TABLE OF APPENDICES

APPENDIX-A

FILED

SEP 20 2024

MOLLY C. DWYER, CLERK

U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PRABHJOT KAUR KANG,

Plaintiff-Appellant,

v.

WESTERN GOVERNORS UNIVERSITY,

Defendant-Appellee.

No. 23-35286

D.C. No. 3:22-cv-05861-RJB

Western District of Washington, Tacoma

ORDER

Before: FRIEDLAND, BENNETT, and SANCHEZ, Circuit Judges.

The panel has voted to deny the petition for panel rehearing.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 35.

Kang's petition for panel rehearing and petition for rehearing en banc. (Docket Entry No. 20) are denied.

No further filings will be entertained in this closed case.

APPENDIX B

FILED
JUN 3 2024
MOLLY C.
DWYER, CLERK
U.S. COURT OF
APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PRABHJOT KAUR KANG,
Plaintiff-Appellant,
v.

WESTERN GOVERNORS UNIVERSITY,

Defendant-Appellee.

No. 23-35286

D.C. No. 3:22-cv-05861-RJB

MEMORANDUM

Appeal from the United States District Court

for the Western District of Washington

Robert J. Bryan, District Judge, Presiding

Submitted May 29, 2024**

Before: FRIEDLAND, BENNETT, and SANCHEZ, Circuit Judges.

Prabhjot Kaur Kang appeals pro se from the district court's summary judgement in her diversity action alleging breach of contract against her former university. We have jurisdiction under 28 U.S.C. section 1291. We review de novo.

City of Martinez v. Texaco Trading & Transp., Inc., 353 F.3d 758, 761 (9th Cir. 2003). We affirm.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2)

The district court properly granted summary judgment on the basis of res judicata because Kang had previously brought an action against defendant regarding the same causes of action and subject matter that resulted in a final judgment on the merits. See Holcombe v. Hosmer, 477 F.3d 1094, 1097 (9th Cir. 2007) (federal court must apply state law regarding res judicata to a prior state court judgment); Ofuasia v. Smurr, 392 P.3d 1148, 1154 (Wash. Ct. App. 2017) (setting forth elements of res judicata under Washington law); Karlberg v. Otten, 280 P.3d 1123, 1130 (Wash. Ct. App. 2012) ("[R]es judicata prohibits the re-litigation of claims and issues that were litigated, or could have been litigated, in a prior action[.]").

We do not consider arguments and allegations raised for the first time on appeal, or documents not presented to the district court. *See Padgett v. Wright, 587 F.3d 983, 985 n.2 (9th Cir. 2009); United States v. Elias, 921 F.2d 870, 874 (9th Cir. 1990).*

Appellee's request for fees, set forth in the answering brief is denied without prejudice to the filing of a separate, noticed motion. See Fed. R. App. P. 38.

All other pending motions and requests are denied.

AFFIRMED.

23-35286

APPENDIX C

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON
AT TACOMA

PRABHJOT K KANG,

Plaintiff,

v.

WESTERN GOVERNORS UNIVERSITY,

Defendant.

CIVIL JUDGMENT

CASE NO 3:22-cv-5861-RJB

_____ **Jury Verdict**. This action came to consideration before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

_XX_ **Decision by Court**. This action came to consideration before the Court. The issues have been considered and a decision has been rendered.

THE COURT HAS ORDERED THAT

- Defendant's Motion for Summary Judgment (Dkt. 16) IS GRANTED;
- The Complaint IS DISMISSED WITH PREJUDICE; and
- This case IS CLOSED.

Judgment

Dated this 3rd day of April 2023.

Ravi Subramanian
Clerk of Court

s/Tyler Campbell
Tyler Campbell, Deputy Clerk

APPENDIX D

FILED
SUPREME COURT
STATE OF WASHINGTON
8/10/2022
BY ERIN L. LENNON
CLERK

THE SUPREME COURT OF WASHINGTON

PRABHJOT KANG,	)	No. 100842-2
	)	**ORDER**
Petitioner,	)	Court of Appeals
No. 83460-6-I	)	
v.	)	
	)	
WESTERN GOVERNORS UNIVERSITY,	)	
	)	
Respondent.	)	

A Special Department of the Court, composed of Chief Justice Gonzalez and Justices Johnson, Stephens, Gordon-McCloud, and Yu considered at its August 9, 2022, Motion Calander, whether review should be granted pursuant to RAP 13.4(b), and unanimously agreed that the following order be entered.

IT IS ORDERED:

That the petition for review is denied.

DATED at Olympia, Washington, this 10th day of August, 2022

For the Court

s/signature of chief justice
CHIEF JUSTICE

APPENDIX E

FILED
3/14/2022
Court of Appeals
Division I
State of
Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

PRABHJOT KANG, Appellant, v. WESTERN GOVERNORS UNIVERSITY, a foreign nonprofit corporation; and WESTERN GOVERNORS UNIVERSITY – WASHINGTON, a Washington nonprofit corporation, Respondents.

No. 83460-6-I

DIVISION ONE

UNPUBLISHED OPINION

Bowman, J. ---- Western Governors University (WGU) discovered five plagiarized papers Prabhjot Kang submitted as a student there. WGU sanctioned Kang for academic dishonesty. Kang sued WGU for breach of contract; violation of the Consumer Protection Act (CPA), chapter 19.86 RCW; and discrimination under the Washington Law Against Discrimination (WLAD), chapter 49.60 RCW, asserting that Hindu East Indian employees of WGU manufactured evidence against her

because of her Sikh religion and Punjabi ethnicity. The trial court granted summary judgment dismissal for WGU. Because Kang presents no competent evidence supporting the essential elements of her claims, we affirm.

Citations and pin cites are based on the Westlaw online version of the cited material

No. 83460-6-I/2

FACTS

WGU is an online, private academic institution. WGU-Washington is a wholly-owned subsidiary of WGU (collectively WGU). Between November 2013 and April 2016, Kang attended WGU and graduated with a bachelor's degree in business management. Then, in May 2017, Kang enrolled in a master business administration (MBA) program.

Like all WGU students, Kang agreed to abide by a "Code of Student Conduct" (Code), which prohibits acts of academic dishonesty, including plagiarism. WGU defines "plagiarism" as

> the use, by paraphrase or direct quotation, of the published or unpublished work of another person without full and clear acknowledgment. It also includes the unacknowledged use of materials prepared by another person or agency engaged in the selling of term papers or other academic materials.

In its Code, WGU reserves the right to review all work submitted to the university. To verify its students produce original work, WGU requires them to submit written assignments through a plagiarism detection software called "Turnitin." WGU encourages students to submit their drafts to Turnitin to check for plagiarism before they submit their final draft.

In October 2018, the WGU Assessment Security and Authenticity Department (Authenticity Department) conducted an "originality review" of Kang's work. WGU explained that it investigated Kang because another investigation implicated much of her work.[1] It determined that five papers Kang submitted between May 2017 and June 2018 plagiarized other students' work.

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[1] The other investigation involved Kang's sister, who was also an MBA student at WGU

No. 83460-6-I/3

Authenticity Department personnel determined that Turnitin did not flag Kang's assignments for plagiarism because they fell within its "allowed threshold." Still, it appeared to the Authenticity Department that Kang was committing "thought-progression" plagiarism. She started with another student's paper and reworded it, or revised it down, "to the point that the language was different enough that Turnitin would likely not catch it but the original author's thought process and ideas were sill obvious." The Authenticity Department created side-by-side comparisons of each of Kang's papers with the papers it alleged she plagiarized. The Authenticity Department also obtained metadata from two of Kang's papers showing other students as the original authors of the files.

The Authenticity Department referred its findings to the WGU Office of Student Conduct. WGU assigned the case to student conduct officer Kumar Pandya. Pandya notified Kang by e-mail that the Authenticity Department referred her work to his office for plagiarism. He attached the supporting evidence. That same day, Kang met with Pandya by telephone to discuss the alleged plagiarism. Pandya recorded the call per Code policy.

During that meeting, Kang first defended her work by suggesting that the papers matched other students' work because she shared a laptop with her sister. When Pandya informed Kang that the papers matched students' work other than her sister's, Kang suggested that "when thousands of students are writing about the same stuff and there are thousands of papers floating out there, then it's bound to match[ ] something" because "[t]here are only so many ways

you can write something." Kang then asserted she relied on the Turnitin software to ensure her work did not "accidentally" match someone else's, and that Turnitin never flagged her drafts. After hearing her defenses, Pandya told Kang that he did not believe she was being truthful and that the WGU Student Conduct Board (SCB) would schedule a hearing to determine whether there was evidence of a student conduct violation. The SCB consisted of four voting members and Pandya, a nonvoting member.

Before the SCB hearing, Kang submitted a letter to the board stating the same defenses. At the hearing, the SCB heard from two Authenticity Department investigators. The investigators described each instance of plagiarism they found in Kans's papers and presented their evidence. The SCB then heard from Kang, who again denied plagiarizing other students' work, but offered more explanations. She encouraged the SCB to "look at things outside the box and see there are other ways

that things could happen." Kang offered that Turnitin "could have a glitch" or could have been "hacked" because "lots of companies have gotten hacked." Kang also offered that she had no access to her original documents, so "there could be human [s]henanigans, there could be hacking, there could be file corruption."

After the hearing, the SCB determined that there was clear and convincing evidence that Kang violated the Code's prohibition against plagiarism and imposed sanctions. The SCB issued a "Level 2 Conduct Warning" on Kang's permanent disciplinary record. It "zeroed out" the grades for four of the papers and required Kang to rewrite them. It changed Kang's grades in two classes to

"not passed" until she submitted original papers. And it required Kang complete an online ethical development seminar at her cost and submit a two-page reflection essay on academic integrity and professional ethics.

Kang appealed the SCB's decision to the WGU Appellate Board. In preparing her appeal, Kang e-mailed Pandya, seeking declarations from him and SCB panel member Dr. Gauri Sawant attesting that "they have no affiliations, connections, or communications with any East Indian political parties/entities in the United States, India, or elsewhere," or recuse themselves. Kang made the same request of appeal board member Dr. Rashmi Prasad. Kang explained that she was asking not because of "their race, religion, gender, ethnicity, national origin, skin color, etc." but "only because of their political affiliation to a foreign state." The WGU employees did not provide the requested declarations or recuse themselves.

Kang then submitted a nine-page letter and attached 10 exhibits in support of her appeal. She generally denied plagiarizing and argued that the SCB reached the wrong conclusion. She then, again, broadened the scope of her defense. Urging the Appellate Board to "think outside the box" to unravel the real facts of this saga," she argued that the metadata evidence was [d]octored," that WGU deliberately targeted her for investigation, that Pandya was scheming against her, and that the SCB's decision was "[a] convenient tool for [her] personal destruction in the East Indian community." Kang labeled the disciplinary proceedings as "ongoing propaganda against [her] about [her] intelligence" because of her Sikh religion and Punjabi ethnicity. She called them

"a highly sophisticated attempt to achieve [her] personal destruction and to damage the reputation of [her] parents," which she claimed was in line with the "pattern of propaganda in the gender biased East Indian community." She then discussed rumors "circulating in the East Indian community for almost a quarter century" about her being "a dumb girl" because of circumstances involving her birth after her mother experienced a complicated pregnancy.

After reviewing the verbatim record of the SCB hearing and supporting documents as well as Kang's submitted material, the Appellate Board concluded that the SCB hearing was fair and "in conformity with prescribed procedures." It determined that the decision rested on "substantial" evidence and that the sanctions were proportionate.

Kang sued WGU in May 2019 and filed an amended complaint in September 2019. She asserted claims of breach of contract and violation of the CPA, alleging that WGU failed to follow its policies in the Code. Kang also asserted a claim under the WLAD. She alleged that Hindu members of the SCB and Appellate Board, working as "agents of the foreign political and religious entities of East Indian descent," targeted her and fabricated a plagiarism case against her because of her Sikh religion and Punjabi ethnicity. She claimed that the SCB and Appellate Board used the WGU disciplinary proceedings "as a breeding ground to hatch a conspiracy against" her to destroy her career, destroy the reputation of her parents, and to "take revenge" because of her father's "role in bringing down the state Government in East Punjab (India)

No. 83460-6-I/7

through our literary and artistic activities on social media as well as on the ground."

In January 2021, WGU moved for summary judgement dismissal of Kang's lawsuit. It argued Kang failed to produce "any actual evidence" to establish the essential elements of each of her claims. Kang responded by filing a declaration in which she denied facts alleged in the underlying disciplinary action and questioned the legitimacy of various documents presented to the SCB. She asserted that WGU submitted "falsified" and fraudulent evidence, attributing the "corrupted" evidence to "the three Hindu agents of WGU, "Pandya, Dr. Swant, and Dr. Prasad.

The court heard oral argument on the motion on Friday, February 5,2021. At the end of the hearing, the court granted summary judgment for WGU on Kang's breach of contract and CPA claims. On the following Monday, the court granted

summary judgment for WGU on Kang's WLAD claim and entered an order dismissing Kang's lawsuit with prejudice.

Kang appeals.

ANALYSIS

Kang argues that the trial court erred by granting summary judgment for WGU because she raised genuine issues of fact sufficient to support each of her claims.[2] We disagree.

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[2] WGU urges us to decline review of Kang's assignments of error because her brief does not comply with RAP 10.3(a)(6). But RAP 1.2(a) calls for a liberal interpretation of the rules "to promote justice and facilitate the decision of cases on the merits." Viereck v. Fibreboard Corp., 81 Wn. App. 579, 582, 915 P .2d 581 (1996). Because Kang adequately identifies her assignments of error and generally supports them with argument, we consider the merits of her appeal.

We review rulings on summary judgment de novo, performing the same inquiry as the trial court. Kruse v. Hemp, 121 Wn.2d 715, 722, 853 P .2d 1373 (1993). Summary judgment is appropriate only where "there is no genuine issue as to any material fact and ... the moving party is entitled to a judgment as a matter of law." CR 56(c). The moving party bears the burden of proving that there is no genuine issue as to any material fact. Lamon v. McDonnell Douglas Corp., 91 Wn.2d 345, 349, 588 P.2d 1346 (1979). We consider all facts submitted and all reasonable inferences that can be drawn from those facts in the light most favorable to the nonmoving party. Ellis v. City of Seattle, 142 Wn.2d 450, 458, 13 P.3d 1065 (2000).

A defendant may move for summary judgment by showing the plaintiff lacks competent evidence to support an essential element of their case. Guile v. Ballard Cmty. Hosp., 70 Wn. App. 18, 25, 851 P.2d 689 (1993). If the defendant makes this showing, the burden shifts to the plaintiff to establish the existence of the essential element. Pagnotta v. Beall Trailers of Or., Inc., 99 Wn. App. 28, 36, 991 P.2d 728 (2000). The plaintiff must present specific facts showing a genuine issue for trial. Pagnotta, 99 Wn, App at 36. The plaintiff cannot meet this burden by responding with conclusory allegations, speculative statements, or argumentative assertions. Pagnotta, 99 Wn, App at 36. If the plaintiff fails to meet their burden, summary judgment for the defendant is proper. Knight v. Dep't of Labor & Indus., 181 Wn. App. 788, 795-96, 321 P.3d 1275 (2014).

Breach of Contract

Kang contends she presented competent evidence that WGU breached its contract and the implied covenant of good faith and fair dealing by failing to follow its written disciplinary procedures and failing to provide her a fair disciplinary hearing.

To prevail on a breach of contract claim, a plaintiff must establish a contractual duty, breach of that duty, and that the breach proximately caused the plaintiff damage. Nw. Indep. Forest Mfrs. v. Dep't of Labor & Indus., 78 Wn. App. 707, 712, 899 P.2d 6 (1995). And to show breach of an implied duty of good faith and fair dealing, a plaintiff must establish that the defendant did not perform in good faith the specific obligations imposed by their agreement. Bill & Melinda Gates Found. v. Pierce, 15 Wn. App. 2d 419, 433, 475 P.3d 1011 (2020); review denied, 197 Wn.2d 1006, 483 P.3d 785 (2021); Rekhter v. Dep't of Soc. & Health Servs., 180 Wn.2d 102,113, 323 P.3d 1036 (2014).

Generally, we review the relationship between universities and their students as contractual. Marquez v. Univ. of Wash., 32 Wn. App. 302, 305, 648 P.2d 94 (1982); Maas v. Corp. of Gonzaga Univ., 27 Wn. App. 397, 400, 618 P.2d 106 (1980). Since a formal contract between a university and a student rarely exists, we look to the implied provisions found in university publications to determine the general nature and specific term of the student-university agreement. Marquez, 32 Wn. App. At 305.

Courts routinely distinguish the contractual responsibilities of public universities and private universities when making discretionary academic or

disciplinary decisions. See Boehm v. Univ. of Pa. Sch. of Veterinary Med., 392 Pa. Super. 502, 509, 573 A.2d 575 (Pa. Super. Ct. 1990). That is because students of public universities are entitled to constitutional due process protections, so public university disciplinary decisions are subject to greater judicial scrutiny. See Alpha Kappa Lambda Fraternity v. Wash. State Univ., 152 Wn. App. 401, 413, 216 P.3d 451 (2009) (Washington State University disciplinary decisions are subject to review under the Administrative Procedure Act, chapter 3.05 RCW). But courts are more reluctant to interfere in the disciplinary proceedings of a private college. Boehm, 392 Pa. Super. at 509.

No published Washington case directly addresses the standard by which we evaluate whether a private university's disciplinary decision breached its contractual duty to a student. But we have turned to decisions from other jurisdictions in that regard. See Marquez, 32 Wn. App. at 305-09 (relying on non-Washington cases in analyzing University of Washington's academic decision); Maas, 27 Wn. App. at 400-03 (following cases from other jurisdictions in deciding standard for review for private university's academic decisions). And several other jurisdictions have recognized that students of private universities are entitled to at least the basic tenets of fundamental fairness in disciplinary proceedings. See Boehm, 392 Pa. Super. at 510; Shah v. Union Coll., 97 A.D.3d 949, 950-51, 948 N.Y.S.2d 456 (N.Y. App. Div. 2012).

To ensure fundamental fairness in disciplinary proceedings, private universities must (1) substantially comply with their published policies and (2) not subject students to arbitrary or capricious decisions. Bohem, 392 Pa. Super. at

No. 83460-6-I/11

510-11; Shah, 97 A.D.3d at 950-51.[3] A university acts arbitrarily and capriciously when it takes " 'willful and unreasoning action ... without regard to or consideration of the facts and circumstances surrounding the action. ' " Alpha Kappa Lambda, 152 Wn. App. at 421[4] (quoting Bowers v. Pollution Control Hr'gsBd., 103 Wn. App. 587, 596, 13 P.3d 1076 (2000). " '[A] decision is not arbitrary or capricious if it is made honestly and upon due consideration.' "Alpha Kappa Lambda, 152 Wn. App. at 421 (quoting Bowers, 103 Wn. App. at 596).

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[3] Kang and WGU agreed that this standard applied to her breach of contract claim below. Neither argues differently on appeal.

[4] Internal quotation marks omitted.

WGU's Code establishes its procedures for adjudicating charges of academic dishonesty. WGU must give written notice to the student and seek to reach a mutually agreeable resolution. If WGU and the student cannot reach an agreement, WGU will set a SCB hearing at which the WGU investigation presents his or her findings, the student has a chance to present information, and the SCB members deliberate about whether the accused student has violated the Code. If the SCB decides that the investigator proved the violations by clear and convincing evidence, the board may direct the student conduct administrator to impose any of the sanctions provided in the Code, which range from a "Level 1 Warning," to Disciplinary Expulsion," to "Revocation of Admission and/or Degree."

The record shows the WGU afforded Kang the adjudication processes and protections established in the Code. In her response to summary judgment, Kang asserted that WGU deviated from its published policies by imposing a

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"Level 2 Warning" as a sanction instead of "the level she was entitled to for an alleged first-time disciplinary violation." But WGU's Code gives discretion to the SCB to impose any level of sanction it deems appropriate for a student found to have violated the rules.

The record also shows that WGU's decision to sanction Kang was not arbitrary or capricious. WGU first looked into Kang's work after investigating her sister and finding the two submitted similar work product. On deeper investigation, WGU discovered other times when Kang plagiarized the work of others and commenced disciplinary proceedings. WGU's Authenticity Department presented evidence of the alleged plagiarism to the SCB. The SCB considered the evidence, including Kang's response; found the Authenticity Department proved the plagiarism allegations; and imposed a sanction authorized by WGU's code. The Appellate Board then reviewed the decision. It heard argument and again considered the merit of Kang's claims before upholding the SCB's decision.

Kang claims that the SCB's decision was arbitrary and capricious because the case against her rested on forgeries and fraud, motivated by "agents of East Indian descent...plotting to harm [her], due to their biases." But Kang's depictions of fraud, forgery, bias, and discrimination against her are conclusory allegations based on speculation and cannot defeat summary judgment. Pagnotta, 99 Wn. App at 36. The trial court did not err in dismissing Kang's breach of contract claim at summary judgment.[5]

[5] Because Kang's CPA claim is predicated on her breach of contract claim, the CPA claim also fails.

No. 83460-6-I/13

WLAD

Kang argues that she established a prima facie case of discrimination under the WLAD because she showed that WGU "agents of East descent plotted "to harm [her] due to their biases."

The WLAD guarantees the right to "be free from discrimination because of race, creed, color, [or] national origin." RCW 49.60.030(1). That guarantee extends to all places of public accommodation. RCW 49.60.030(1)(b).

We analyze WLAD claims under the burden-shifting framework established in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973). See Domingo v. Boeing Emps.' Credit Union, 124 Wn. App. 71, 77, 98 P.3d 1222 (2004), abrogated on other grounds by Mikkelsen v. Pub. Util. Dist. No. 1 of Kittitas County, 189 Wn.2d 516, 404 P.ed 464 (2017); see also Hartleben v. Univ. of Wash., 194 Wn. App. 877, 883-84, 378 P.3d 263 (2016). Under that framework, a plaintiff must first show a prima facie case of discrimination. Domingo, 124 Wn. App. at 77. If the plaintiff cannot meet that burden, the inquiry stops, and the defendant is entitled to summary judgment. Domingo, 124 Wn. App. at 77-78.

To make a prima facie showing of discrimination, Kang had to show (1) she is a member of a protected class, (2) WGU is a place of public accommodation, and (3) WGU treated her differently than other similarly situated students (4) because of her membership in that protected class. McDonnell Douglas, 411 U.S. at 802; Hartleben, 378 Wn. App. at 883-84.

No. 83460-6-I/14

WGU concedes that Kang's Punjabi ethnicity and Sikh religion make her a member of a protected class and that WGU is a place of public accommodation. But Kang fails to show that WGU treated her differently than other similarly situated students because of her membership in a protected class. Kang offers no evidence WGU disciplined her any differently than other students at WGU accused of plagiarism. Nor does she show the WGU employees involved in her disciplinary proceedings were aware of her Sikh religion, Punjabi ethnicity, or political affiliation. And Kang's allegations that several of WGU employees are "Hindu agents" motivated to manufacture evidence against her are speculative and do not amount to prima facie showing of discrimination under the WLAD.[6] Because Kang failed to establish the essential elements of her claims, the trial court did not err in granting summary judgment for WGU.

We affirm dismissal of Kang's lawsuit with prejudice.

WE CONCUR:

s/signature *s/signature* *s/signature*

[6] Indeed, the record shows that at least one of Kang's claimed WGU "Hindu agents" is not Hindu. In his declaration, Pandya was "surprised" that Kang claimed "under the penalty of perjury in her discovery responses ... that she 'knows' I am Hindu. I am not."

APPENDIX F

The Honorable Timothy L. Ashcraft

BARCODE

18-2-08319-8 55456712
ORGSJ 02-09-21

FILED
DEPT 2
IN OPEN COURT
FEB 08 2021
PIERCE COUNTY,
Clerk
BY *signature*
DEPUTY

SUPERIOR COURT OF WASHINGTON IN AND FOR PIERCE COUNTY

PRABHJOT KANG, Plaintiff, vs. WESTERN GOVERNORS UNIVERSITY, a foreign NONPROFIT *corporation*; and WESTERN GOVERNORS UNIVERSITY – WASHINGTON, a Washington nonprofit corporation, Defendant	No. 19-2-08319-6 ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT [CLERK'S ACTION REQUIRED]

THIS MATTER came before the undersigned Judge on Defendants' Motion for Summary Judgment. The Court has reviewed the files and pleadings herein, including:

1. Defendants' Motion for Summary Judgment;

2. Declaration of Kumar Pandya in Support of Defendants' Motion for Summary Judgment and the following exhibits attached thereto:

Exhibit 1 – WGU Code of Student Conduct;

Exhibit 2 – WGU Academic Authenticity policies;

Exhibit 3 – Academic Authenticity Warning ("AAW") sent to Ms. Kang on May 18, 2017;

Exhibit 4 – Findings from the Assessment Security & Authenticity Department's originality review of Ms. Kang's sister's task submissions;

Exhibit 5 – Administrative resolution agreed to by Ms. Kang's sister regarding the plagiarism charges against her;

Exhibit 6 – Records regarding Ms. Kang's sister's web patrol violation for posting papers on CourseHero.com;

Exhibit 7 – Screenshot showing the CourseHero.com account to which Ms. Kang's sister posted papers was under the name "Prabhjot Kang;"

Exhibit 8 – March 25, 2018 email from Ms. Kang's sister acknowledging she posted the papers and would get them removed from CourseHero.com;

Exhibit 9 – Findings from the Assessment Security & Authenticity Department's originality review of Ms. Kang's task submissions;

Exhibit 10 – First version of Ms. Kang's paper for Task 2 of Managing Organizations and Leading People, submitted to WGU on May 17, 2017;

Exhibit 11 – Ashley Moore's paper for Task 2 of Managing Organizations and Leading People, dated June 10, 2015 (submitted to WGU on June 16, 2015);

Exhibit 12 – Second version of Ms. Kang's paper for Task 2 of Managing Organizations and Leading People, submitted to WGU on May 19, 2017;

Exhibit 13 – Ms. Kang's paper for Task 1 of Marketing, submitted to WGU on January 21, 2018;

Exhibit 14 – Alicia Nelson's paper for Task 1 of Marketing, dated February 25, 2017 (submitted to WGU on March 12, 2017);

Exhibit 15 – Ms. Kang's paper for Task 1 of Application of Ethical Leadership, submitted to WGU on June 5, 2018;

Exhibit 16 – Lauren Cook's paper for Task 1 of Application of Ethical Leadership, dated April 20, 2016;

Exhibit 17 – Ms. Kang's paper for Task 2 of Application of Ethical Leadership, submitted to WGU on May 1, 2018;

Exhibit 18 – Student B's paper for Task 2 of Application of Ethical Leadership, submitted to WGU on November 26, 2014;

Exhibit 19 – Ms. Kang's paper for Task 3 of Application of Ethical Leadership, submitted to WGU on June 28, 2018;

Exhibit 20 – Ms. Kang's sister's paper for Task 3 of Application of Ethical Leadership, submitted to WGU on June 22, 2018;

Exhibit 21 – Student A's paper for Task 3 of Application of Ethical Leadership, submitted to WGU on January 13, 2018;

Exhibit 22 – October 30, 2018 email from Kumar Pandya to Ms. Kang notifying her that she had been referred to the Office of Student Conduct based on the findings of the originality review conducted by the Assessment Security & Authenticity Department, with attachments;

Exhibit 23 – Transcript of the recorded administrative meeting between Kumar Pandya and Ms. Kang conducted by phone on October 30, 2018;

Exhibit 24 – October 31, 2028 notice to Ms. Kang regarding the date and time of her hearing before the Student Conduct Board;

Exhibit 25 – Ms. Kang's November 5, 2018 written response to the investigation findings;

Exhibit 26 – Transcript of the recording of Ms. Kang's November 14, 2018 hearing before the Student Conduct Board;

Exhibit 27 – Student Conduct Board Deliberation Summary related to Ms. Kang's November 14, 2018 hearing;

Exhibit 28 – November 20, 2018 letter to Ms. Kang explaining the Student Conduct Board's findings and sanctions and notifying her of her right to appeal;

Exhibit 29 – November 21-27, 2018 emails between Ms. Kang and Kumar Pandya;

Exhibit 30 – November 27, 2018 email exchange between Ms. Kang and Kumar Pandya;

Exhibit 31 – Ms. Kang's Letter of Appeal with exhibits, dated November 28, 2018;

Exhibit 32 – Appellate Board Deliberation Summary related to Ms. Kang's Appeal of the Student Conduct Board's decision;

Exhibit 33 – December 13, 2018 letter from Anika Webb to Ms. Kang explaining the Appellate Board's decision and notifying her that the Appellate Board's decision is final:

Exhibit 34 – December 17, 2018 letter signed by the voting members of the Appellate Board, as requested by Ms. Kang, explaining the Appellate Board's decision and notifying her that the Appellate Board's decision is final;

Exhibit 35 – Plaintiff Prabhjot Kang's verified discovery responses;

3. Declaration of Gauri Sawant, PhD, in Support of Defendants' Motion for Summary Judgment;

4. Declaration of Beth M. Strosky in Support of Defendants' Motion for Summary Judgment and the following exhibits attached thereto:

Exhibit A – Amandeep Kang's Authorization for Release of Records;

Exhibit B – Declaration of Ashley (Moore) Woodruff and the exhibits attached thereto;

Exhibit C – Declaration of Lauren Cook and the exhibits attached thereto;

Exhibit D - Declaration of Alicia Nelson and the exhibits attached thereto;

Exhibit E – Redline comparison of the first and second versions of Ms. Kang's paper for Task 2 of Managing Organizations and Leading People (Exhibits 10 & 12 to Kumar Pandya's declaration) created for demonstrative purposes by defense counsel;

5. Plaintiff's Response to Defendants' Motion for Summary Judgment;

6. Declaration of Prabhjot Kang and the following exhibits attached thereto;

Exhibit 1 – Email correspondence between Prabhjot Kang, Diane Atkinson, and Susan Skinner from June 27, 2018 to July 1, 2018;

Exhibit 2 – Turnitin Originality Report that Ms. Kang processed on May 17, 2017 at 11:48 PM MDT on her paper for Task 2 of Managing Organizations and Leading People, Version One;

Exhibit 3 – Turnitin Originality Report that Ms. Kang proceeded on May 17, 2017 at 11:48 PM MDT on her paper for Task 2 of Managing Organizations and Leading People; Version Two;

Exhibit 4 – Side-by-side comparison of Marketing, Task 1 papers submitted my Ms. Kang on January 21, 2018 and "Student B" on March 12, 2017;

Exhibit 5 – Copies of metadata screenshots from the Findings from the Assessment Security & Authenticity Department's originality review of Ms. Kang's task submissions (*see* Pandya Exhibit 9 at pages 3-5);

Exhibit 6 – August 20, 2020 email from WGU's attorney to Ms. Kang's attorney attaching the original electronic version of Ms. Kang's paper for Task 1 of Marketing and containing an exemplar screenshot of the metadata snapped by WGU's attorney before sending email;

Exhibit 7 – Declaration of Alicia Nelson;

Exhibit 8 – Side-by-side comparison of Application of Ethical Leadership, Task 1 papers submitted by Ms. Kang on June 4, 2018 and "Student D" on April 25, 2016;

Exhibit 9 – [duplicate of Exhibit 5];

Exhibit 10 – Declaration of Lauren Cook;

Exhibit 11 – Side-by-side comparison of Application of Ethical Leadership, Task 2 papers submitted by Ms. Kang on April 29, 2018 and "Student C" on November 26, 2014, captured by Turnitin's database on January 1, 2016;

Exhibit 12 – Turnitin Originality Report processed on June 28, 2018 at 11:44 PM MDT on a paper titled AstraZeneca Code of Ethics relating to Task 3 of Application of Ethical Leadership;

Exhibit 13 – Declaration of Amandeep Kang, dated May 24, 2019;

Exhibit 14 – Screenshot taken on June 1, 2018 of a portion of a Turnitin Report for a paper submitted to Turnitin on June 2, 2018, titled AstraZeneca Code of Ethics relating to Task 3 of Application of Ethical Leadership;

Exhibit 15 – Screenshot taken on June 25, 2018 of a portion of a Turnitin Report for a paper submitted to Turnitin on June 25, 2018, titled AstraZeneca Code of Ethics relating to Task 3 of Application of Ethical Leadership;

Exhibit 16 – Ms. Kang's "original essay" relating to Task 3 of Application of Ethical Leadership, sent to Susan Skinner and Diane Atkinson on June 27, 2018;

Exhibit 17 – Copy of paper provided by WGU alleging it is Ms. Kang's sister's paper for Task 3 of Application of Ethical Leadership on PepsiCo., submitted to WGU on June 22, 2018, even though it does not have her name on it;

7. Declaration of Lance M. Hester in Opposition to Defendants' Motion for Summary Judgment and the following exhibits attached thereto:

Exhibit A – Plaintiff Prabhjot Kang's verified discovery responses;

Exhibit B – Email dated August 20, 2020, from Beth Strosky to Lance Hester regarding Nelson Metadata;

8. Defendants' Reply in Support of their Motion for Summary Judgment; and

9. Supplemental Declaration of Kumar Pandya in Support of Defendants' Motion for Summary Judgment and the following exhibits attached thereto:

Exhibit 36 – Code of Conduct Concern Referral Notification, dated October 19, 2018, regarding Ms. Kang's referral to the Student Conduct Board for review;

Exhibit 37 – Instructions to students for their Task 3 assignment in Application of Ethical Leadership.

The court also heard oral argument and determined that:

1. There are no genuine issues of material fact on any of plaintiff's claims; and

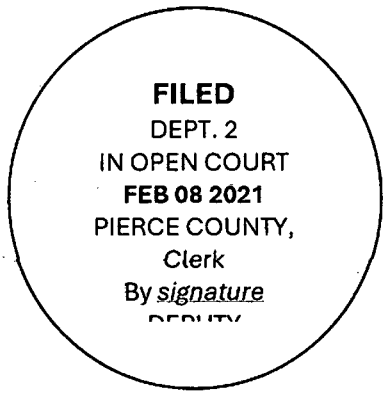
2. Defendants are entitled to Summary Judgment as a matter of law.

IT IS HEREBY ORDERED that Defendants' Motion for Summary Judgment is **GRANTED**, and all of plaintiff's claims are dismissed with prejudice.

DONE this 8 day of February, 2021.

By: *s/ Timothy L. Ashcraft*

THE HONORABLE TIMOTHY L. ASHCRAFT



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Presented by:

KELLER ROHRBACK L.L.P.

By *s/ Beth M. Strosky*
Beth M. Strosky, WSBA #31036
Attorneys for Defendants

Approved as to form;
Notice of presentation waived.

HESTER LAW GROUP, INC., P.S.

By *s/ Lance Hester*
Lance Hester, WSBA #27813
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