

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

DILAWAR S. GREWAL,  
PO Box 140732  
Staten Island, NY 10314

Plaintiff,

vs.

Case No. 10-CV-2666 KHV/GLR

THE UNIVERSITY OF KANSAS,  
Serve:  
Stephen N. Six, Kansas Attorney General  
Memorial Hall, 2<sup>nd</sup> Floor  
120 SW 10<sup>th</sup> Street  
Topeka, KS 66612

Defendant,

BERNADETTE GRAY-LITTLE, in her  
official capacity as Chancellor of the  
University of Kansas,  
Serve at:  
Strong Hall  
1450 Jayhawk Boulevard  
Lawrence, KS 66045,

Defendant.

and

DANNY ANDERSON, individually,  
and in his official capacity as  
Executive Vice-Chancellor and  
Interim Provost, The University  
of Kansas,  
Serve at:  
Strong Hall  
1450 Jayhawk Boulevard  
Lawrence, KS 66045,

Defendant,

and

OLA FAUCHER, individually, and  
 in her official capacity as  
 Director of Human Resources,  
 The University of Kansas,  
 Serve at:

103 Carruth O’Leary Hall  
 Lawrence, KS 66045,

Defendant,

and

JULIE LOATS, individually and in  
 her official capacity as  
 Director of IT, Enterprise  
 Applications and Services,  
 The University of Kansas,  
 Serve at:

1001 Sunnyside Avenue  
 Lawrence, Kansas 66045

Defendant.

## **COMPLAINT**

Plaintiff, Dilawar S. Grewal, (“Dr. Grewal”) by and through his attorneys of record, for his causes of action against Defendants, The University of Kansas, (“KU”), Bernadette Gray-Little (“the Chancellor”), Danny Anderson (“Mr. Anderson”), Ola Faucher (“Ms. Faucher”), and Julie Loats (“Ms. Loats”), states as follows:

## **JURISDICTION AND VENUE**

1. This Court has original federal question jurisdiction over the subject matter, pursuant to 28 U.S.C. § 1331, for Plaintiff’s claims arising under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e, *et seq.* (“Title VII”), and under 28 U.S.C. §1343, for violations of 42 U.S.C. §§1981, 1983, and 1985. This Court has

supplemental jurisdiction, pursuant to requirements set out in 28 U.S.C. § 1367, over the subject matter of Plaintiff's claims under Kansas law.

2. The unlawful acts and practices set forth in this Complaint were committed in the State of Kansas, and venue is proper in this Court, pursuant to 28 U.S.C. § 1391(b) and 42 U.S.C. §2000e(5)(f)(3).

3. All administrative prerequisites and conditions precedent have been met.

### **PARTIES**

4. Plaintiff Dr. Grewal is a naturalized citizen of the United States. He was born in India, and is of Indian nationality and ancestry. He is a member of the Sikh religious denomination. At all times relevant to the Complaint, he was a resident of Lawrence, Kansas.

5. Defendant KU is a state-supported educational institution of higher learning, with Dr. Grewal's workplace, and KU's main campus, located in Lawrence, Kansas. KU is an "employer" within the meaning of Title VII, K.S.A. §44-1001, et seq., and 42 U.S.C. §1981.

6. Defendants sued in their individual capacities were residents of the State of Kansas and employees of KU at the Lawrence, Kansas, campus at all time relevant to the Complaint. These individual Defendants were acting in the course and scope of their employment when they took the actions set forth herein.

### **FACTS COMMON TO ALL CLAIMS AND COUNTS**

7. Dr. Grewal began his employment at KU in August 2008, in the position as Director of Research Information Technology Services. This was one of three Director positions leading Information Technology (IT) at KU. The other two Directors were Mr.

Charles Crawford, Director of IT, Enterprise Infrastructure and Security; and Ms. Julie Loats, Director of IT, Enterprise Applications and Services.

8. At all relevant times, Dr. Grewal's direct supervisor was Ms. Denise Stephens, Vice Provost for Information Services. ("Ms. Stephens"). She never participated in or condoned discriminatory or inappropriate actions toward Dr. Grewal, and she was supportive of his concerns and his attempts to obtain redress for discrimination through the offices of the KU Department of Human Resources.

9. Dr. Grewal is an individual with dark brown skin. His Sikh religion requires the wearing of a beard and long hair, which he wears in a pony tail.

10. After five months at KU, Dr. Grewal received a performance review. It was the only performance review he received at KU. His rating was "Exceptional."

11. On August 8, 2009, after an administrative restructuring, he was promoted to the position of Associate Vice-Provost for Information Services. This position established him as the head of IT, still reporting to the Vice Provost for Information Services.

12. Prior to that date, he had not been troubled by discriminatory actions beyond isolated, passing behavior and references he saw as inevitable in any workplace.

13. Dr. Grewal's former colleague, Defendant Ms. Loats, competed for the promotion received by him in August 2009. She was visibly upset that she had been passed over. After his promotion, she reported directly to Dr. Grewal.

14. Following his promotion, Dr. Grewal attempted to establish routine business meetings with Ms. Diane Goddard, the Chief Financial Officer of KU. Ms.

Goddard routinely cancelled those meetings, choosing to meet instead with Dr. Grewal's now-subordinate, Ms. Loats. Ms. Goddard made it clear that she thought Ms. Loats should have received the promotion.

15. By the end of August, 2009, Ms. Loats' animosity toward Dr. Grewal had become more open, and she made it evident that she would not only tolerate, but also would join in, insulting and discriminatory behavior toward Dr. Grewal in the workplace.

16. From September 2009 onward, until his termination from employment at KU, Dr. Grewal became the subject of open racial and religious slurs in the workplace. As one example, Ms. Loats approached him, pulled his pony tail, and made comments that people were likely to see him as "a terrorist," because of his appearance. When he objected, she responded flippantly and asked why he was upset by someone "joking" about his looks.

17. After that, Dr. Grewal was subjected to similar comments by other workers subordinate to Ms. Loats. He was openly referred to as "looking like a terrorist," or as "a terrorist" on several occasions. He also was told, in a serious manner, that he was "menacing looking."

18. One subordinate employee openly informed him that she found it "very hard" to work for him, because he is a "non-believer." She explicitly refused to follow work directives that he gave her, stating that she had been told by Ms. Loats not to do that work.

19. In late August or early September, 2009, Dr. Grewal met with Defendant Ms. Faucher, the Director of Human Resources, and complained about the near absence of racial diversity in IT personnel at KU, the reluctance to even consider

outside candidates for IT supervisory positions. He provided specific examples of the lack of racial tolerance in IT in terms of racial and religious slurs he had been experiencing. There was little or no training for Information Technology employees concerning sensitivity or discrimination. He offered to help Ms. Faucher facilitate such training.

20. Dr. Grewal complained in writing and made recommendations for training and other remedial action. No training followed and there was no follow-up from Ms. Faucher addressing his concerns.

21. In September and October, 2009, Dr. Grewal was subjected to similarly hostile actions. His personal belongings were rifled through in a secure and restricted office space of IT. Dr. Grewal brought this to the attention of Ms. Loats. No inquiry was initiated and no actions were taken.

22. While on a business trip on November 5, 2009, Dr. Grewal was told that he was to meet with Ms. Faucher on Monday, November 9. No explanation or agenda was provided.

23. Dr. Grewal met with Ms. Faucher and her associate, Mr. Allen Humphrey. He was joined in the meeting by his supervisor Ms. Stephens. He was told there had been "complaints" by employees about his "menacing looks," and that some employees were frightened to the point of developing "eating disorders" because they had to work with someone who "looked like a terrorist." No complainant was ever identified, and Ms. Faucher verified there were no written complaints.

24. Ms. Faucher recited incidents that had been reported verbally to her, complaining of actions Dr. Grewal had allegedly taken in departmental meetings. Those

were meetings at which Ms. Stephens had been present and presiding. Ms. Stephens informed Ms. Faucher that the recited events had not occurred, and that Dr. Grewal had behaved professionally at the meetings.

25. At the end of the meeting with Ms. Faucher, Dr. Grewal was told to go directly to the office of Defendant Mr. Anderson, the Executive Vice Chancellor and Interim Provost of KU. When Dr. Grewal arrived, Mr. Anderson informed him that he was replacing Ms. Stephens as Dr. Grewal's supervisor, as of that moment. Mr. Anderson told Dr. Grewal that he could be fired only by his supervisor, that he was fired effective November 13, 2009, and that he was required to immediately leave the premises.

26. Upon information and belief, after Dr. Grewal's termination, his duties and job responsibilities were assigned to a Caucasian male.

27. When Dr. Grewal tried to appeal his termination, Ms. Faucher responded by email that he served at the pleasure of the administrator to whom he reported, and he was not entitled to any notice, any progressive discipline, or any recourse to the grievance procedure set in place for KU personnel.

**COUNT ONE**  
**(TITLE VII--RACE, COLOR, RELIGION AND NATIONAL ORIGIN DISCRIMINATION)**  
**(Against KU)**

28. Plaintiff adopts and incorporates by reference, as though fully set forth herein, the material allegations contained in Paragraphs 1 through 27 herein.

29. Dr. Grewal is a member of a class of persons who is entitled to the protections of Title VII, and this Complaint is timely filed with 90 days of September 28,

2010, the date the EEOC issued a right-to-sue letter for his administrative charge of discrimination.

30. Defendant KU is an employer within the meaning of Title VII.

31. In violation of Title VII, Dr. Grewal was subjected to hostile, discriminatory and harassing behavior by employees in his workplace, including supervisory employees who condoned and/or participated in such behavior.

32. Dr. Grewal complained about such hostile and discriminatory behavior to officials charged with the duty to address discrimination in the workplace at KU, which complaints were protected activity under Title VII.

33. Dr. Grewal's complaints, both written and oral, went unredressed and caused, in whole or in significant part, retaliation up to and including termination, all in violation of Title VII.

34. Dr. Grewal was ultimately terminated because of his race, national origin and/or religion and in retaliation for complaining of discrimination, in violation of Title VII.

35. As a direct and proximate result of Defendant KU's violations of Title VII, Dr. Grewal has been damaged, as set forth below.

**COUNT TWO**  
**(DISCRIMINATION UNDER STATE LAW)**  
**(Against KU)**

36. Plaintiff adopts and incorporates by reference, as though fully set forth herein, the material allegations contained in Paragraphs 1 through 35 herein.

37. Dr. Grewal is a member of a class of persons protected by the Kansas Act Against Discrimination, K.S.A. §44-1001, et seq., and this Complaint is timely filed



within 90 days of September 28, 2010, the date the EEOC issued a right-to-sue letter for his dual-file administrative charge of discrimination.

38. As set forth above, KU, by and through the individual Defendants, unlawfully discriminated against Dr. Grewal and subjected him to disparate treatment, harassment and discrimination on the basis of his race, color, national origin, and religion in violation of Kansas law.

39. As set forth above, KU, by and through the individual Defendants, unlawfully retaliated against Dr. Grewal for complaining of such harassment, disparate treatment and discrimination, in violation of Kansas law.

40. As a direct and proximate result of KU's violations of Kansas law, Dr. Grewal has been damaged, as set forth below.

**COUNT THREE**  
**(42 U.S.C. §1981 as enforced by 42. U.S.C. §1983 and 42. U.S.C. §1985)**  
**(HOSTILE WORK ENVIRONMENT, DISCRIMINATION, RETALIATION)**  
**(Against the Individual Defendants and the Chancellor)**

41. Plaintiff adopts and incorporates by reference, as though fully set forth herein, the material allegations contained in Paragraphs 1 through 40 herein.

42. Defendants Anderson, Faucher, and Loats, and each of them, acting under color of state law and within the scope of their employment and authority of KU, separately and in concert, acted willfully, knowingly and purposefully with specific intent to deprive Dr. Grewal of his constitutional and statutory rights.

43. The Individual are not protected by the Eleventh Amendment from the filing of this Complaint. The Chancellor is a named defendant to the extent equitable relief is sought.

44. All of these rights are secured to Dr. Grewal by the provisions of the Due Process Clause of the Fourth, Fifth and Fourteenth Amendments to the United States Constitution, as well as 42 U.S.C. §§ 1981, 1983 and 1985.

45. Federal law, in 42 U.S.C. §1981, entitled Dr. Grewal to equal benefits, privileges, terms, and conditions of his employment at KU, and entitled him to be free from discrimination in that employment.

46. Defendants Anderson, Faucher, and Loats, and each of them, acting in the course of, and within the scope of, his or her employment and supervisory duties at KU, intentionally committed acts and omissions constituting harassment and discrimination, and thereby deprived Plaintiff of his rights under 42 U.S.C. §1981.

47. When Dr. Grewal complained to the designated official in charge of the Human Resources Department at KU, he engaged in protected activity under 42 U.S.C. §1981. As a result of that protected activity, Dr. Grewal was subjected to harassing, discriminatory, and retaliatory conduct by officials, supervisors, and management employees of KU in the course, and within the scope, of their employment.

48. Defendants knew, or should have known, of the retaliatory, hostile, harassing, and discriminatory actions to which Dr. Grewal was subjected in the workplace. Its failure, through its employees and agents, to take prompt, appropriate remedial action in the course, and within the scope, of their employment violated 42 U.S.C. §1981.

49. Dr. Grewal was ultimately terminated based on his race, color, national origin or religion, or in retaliation for engaging in activities protected by section 1981.

50. As state actors, the claims against the Individual Defendants for violation of 42 U.S.C. §1981 are brought by Dr. Grewal under 42 U.S.C. §1983.

51. The Individual Defendants, acting in concert under color of state law, in an abuse of their authority and in the absence of any legitimate governmental interest, conspired to and did misuse and deliberately misinterpret KU's policy for terminating an administrator, thus depriving him of substantive due process in violation of 42 U.S.C. §§1983 and 1985.

52. Objectively reasonable KU officials should have been aware that actions taken against Dr. Grewal, including his termination, violated Dr. Grewal's constitutional and statutory rights.

53. As a proximate and direct result of the Individual Defendants' violation of Dr. Grewal's constitutional and statutory rights, Dr. Grewal has been damaged and seeks equitable relief as set forth below.

**COUNT FOUR**  
**(Damages Alleged)**

54. Plaintiff adopts and incorporates by reference, as though fully set forth herein, the material allegations contained in Paragraphs 1 through 52 herein.

55. But for the harassment, discrimination and retaliation of Defendants and their failure to address such illegal activities on the part of employees under their direct or indirect supervision, Dr. Grewal would not have been terminated from his employment at KU.

56. As a direct and proximate result of Defendants' harassment, discrimination and retaliation against Dr. Grewal, he suffered humiliation, emotional distress, mental

anguish, and anxiety, as well as substantial losses of earnings and other employment benefits.

57. Defendants' unlawful actions and omissions were malicious, willful, and with the wrongful intent and improper motive, intended to injure Dr. Grewal in conscious disregard for his rights, any and all of which justify an award of punitive and exemplary damages.

**PRAYER FOR RELIEF REQUESTED**

WHEREFORE, Plaintiff Dilawar Grewal, prays that the Court grant the following relief against all Defendants, and against each of them:

A. Adjudge and decree on Count One, that Defendant University of Kansas unlawfully discriminated against Dr. Grewal on the basis of his race, color, national origin, and religion, in violation of Title VII.

B. Adjudge and decree on Count Two, that Defendants University of Kansas unlawfully discriminated against Dr. Grewal and subjected him to disparate treatment on the basis of his race, color, national origin, and religion, all in violation of the KAADA.

C. Adjudge and decree on Count Three, that Defendants Anderson, Faucher, and Loats, and each of them, acting under color of state law and in the course and scope of his or her employment and supervisory duties at KU, intentionally committed acts and omissions constituting harassment and discrimination, and conspired to misuse KU's policy for terminating an administrative employee, thereby depriving Plaintiff of his rights under 42 U.S.C. §1981 in violation of 42 U.S.C. §1983 and §1985.

F. Order Defendants, and each of them, to make Plaintiff whole for his loss of income and other employment benefits proximately caused by their unlawful actions.

G. Order Defendant KU to provide equitable relief, including appropriate back pay, with incentive bonuses, wage increases, and reimbursement of any lost fringe benefits and other benefits.

H. Order Defendants, and each of them to compensate Plaintiff for mental pain, suffering, anguish, humiliation, and distress suffered as a result of being subjected to a hostile workplace, harassment, and discrimination, retaliation for protected activity, and unlawful termination without substantive due process.

I. Order Defendant KU to pay Plaintiff liquidated damages in an amount equal to his actual damages for willful violations of Title VII.

J. Order Defendants, and each of them, to pay Plaintiff fair and just punitive and exemplary damages for willful violations of KAADA, and 42 U.S.C. §§1981, 1983, and 1985.

K. Order Defendants, and each of them, to pay interest in an amount authorized by applicable law.

L. Award Plaintiff his costs in prosecution of this civil action, including an award of reasonable attorneys' fees.

M. Grant such additional affirmative relief as the Court deems just and proper.

#### **DEMAND FOR JURY TRIAL**

Plaintiff demands a jury trial on all matters so triable.

#### **DESIGNATION OF PLACE FOR TRIAL**

Plaintiff designates Kansas City, Kansas as the place for trial of this action.

McDowell, Rice, Smith & Buchanan, P.C.

By       s/ Linda C. McFee      

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