

DISTRICT COURT, CITY AND COUNTY OF DENVER,
STATE OF COLORADO
1437 Bannock Street
Denver, Colorado 80202

Plaintiff:

WARD CHURCHILL, an individual

Defendants:

UNIVERSITY OF COLORADO;
THE REGENTS OF THE UNIVERSITY OF COLORADO, a
body corporate;
PAUL SCHAUER, in his individual and official capacities;
TOM LUCERO, in his individual and official capacities;
PAT HAYES, in her individual and official capacities;
STEVE BOSLEY, in his individual and official capacities;
CINDY CARLISLE, in her individual and official
capacities;
MICHAEL CARRIGAN, in his individual and official
capacities;
STEVE LUDWIG, in his individual and official capacities;
KYLE HYBL, in his individual and official capacities; and
TILMAN BISHOP, in his individual and official capacities.

Patrick T. O'Rourke, #26195
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Denver, Colorado 80203
(303) 860-5691
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Case Number:

2006 CV 11473

Division 6

JOINT STIPULATION FOR DISMISSAL OF CLAIMS, WITHDRAWAL OF MOTIONS
TO DISMISS AND LIMITED WAIVER OF ELVENTH AMENDMENT IMMUNITY

The Plaintiff, WARD CHURCHILL, and the Defendants, the UNIVERSITY OF COLORADO, THE REGENTS OF THE UNIVERSITY OF COLORADO, PAUL SCHAUER, in his official and individual capacity; TOM LUCERO, in his official and individual capacity; PAT HAYES, in her official and individual capacity; STEVE BOSLEY, in his official and individual capacity; CINDY CARLISLE, in her official and individual capacity; MICHAEL CARRIGAN, in his official and individual capacity; STEVE LUDWIG, in his official and individual capacity; KYLE HYBL, in his official and individual capacity; and TILMAN BISHOP, hereby stipulate and agree as follows:

1. Plaintiff Ward Churchill is a former employee of the University of Colorado. Professor Churchill brings claims stemming from events that ultimately led to the termination of his tenured professorship at the University of Colorado, which Professor Churchill claims violated his rights under the First and Fourteenth Amendments to the United States Constitution.
2. The Defendants to the case currently are :(1) the University of Colorado; (2) the Regents of the University of Colorado; and (3) the individual Regents of the University of Colorado in both their official and individual capacity claims. The Defendants have currently filed Motions to Dismiss Professor Churchill's claims.
3. Professor Churchill has responded to the Motions to Dismiss and has further indicated that he may amend his pleadings to present additional claims against additional defendants.
4. The parties wish to simplify the pleadings to the extent possible, prevent litigation against potentially unnecessary parties, and to allow the case to proceed in the most expeditious manner.
5. Accordingly, Professor Churchill stipulates and agrees:
 - (a) Professor Churchill shall dismiss all official capacity and individual capacity claims currently pled against individual Regents of the University of Colorado with prejudice.

- (b) Professor Churchill shall dismiss the following claims for relief presented in his Second Amended Complaint in their entirety

Third Claim for Relief – Breach of Contract

Third [Sic] Claim for Relief – Breach of Contract/Good Faith and Fair Dealing

Alternative Claim for Relief – Breach of Contract

Alternative Claim for Relief – Breach of Implied Contract

Alternative Claim for Relief – Promissory Estoppel

Fifth Claim for Relief – Substantive Due Process

- (c) Professor Churchill shall agree to refrain from amending his pleadings to add any additional claim against any officer or employee of the University of Colorado absent a showing of good cause.
- (d) Professor Churchill agrees that the University's waiver of Eleventh Amendment immunity is not a general waiver of the University's Eleventh Amendment immunity. The waiver is effective only on the terms described herein and should not be treated as a waiver in any future litigation, as to any other potential plaintiff, or to any other potential claim.

6. The University stipulates and agrees:

- (a) The University shall withdraw its Motion to Dismiss applicable to the following Claims for Relief asserted in the Second Amended Complaint

First Claim for Relief – First Amendment Retaliation in Launching the Investigation


Second Claim for Relief – First Amendment Retaliation in Terminating Professor Churchill's Employment

Fourth Claim for Relief – Denial of Procedural Due Process

- (b) The University agrees and stipulates that it shall waive its immunity to claims for damages under the Eleventh Amendment to the United States Constitution to permit the same recovery from the University that might otherwise be had against any of its officials or employees acting in their official or individual capacities, reserving to the University the ability to present the same defenses that would have been applicable to any of its officials or employees acting in their official or individual capacities.
 - (c) The University agrees, for the purposes of this litigation only, that it will be subject to an award of damages and, if appropriate, an award of attorney's fees and costs, for only these specific claims asserted under 42 U.S.C. §1983. In the event that Professor Churchill further amends his pleadings to state additional claims in this litigation, the University reserves the right to withdraw its waiver of Eleventh Amendment immunity and to reassert any pending Motions to Dismiss to claims previously asserted in the Second Amended Complaint.
7. The parties agree to submit a stipulation to the Court to accomplish the dismissals and withdrawals described in the foregoing paragraphs.
 8. The parties agree to maintain this Stipulation confidentially and to file it with the Court only if necessary to resolve a dispute between them as to its validity or construction.

Dated this 25 day of December, 2007:

OFFICE OF UNIVERSITY COUNSEL



/s/ Patrick T. O'Rourke

Patrick T. O'Rourke

KILLMER LANE & NEWMAN, LLP

/s/ David A. Lane

David A. Lane

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Case Number:

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Division 6

JOINT STIPULATION FOR DISMISSAL OF CLAIMS AND
WITHDRAWAL OF MOTIONS TO DISMISS

The Plaintiff, WARD CHURCHILL, and the Defendants, the UNIVERSITY OF COLORADO, THE REGENTS OF THE UNIVERSITY OF COLORADO, PAUL SCHAUER, in his official and individual capacity; TOM LUCERO, in his official and individual capacity; PAT HAYES, in her official and individual capacity; STEVE BOSLEY, in his official and individual capacity; CINDY CARLISLE, in her official and individual capacity; MICHAEL CARRIGAN, in his official and individual capacity; STEVE LUDWIG, in his official and individual capacity; KYLE HYBL, in his official and individual capacity; and TILMAN BISHOP, hereby stipulate and agree as follows:

1. The Defendants to the case currently are :(1) the University of Colorado; (2) the Regents of the University of Colorado; and (3) the individual Regents of the University of Colorado in both their official and individual capacity claims.
2. The parties wish to simplify the pleadings to the extent possible, prevent litigation against potentially unnecessary parties, and to allow the case to proceed in the most expeditious manner.
3. Accordingly, Professor Churchill stipulates and agrees:
 - (a) Professor Churchill dismisses all official capacity and individual capacity claims currently pled against individual Regents of the University of Colorado with prejudice.
 - (b) Professor Churchill dismisses the following claims for relief presented in his Second Amended Complaint in their entirety

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Alternative Claim for Relief – Promissory Estoppel

Fifth Claim for Relief – Substantive Due Process

4. The University stipulates and agrees:
- (a) The University withdraws its Motion to Dismiss applicable to the following Claims for Relief asserted in the Second Amended Complaint

First Claim for Relief – First Amendment Retaliation in Launching the Investigation

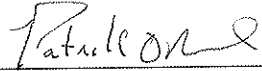
Second Claim for Relief – First Amendment Retaliation in Terminating Professor Churchill’s Employment

Fourth Claim for Relief – Denial of Procedural Due Process

5. The University and Professor Churchill agree that the University shall file its responsive pleading to the First Claim for Relief, Second Claim for Relief, and Fourth Claim for Relief as pled against the University of Colorado and the Regents of the University of Colorado, a body corporate, by no later than January 4, 2008 and that the case shall be “at issue” as of that date.
6. The University and Professor Churchill request that the Court amend the caption in this case to reflect that only the University of Colorado and the Regents of the University of Colorado, a body corporate, shall remain as defendants.

Dated this 20 day of December, 2007:

OFFICE OF UNIVERSITY COUNSEL

/s/ Patrick T. O'Rourke 
Patrick T. O'Rourke

KILLMER LANE & NEWMAN, LLP

/s/ David A. Lane
David A. Lane