

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

DR. GAVIN CLARKSON,

Plaintiff,

v.

No.

**BOARD OF REGENTS OF
NEW MEXICO STATE UNIVERSITY,**

Defendant.

**NOTICE OF REMOVAL TO UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

To: UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO

Defendant Board of Regents of New Mexico State University, by and through its counsel of record, Conklin, Woodcock & Ziegler, P.C., and pursuant to 28 U.S.C. §§ 1141 and 1446 and D.N.M.LR-Civ. 81.1, moves this Court to allow removal of the above-entitled action to the United States District Court for the District of New Mexico.

1. On July 27, 2018, a Complaint was filed in the Third Judicial District Court, County of Dona Ana, State of New Mexico. The case was docketed as Cause No. D-307-CV-2018-01611.

2. The Plaintiff is Gavin Clarkson.

3. The Complaint names the Board of Regents of New Mexico State University as the Defendant. The Board of Regents of the New Mexico State University is a governmental entity of the State of New Mexico.

4. In accordance 28 U.S.C. § 1446 and D.N.M.LR-Civ. 81.1, attached hereto as Exhibit

A are copies of all pleadings served upon the Defendant, along with copies of all records filed with the Court in D-202-CV-2017-08418.

5. The Defendant was served with a copy of the Complaint and Summons on or about August 17, 2018. *See* Exhibit A, Return of Service.

6. The Complaint asserts claims under Federal law and New Mexico State law.

7. The Complaint is a civil action over which this Court has jurisdiction pursuant to 28 U.S.C. § 1331 and which is removable by Defendant under the provisions of 28 U.S.C. § 1441(a). Although the Defendant disputes the Plaintiff's claims, the Plaintiff asserts at Paragraphs 91 through 98 that Defendant has violated 42 U.S.C. § 1983 and the Age Discrimination in Employment Act, 29 U.S.C. §§ 621 et seq. *See* Exhibit A, Complaint, ¶¶ 91 through 98. Therefore, this Court has federal question original jurisdiction set forth in 28 U.S.C. § 1331.

8. Pursuant to 28 U.S.C. § 1367, this Court may exercise its supplemental jurisdiction over the claims alleged by Plaintiff under New Mexico State law as the claim forms a part of the same case or controversy as the claim arising under Federal law. *See* Exhibit A, Complaint, ¶¶ 72 through 85.

9. This Notice of removal was filed with this Court within thirty (30) days after service of the Complaint, which is the first pleading naming this Defendant. *See* Exhibit A.

10. Defendant Board of Regents of the University of New Mexico, upon filing of this Notice of Removal, gave written notice of the filing to Plaintiff as required by 28 U.S.C. § 1446(d), and filed a copy of this Notice of removal with the clerk of the Third Judicial District Court, County of Dona Ana, State of New Mexico, the Court from which this action is removed.

11. This Notice of Removal is signed pursuant to Fed. R. Civ. P. 11.

WHEREFORE, the Defendant prays that the above-entitled action be removed from the Third Judicial District Court, County of Dona Ana, State of New Mexico, to this Court.

CONKLIN, WOODCOCK & ZIEGLER, P.C.

By /s/ Christa M. Hazlett
Christa M. Hazlett
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Attorneys for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 14th day of September, 2018, I filed the foregoing electronically through the CM/ECF system, which caused all counsel of record to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

Brian J. Pezzillo
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Las Vegas, NV 89169
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/s/ Christa M. Hazlett
Christa M. Hazlett

STATE OF NEW MEXICO
COUNTY OF DOÑA ANA
THIRD JUDICIAL DISTRICT COURT

DR. GAVIN CLARKSON, an individual,

Plaintiff

Case No. D-307-CV-2018-01611

v.

Judge: Beyer, Marci

BOARD OF REGENTS OF NEW MEXICO
STATE UNIVERSITY,

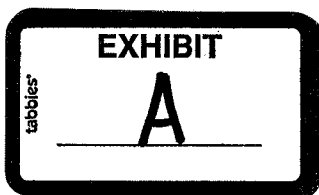
Defendants

COMPLAINT

COMES NOW, DR. GAVIN CLARKSON seeking injunctive relief and damages against
Defendant New Mexico State University ("NMSU");

FACTS COMMON TO ALL CLAIMS FOR RELIEF

1. Dr. Gavin Clarkson, age 49, is an enrolled member of the Choctaw Nation, a federally recognized Indian tribe, and was an Associate Professor in the College of Business at New Mexico State University until April 27, 2018.
2. Dr. Clarkson has a BA and MBA from Rice University, is a *cum laude* graduate of the Harvard Law School where he was President of the Native American Law Students Association and Managing Editor of the Harvard Journal of Law and Technology. The first tribal member to earn a doctorate from the Harvard Business School (in Technology and Operations Management).
3. Dr. Clarkson has published extensively on both intellectual property strategy, tribal finance and economic development, and is a leading scholar on tribal finance and economic



development. Upon information and belief, it is alleged that he has sole-authored more law review articles than the entire rest of the NMSU business law faculty combined.

4. Dr. Clarkson was specifically recruited by Dr. Garrey Carruthers to the College of Business at NMSU to “do Indian stuff,” including being the faculty sponsor of the Native American Business Students Association and increasing the amount of tribal finance and economic development research at NMSU.

5. In part, because of his academic credentials and nationally-recognized research expertise, Dr. Clarkson was appointed as the Deputy Assistant Secretary for Policy and Economic Development (“DASPED”) in the Department of the Interior in June of 2017.

6. Dr. Clarkson had also been offered the position of Deputy Director of Indian Energy Policy and Programs in the Department of Energy, but after careful consideration, chose the position at the Department of the Interior instead.

7. Pursuant to NMSU’s Administrative Rules and Procedures (“ARP”) §8-53, Dr. Clarkson requested and was granted a professional leave of absence until January, 2020 in a written letter from Provost Howard dated June 28, 2017.

8. Additionally, the written document from Provost Howard specifically granted Dr. Clarkson a pause in his tenure clock until the Fall of 2020.

9. Dr. Clarkson requested the option of extending the leave for an additional 12 months until January 2021. Provost Howard denied that request in the written grant of leave.

10. Dr. Clarkson requested that, upon his return to the faculty, he be given control of the Indian Resource Development Program. Provost Howard denied that request in the written grant of leave.

11. ARP §8.53-G states “All conditions of professional leave without pay, including the status of the individual upon return to the university and (if appropriate) the effect of this period on tenure and promotion eligibility, must be in writing prior to the leave period.” Nowhere in the written grant of leave from Provost Howard are any conditions specified under which Dr. Clarkson’s leave could be unilaterally cancelled by NMSU or Provost Howard.

12. At the time of his appointment as DASPED, Dr. Clarkson was preparing to teach an online course at NMSU, and he didn’t want to abandon his students, so he requested that his leave begin after the end of the summer semester. He then requested and was granted ethics clearance by the Department of Interior to teach the course while he served as the DASPED.

13. NMSU has previously attempted to discriminate against and terminate Dr. Clarkson on at least one other occasion. Approximately two weeks after Dr. Clarkson attended the presidential inauguration in January 2017, a defamatory dossier was submitted to his supervisors alleging that he had engaged in plagiarism. Since Dr. Clarkson is the nation’s leading scholar in tribal finance, however, they were unable to document any cases of actual plagiarism and instead compiled a dossier alleging “self-plagiarism.”

14. The fake dossier contained passages that Dr. Clarkson periodically re-uses, with proper attribution, from earlier articles. The dossier omitted these attributions in an attempt to persuade the P&T committee not to renew Dr. Clarkson’s contract.

15. Based on information obtained in a separate administrative hearing, one of the professors behind this effort, Professor Nancy Oretskin, admitted under oath that she had been involved in targeting Dr. Clarkson for years. Oretskin had also publicly denigrated Dr. Clarkson’s scholarship regarding Indian tribes and had declared that it was a waste of time to teach anything regarding Indians to business law students in New Mexico.

16. Additionally, in or around August, 2014, during an NMSU governmental relations meeting, Defendant Dean Hoffman commented that he would prefer someone other than Dr. Clarkson to run a specific Native American program because he wanted someone who “looked more like a New Mexican Indian.”

17. As noted above, Dr. Clarkson is a member of the Choctaw nation.

18. During the time that Dr. Clarkson was serving in Washington D.C., Congressman Steve Pearce decided to run for Governor of New Mexico instead of seeking another term in Congress. Dr. Clarkson began seriously considering leaving Interior and running for the open seat, given that one of his mentors, Garrey Carruthers, had taken a similar path.

19. In November, 2013, a false news story appeared in the Washington Post alleging that Dr. Clarkson had resigned because of a report about problems with the Indian Loan Guarantee Program during the Obama Administration.

20. On November 15, 2017, Provost Howard acknowledged receipt of the false news story, but he took no steps to contact Dr. Clarkson or cancel his leave.

21. Provost Howard would later testify, under oath, that as of November 15, 2017 he fully expected that Dr. Clarkson would be rejoining the faculty in January 2018. Based on information and belief, his statement was demonstrably false. Furthermore, the Provost took no steps whatsoever indicating any expectation that Dr. Clarkson would be returning to the faculty anytime other than January 2020.

22. On December 14, 2017, Dr. Clarkson received email correspondence confirming that he was still on professional leave of absence.

23. On December 29, 2017, Dr. Clarkson submitted a letter of resignation to Secretary Zinke.

24. Upon information and belief it is alleged that NMSU wrongly claims that the act of resigning from the Department of the Interior resulted in revocation of Dr. Clarkson's leave.
25. Despite claims that Dr. Clarkson's leave of absence was terminated by his resignation, upon information and belief it is alleged that NMSU took no action to return him to the faculty and did so only after his announcement that he was running for Congress.
26. On January 1, 2018, Dr. Clarkson moved back to Las Cruces and started preparing for his upcoming campaign for New Mexico's 2nd Congressional District.
27. On January 4th, Finance Department head Harikumar Sankaran emailed Dr. Clarkson that he is assuming that Dr. Clarkson will return for the Fall 2018 semester. No mention is made of teaching in Spring 2018 or cancellation of Dr. Clarkson's leave.
28. As a courtesy, Dr. Clarkson replied back to Sankaran indicating that he is running for Congress.
29. On January 5, 2018, Sankaran reminded the Provost in an email that Dr. Clarkson was on leave even through the Fall of 2018. The Provost's written response does not contradict the statement that Dr. Clarkson remains on leave.
30. Also, on January 5th, 2018, Dr. Clarkson filed paperwork to enter the race as a Republican for New Mexico's 2nd Congressional District.
31. On January 8th, 2018, Dr. Clarkson formally announced his candidacy at a meeting of Doña Ana County Republicans.
32. On January 9th, 2018, the Las Cruces Sun-News ran a story about Dr. Clarkson's running for Congress, highlighting, among other items, his membership in an Indian tribe and his having been "named the nation's 'leading scholar in tribal finance' by The Financial Times [and having] been cited by Bloomberg, the Wall Street Journal and USA TODAY on matters of tribal finance

and federal Indian law.” Other national publications similarly highlight Dr. Clarkson’s tribal heritage.

33. On January 9th, Provost Howard and General Counsel Lizbeth Ellis initiated a conversation on how to respond.

34. On January 10th, Sankaran asks Dr. Clarkson to schedule a meeting with himself, the Associate Dean and the Dean of the College of Business to discuss the status of his leave. He mentions that several options regarding the leave will be on the table. He also sent a Doodle Poll meeting request.

35. Additionally, on January 10th, the assistant to the Provost wrote a message asking the Dean to “hold off on talking [about] options for the Clarkson leave of absence until [he had] talked with the Provost.” This change in direction was allegedly based on “new information.”

36. Faculty were to report to campus by January 11, 2018 in conjunction with the beginning of the next semester. The first paycheck for faculty would have been issued January 12, 2018 covering the time period between January 1, 2018 and January 15, 2018.

37. Upon information and belief it is alleged that at 6:08pm on January 11th, Sankaran emailed that “I was advised the NMSU Attorney General Liz Ellis that the Provost is going to send a letter with options to Gavin. Until then we will not be meeting.”

38. On Friday morning, January 12th, Dr. Clarkson voluntarily attended the Finance Department faculty meeting. He reminded everyone that he is on leave while he is running for office. At that meeting nobody disputed that he was on leave, and it is confirmed that he is not on the schedule to teach in the Spring of 2018.

39. Later on January 12th, at the end of the day before the Martin Luther King holiday weekend, Provost Howard sent Dr. Clarkson a letter revoking his leave and demanding that he either resign immediately or return to campus the next business day.

40. Dr. Clarkson attempted to call Provost Howard back within a few minutes of receiving the letter, but according to his assistant, he had already left for the day. Dr. Clarkson gave the assistant his personal cell phone number and asked that the Provost call him to discuss. No such call took place until the following week.

41. Dr. Clarkson did not receive a paycheck from NMSU on January 12, 2018.

42. If, as NMSU claims, they were anticipating Dr. Clarkson's return to campus for the Spring of 2018, then Dr. Clarkson should have received a paycheck on January 12, 2018, which did not occur.

43. On January 16th, Dr. Clarkson voluntarily attended the College of Business convocation and "checked in" with Finance Department Head Sankaran.

44. Also on January 16th, Sankaran mentioned in an email to the Provost that the General Counsel had made some disparaging remarks regarding Dr. Clarkson's presence on campus, presumably because Dr. Clarkson had previously flown back to Houston to take care of his teenage son and elderly mother.

45. No mention was made of monitoring other faculty member's presence on campus. NMSU has claimed attorney-client privilege in order to keep such relevant information from Dr. Clarkson.

46. Upon information and belief it is alleged that in that same email, there was a discussion about hindering Dr. Clarkson's run for Congress

47. In Response, the Provost indicated that Dr. Clarkson is to be on campus at all times (a requirement that is not imposed on any other faculty member anywhere at NMSU). He also declared that Dr. Clarkson will have to go up for tenure two years earlier than promised in the grant of professional leave.

48. On Wednesday, January 17th, the Provost called Dr. Clarkson on his personal cell phone. In that conversation, the Provost claimed that the leave was automatically cancelled the moment that Dr. Clarkson resigned his position within the Presidential administration. The Provost further claimed that he was aware in November 2017 that Dr. Clarkson would be leaving the Interior and was expecting him back on campus for Spring 2018.

49. During the conversation the Provost stated that the leave was only for the position of Deputy Assistant Secretary at Interior. He claimed that if Dr. Clarkson had changed jobs in the Trump Administration, either to the position at the Department of Energy or presumably a promotion within Interior, the leave would still have automatically cancelled although no such restrictions were ever made in writing prior to Dr. Clarkson's leave.

50. Upon information and belief it is alleged that the Provost pretextually told Dr. Clarkson that the leave was being cancelled because his presence was desperately needed on campus. Dr. Clarkson told the provost that he was willing to teach classes while on leave if there was a curricular need. The Provost then told Dr. Clarkson to work out an arrangement with Dean Hoffman.

51. Dr. Clarkson then had a subsequent call with Dean Hoffman during which Dr. Clarkson repeated his offer to teach courses while on leave if there is a curricular need.

52. On Friday, January 19th, Sankaran emailed Dr. Clarkson indicating that he is being scheduled for three intensive “mini-mester” courses, one of which Dr. Clarkson had never taught and one of which he had never taught in the “mini-mester” format.

53. In the same email, and confirmed in others, he asked Dr. Clarkson to meet with himself and Dean Hoffman to discuss the proposed teaching assignments. No mention is made of attorneys being present in the meeting request.

54. On January 23rd, Dr. Clarkson was ambushed in the meeting by both Provost Howard and General Counsel Ellis. Since he was not afforded the opportunity to have his own attorney present, he declined to continue the meeting. Dr. Clarkson did point out that, and it was acknowledged by the Dean, that Dr. Clarkson had not been returned to the NMSU payroll as of January 23rd, midway through the second pay period of the Spring 2018 semester.

55. In the event that it was expected that Dr. Clarkson was to return to the faculty in the Spring of 2018, he would have already been added to the payroll and would have received at least one paycheck.

56. On January 24, 2018, also at close of business, HR, Employee, and Labor Relations Director Ralph Lucero emailed Dr. Clarkson a letter from the Provost proposing his termination.

57. On January 25, 2018, however, Dr. Clarkson received an email indicating that he had been returned to work as of January 16, 2018 and would receive a paycheck on January 31, 2018. Dr. Clarkson replied that he had not returned to work and was still on leave until January 2020.

58. On January 31, 2018, Dr. Clarkson filed a timely appeal of the proposed termination.

59. Despite Dr. Clarkson’s request for relevant documents, Defendants refused to turn over many of the requested documents and they improperly claimed attorney client privilege for

others. They also refused to allow an investigator to interview witnesses in order to prepare witness statements.

60. NMSU also continued to engage in hostile actions against Dr. Clarkson. In particular, when Dr. Clarkson made a reasonable request in February for the NMSU College Republicans to be able make a room reservation, he was met with aggressive hostility and had to escalate the request to the highest levels in the University and point out that one of the attendees at the meeting would be Congressman Steve Pearce, a distinguished alumnus. Eventually the university relented and allowed the College Republicans to have their organizational meeting.

61. In late February 2018, NMSU asked for, and Dr. Clarkson agreed to, a postponement of the administrative "Pre-Action Determination Hearing," the first step in the appeals process.

62. After additional NMSU delays and a continued refusal to provide all relevant information and access to witnesses, the Pre-Action Determination Hearing took place on Friday, April 13, 2018.

63. NMSU selected a hearing officer, Ralph Lucero, who was not only hired by Provost Howard but directly reports to Provost Howard. Provost Howard was acting as the lead prosecutor in the hearing, and despite Dr. Clarkson's objections to the obvious conflict of interest, the hearing officer did not recuse himself.

64. At the hearing, both the Provost and the Dean admitted, under oath, that neither of them took any actions whatsoever regarding Dr. Clarkson's leave until after he announced his run for Congress.

65. The Provost also admitted, under oath, that nothing in the grant of professional leave gave the Provost the authority to unilaterally cancel the leave.

66. As expected, given the fundamental lack of due process and inherent conflicts of interest, the hearing officer ruled in favor of his direct superior and against Dr. Clarkson.

67. The hearing officer did not apply the appropriate standard for burden of proof Clarkson says, nor did he apply it against the correct party, which should have been NMSU. The opinion itself ignored the plain text of the leave granting document and instead engaged in contract by inference and anecdote as opposed to the rule of law.

68. Despite ruling against Dr. Clarkson and in favor of his direct superior, Provost Howard, the hearing officer nevertheless found NMSU's conduct troubling, saying NMSU's "communication with Dr. Clarkson has been antagonistic, especially at the Department and College levels, with limited attempts to seek mutual understanding and establish a positive protocol of communication and interaction."

69. Despite being within the 5-day appeal window, the Provost sent a notice of termination on April 24. There was a disingenuous offer for Dr. Clarkson to be reinstated provided that he remain in his office on campus at all times, even though he had no students and no classes. This offer was clearly intended to make it impossible for Dr. Clarkson to continue to campaign, and the "office arrest" provision has never been imposed on any faculty member at NMSU. The letter acknowledged that an appeal of the Pre-Action Determination Hearing was possible.

70. On April 25, Dr. Clarkson filed a timely appeal of the Pre-Action Determination Hearing to the faculty senate, pursuant to ARP §10-50-N.

71. On April 30, despite the pending appeal, Dr. Clarkson's employment was terminated effective April 27, 2018. Upon information and belief it is alleged that by choosing this date, NMSU attempted to put additional pressure on Dr. Clarkson because his son's health insurance would also be cancelled on that date.

**FIRST CAUSE OF ACTION
(Wrongful Termination)**

72. Plaintiff incorporates the allegations of the preceding paragraphs as if set forth in full.

73. NMSU ARP §8-53-G clearly states that “All conditions of professional leave without pay, including the status of the individual upon return to the university and (if appropriate) the effect of this period on tenure and promotion eligibility, must be in writing prior to the leave period.”

74. NMSU has stipulated that no conditions exist in the leave granting document that allow the Provost to cancel.

75. The hearing officer who conducted the pre-determination hearing incorrectly found that because Provost Howard granted a leave of absence he must necessarily be empowered to unilaterally alter the terms of the leave of absence.

76. NMSU has created and granted a right to certain administrative procedures and rights, but has denied Plaintiff those rights, in the course of his termination.

77. Upon information and belief it is alleged that NMSU does not believe a contract exists between the parties which would otherwise confer rights upon Plaintiff.

78. Upon information and belief, it is alleged that the reasons provided for Plaintiff’s termination were pretextual in nature and failed to provide a legitimate bases for his termination.

**SECOND CAUSE OF ACTION
(Denial of Due Process)**

79. Plaintiff incorporates the allegations of the preceding paragraphs as if set forth in full.

80. Both the New Mexico and United States Constitutions provide for substantive and procedural due process when state action is involved and a deprivation of rights occurs.

81. NMSU administrative regulations likewise expressly confirm that Due Process will be afforded a party prior to termination.

82. The hearing process at NMSU was fundamentally flawed from the beginning, and Dr. Clarkson's interest in his leave was arbitrarily undermined.

83. Dr. Clarkson was denied access to relevant documents, was not allowed to interview witnesses prior to the hearing.

84. At the time this Complaint is filed, Plaintiff has still not been afforded all relevant documents which had been requested prior to the pre-determination hearing.

85. Plaintiff was denied the opportunity to present his case in full and was not afforded an impartial tribunal as the hearing officer was selected by, and directly answers to the party seeking to terminate Plaintiff.

**THIRD CAUSE OF ACTION
(Breach of Contract)**

86. Plaintiff incorporates the allegations of the preceding paragraphs as if set forth in full.

87. Alternatively, it is alleged that the document granting Dr. Clarkson's professional leave of absence is a contract which granted rights to Dr. Clarkson.

88. Any ambiguities in the contract must be construed against against NMSU as the drafter of the contract.

89. NMSU breached the plain language of the contract when Provost Howard unilaterally, and without any authority under law or regulation, revoked Dr. Clarkson's leave.

90. A second breach occurred when the Provost ordered Dr. Clarkson to go up for tenure in the Fall of 2018 rather than the Fall of 2020.

FOURTH CAUSE OF ACTION
(Violation of 42 U.S.C. §1983 - Racial Discrimination)

91. Plaintiff incorporates the allegations of the preceding paragraphs as if set forth in full.

92. Dr. Clarkson is an enrolled member of the Choctaw Nation of Oklahoma, a federally recognized tribe.

93. Dr. Clarkson joined the NMSU faculty in 2012 along with two other American Indians.

94. Throughout his employment, Dr. Clarkson has endured a hostile work environment attributable to his race.

95. Currently, neither Dr. Clarkson, nor the two other American Indians are employed by NMSU.

96. Dr. Clarkson has been forced to endure comments and opinions, including that he did not look New Mexico Indian enough for particular positions.

97. Because plaintiff is in a protected class and can establish a prima facie case, the burden of proof is on NMSU to prove that they have not violated Executive Order 11246, Title VII of the Civil Rights Act of 1964, Title VI of the Civil Rights Act of 1964, or §188 of the Workforce Investment Act of 1998. *Griffis v. City of Norman*, 232 F 3d 901 (10th Cir. 2000).

FIFTH CAUSE OF ACTION
(Age Discrimination)

98. Dr. Clarkson is over 40 and is therefore a member of a protected class. Untenured faculty in the Finance Department at NMSU younger than 40 were given a lighter teaching load than untenured faculty over 40. Because plaintiff is in a protected class and can establish a prima facie case, the burden of proof is on NMSU to demonstrate that it has not violated the Age Discrimination Act of 1975, The Age Discrimination in Employment Act of 1967, or §188 of the Workforce Investment Act of 1998. *Griffis v. City of Norman*, 232 F 3d 901 (10th Cir. 2000)

Relief Sought

99. Dr. Clarkson asks this court to issue an order enjoining NMSU from processing his termination until all administrative appeal rights have been exhausted. Dr. Clarkson further asks this court to compel NMSU to undo all actions taken since April 26, 2018 regarding Dr. Clarkson's employment and leave status, particularly the cancellation of his son's health insurance;

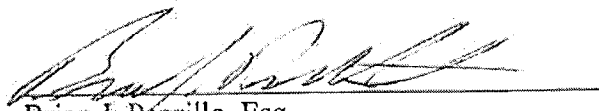
100. Dr. Clarkson seeks damages for the pain and suffering caused by NMSU's hostile and discriminatory actions;

101. Monetary damages in an amount to be proven at trial;

102. Attorneys' fees and costs; and,

103. Any other appropriate relief which the evidence in the case may support and the Court finds appropriate.

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STATE OF NEW MEXICO
COUNTY OF DOÑA ANA
THIRD JUDICIAL DISTRICT COURT

DR. GAVIN CLARKSON,
Plaintiff,

D-307-CV-2018-1611
JUDGE: MARCI BEYER

BOARD OF REGENTS OF NEW MEXICO
STATE UNIVERSITY,
Defendant.

ORDER REQUIRING SCHEDULING REPORTS,
A DISCOVERY PLAN, EXPERT WITNESS DISCLOSURE,
AND LIMITING STIPULATIONS TO ENLARGE TIME
FOR RESPONSIVE PLEADINGS

IT IS SO ORDERED:

- A. Plaintiff shall serve a copy of this order on each defendant with the summons and complaint and file a certificate of such service. Parties other than plaintiffs who assert claims against others who have not been served with this order shall serve a copy of this order on those against whom they assert claims with the pleading asserting such claims and shall file a certificate of such service.
- B. Within sixty (60) calendar days after the initial pleading is filed, parties of record shall file a scheduling report with copies to opposing parties and the assigned judge. Parties shall confer and are encouraged to file a Joint Scheduling Report, LR3-Form 2.12 NMRA for Track A or LR3-Form 2.13 for Tracks B and C, or, if they cannot agree, file an individual Scheduling Report, LR3-Form 2.13 NMRA. *See* copies of forms attached hereto.
- C. Any party who enters an appearance in the case more than sixty (60) calendar days after the filing of the initial pleading shall file a scheduling report within ten (10) business days and deliver a copy to the assigned judge.

- D. If all parties are not of record within sixty (60) calendar days of the filing of the initial pleading, the party making claims against the absent parties (*Plaintiff for Defendants, Third-Party Plaintiffs for Third-Party Defendants, etc.*) shall, within five (5) business days after the sixtieth (60th) day, file and serve parties of record and deliver to the assigned judge, a written explanation following LR3-Form 2.14 NMRA, "Delay in Putting the Matter at Issue."
- E. Counsel or parties who do not have attorneys may not stipulate to an enlargement of time greater than fourteen (14) calendar days for the filing of a responsive pleading without a motion and order. The motion shall state with particularity the reason(s) an enlargement is in the best interests of the parties. A copy of the motion and stipulation shall be delivered to all parties as well as counsel. The enlargement requested shall be for a specified time.
- F. When all parties have been joined and the case is at issue, the parties shall immediately notify in writing the assigned judge and the alternative dispute resolution coordinator.
- G. If appropriate, the court will refer this matter to settlement facilitation under Part VI of the Local Rules of the Third Judicial District Court.
- H. Within seventy-five (75) calendar days from the date the initial pleading is filed, or fifteen (15) calendar days after the case is at issue if LR3-Form 2.14 NMRA has been filed, the parties shall either:
- (1) stipulate to a discovery plan and file the stipulation with the court, or
 - (2) request a hearing to establish a discovery plan pursuant to Paragraph F of Rule 1-026 NMRA.
 - (3) In the absence of a stipulated discovery plan or a timely request from a party for a hearing to establish a discovery plan, the following plan shall go into effect:
Within one hundred (100) calendar days after the initial pleading was filed or fifteen (15) calendar days after a party has entered the suit, whichever is the later date, each party shall provide to all other parties:
 - a. The name and, if known, the address and telephone number of each individual likely to have discoverable information relevant to disputed issues raised by the

pleadings, identifying the subjects of the information;

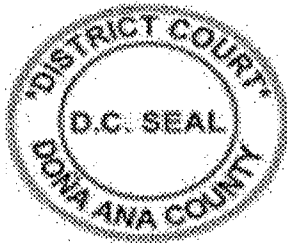
- b. A copy of, or a description by category and location of, all documents, data compilations, and tangible things in the possession, custody, or control of the party that are relevant to disputed issues raised by the pleadings;
- c. A computation of any category of damages claimed by the disclosing party, providing copies or making available for inspection and copying the documents or other evidentiary materials and medical records and opinions, not privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries suffered;
- d. For inspection and copying, any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment;
- e. If the medical condition of a party is at issue, such party shall give a medical release authorization to opposing parties. The parties shall confer regarding the nature and extent of the release and stipulate, if possible. If the parties cannot agree, each party shall file a memorandum with a proposed medical release authorization advocating that party's proposed form to the court. A copy of the memorandum and proposed form shall be delivered to the assigned judge. Rule 1-007.1 NIMRA shall apply.

- I. Pursuant to Rule 1-026(E) NMRA, parties shall reasonably supplement discovery required in Subparagraphs (3)(a) through (e) of Paragraph H of this Order.
- J. Intent to Call Expert Witness - Disclosure. No later than sixty (60) calendar days after filing their respective pleading or responsive pleading, all parties shall exchange a "Notice of Intent to Call Expert Witness(es)". The parties shall list the names, addresses and phone numbers for all anticipated experts, including a brief summary of the subject matter of each witness' testimony. If an expert has not yet been identified by a party, the parties must list the specialized area(s) in which

an expert is anticipated to be retained and a brief summary of the areas or issues on which the expert is expected to testify. With respect to each expert listed, all parties are to observe their continuing duty to timely supplement discovery and shall further abide by the requirements of Section 8 of the attachment to the Rule 16(B) Scheduling Order.


DISTRICT COURT JUDGE

July 30, 2018



David S Borunda
Clerk f the District Court



Deputy – Guillermo A. Saenz,

LR3-Form 2.12

Supreme Court Approved
August 6, 2004

STATE OF NEW MEXICO
COUNTY OF DOÑA ANA
THIRD JUDICIAL DISTRICT COURT

Plaintiff

vs.

NO.: D-307-CV
Judge:

Defendant

JOINT SCHEDULING REPORT STIPULATING TO TRACK A

Come now all the parties to this case, (by their counsel of record) and stipulate as follows:

- 1 The court has subject matter and personal jurisdiction, and venue is proper.
- 2 This case is appropriate for assignment to Track A
- 3 The parties do not intend to amend the pleadings or file dispositive motions
- 4 All parties will be ready for trial *by* _____ *(no more than six (6) months from filing of complaint)*
- 5 Witness lists will be exchanged and filed forty-five (45) days before trial
- 6 Discovery limited to interrogatories, requests for production and admission and no more than two (2) depositions per party.
- 7 All parties and counsel will either (a) select a facilitator by agreement of the parties, or (b) request the court's ADR coordinator to select a facilitator and will engage in a settlement conference within ninety (90) days from the date of the filing of the complaint.

The parties may move for enlargement of time for the settlement conference for good cause shown The parties shall share the facilitator's fee, if any, equally.

8. Exhibits: exchanged at least fifteen (15) days before trial.

This (jury ____ 6 ____ 12 nonjury ____) matter will take ____ hours to try.

9. Conflicting court hearings (or other conflicts which show good cause for not setting trial)
for two (2) months following the date the matter is ready for trial:

10. Other: _____

SUBMITTED BY:

Name of party: _____
Attorney: _____
Address: _____
Telephone Number _____

Name of party: _____
Attorney: _____
Address: _____
Telephone Number _____

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I mailed, delivered or faxed a copy to the assigned judge and each party or each party's attorney on the ____ day of _____, 20____

Signature

LR3-Form 2.13. (_____ 's) (joint) scheduling report.

STATE OF NEW MEXICO
COUNTY OF DOÑA ANA
THIRD JUDICIAL DISTRICT COURT

_____, Plaintiff

vs.

NO.: D-307-CV

Judge:

_____, Defendant

(_____ 'S) (JOINT) SCHEDULING REPORT

1. This case should be assigned to Track _____.
2. Jurisdiction and Venue: _____ Stipulated; _____ Disputed;
Why: _____
3. _____ Non Jury; _____ 6-person jury; _____ 12-person jury.
4. Significant legal issues, if any: _____

5. Trial witnesses presently known (defendant's, plaintiff's, etc.): _____
State expert type: _____
6. Settlement:
_____ [I] [We] have sufficient information to evaluate the case.
_____ [I] [We] have provided sufficient information for opposing parties to evaluate the case.
_____ [I][We] need the following information from _____ to evaluate the case: _____

_____ [I] [We] need the following discovery to obtain information sufficient to evaluate the case:

_____ Explain why such information cannot be obtained informally without formal discovery:

_____ [I] [We] have scheduled a settlement conference on _____, 20_____
with _____ (*facilitator*) or have requested the court's ADR coordinator to refer to facilitation.

Or

_____ [I] [We] request that this not be referred to facilitation because:

The possibility of settlement is _____ good, _____ fair, _____ poor.

7. Discovery:

[I] [We] estimate it will take _____ months to complete discovery. (*Attach discovery plan if stipulated, or request for setting a discovery conference if wanted.*) If any party requests a discovery conference, answer the following:

The party submitting this scheduling report intends to do the following discovery:

(If this is a joint scheduling report, each party shall answer this question.)

[Plaintiff] [Defendant] intends to do the following discovery:

8. [I] [We] estimate that trial will take _____ court days to try-

9. Dates counsel will not be available for trial due to the following conflicting court settings (*beginning with the date immediately following the time you estimate discovery will be completed*). _____

10. Stipulations: _____

11. Other: _____

SUBMITTED BY:

Name of party: _____
Attorney: _____
Address: _____
Telephone Number _____

Name of party: _____
Attorney: _____
Address: _____
Telephone Number _____

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I mailed, delivered or faxed a copy to the assigned judge and each party or each party's attorney on the ____ day of _____, 20____

Signature

STATE OF NEW MEXICO
COUNTY OF DOÑA ANA
THIRD JUDICIAL DISTRICT COURT

DR. GAVIN CLARKSON, an individual,

Plaintiff

Case No. D-307-CV-2018-01611

v.

Judge: Beyer, Marci

BOARD OF REGENTS OF NEW MEXICO
STATE UNIVERSITY,

Defendants

RETURN OF SUMMONS

4-206. Summons.

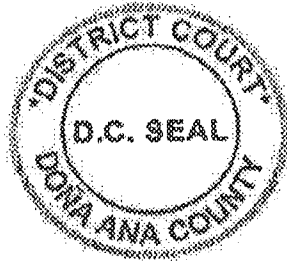
[For use with District Court Civil Rule 1-004 NMRA]

SUMMONS	
District Court: Third Judicial DOÑA ANA County, New Mexico	Case Number: D-307-CV-2018-01611
Court Address: 201 W Picacho Ave, Las Cruces, NM 88005	Judge: Beyer, Marci
Court Telephone Number.: (575) 523-8200	
Plaintiff(s): Dr. Gavin Clarkson v. Defendant(s): Board of Regents of New Mexico State University	Defendant Name: Board of Regents of New Mexico State University Address: 2650 N Weddell Dr, Las Cruces, NM 88003

TO THE ABOVE NAMED DEFENDANT(S): Take notice that

1. A lawsuit has been filed against you. A copy of the lawsuit is attached. The Court issued this Summons.
 2. You must respond to this lawsuit in writing. You must file your written response with the Court no later than thirty (30) days from the date you are served with this Summons. (The date you are considered served with the Summons is determined by Rule 1-004 NMRA) The Court's address is listed above.
 3. You must file (in person or by mail) your written response with the Court. When you file your response, you must give or mail a copy to the person who signed the lawsuit.
 4. If you do not respond in writing, the Court may enter judgment against you as requested in the lawsuit.
 5. You are entitled to a jury trial in most types of lawsuits. To ask for a jury trial, you must request one in writing and pay a jury fee.
 6. If you need an interpreter, you must ask for one in writing.
 7. You may wish to consult a lawyer. You may contact the State Bar of New Mexico for help finding a lawyer at www.nmbar.org; 1-800-876-6227; or 1-505-797-6066.
- Dated at Las Cruces, New Mexico, this 7th day of 2018
20_____

David S. Borunda
CLERK OF COURT

By: 

aintiff or

RETURN OF SUMMONS

STATE OF NEW MEXICO)

) ss.

COUNTY OF DONA ANA)

D-307-CV-2018-1611

I, being duly sworn upon my oath, state that I am over the age of 18 years and not a party to this lawsuit, and that I served a copy of the within Summons in said county of the 17th day of August, 2018, by delivering a copy of this summons, with a copy of the complaint, in the following manner:

☐ to Defendant/Respondent _____ (used when Respondent receives copy of Summons or refuses to receive Summons).

☐ to the Defendant/Respondent by [mail] [courier service] as provided by Rule 1-004 NMRA (used when service is by mail or commercial courier)

After attempting to serve the summons and complaint on the Defendant/Respondent by personal service or by mail or commercial courier service, by delivering a copy of this summons, with a copy of complaint attached, in the following manner:

☐ to _____, a person over 15 years old residing at the usual place of abode of the Defendant/Respondent, (used when the defendant/respondent is not presently at the place of abode) and by mailing by first class mail to the defendant at _____ a copy of the summons and complaint.

☐ to _____, an agent authorized to receive service of process of behalf of Respondent _____

☐ to _____, the [parent] [guardian] [custodian] [conservator] [guardian ad litem] of Defendant/Respondent _____ (used when the Defendant/Respondent is a minor or incompetent person).

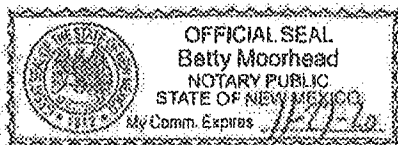
☒ to Stela Heredia, secretary (name of person) General Counsel (title of person authorized to receive service. Use this alternative when is a corporation of association subject to a suit under a common name, a land grant board of trustees, the State of New Mexico or any political subdivision).

FEES:

signature of person making service

Jack Rakowski process server 575 805-9058

SUBSCRIBED AND SWORN TO before me this

22 day of Aug, 2018.

Betty Moorhead
Officer Authorized to Administer Oath, Judge,
Notary or other officer



Attorney's Aid Process Service

We serve process in Las Cruces,
and surrounding counties.

575 805-9056
fax 575 652-4051

Jack@NM-Process-Server.com
www.NM-Process-Server.com

Jack Rokowski
P.O. Box 13567
Las Cruces NM 88013

A member of New Mexico Process Server Association

8-17-18 2:15pm Friday
Hand delivered by
Process Server - Jack Rokowski
to Estela Heredia, Legal Asst.,
Univ. General Counsel, NMSU

AUG 17 2018

4-206. Summons.**Office of General Counsel**

[For use with District Court Civil Rule 1-004 NMRA]

SUMMONS	
District Court: <u>Third Judicial</u> <u>DOÑA ANA</u> County, New Mexico	Case Number: D-307-CV-2018-01611
Court Address: 201 W Picacho Ave, Las Cruces, NM 88005	Judge: Beyer, Marci
Court Telephone Number.: (575) 523-8200	
Plaintiff(s): Dr. Gavin Clarkson v.	Defendant
Defendant(s): Board of Regents of New Mexico State University	Name: Board of Regents of New Mexico State University Address: 2850 N Weddell Dr, Las Cruces, NM 88003

TO THE ABOVE NAMED DEFENDANT(S): Take notice that

1. A lawsuit has been filed against you. A copy of the lawsuit is attached. The Court issued this Summons.

2. You must respond to this lawsuit in writing. You must file your written response with the Court no later than thirty (30) days from the date you are served with this Summons. (The date you are considered served with the Summons is determined by Rule 1-004 NMRA) The Court's address is listed above.

3. You must file (in person or by mail) your written response with the Court. When you file your response, you must give or mail a copy to the person who signed the lawsuit.

4. If you do not respond in writing, the Court may enter judgment against you as requested in the lawsuit.

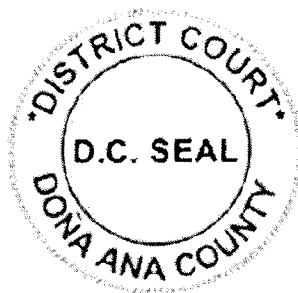
5. You are entitled to a jury trial in most types of lawsuits. To ask for a jury trial, you must request one in writing and pay a jury fee.

6. If you need an interpreter, you must ask for one in writing.

7. You may wish to consult a lawyer. You may contact the State Bar of New Mexico for help finding a lawyer at www.nmbar.org; 1-800-876-6227; or 1-505-797-6066.

Dated at Las Cruces, New Mexico, this 7th day of 2018,
20__.

David S. Borunda
CLERK OF COURT

By: 

aintiff or

RETURN¹

STATE OF NEW MEXICO)
)ss
COUNTY OF _____)

(check one box and fill in appropriate blanks)

[] to the defendant _____ (used when defendant accepts a copy of summons and complaint or refuses to accept the summons and complaint)

[] to the defendant by [mail] [courier service] as provided by Rule 1-004 NMRA (*used when service is by mail or commercial courier service*).

After attempting to serve the summons and complaint on the defendant by personal service or by mail or commercial courier service, by delivering a copy of this summons, with a copy of complaint attached, in the following manner:

[] to _____, a person over fifteen (15) years of age and residing at the usual place of abode of defendant _____, *(used when the defendant is not presently at place of abode)* and by mailing by first class mail to the defendant at _____ *(insert defendant's last known mailing address)* a copy of the summons and complaint.

[] to _____, the person apparently in charge at the actual place of business or employment of the defendant and by mailing by first class mail to the defendant at _____ (*insert defendant's business address*) and by mailing the summons and complaint by first class mail to the defendant at _____ (*insert defendant's last known mailing address*).

[] to _____, an agent authorized to receive service of process for

defendant _____.

[] to _____, [parent] [guardian] [custodian] [conservator] [guardian ad litem] of defendant _____ (*used when defendant is a minor or an incompetent person*).

[] to _____ (*name of person*), _____, _____ (*title of person authorized to receive service. Use this alternative when the defendant is a corporation or an association subject to a suit under a common name, a land grant board of trustees, the State of New Mexico or any political subdivision*).

Fees: _____

Signature of person making service

Title (*if any*)

Subscribed and sworn to before me this _____ day of _____, _____.²

Judge, notary or other officer
authorized to administer oaths

Official title

USE NOTE

1. Unless otherwise ordered by the court, this return is not to be filed with the court prior to service of the summons and complaint on the defendant.

2. If service is made by the sheriff or a deputy sheriff of a New Mexico county, the signature of the sheriff or deputy sheriff need not be notarized.

[Adopted effective August 1, 1988; as amended by Supreme Court Order 05-8300-01, effective March 1, 2005; by Supreme Court Order 07-8300-16, effective August 1, 2007; by Supreme Court Order No. 12-8300-026, effective for all cases filed or pending on or after January 7, 2013; as amended by Supreme Court Order No. 13-8300-022, effective for all cases pending or filed on or after December 31, 2013; as amended by Supreme Court Order No. 14-8300-017, effective for all cases pending or filed on or after December 31, 2014.]

STATE OF NEW MEXICO
COUNTY OF DONA ANA
THIRD JUDICIAL DISTRICT COURT

GAVIN CLARKSON,

Plaintiff,

v.

Case No. D-307-2018-01611

BOARD OF REGENTS OF
NEW MEXICO STATE UNIVERSITY,

Defendant,

NOTICE OF FILING OF NOTICE OF REMOVAL

Please take notice that a Notice of Removal of the above-entitled action to the United States District Court for the District of New Mexico was filed on the 14th day of September, 2018, in the United States District Court for the District of New Mexico. A copy of the Notice of Removal is attached to this Notice.

CONKLIN, WOODCOCK & ZIEGLER, P.C.

By /s/ Christa M. Hazlett
Christa M. Hazlett
320 Gold Avenue, SW Suite 800
Albuquerque, NM 87102
(505) 224-9160
cmh@conklinfirm.com
Attorneys for Defendant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was e-filed and served through the court's e-filing system upon the following counsel of record on this 14th

day of September, 2018.

Brian J. Pezzillo
3800 Howard Hughes Pkwy., Ste. 1000
Las Vegas, NV 89169
bjp@h2law.com

/s/ Christa M. Hazlett
Christa M. Hazlett