectively chill workplace dissent and Civil Rights activism.

45. Due to the discriminatory and retaliatory acts and deliberate indifference of the defendants, Plaintiff has suffered years of harassment, persecution, mental anguish, humiliation, loss of reputation, lost pay, lost employment rights, lost employment opportunity in his field, and severely reduced qualities of life and work life.

FIRST CAUSE OF ACTION

**DISCRIMINATION AND RETALIATION
BASED ON ETHNIC BACKGROUND AND NATIONAL ORIGIN (TITLE VII)**

46. Plaintiff Michael R. Cuenca incorporates as if realleged Paragraphs 1-45.

47. By restricting Plaintiff Michael R. Cuenca's promotional opportunities and harassing and retaliating against him on the basis of his race, and/or national origin, and/or opposition to racial discrimination, defendant University of Kansas has violated Title VII of the Civil Rights Act of 1964.

WHEREFORE, Plaintiff seeks to be made whole and prays for judgment against the defendant **UNIVERSITY OF KANSAS** for:

- a. Back pay and lost benefits; front pay until normal retirement;
- b. Compensatory damages for his mental anguish, pain and suffering and other non-pecuniary losses;
- c. His attorney fees and the costs and expenses of this action; and
- d. Such other relief as the Court deems just and equitable.

SECOND CAUSE OF ACTION

42 U.S.C. § 1981

48. Plaintiff Michael R. Cuenca incorporates as if realleged Paragraphs 1-45.

49. By restricting Plaintiff Michael R. Cuenca's due process rights, free speech rights, employment rights, and harassing and retaliating against him on the basis of his race, and/or his national origin, and/or his opposition to racial discrimination, defendants Robert E. Hemenway, David E. Shulenburger, Myron A. Kautsch, James K. Gentry, Maurice L. Bryan, Jr., Theodore P. Frederickson, Richard S. Musser, Robert R. Basow, and Susanne Shaw in their individual capacities have violated 42 U.S.C. § 1981.

WHEREFORE, Plaintiff seeks to be made whole and prays for judgment against defendants Robert E. Hemenway, David E. Shulenburger, Myron A. Kautsch, James K. Gentry, Maurice L. Bryan, Jr., Theodore P. Frederickson, Richard S. Musser, Robert R. Basow, and Susanne Shaw for:

- a. Back pay and lost benefits; front pay until normal retirement age;
- b. Compensatory damages for his mental anguish, pain and suffering and other non-pecuniary losses;
- c. His attorney fees and the costs and expenses of this action;
- d. Punitive damages against individual defendants Robert E. Hemenway, David E. Shulenburger, Myron A. Kautsch, James K. Gentry, Maurice L. Bryan, Jr., Theodore P. Frederickson, Richard S. Musser, Robert R. Basow, and Susanne Shaw; and
- e. Such other relief as the Court deems just and equitable.

THIRD CAUSE OF ACTION

42 U.S.C. § 1983

50. Plaintiff Michael R. Cuenca incorporates as if realleged Paragraphs 1-45.

51. Defendants Robert E. Hemenway, David E. Shulenburger, Myron A. Kautsch, James K. Gentry, Maurice L. Bryan, Jr., Theodore P. Frederickson, Richard S. Musser, Robert R. Basow, and Susanne Shaw in their individual capacities have, acting under color of State law, intentionally discriminated against Plaintiff Michael R. Cuenca because of his race and/or national origin and/or because of prior complaints he had directed against defendants regarding discrimination based on race, have intentionally violated his rights to due process and free speech, and have denied him the equal opportunity to enjoy the rights and privileges of citizenship. In so doing, each of the defendants violated 42 U.S.C. § 1983 by virtue of the First Amendment of the United States Constitution, and the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

WHEREFORE, Plaintiff seeks to be made whole and prays for judgment against defendants Robert E. Hemenway, David E. Shulenburger, Myron A. Kautsch, James K. Gentry, Maurice L. Bryan, Jr., Theodore P. Frederickson, Richard S. Musser, Robert R. Basow, and Susanne Shaw for:

- a. Back pay and lost benefits; front pay until normal retirement age;
- b. Compensatory damages for his mental anguish, pain and suffering and other non-pecuniary losses;
- c. His attorney fees and the costs and expenses of this action;
- d. Punitive damages against individual defendants Robert E. Hemenway, David E. Shulenburger, Myron A. Kautsch, James K. Gentry, Maurice L. Bryan, Jr., Theodore P. Frederickson, Richard S. Musser, Robert R. Basow, and Susanne Shaw; and
- e. Such other relief as the Court deems just and equitable.

FOURTH CAUSE OF ACTION

42 U.S.C. § 1985(3)

52. Plaintiff Michael R. Cuenca incorporates as if realleged Paragraphs 1-45.

53. Defendants Robert E. Hemenway, David E. Shulenburger, Myron A. Kautsch, James K. Gentry, Maurice L. Bryan, Jr., Theodore P. Frederickson, Richard S. Musser, Robert R. Basow, and Susanne Shaw in their individual capacities have intentionally acted with like-mindedness and common goals to take illegal action against Plaintiff Michael R. Cuenca because of his race and/or his national origin and/or because of prior complaints he had directed against defendants regarding discrimination based on race, to effectively deny his Constitutional rights protected by the First and Fourteenth Amendments to the U.S. Constitution. In so doing, each of the defendants violated 42 U.S.C. § 1985(3).

WHEREFORE, Plaintiff seeks to be made whole and prays for judgment against defendants Robert E. Hemenway, David E. Shulenburger, Myron A. Kautsch, James K. Gentry, Maurice L. Bryan, Jr., Theodore P. Frederickson, Richard S. Musser, Robert R. Basow, and Susanne Shaw for:

- a. Back pay and lost benefits; front pay until normal retirement age;
- b. Compensatory damages for his mental anguish, pain and suffering and other non-pecuniary losses;
- c. His attorney fees and the costs and expenses of this action;
- d. Punitive damages against individual defendants Robert E. Hemenway, David E. Shulenburger, Myron A. Kautsch, James K. Gentry, Maurice L.

Bryan, Jr., Theodore P. Frederickson, Richard S. Musser, Robert R. Basow, and Susanne Shaw; and

- e. Such other relief as the Court deems just and equitable.

FIFTH CAUSE OF ACTION

42 U.S.C. § 1986

54. Plaintiff Michael R. Cuenca incorporates as if realleged Paragraphs 1-45.

55. Defendants Robert E. Hemenway, David E. Shulenburger, Myron A. Kautsch, James K. Gentry, Maurice L. Bryan, Jr., Richard S. Musser, and Robert R. Basow, in their individual capacities have deliberately ignored the illegality and conspiratorial nature of their own actions and the actions of others taken against Plaintiff Michael R. Cuenca because of his race and/or his national origin and/or because of prior complaints he had directed against defendants regarding discrimination based on race. In so doing, each of the defendants violated 42 U.S.C. § 1986.

WHEREFORE, Plaintiff seeks to be made whole and prays for judgment against defendants Robert E. Hemenway, David E. Shulenburger, Myron A. Kautsch, James K. Gentry, Maurice L. Bryan, Jr., Richard S. Musser, and Robert R. Basow for:

- a. Back pay and lost benefits; front pay until normal retirement age;
- b. Compensatory damages for his mental anguish, pain and suffering and other non-pecuniary losses;
- c. His attorney fees and the costs and expenses of this action;
- d. Punitive damages against individual defendants Robert E. Hemenway, David E. Shulenburger, Myron A. Kautsch, James K. Gentry, Maurice L. Bryan, Jr., Richard S. Musser, and Robert R. Basow; and

- e. Such other relief as the Court deems just and equitable.

Respectfully submitted,

MICHAEL R. CUENCA, *pro se*
3019 Longhorn Dr.
Lawrence, KS 66049
(785) 842-8954 – Office
(785) 838-9617 – Fax

DEMAND FOR A TRIAL BY JURY

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands a trial by a jury of twelve (12) persons in this action.

MICHAEL R. CUENCA, *pro se*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing was deposited in the United States Mail, First Class, postage prepaid on the 9th day of

January, 2002, addressed to:

Barbara L. McCloud
Special Assistant Attorney General
University of Kansas
245 Strong Hall
Lawrence, KS 66045

MICHAEL R. CUENCA, *pro se*