

LINUS L. BAKER KS 18197
6732 WEST 185TH TERRACE
STILWELL, KANSAS 66085
913.486.3913
LINUSBAKER@PRODIGY.NET
Attorney for former Emporia State professor Dusti Howell

IN THE DISTRICT COURT OF LYON COUNTY, KANSAS

Dusti Howell

Plaintiff,

vs.

Case No.

Emporia State University
and
Joan D. Brewer, individually
and
Jim Persinger, individually

Defendants.

Petition

Jury Trial Requested

JURISDICTION AND VENUE

1. This action arises under the Civil Rights Act of 1964, 42 U.S.C. §2000e, et. seq. (hereinafter Title VII), The Kansas Act Against Discrimination, K.S.A. 44-1001 et. seq. (hereinafter KAAD), and 42 U.S. Code § 1985 - Conspiracy to interfere with civil rights.

2. Venue is proper in this judicial district as the defendants regularly conduct substantial business activity in the state of Kansas.

**Parties
Plaintiff**

3. The plaintiff professor Dusti Howell is an adult citizen of the United States and a resident of the state of Kansas.

4. Professor Howell was a professor at Emporia State University.

5. Dr. Howell is not Jewish but in other nomenclatures would be considered to celebrate what others call traditional Jewish holidays.

6. Professor Howell believes that the Bible teaches that there are certain Holy Days that must be observed as a part of his Christian walk.

7. Violating these religious beliefs and convictions by not participating in these Holy Day observances would cause Professor Howell substantial harm.

8. Defendants Emporia State University is a state operated university in Kansas.

9. Joan Brewer is a Dean at Emporia State University. Joan Brewer conspired with Jim Persinger to violate Professor Howell's civil rights.

10. Jim Persinger is an employee of Emporia State University. Jim Persinger conspired with Joan Brewer to violate Professor Howell's civil rights.

Exhaustion

11. The plaintiff has exhausted his administrative remedies by timely filing a charge of discrimination in writing with the Kansas Human Rights Commission. Plaintiff received a "Right to Sue" letter (attached). This action is brought within the ninety (90) day statutory period for filing.

General Facts

12. For approximately 24 years, Dr. Dusti Howell worked as a professor at ESU. ESU had always afforded Dr. Howell choices and options regarding his course selection.

13. In 2016, Emporia State University (ESU) considered developing a written policy regarding absences for religious observances (FSB 16004). Its purpose was described as being "designed to create a policy on absences for religious observances." But the ESU faculty Senate failed to enact such a policy.

14. ESU developed a custom in refusing to accommodate students' requests for religious accommodations:

- a) Sep 23, 2010 article in the ESU student newspaper, The Bulletin, by ESU student, Ellen Wiess, *Opinion: Where are all the Jews in Emporia.* "As a Jew, it just feels lonely." "The only thing that really bothers me about the lack of Jewish community is that Emporians in power schedule things on

important Jewish holidays. It's like they all get in a room together and say "what test/event can we schedule on this one important holiday to prevent Jews from being with their families on this specific day?" "...but perhaps one of those powerful schedule-makers will read this and look at their fucking calendars next time before they decide that a couple Jews aren't worth changing a date."

- b) Summer 2015. During Autumn Howell's first ESU advisory meeting, her adviser told Autumn that she would not be able to earn a Biology degree if she missed classes for holy day observance.
- c) Fall Semester 2015. Autumn Howell (ESU Freshman) missed the delivery of a group presentation in Biology due Day of Atonement (Yom Kippur) observance. In addition to researching and creating the PowerPoint slides for the group, she was given an extra research article assignment with a maximum 80% credit in lieu of the presentation. After submitting the extra assignment she was upset that her course grade dropped. She met with an ESU administrator who directed her to meet again with the professor. He finally agreed to allow her to give the entire group presentation herself to a couple of upperclassman and to the professor to replace the research assignment grade. She received a lower grade for this class. In Fall 2016 President Allison Garrett was upset and informed the Faculty Senate that a student was academically penalized for observing Yom Kippur (Atonement). She asked the Faculty Senate to address religious accommodations.
- d) Fall 2018. Trevor Howell tried giving information about his Holy Day observance prior to his absence to instructor Lucy Carol, but she did not want it. Trevor had met with his teacher to try to work out some type of equitable accommodations/solution with no luck. After a month, Trevor finally reached out to Human Resource Director Ray Lauber who sent an email to Ed Bashaw (Dean of Business School), Joyce Zhou, and Jennifer Ananda on November 6. Throughout November and December, Trevor emailed back and forth with Glenda Estes (secretary), Ed Bashaw, and Lucy Carol attempting to obtain accommodation, but the meeting did not happen until finals week when it was too late to make up anything. Trevor did not feel that the final "solution" was fair or accommodating so he declined and took zeros for his religious observance. He eventually quit ESU. Deanne Howell (ESU Instructor) emailed, met with, and called Steven Lovett (President of Faculty and professor of Business), Kevin Johnson (ESU General Counsel), and Ray Lauber (Human Resource Director) regarding religious accommodation at ESU. They all agreed with her but no action was taken.

- e) Kevin Johnson to Deanne Dec. 10, 2018: “Accommodations for religious observance are relatively easy to make and are legally required, unless there is some sort of undue hardship. In this situation, I am not aware of anything that would be an undue hardship to stand in the way of providing the requested accommodation.”
- f) Ray Lauber to Deanne Dec. 13, 2018 “Hi Deanne, thanks so much for reaching out. In fact, this is something we’re looking at (and Steve and I have a meeting set up to discuss this as well as a couple of other items). We’ll keep you posted!

15. With no written policy regarding religious observances, ESU’s failure to enact a written policy is itself an unwritten policy and practice giving staff unguided, unreasonable, and arbitrary authority to penalize, deny, constrain, or impose unreasonable conditions upon individuals who request religious accommodations for religious observances.

16. ESU began experiencing a shortage of funding. ESU set out on a plan to eliminate graduate faculty of which Professor Howell is a part of that faculty. Professor Howell was fully tenured was near the requirements for a voluntary early retirement. The plan appeared to force Professor Howell to resign and hire cheaper non-tenured instructors. Dr. Howell has gained the honor of being a Full Professor at ESU. Professor Howell had a stellar record at ESU.

17. It seems highly unlikely for three students in Professor Howell’s class to simultaneously make a concerted grievance against Professor Howell. This fits the narrative of removing Professor Howell and coaxing students to make a grievance which was factually erroneous on numerous points.

18. According to ESU emails, Regina D. Murphy, Administrative Specialist in Instructional Design & Technology, engaged in discussions with Jim Persinger regarding researching if student complaints about Dr. Howell existed. These emails indicate Murphy worked at soliciting and encouraging students to come forward with complaints.

19. Dr. Howell’s career at the Department of Instructional Design and Technology (IDT) was severely crippled and eventually came to an end after these defendants initiated a series of actions designed to alienate, humiliate, and ultimately terminate Dr. Howell in retaliation for his constitutionally and statutorily protected speech and religious beliefs and affiliations.

20. Then Professor Howell's name began to not be included in many work-related ESU emails. Yet the defendants faulted Professor Howell for not knowing something when he was not included in those communications.

21. On October 22nd, 2020, Dr. Howell was ambushed being subjected to a grueling inquisition for nearly 3 hours in the Dean's conference room with Teachers College Dean Joan Brewer and IDT Department Chair Jim Persinger.

22. Brewer and Persinger had discussed amongst themselves in various communications what they intended to accuse Professor Howell of. While they were prepared well in advance, they purposely concealed notifying Professor Howell of anything in order for him to be prepared. Thus they purposely intended no prior meeting agenda on the topic to be covered which was designed to surprise Professor Howell. At the meeting Dean Brewer chastised Dusti for going to a church conference earlier that month. It was recommended by an ESU professor Janet Holland that Professor Howell not subject himself to any future meetings of that kind unless he had an attorney present. Professor Holland stated it appeared that defendant Brewer and Persinger were not operating in good faith and used the meeting not to obtain information but to indict Professor Howell before listening to him.

23. On October 22, 2020, Dusti was called, without any prior notice of the subject matter, into a formal meeting with Dean Joan Brewer and interim IDT chair Jim Persinger. The meeting lasted for nearly 3 hours nonstop concerning their accusations about Dusti's religious practices and pretextual accusations about Dusti's teaching techniques and the interplay of his religious exercise with students.

24. On November 4, 2020, Dean Brewer sent Dusti a letter of discipline claiming that Dusti had not reported for teaching for "weeks" (when in fact Dusti's religious absence was a week). Brewer claimed Dusti had been absent a week (for the day of Atonement) when in fact it was only one day. Brewer claimed Dusti had sought two weeks of absence (for the Feast of Tabernacles) when in fact it was only one week. Brewer claimed that Dusti had not responded to school emails for upwards of a week (when in fact it was only two days). Brewer contended that meant Dusti was on a leave of absence when he was not. Brewer contended that Dusti had not followed the proper "process" but never identified where in any published policy of Emporia State making such requirements.

25. Brewer claimed in her November 4, 2020, reprimand letter that Emporia State required "face to face" course teaching which was not in the University's written policy. Despite Dusti having contracted Covid 19, Brewer falsely claimed that Dusti taught courses online and remotely with no accommodation request which was false. Brewer claimed she or Persinger had made "several reminders and requests" which

was untrue. Despite Brewer's contentions to the contrary, Dusti had sought approval from his Department chair.

26. At the October meeting Brewer and Persinger stated that three students accused Professor Howell of taking off for three weeks and cancelling classes to go to a church conference. They claimed that Professor Howell's Graduate Teaching Assistant (GTA) Kaushar was delegated to teach the class and grade course materials. Professor Howell refuted those accusations during this meeting as untrue.

27. Dr. Howell continued to express his concern that his role within the IDT Program was being diminished and that his position within the University was in jeopardy.

28. On November 4th, the Dean and Chair signed a document ignoring Dr. Howell's evidence and sided with the three students. Professor Howell was chastised for teaching a live virtual conference class on ZOOM when he was sick from COVID-19 even though Professor Howell had previously received praise from the defendant Persinger for this.

29. These defendants then told Professor Howell that his absence was now deemed taking a leave of absence. They informed Professor Howell of a new requirement only applicable to him: that any request to attend a conference, including a Holy Day conference even for one day, had to be pre-approved eight weeks in advance by Human Resource Department, Dean Brewer, and Department Chair Jim Persinger. It was not merely notice but Professor Howell was required to write "a detailed plan" 8 weeks in advance even to miss one day of class to attend Yom Kippur. This procedure was never imposed on any other staff member or professor before or after Professor Howell.

30. Although Professor Howell was accused of taking a 3 week leave of absence, Professor Howell was not absent for 3 weeks. His absence was only one week. Although Professor Howell was accused of cancelling his classes, he did not and this was never the historic practice of Professor Howell when he observed Holy Days.

31. Defendants Brewer and Persinger faulted Professor Howell in allowing his GTA to teach or grade yet it was ESU's standard practice to allow a Graduate Teaching Assistant to gain practice in teaching as part of their training as part of any normal university practice. Having GTA Kaushar teach two classes for 20 minutes each and grade was not a remarkable occurrence.

32. The facts that Brewer and Persinger ignored were that the GTA Kaushar took the class to the Resource Library where staff member Brady Johnson instructed the students how to use the green screen room. Then the class was given time on Tuesday and on Thursday to work on their green screen videos. Kaushar taught a 20-minute

lesson on green screening. Professor Howell had Kaushar grade that lesson. Professor Howell then let Kaushar teach another 20-minute lesson that semester. Contrary to the false accusations of the defendants, that is the totality of what Kaushar taught. As to grades, everything Kaushar graded Professor Howell also graded. All of the students received comments from both Kaushar and Dr. Howell.

33. In Professor Howell's 23 year experience at ESU, ESU never imposed the arbitrary conditions that Brewer and Persinger imposed upon him. For that matter, for that 23 year period, all the chairs, including Armand Seguin, Marc Childress, Zeni Colorado, and Jim Persinger have all considered and treated Professor Howell attending his church holy days the same as attending a regular academic conference. For example, when Dusti's Holy Days would fall on Tuesdays, Professor Howell would ask in advance for his classes to be on a Monday/Wednesday schedule.

34. But now, that prior religious accommodation was removed.

35. Brewer and Persinger's new condition constrained the exercise of Dusti's religion, and further contributed to the hostile anti-religious environment. This ad hoc unwritten 8 week notice and approval condition was unwritten, arbitrary, and specifically used to target Dr. Howell alone: it is not found anywhere in any ESU Policy Manual. Brewer and Persinger's arbitrary imposition of their conditions is contrary to ESU promise against religious discrimination.

36. As of October 2021, the defendant Joan Brewer was not aware of any procedures, guidelines, and directions that specifically address accommodating religious exercise, including religious holy days.

37. As of October 2021, Joan Brewer has no understanding of Dusti's practice or observance of religion under section 7 of the bill of rights of the constitution of the state of Kansas and the free exercise clause of the first amendment to the constitution of the United States, including Dusti's right to act or refuse to act in a manner substantially motivated by Dusti's sincerely-held religious tenet or beliefs.

38. According to Joan Brewer, the procedure to attend a conference of any kind was this: a faculty member submits a request to attend a conference to the chair of their department. When approved by the department chair the request is submitted to the Dean of the appropriate school or college. After approval by the Dean, the request is submitted to the budget office.

39. However, this procedure referred to by Joan Brewer above is not contained in any ESU written policy.

40. On April 2, 2021, Professor Howell emailed the defendant Persinger stating that he was filing a formal grievance. Dr. Howell stated in part that “This week, Dr. Holland sent me two emails that involve both you and the secretary that are extremely unsettling. I'm alarmed that our secretary has been able to carry on a narrative that is disinviting and harmful to both the IDT culture and to my career.”

41. Dr. Howell further stated that:

Dr. Holland sent me the first email after I asked for help with enrollment schedules. In the email, Regina said, "And if Dusti takes the buy-out, the better it will be for me and Dr. Persinger as we transition to a new "whatever this is all going to turn out to be".

a. Dr. Holland and I both feel that this is alarming. Was I approached about a “buy-out?” No? This is someone trying to determine my future at ESU without confiding in me.

In the second email, Janet asked you why she was on the instructor search committee. You told her, “...**the chair has to make arrangements. Regina and I let Dusti know that a few times.** In the meantime, Friday was the date by which we had to get things posted, so we put things through with you on the committee. Dusti can let us know the other two folks who've agreed to serve including who is EOE monitor and we'll amend it.

a. I have had no information or dialog about being chair of the committee from you or Regina. The underlined and bolded statement is completely inaccurate. How can they say this? As per my email to you, Regina and Dr. Holland on Monday, March 22nd, I said, “Ask both Seth and Rob if they will be the chair and EOE respectively. This would be good practice for Seth and Rob has been our EOE on IDT hiring committees in the past. I'll join them and Janet can be given a break from this committee.” Receiving an email form from HR that I am the committee chair and finding out that Dr. Holland will need to serve on this committee is unsettling and unprofessional.

42. Professor Howell further stated:

These emails, amid a dearth of communication from you and the secretary, completely undermine the professional and collegial culture of IDT. Over a year ago, I shared with you a huge problem in IDT. Our secretary was only helping the chair and she was not helping the faculty. I shared with you that this was an easy problem to fix. A decade earlier, our former chair faced this identical problem. At that time, ALL of the IDT faculty complained to him that the secretary was not helping them. He took action and directed that secretary to do a better job assisting the faculty. It worked incredibly well and changed the entire demeanor of the department. In fact, no faculty left the department for over a decade. Even better, that secretary became the 'secret sauce' of IDT. She was helpful to students and to

faculty and to the chair. My suggestion to direct the secretary to help out the faculty was seemingly ignored. In fact, when I brought this up to the Dean, she was completely in the dark on the situation and blamed the faculty for other faculty departing. That is not true. The faculty are leaving because of a lack of secretarial support, and the uninviting environment that this has created. Now, several months farther down the road, as per the first email mentioned above, the secretary expressively stated that she wishes I would leave so you both can get the department moving in a better direction. Dr. Holland and I were taken back with this unprofessional, disarming and harmful narrative. Even worse, the secretary has been hiding communication from us. In addition, she's changed the latest schedules in a way that is forcing students and IDT faculty to leave.

1. In January 2021, shortly before classes started, the secretary changed my classes from 7 weeks in length to 16 weeks without notifying me. I found out from students that my class lengths had been changed. This would have forced them to pay \$250 more for software and some had to drop the course due to the change in the schedule. This was done without consulting me or telling me about it.

2. In February, the secretary did not share schedules with faculty but made choices about class assignments without even asking for input. Forcing Dr. Holland to teach IT727 and myself to teach IT899, classes we've never taught, is something that is detrimental to faculty and students in highly specialized graduate education. Like me, Dr. Holland said she was never asked and didn't even know what IT727 was.

3. In March, I raised 'alarm' about the puzzling schedule that was introduced at the last minute, right before summer schedules were released. The Fall schedule is the worst schedule IDT has put out in 25 years. Eliminating all of the 800 courses in the Fall is going to kill our most popular certificate (eLearning & Online Teaching). Students that want to take one class a semester now must spend 3 years to take the 4 classes in this 'one year' certificate program. Students can now only take the three required classes (IT800, IT820 and IT830) in the Spring. At least one student that just signed up for IDT said she will now have to leave our program if this isn't addressed.

43. In response, the defendant Persinger emailed Murphy on April 6, 2021 stating:

This isn't time sensitive, so don't read this aggravating email until you're in a good place, because it will ruin your mood. This is why I asked about the emails. Since he's now pursuing it I can share the details. But apparently he's portraying your citation of a "buy out" as inappropriate (though he asked us to look into it?) and seems to be claiming that he had no communications (?!?) from either of us about the search committee. I know he sent me at least one communication in which he referred to himself as the chair, that's the icing on the cake if it can be located. I've asked IT if those are on the backups once email is deleted.

Nothing you need to do with this info except to know what he's pursuing should it give you further info about other documentation that would help. I believe I already have enough to address this in mediation should he pursue it. Joan, Zeni and Provost Cordle all aware of this and have no concerns.

No need to comment on any of these assertions and complaints unless you just need to vent. Dr. Howell has already wasted enough of our time this year.

44. Plaintiff filed an EEOC charge against ESU. While that was pending the plaintiff filed suit against all of the defendants under the Kansas Preservation of Religious Freedom Act in May 2021. Defendants engaged in a year-long process to purge him from their ranks.

45. Defendants retaliated against Professor Howell for exercising his rights.

46. Plaintiff is an employee within the meaning of Title VII, 42 U.S.C. §2000e(f), KAAD, K.S.A. 44-1002(c).

47. Plaintiff is a member of a protected class called religion.

48. Defendant Emporia State University is an employer within the meaning of Title VII, 42 U.S.C. §2000e(b), K.AAD, K.S.A. 44-1002(b).

49. As of September 2021, Jim Persinger's understanding of Dusti's practice or observance of religion was as follows:

From an email he sent me dated October 8, 2019 which stated "FYI: For the 23rd year in a row, while here at ESU, I'll be out of town for my annual Christian Holy Days beginning with Atonement (or Yom Kippur) tomorrow in Kansas City and then Tabernacles from Friday, October 11th through Tuesday, October 22nd in Fort Walton Beach, Florida. Classes have been taken care of and GTAs and students have been notified. They've also been told that I will only be checking my email a few times while I'm gone."

From an email he sent me dated August 14, 2020, which stated "I don't check email on the Sabbath (Friday sunset to Saturday sunset which is after 8pm)."

From an email he sent me dated September 29, 2020 which stated "Sorry, I didn't respond yesterday. I was keeping Yom Kippur in K.C. Yeol's wording on this is great. FYI: I'll be gone for a week. My family and I will be flying to Montana on Friday for our Fall church conference. United Church of God will be hosting this church convention complete with social distancing and masks in Glacier National Park. I'll be back on October 12th."

From a document attached to an email he sent to the IDT department dated October 15, 2020, instructing the IDT department to print one copy. A copy of that document (Loneliness is Not Good It Is Not Good For Man To Be

Alone by Dennis Prager: Essay in The Rational Bible: Genesis, 2019, pp. 39-41.) is attached to these interrogatory responses.

From a discussion with Plaintiff sometime in the past two years, in which he described doing missionary work in Thailand and expressed a hope to return there.

50. Murphy responded the same day stating:

Okey-dokes - I just read your email for now. Do You want the link to our meeting minutes where Janet specifically asked Dusti if he was asking you for a buy out? Sharepoint Documents - I'm gimng to make sure only you and I can edit that document

51. Persinger responded: "I thought we had a transcript! That means, unless I deleted it, I have a video of him requesting it as well."

52. Murphy responded:

Nope - I asked you afterward, and you said you did not record that session. Our witnesses would be Janet, who initiated the conversation, and Cate and Manjula, both of whom were still on the Zoom. I checked the dates on communications - our meeting on Zoom was March 15. My email to Janet was March 12 -- I wonder if that's why she asked about that at the meeting?

Odd - There's nothing sinister about me telling Janet that the student files being up-to-date as possible before the end of the semester would make things better for the three of us, or if Dusti were to leave, the two of us.

I guess she shared that with him, and then "set up" that conversation on the Monday meeting?

I don't know - still haven't read the complaint. Do I need a lawyer?

Save the drama for your Mama! lol

53. As of September 2021, Jim Persinger did not know exactly what constitutes exercise of religion as defined under the Kansas Preservation of Religious Freedom Act.

54. As of September 2021, Jim Persinger did not know exactly what constitutes practice or observance of religion under section 7 of the bill of rights of the constitution of the state of Kansas and the free exercise clause of the first amendment to the constitution of the United States, including Dusti's right to act or refuse to act in a manner substantially motivated by his sincerely-held religious tenet or beliefs

55. For 52 years, since the plaintiff Dusti Howell was 7 years old, he has exercised his religion by celebrating festivals including the Feast of Tabernacles. The plaintiff

is a Christian that keeps the Biblical Holy Days like the Feast of Tabernacles and Passover as opposed to traditional days like Christmas and Easter.

56. For 24 years employed as a professor at Emporia State, Dusti's religious exercise was accommodated by Emporia State University until the 2020 school year. At that point the defendants each began deliberate, pretextual, and systematic course of action directed against Dr. Howell in being treated unfavorably and in the disciplining of professor Howell regarding his observances of these Holy Days.

57. Professor Howell was subjected to disparate treatment compared to similarly situated employees because of his religious exercise such as having his work more closely scrutinized, required to provide greater advance notice to fulfill his Holy Day observances as compared to other employees attending non-religious conferences, and being subjected to unrealistic workplace demands.

58. Brewer claimed that a graduate student had been teaching most of Dusti's classes which was untrue (at most it was 20 minutes in two classes). Brewer communicated that there seemed to be a multitude of students complaining when in fact there were only three doing so.

59. Brewer and Persinger directly violated ESU's Policy Manuals in threatening to terminate him.

60. Brewer and Persinger slandered Dusti's religious beliefs ordering him not to follow Jesus' Golden rule (treat others as you want to be treated) but instead to replace it with what they thought was a higher rule called the Platinum rule (treat others the way they want to be treated).

61. Brewer and Persinger sought to have Professor Howell adopt their religious value system and abandon the ones Professor Howell adhered to. Defendants Brewer and Persinger's hostility towards and disrespect for Dr. Howell continued throughout the duration of his employment and up until the day he was constructively discharged.

62. Defendants increased their hostile environment by removing four computers and technology equipment from Professor Howell's office leaving him to teach with an antiquated and problem-riddled 7-year-old laptop. To summarize:

- a. Professor Howell was subject to a series of false accusations and slander.
- b. Brewer failed to provide, and was unwilling to make, accommodations for religious observance. Previously, he worked with the administration as a team to create a schedule that minimized the days he would be required to miss for religious observance.

c. Persinger regularly excluded Professor Howell from work related emails.

d. Regina Murphy, the Department secretary, harassed Professor Howell by changing course lengths shortly before classes started from 7 weeks in length to 16 weeks without notifying him. She assigned him courses and axed his classes without consultation.

e. Persinger and Murphy exchange a flurry of slanderous emails immediately after Howell's Atonement email falsely accusing him and reaching out to students for any complaints.

f. Brewer and Persinger harassed and targeted Dusti with mandates and policies not applicable to others.

63. These hostile work environment actions were designed to coerce or otherwise encourage professor Howell to quit his position which he eventually did because of the discrimination.

64. Plaintiff, while employed as a professor with Emporia State University was subjected to intentional disparate treatment in terms and conditions of employment that were materially different than similarly-situated professors and other employees.

65. While Plaintiff was employed the working environment took on hostile characteristics including statements he perceived as religiously biased and discriminatory.

66. Pursuant to Emporia State's policy on workplace discrimination, the plaintiff communicated to higher authorities about disparate conditions of employment, including such related to treatment, that he perceived were religiously biased in origin. No investigations were initiated as a result of the notification.

67. Plaintiff resigned from his position as a professor manager because of the disparate treatment as well as the persistent, systemic pattern of intentional discriminatory conduct as alleged in this petition.

68. Plaintiff's resignation was constructive in nature and was caused by religious discrimination creating a hostile environment that manifested in, inter alia, disparate treatment.

69. Subsequent to the resignation, the plaintiff suffered loss of status, benefits, and disciplinary actions.

Count 1
VIOLATION OF TITLE VII, 42 U.S.C. § 2000E, ET SEQ.
RELIGIOUS DISCRIMINATION AND RETALIATION

70. Plaintiff incorporates the above as fully set forth.
71. Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e, et seq., makes it unlawful for an employer to discriminate against any individual because the individual has opposed any practice made an unlawful employment practice under the statute, or because the individual has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the statute. 42 U.S.C. §2000e-3(a).
72. An employer may be held liable for a hostile environment based on retaliatory animus.
73. By failing to prevent and permitting a retaliatory hostile work environment, in which, as shown above, Dr. Howell's concerns were for a long time ignored by the Defendant, even as his employment conditions deteriorated further every time he raised concerns about discriminatory treatment, Defendant violated the statute.
74. Defendant Emporia State had previously provided religious accommodations to Professor Howell so that Professor Howell could practice his religion.
75. Those accommodations allowed Professor Howell to notify his department chair in an informal fashion as to the upcoming dates in which Professor Howell would be absent. This custom was followed for approximately 23 years.
76. The prior religious accommodations were reasonable and the defendants were requested to continue providing those which it refused to do.
77. In 2020, and despite the fact Professor Howell's job description had not substantially changed, the defendants, failed to engage Professor Howell in a meaningful dialogue about changing the requirements for any religious accommodation to Professor Howell.
78. Not only did defendants impose unnecessary burdens upon Professor Howell, Emporia State would have suffered no additional undue hardships in continuing the prior 23 year manner of accommodations to Professor Howell.
79. There were no hardships to ESU in providing the religious accommodation to Professor Howell during the 23 years.

80. Whatever burden ESU might have experienced in those 23 years in accommodating Professor Howell, it is a burden ESU has already absorbed, without any demonstrated measurable cost.
81. As *Brown v. Gen. Motors Corp.*, 601 F.2d 956, 960 (8th Cir. 1979) held, “if an employer stands on weak ground when advancing hypothetical hardships in a factual vacuum, then surely his footing is even more precarious when the proposed accommodation has been tried and the postulated hardship did not arise.”
82. Because of professor Howell’s religious beliefs, Emporia State caused significant adverse changes to professor Howell’s employment status.
83. Professor Howell’s grants were diminished or otherwise terminated. Professor Howell was reassigned with significantly different responsibilities. Professor Howell suffered the loss of his benefits.
84. Under Title VII, and having sincerely held religious beliefs of which ESU was undisputedly and fully aware, Dr. Howell belongs to a protected class.
85. When Dr. Howell continued to express his religious identity and faith despite previous attempts to suppress his and others expressions, he was subjected to disparate treatment and unequal terms and conditions of employment including, but not limited to, adverse employment actions for observing Holy Day holidays, removal from teaching classes he had taught, denial of teaching assistance, new limitations on his participation within the Department, hostility, retaliation, and ultimately, constructive termination.
86. By failing to prevent and by permitting a discriminatory and hostile work environment, in which, as shown above, Dr. Howell’s conditions of employment were negatively impacted and his dignity affronted, and which was sufficiently severe and pervasive to unreasonably interfere with his work, the defendants each violated the statute.
87. By treating Dr. Howell differently than his non-Holy Day observing peers, and applying standards to him that ESU did not apply to anyone else, ESU engaged in disparate treatment of Dr. Howell and violated the statute.
88. By constructively terminating Dr. Howell for refusing to accept his being treated worse than all of his non-Holy Day observing peers, Defendant engaged in religious discrimination and violated the statute.

89. Professor Howell was a member of one of the Title VII classes (religion); (2) he was qualified for the professor position; (3) he was constructively discharged; and (4) he was replaced by someone outside the protected class and members outside the protected class were treated more favorably.
90. The impact of the religious discrimination perpetrated by Defendant was pervasive and substantial.
91. Defendant's actions, as described above, caused serious financial and emotional harm to Dr. Howell.
92. The unlawful employment practices of Defendant described and complained of in the paragraphs above were intentional and began only after ESU decided to reduce tenured faculty and when Dr. Howell persisted in his religious exercise.
93. As a result of the Defendant's actions, Plaintiff has suffered, and will continue to suffer, both economic and non-economic damages, emotional distress, and other compensable damages.
94. The unlawful employment practices of Defendant were done with malice and/or reckless indifference to Dr. Howell's protected rights and warrant additional damages.
95. Emporia State, by its illegal discriminatory acts, made the working conditions for Professor Howell so difficult that a reasonable person in his position would feel compelled to resign.
96. Wherefore, the plaintiff requests that the Court grant him the relief requested including the following: compensation for:
 - a. Termination or employee misconduct contained in his personnel file;
 - b. Deterioration in job skills;
 - c. Lost bonus pay;
 - d. Lost seniority;
 - e. Loss of preferential shifts and other adverse impacts on working conditions;
 - f. Loss of wages; and
 - g. Extreme stress and anxiety.

The plaintiff has suffered the losses and damages described in this petition.

WHEREFORE, the plaintiff Dusti Howell requests damages, including lost benefits and wages due to his termination, unpaid lost wages due to wrongful

discharge or constructive discharge, back pay, reinstatement or front pay, pre-judgment and post-judgment interest, additional damages, and compensatory damages, including, but not limited to, damages for pain and suffering, mental and emotional distress, suffering and anxiety, reductions in wages, expenses costs and other damages due to each of the defendant's wrongful conduct; award the plaintiff reasonable attorneys' fees and costs; and grant any other relief that the Court deems just, proper, and equitable.

Count 2

VIOLATION OF THE KANSAS ACT AGAINST DISCRIMINATION, K.S.A. 44-1001 ET. SEQ

97. Plaintiff incorporates the above as fully set forth.
98. Defendant Emporia State violated the Kansas Act Against Discrimination (KAAD).
99. ESU had previously provided religious accommodations to Professor Howell so that Professor Howell could practice his religion.
100. Those accommodations allowed Professor Howell to notify his department chair in an informal fashion as to the upcoming dates in which Professor Howell would be absent. This custom was followed for approximately 23 years.
101. The prior religious accommodations were reasonable and the defendants were requested to continue providing those which it refused to do.
102. In 2020, and despite the fact Professor Howell's job description had not substantially changed, the defendants, failed to engage Professor Howell in a meaningful dialogue about changing the requirements for any religious accommodation to Professor Howell.
103. Not only did defendants impose unnecessary burdens upon Professor Howell, Emporia State would have suffered no additional undue hardships in continuing the prior 23 year manner of accommodations to Professor Howell.
104. There were no hardships to ESU in providing the religious accommodation to Professor Howell during the 23 years.
105. Whatever burden ESU might have experienced in those 23 years in accommodating Professor Howell, it is a burden ESU has already absorbed, without any demonstrated measurable cost.

106. As *Brown v. Gen. Motors Corp.*, 601 F.2d 956, 960 (8th Cir. 1979) held, “if an employer stands on weak ground when advancing hypothetical hardships in a factual vacuum, then surely his footing is even more precarious when the proposed accommodation has been tried and the postulated hardship did not arise.”
107. Because of professor Howell’s religious beliefs, Emporia State caused significant adverse changes to professor Howell’s employment status.
108. Professor Howell’s grants were diminished or otherwise terminated. Professor Howell was reassigned with significantly different responsibilities. Professor Howell suffered the loss of his benefits.
109. Professor Howell was a member of one of the Title VII classes (religion); (2) he was qualified for the professor position; (3) he was constructively discharged; and (4) he was replaced by someone outside the protected class and members outside the protected class were treated more favorably.
110. Emporia State, by its illegal discriminatory acts, made the working conditions for Professor Howell so difficult that a reasonable person in his position would feel compelled to resign.
111. Wherefore, the plaintiff requests that the Court grant him the relief in KAAD and as requested including the following: compensation for:
- a. Termination or employee misconduct contained in his personnel file;
 - b. Deterioration in job skills;
 - c. Lost bonus pay;
 - d. Lost seniority;
 - e. Loss of preferential shifts and other adverse impacts on working conditions;
 - f. Loss of wages; and
 - g. Extreme stress and anxiety.

The plaintiff has suffered the losses and damages described in this petition.

WHEREFORE, the plaintiff Dusti Howell requests damages, including lost benefits and wages due to his termination, unpaid lost wages due to wrongful discharge or constructive discharge, back pay, reinstatement or front pay, pre-judgment and post-judgment interest, additional damages, and compensatory damages, including, but not limited to, damages for pain and suffering, mental and emotional distress, suffering and anxiety, reductions in wages, expenses costs and other damages due to each of the defendant's wrongful conduct; award the plaintiff reasonable attorneys' fees and costs; and grant any other relief that the Court deems just, proper, and equitable.

Jury Trial Requested

By:/s/Linus L. Baker
Linus L. Baker KS 18197
6732 West 185th Terrace
Stilwell, Kansas 66085-8922
913.486.3913
913.232.8734 (fax)
E-Mail: linusbaker@prodigy.net
Attorney for the plaintiff



U.S. Department of Justice
Civil Rights Division
NOTICE OF RIGHT TO SUE WITHIN 90 DAYS

VIA EMAIL

150 M Street, N.E.
Karen Ferguson , EMP, 4CON, Room 9.514
Washington, DC 20530

October 04, 2022

Mr. Dusti Howell
c/o Linus L. Baker, Esquire
Law Office of Linus L. Baker
6732 West 185th Terrace
Stilwell, KS 66085

Re: EEOC Charge Against Emporia State University, et al.
No. 28D202100571

Dear Mr. Howell:

Because you filed the above charge with the Equal Employment Opportunity Commission, and more than 180 days have elapsed since the date the Commission assumed jurisdiction over the charge, and no suit based thereon has been filed by this Department, and because you through your attorney have specifically requested this Notice, you are hereby notified that you have the right to institute a civil action under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, et seq., against the above-named respondent.

If you choose to commence a civil action, such suit must be filed in the appropriate Court within 90 days of your receipt of this Notice.

The investigative file pertaining to your case is located in the EEOC St. Louis District Office, St Louis, MO.

This Notice should not be taken to mean that the Department of Justice has made a judgment as to whether or not your case is meritorious.

Sincerely,

Kristen Clarke
Assistant Attorney General
Civil Rights Division

by /s/ Karen L. Ferguson
Karen L. Ferguson
Supervisory Civil Rights Analyst
Employment Litigation Section

cc: St. Louis District Office, EEOC
Emporia State University, et al.