

**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, and]	
James K. Gentry, Individually]	
]	
Defendants.]	
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FIRST AMENDED COMPLAINT

COMES NOW, the plaintiff, Michael R. Cuenca, through his attorneys, Schroer, Rice P.A., and for his first 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 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 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; and 42 U.S.C. § 1983, providing for redress of violations of the Equal Protection clause of the 14th Amendment of the United States Constitution.

2. Plaintiff, an Asian/Pacific Islander male 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 the 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. 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 and 42 U.S.C. § 1983.

5. Punitive damages are sought against Myron A. Kautsch and James K. Gentry, individuals, pursuant to 42 U.S.C. § 1981 and 42 U.S.C. § 1983.

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 Myron A. Kautsch and James K. Gentry are individuals and (hereinafter defendant **KAUTSCH** and defendant **GENTRY**) 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

Defendants University of Kansas and Myron A. Kautsch

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. This position required that plaintiff lead development of new courses and laboratory opportunities for a multi-media curriculum using computer technology. This position was also the only position specifically allocated to the teaching and development of this curriculum and/or laboratory opportunities and was the sole position responsible for the teaching of print visual communications which includes newspaper design and photojournalism. Plaintiff has more than twenty (20) years of experience in journalism, has won national awards for his work and has authored treatises and professional publications in his field. Defendant Myron A. Kautsch was the Dean of the School of Journalism at the time of plaintiff's hiring.

12. From the date of hire, Plaintiff was denied the authority to carry out the duties of his job description. Defendant Kautsch accorded technology laboratory oversight to a less-qualified Caucasian male who occupied the support position of Computing Coordinator, despite complaints to Defendant Kautsch that the Computing Coordinator's job performance was poor.

13. After the Computing Coordinator was fired for poor performance, Defendant Kautsch accorded technology laboratory oversight to his administrative assistant, a Caucasian female.

14. Plaintiff was required by defendant Kautsch to teach additional classes without additional pay while similarly situated Caucasians were paid to do the same.

15. After complaining to defendant Kautsch about the additional workload, defendant Kautsch replaced plaintiff on the school's Technology Committee with a Caucasian male in November, 1995.

16. Starting in December, 1995, plaintiff was harassed, humiliated and publicly disparaged by defendant Kautsch after plaintiff complained of discriminatory and disparate treatment based on race.

17. During this period, defendant Kautsch attempted to terminate plaintiff without basis and made false reports regarding plaintiff's job performance and conduct to the Office of Academic Affairs of defendant University of Kansas. Defendant Kautsch further placed plaintiff on a "special probation" which was not authorized under school policies and which was later overturned.

18. Notwithstanding plaintiff's qualifications and the fact that the School of Journalism's General Manager of the Integrated Media Laboratory position included plaintiff's duties, plaintiff was denied by defendant Kautsch the opportunity to apply for the

position of the General Manager of the Integrated Media Laboratory, which defendant Kautsch later filled with a Caucasian male in May, 1995.

19. By February, 1996, defendant Kautsch continued to publicly discredit plaintiff in an attempt to damage plaintiff's professional reputation in retribution and retaliation for plaintiff's prior complaints of discrimination. Defendant Kautsch further excluded plaintiff from the school's "Ad Hoc Technical Committee" for which plaintiff was the most qualified on the Journalism faculty or staff. Plaintiff was also isolated and excluded from the School's web page development for which plaintiff was most qualified and responsible under his job description.

20. In May, 1996, plaintiff made a formal complaint to the Director of Equal Opportunity based on race discrimination. Plaintiff was advised that this was not the first racial complaint against defendant Kautsch.

21. Within ten (10) days of his formal complaint to the Director of Equal Opportunity, plaintiff was given poor evaluations and an annual merit increase of just \$180.00 without justification by defendant Kautsch. This was the lowest merit increase for any faculty or staff in the School of Journalism.

22. Thereafter, plaintiff continued to be denied creative, grant, and award opportunities by defendant Kautsch, including involvement with the development, design and production of the "J-School Journal", competition for the Creative Problem Solving Service Award, competition for a grant from the General Research Fund of the University, and competition for the Outstanding Professor in the School of Journalism Award. Each of these opportunities, awards and cash incentives were given by defendant Kautsch to Caucasian recipients.

23. Plaintiff was also excluded by defendant Kautsch from meetings with visiting contemporaries and denied meaningful work opportunities and the opportunity to do his job in retaliation for his complaints of discrimination.

24. 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.

25. Defendant Kautsch resigned his duties at the School of Journalism and was replaced by defendant James K. Gentry in July, 1997.

Defendants University of Kansas and James K. Gentry

26. Upon being hired as the Dean of the School of Journalism, defendant Gentry announced an opening for the position of “New Media Leader” which involved job requirements specifically related to plaintiff’s job description, qualifications, and background. Plaintiff was denied an interview for the New Media Leader position even though he applied and was found to be one of only four (4) qualified applicants. The other three (3) qualified applicants were all interviewed and all were Caucasian males. The position was not offered to any of the applicants. The position of New Media Leader was later filled by a Caucasian male in a manner so as to avoid the defendants’ own Equal Employment policies despite plaintiff’s complaints to the Director of Equal Opportunity.

27. 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, the

University's Office of Equal Employment suspended its own internal investigation of the plaintiff's complaint in June, 1997.

28. In January, 1999, in retaliation for plaintiff's complaints of discrimination against defendant Gentry, six (6) days after defendant Gentry accepted service as a defendant in instant case, plaintiff received from defendant Gentry unjustified low evaluations as part of a pre-tenure review. Such conduct by defendant Gentry was designed to inhibit plaintiff's opportunity to reach full tenure in the future.

29. Defendants, **MYRON A. KAUTSCH AND JAMES K. GENTRY** have, at all times, been acting with malice towards plaintiff and with conscious disregard of plaintiff's rights.

30. Due to the discrimination, retaliation and unfair treatment of the defendants, plaintiff has suffered mental anguish, humiliation and lost pay.

FIRST CAUSE OF ACTION

DISCRIMINATION AND RETALIATION BASED ON ETHNIC BACKGROUND (TITLE VII)

31. Plaintiff Michael R. Cuenca incorporates as if realleged Paragraphs 1-30.

32. By restricting Plaintiff's promotional opportunities and harassing and retaliating against him on the basis of his race and opposition to racial discrimination, defendant University of Kansas has violated Title VII of the Civil Rights Act of 1964.

WHEREFORE, plaintiff 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;
- d. Such other relief as the Court deems just and equitable.

SECOND CAUSE OF ACTION
42 U.S.C. § 1981

33. Plaintiff Michael R. Cuenca incorporates as if realleged Paragraphs 1-32.

34. By restricting Plaintiff's promotional opportunities and harassing and retaliating against him on the basis of his race and opposition to racial discrimination, defendants Myron A. Kautsch and James K. Gentry in their individual capacities have violated 42 U.S.C. § 1981.

WHEREFORE, plaintiff prays for judgment against defendants Myron A. Kautsch and James K. Gentry 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 Myron A. Kautsch and David K. Gentry, and
- e. Such other relief as the Court deems just and equitable.

THIRD CAUSE OF ACTION
42 U.S.C. § 1983

35. Plaintiff Michael R. Cuenca incorporates as if realleged Paragraphs 1-34.

36. Defendants Myron A. Kautsch and James K. Gentry in their individual capacities have intentionally discriminated against Michael R. Cuenca because of his race

and 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. § 1983 by virtue of the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

WHEREFORE, plaintiff prays for judgment against defendants Myron A. Kautsch and James K. Gentry for:

- f. Back pay and lost benefits; front pay until normal retirement age;
- g. Compensatory damages for his mental anguish, pain and suffering and other non-pecuniary losses;
- h. His attorney fees and the costs and expenses of this action;
- i. Punitive damages against individual defendants Myron A. Kautsch and David K. Gentry, and
- j. Such other relief as the Court deems just and equitable.

Respectfully submitted,

SCHROER, RICE, P.A.

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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.

RICHARD C. EVANS, #12003

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 28th day of April, 1999, addressed to:

Rose Marino
Special Assistant Attorney General
University of Kansas
245 Strong Hall
Lawrence, KS 66045

Richard Evans #12003