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; Patrick T. O'Rourke, #26195 Office of University Counsel 1800 Grant Street, Suite 700 Denver, Colorado 80203 (303) 860-5691 Patrick.orourke@cu.edu	Case Number: 2006 CV 11473 Division 6

MOTION FOR JUDGMENT AS A MATTER OF LAW
(DISCHARGE IN VIOLATION OF FIRST AMENDMENT)

The Defendants move the Court to enter judgment as a matter of law on the Second Claim for Relief asserted in Professor Churchill's Amended Complaint. The Second Claim for Relief is barred by the doctrine of quasi-judicial immunity

Introduction

Plaintiff Ward Churchill alleged that the Regents of the University of Colorado unlawfully terminated his employment in violation of the First Amendment. As specified in the pleadings and Trial Management Order, the University preserved that it was immune from liability. At the close of the evidence, the parties agreed that the University would present its immunity arguments after the jury's verdict because judicial immunities are a legal issue to be determined by a court, not a jury. *See Miller v. Davis,* 521 F.3d 1142, 1145 (9th Cir. 2008) (stating that "whether a public official is entitled to absolute immunity is a question of law . . ."); *Crooks v. Maynard*, 913 F.2d 699, 700 (9th Cir. 1990) (stating that "judicial immunity is a question of law"); *Brewer v. Blackwell,* 692 F.2d 387, 390 (5th Cir. 1982) (stating that "whether an official is protected by judicial immunity is a question of law and the facts found by the district judge in making that determination are to be reviewed under the 'clearly erroneous' standard"). Professor Churchill reserved the right to argue that the University had waived its immunity defenses earlier in the lawsuit.

Granting quasi-judicial immunity to the Regents is not only consistent with the Colorado Supreme Court decision determining that government officials act in a quasi-judicial capacity when they apply pre-existing standards to past or present conduct, but it is consistent with federal decisions granting immunity under almost identical circumstances.

Statement of Operative Facts

I. The Regents Are a Unique Constitutional Authority

Article VIII of the Colorado Constitution creates a number of state institutions and states, "Educational, reformatory, and penal institutions . . . and such other institutions as the public good may require, shall be established and supported by the state, in such manner as my be prescribed by law." *Colo. Const. Article VIII, §1.* Within this broad grant of authority, the Colorado Constitution created the University of Colorado as state institution of higher education. *Colo. Const. Article VIII, §V.* For governance of the University of Colorado, the Constitution provides, "There shall be nine regents of the University of Colorado who shall be elected in the manner prescribed by law for terms of six years each." *Colo. Const Article IX, §12.* The Board of Regents, as a constitutional body that is not part of the legislative or executive branches, occupies a unique position in Colorado's governmental structure. *Subryan v. Regents of the University of Colorado*, 698 P.2d 1383, 1383 (Colo. App. 1984).

II. The Laws of the Regents

Among the constitutional powers vested in the Board of Regents is the power "to enact laws for the government of the University." *Subryan*, 698 P.2d at 1383. Acting pursuant to this authority, the Board of Regents enacts *Laws of the Regents.* These laws define both the grounds and the process for dismissing a tenured member of the University's faculty. Specifically, *Article 5.C.1* of the *Laws of the Regents* states:

> A faculty member may be dismissed when, in the judgment of the Board of Regents and subject to the Board of Regents' constitutional and statutory authority, the good of the University requires such action. The grounds for dismissal shall be demonstrable professional incompetence, neglect of duty, insubordination, conviction of a felony or any offense involving moral turpitude upon a plea or verdict of guilty or following a plea of nolo contendere, or sexual harassment or other conduct which falls below minimum standards of professional integrity.[1]

Article 5.C.2.(A)(1) of the *Laws of the Regents* specifies that "no member of the faculty shall be dismissed except for cause and after being given an opportunity to be heard . . ." If the University's administration contemplates that it will dismiss a faculty member, the faculty member may request a hearing before the Faculty Senate Committee on Privilege and Tenure. *Laws of the Regents, Article 5.C.2.(B).* At any such hearing, the faculty member "shall be permitted to have counsel and the opportunity to question witnesses . . . [and] the burden of proof shall be on the University

[1] *Article 5.C* of the *Laws of the Regents* is contained in Exhibit 1-A of the trial exhibits. For the Court's ease of reference, a copy is attached as Exhibit A to this Motion.

administration." *Laws of the Regents, Article 5.C.2.(B).* After the Faculty Senate Committee on Privilege and Tenure makes its findings, the President of the University issues a recommendation and transmits it to the Board of Regent for final action. *Laws of the Regents, Article 5.C.2.(C).*

III. Regent Policy 5-I

To implement the *Laws of the Regents'* requirement that no faculty member be dismissed "except for cause and after being given an opportunity to be heard," as well as the faculty member's right to a hearing before the Faculty Senate Committee on Privilege and Tenure, the Regents enacted *Regent Policy 5-I*.[2] The University followed *Regent Policy 5-I* in the weeks and months preceding its dismissal of Professor Churchill.

A. Commencement of Dismissal for Cause Proceedings

Regent Policy 5-I, §III(A)(a) allows the Chancellor of University of Colorado at Boulder to initiate the dismissal for cause process by issuing a written notices of intent to dismiss. On June 26, 2006, Interim Chancellor Philip DiStefano issued a Notice of Intent to Dismiss informing Professor Churchill that the University intended to dismiss him as a tenured faculty member. The Notice of Intent to Dismiss occurred after the University of Colorado at Boulder's Standing Committee on Research Misconduct concluded that Professor Churchill violated the University's Administrative Policy

[2] *Regent Policy 5-I* is contained in Exhibit 21-I of the trial exhibits. For the Court's ease of reference, a copy is attached as Exhibit B to this Motion.

Statement on Misconduct in Research and Authorship. Chancellor DiStefano informed Professor Churchill that his "pattern of serious, repeated and deliberate research misconduct falls below minimum standards of professional integrity expected of University faculty and warrants your dismissal from the University of Colorado."[3]

B. Formal Hearing Before Faculty Senate Committee on Privilege and Tenure

As permitted by *Regent Policy 5-I*, Professor Churchill requested a formal hearing before a five-member panel of the Faculty Senate Committee on Privilege and Tenure. *Regent Policy 5-I, §III(B)(2)(b)* allowed Professor Churchill to object to any of the panel members, but he did not do so. Although *5-I, §III(B)(2)(f-g)* normally contemplate that a dismissal hearing will last no more than two days. Professor Churchill's had months to prepare for his hearing, began on January 8, 2007, and lasted for seven full days. Pursuant to *Regent Policy 5-I, §III(B)(2)(l)*, a professional court reporter, as well as a professional videographer, made a complete record of the proceedings.[4]

At the hearing, *Regent Policy 5-I, §III(B)(2)(k)* required the University's administration to establish grounds for dismissal by clear and convincing evidence. *Regent Policy 5-I, §III(B)(1)(b)(2)(i)* allowed Professor Churchill to be represented by counsel. *Regent Policy 5-I, §III(B)(2)(o)* allowed Professor Churchill and his counsel the right to examine each of the University administration's witnesses and the right to

[3] Chancellor DiStefano's June 26, 2006 Notice of Intent to Dismiss is contained in Exhibit 21-C of the trial exhibits.

[4] The complete record of the dismissal for cause proceedings before the Faculty Senate Committee on Privilege and Tenure was contained in Exhibits 23A-23G.

present his own witnesses. *Regent Policy 5-I, §III(B)(2)(r)* allowed Professor Churchill and his counsel to present opening statements. *Regent Policy 5-I, §III(B)(2)(r)* also allowed Professor Churchill to make both oral and written closing arguments to the panel. Professor Churchill availed himself of each of these opportunities during the seven-day hearing.

After the conclusion of the hearing, the panel members reached a determination. The panel was "unanimous in finding that Professor Churchill has demonstrated conduct which falls below minimum standards of professional integrity, and that this conduct requires several sanctions."[5] The panel split on what sanction it would recommend - - two members recommended dismissal, while three panel members recommended a suspension coupled with demotion. *Regent Policy 5-I, §III(C)(2)* allowed Professor Churchill to respond in writing to the panel's report.

C. Presidential Recommendation

The panel transmitted its report to the President of the University. President Brown, upon his review of the record, concurred with the panel's finding that Professor Churchill had engaged in conduct that served as grounds for dismissal under *Article 5.C.1* of the *Laws of the Regents* - - conduct falling below minimum standards of

[5] The *Panel Report Regarding Dismissal for Cause of Ward Churchill and the Issue of Selective Enforcement* was contained as Exhibit 21-F of the trial exhibits. For the Court's ease of reference, a copy is attached as Exhibit C to this Motion.

professional integrity.[6] Because President Brown believed that this misconduct warranted dismissal, rather than some other sanction, President Brown returned the case to the panel for reconsideration pursuant to *Regent Policy 5-I, §III(C)(7).* The panel did not modify its report, so President Brown transmitted his recommendation and the panel report to the Board of Regents for final action.

D. Action by Board of Regents

After President Brown made his recommendation, *Regent Policy 5-I, §IV* allowed Professor Churchill to request a hearing before the Board of Regents. Before the hearing, *Regent Policy 5-I, §IV* allowed Professor Churchill to submit extensive written arguments to the Board of Regents.[7]

Regent Policy 5-I, §IV allowed the University administration and Professor Churchill to make presentations to the Board of Regents "based upon the record of the case, including the transcript of the proceedings before the [faculty committee]." After the parties' presentation and "after consideration of all of the information provided to it," the Board of Regents determined that Professor Churchill engaged in conduct that fell below minimum standards of professional integrity and dismissed him from his tenured faculty position.

---

[6] President Brown's May 25, 2007 recommendation is contained in Exhibit 21-G of the trial exhibits. For the Court's ease of reference, President Brown's recommendation is attached as Exhibit D to this Motion.

[7] Professor Churchill's submissions to the Regents are contained in Notebook 11 through Notebook 14 of the trial exhibits.

Legal Framework

Professor Churchill's Second Claim for Relief arises from *42 U.S.C. §1983*, which provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

Colorado state courts have concurrent jurisdiction to entertain claims brought under *42 U.S.C. §1983*. *Espinoza v. O'Dell*, 633 P.2d 455, 460 (1981).

Standing alone, *§1983* creates no substantive rights. *Chapman v. Houston Welfare Rights Organization*, 441 U.S. 600, 619 (1979). Instead, the courts have determined the nature and extent of a defendant's potential liability under *§1983* through a series of judicial decisions. The courts have also determined the defenses available to a defendant through judicial decisions. These decisions provide the legal framework that immunizes the Regents from liability for the alleged conduct described in Professor Churchill's Second Claim for Relief.

I. Quasi-Judicial Immunity

The United States Supreme Court has recognized that there are "some officials whose special functions require a full exemption from liability." *Butz v. Economou*, 438 U.S. 478, 508 (1978). In particular, judicial officers are immune from suit because "the protection essential to judicial independence would be entirely swept away" if lawsuit against judges could proceed upon the premise "that the acts of the judge were done with partiality, or maliciously, or corruptly. . ." *Bradley v. Fisher*, 80 U.S. 335, 348 (1871). The Court reasoned that a judge's errors "may be corrected on appeal, but he should not have to fear that unsatisfied litigants will hound him with litigation charging malice or corruption." *Pierson v. Ray*, 386 U.S. 547, 554 (1967). Stated more directly, judicial immunity prevents judges from being subject to intimidation as they perform their functions. *Pierson*, 386 U.S. at 554.

Judicial immunity is not limited to judges, however, and has been extended to other participants in judicial processes, such as prosecutors and grand jurors. *Imbler v. Pachtman*, 424 U.S. 409, 423 (1976). These people perform functions that are necessary for the functioning of the judicial system, and they receive what has been termed "quasi-judicial immunity." *Butz*, 438 U.S. at 512. When government officials make judgments that are "functionally comparable" to those of judges, quasi-judicial immunity creates an absolute bar to liability. *Butz*, 438 U.S. at 513.

Nor is quasi-judicial immunity reserved exclusively for governmental officials who serve in the judicial branch of a government. Instead, quasi-judicial immunity exists not because of an official's "particular location within the Government but because of the special nature of [his] responsibilities." *Butz*, 438 U.S. at 511. In its leading case, the United States Supreme Court conferred quasi-judicial immunity upon administrative agency officials who participated in a hearing to exclude a commodity company from registration. *Butz*, 438 U.S. at 514-15. In conferring immunity, the Court took noted that "the discretion which executive officials exercise with respect to the initiation of administrative proceedings might be distorted if their immunity arising from that decision was less than complete." *Butz*, 438 U.S. at 515.

After *Butz*, the Tenth Circuit Court of Appeals has extended quasi-judicial immunity to officials serving on panels to determine whether to terminate a government employee or revoke a professional license, even when those officials allegedly violated the plaintiff's constitutional rights. *Saavedra v. City of Albuquerque*, 73 F.3d 1525, 1529-1530 (10th Cir. 1996); *Horwitz v. Colorado State Board of Medical Examiners*, 822 F.2d 1508, 1513-14 (10th Cir. 1987). In a case that is analogous to Professor Churchill's, the Tenth Circuit found that no liability could stem from a career service council's decision to discharge an employee, even though she claimed that the council "improperly discharged [her] in retaliation for her exercise of her right to free speech." *Atiya v. Salt Lake County*, 988 F.2d 1013, 1016-17 (10th Cir. 1993).

Just as the Tenth Circuit has extended quasi-judicial immunity, the Colorado Supreme Court has also determined that a school district's termination of an employee after a contested hearing is a quasi-judicial function. *Widder v. Durango School District No. 9-R*, 85 P.3d 518, 527-28 (Colo. 2004). It explained its analysis:

> Thus, in determining whether a school board is performing a quasi-judicial function, our inquiry must focus on the nature of the governmental decision and the process by which that decision is reached. Quasi-judicial decision making, as it name connotes, bears similarities to the adjudicatory function performed by courts.

Widder, 85 P.3d at 527 (internal citations omitted).

Specifically, where an official applies "preexisting legal standards or policy considerations to present or past facts presented to the governmental body, then one can say with reasonable certainty that the governmental body is acting in a quasi-judicial capacity . . . ." *Widder*, 85 P.3d at 527. This type of decision occurs when a school district decides whether it should terminate an employee who violates the district's code of conduct:

> A school district's decision about whether to terminate an employee who claims that he acted in good faith and in compliance with a conduct and discipline code certainly involves a determination of the rights, duties, or obligations of specific individuals on the basis of the application of presently existing standards . . . to past or present facts.

Widder, 85 P.3d at 527.

Notably, the Colorado Court of Appeals recently reviewed the University's termination of a professor under the same procedures applied in Professor Churchill's case as quasi-judicial action subject to review under C.R.C.P. 106.[8] The Court of Appeals determined that Rule 106 review was available to a faculty member who contended that he was unlawfully terminated, but did not find that the faculty member had carried his burden of proof.

II. Quasi-Judicial Immunity for University Officials

The University is aware of two cases where trial courts in the Tenth Circuit have determined that University officials enjoy quasi-judicial immunity from claims brought after disciplinary proceedings.

A. Hulen v. State Board of Agriculture

Professor Myron Hulen was a tenured professor at Colorado State University. After he provided evidence in an investigation, Professor Hulen alleged that CSU involuntarily transferred him to another department where he would be unable to attract research funds, publish scholarship, or receive salary increases. Professor Hulen filed suit alleging that the transfer was in retaliation for his exercise of protected speech. *Hulen v. State Board of Agriculture*, 98-B-2170, Pages 1-3 (D. Colo. 2001).[9]

---

[8] The Court of Appeals' decision in *Gamow v. University of Colorado* is attached as Exhibit E.

[9] *Hulen v. State Board of Agriculture* is unpublished. A copy of *Hulen* is attached as Exhibit F. Professor Hulen appealed. The Tenth Circuit Court of Appeals recognized that the trial court granted quasi-judicial immunity to some of the defendants, but did not further discuss quasi-judicial immunity. *Hulen v. Yates*, 332 F.3d 1229, 1235 (10th Cir. 2003). .

CSU's faculty manual allowed Professor Hulen to challenge the transfer through a faculty grievance process, at which time CSU bore the burden of proving the propriety of the transfer. *Hulen* at Page 13. The grievance committee found that CSU's administration improperly transferred Professor Hulen, but CSU's provost reversed the grievance committee's decision. CSU's president and governing board upheld the transfer decision. *Hulen* at Page 13.

Professor Hulen sued CSU's provost and president in their individual capacities for their alleged violations of his constitutional rights. The United States District Court for the District of Colorado granted them quasi-judicial immunity from Professor Hulen's claims on the grounds that their judgments were "functionally comparable" to those of judges. *Hulen* at Page 19. Judge Babcock explained:

> Here, the Faculty Manual provides that review of the grievance committee decision may be appealed through the administrative ranks, first to the Provost, then to the President, and finally to the State Board of Agriculture. Each of these entities is provided by the Manual with the appropriate standard of review. Each is functionally comparable to judges, as each is required to exercise a discretionary judgment. In Dr. Hulen's case, Provost Crabtree's and President Yates' involvement with the process was limited to this appellate function. I therefore conclude that Defendants Crabtree and Yates' involvement with the process was as quasi-judicial officers and grant them immunity on that basis.

Hulen at Page 20.

B. Gressley v. Deutsch

Professor Gene Gressley was a tenured professor at the University of Wyoming. After the University of Wyoming's president transferred Professor Gressley to another department, he publicly complained. *Gressley v. Deutsch*, 890 F.Supp. 1474, 1480 (D. Wyo. 1994).[10] A dispute then arose as to whether Professor Gressley had been insubordinate and had misused his position. *Gressley*, 890 F.Supp. at 1481.

The University of Wyoming's president initiated proceedings to terminate Professor Hulen. Under the University's procedures, a Faculty Hearing Committee heard two weeks of testimony before sustaining the charges against Professor Hulen. *Gressley*, 890 F.Supp. at 1481. Professor Hulen appealed the recommendation to the University of Wyoming Board of Trustees, which "after hearing oral arguments, reviewing the record before and findings of the Faculty Hearing Committee . . . sustained the Faculty Hearing Committee's recommendation that Dr. Gressley's employment be terminated for cause." *Gressley*, 890 F.Supp. at 1481.

Professor Gressley brought individual capacity claims against each of the Trustees alleging that they unconstitutionally discharged him in retaliation for his exercise of free speech. The United States District Court for the District of Wyoming granted the Trustees quasi-judicial immunity from suit on the grounds that they were serving in an adjudicatory capacity. *Gressley*, 890 F.Supp. at 1490.

[10] For the Court's ease of reference, *Gressley v. Deutsch* is attached as Exhibit G.

In doing so, Judge Downes construed the United States Supreme Court's and Tenth Circuit's precedents and applied the following test:

> The *Butz* decision granted absolute immunity to administrative officials performing functions analogous to those of judges and prosecutors if the following formula is satisfied: (a) the officials' functions must be similar to those involved in the judicial process; (b) the officials' actions must be likely to result in lawsuits by disappointed parties; and (c) there must be sufficient safeguards in the regulatory framework to control unconstitutional conduct.

Gressley, 890 F.Supp. at 1490-91.

Judicial Function: As to the first factor, Judge Downes readily determined that the Trustees served a judicial function when it heard Professor Gressley's claims:

> [T]he Board of Trustees did not make the determination to hire or fire Plaintiff; its sole purpose was to sit as an appellate body to resolve the dispute generated as a consequence of Plaintiff Roark's administrative decision that Plaintiff should be dismissed. It is hard to imagine a more adjudicative function.
>
> It is also noteworthy that, while the Board of Trustees sustained the Faculty Hearing Committee's determination that Plaintiff be dismissed for cause, it did so as a result of Plaintiff's request, pursuant to University Regulations. It is beyond question that the Board of Trustees' function was similar to those involved in the judicial process.

Gressley, 890 F.Supp. at 1491 (emphasis added).

Likelihood of Litigation: As to the second factor, Judge Downes accurately concluded that there was ample proof that decisions to discharge a tenured professor "would frequently result in damages lawsuits by disappointed parties. *Gressley*, 890 F.Supp. at 1491.

Procedural Safeguards: As to the third factor, Judge Downes determined that "sufficient safeguards exist in the regulatory framework to control unconstitutional conduct." *Gressley*, 890 F.Supp. at 1491. He explained:

> The University Regulations require verbatim records of the Faculty Hearing Committee proceedings to be kept and a written decision of the Faculty Hearing Committee be made.
>
> Moreover, the Board of Trustee's review is specifically limited to the record of these hearings. Furthermore, judicial review of the Board and Faculty Hearing Committee's decision is available pursuant to Wyoming's Administrative Procedure Act . . . and Rule 12 [of the Wyoming Rules of Appellate Procedure].

Gressley, 890 F.Supp. at 1491 (internal citations omitted).

Application to Professor Churchill's Second Claim for Relief

In light of the existing body of law, the individual Regents are immune from Professor Churchill's claim that they discharged him from his employment.

Judicial Function: Under Colorado law, the Regents performed a quasi-judicial function when they heard Professor Churchill's case. When a governmental body applies "preexisting legal standards or policy considerations to present or past facts presented to the governmental body, then one can say with reasonable certainty that the

governmental body is acting in a quasi-judicial capacity . . . ." *Widder*, 85 P.3d at 527. The Board of Regents determined whether grounds for dismissal existed under the *Laws of the Regents*. In doing so, the Regents "applied preexisting legal standards or policy considerations to past or present facts."

In addition, like the University of Wyoming Trustees, the Board of Regents acted in essentially a judicial capacity when it granted him a hearing. Judge Downes correctly noted that it is "hard to imagine a more adjudicative function" than resolving a dispute generated as consequence of a university's decision that it would dismiss a tenured professor. *Gressley*, 890 F.Supp. at 1491.

Likelihood of Litigation: It is beyond dispute that the Board of Regents decision would likely lead to litigation. Dismissal proceedings involve not only pecuniary interests, but also professional reputation. *Butz*, 438 U.S. at 509. This is exactly the type of quasi-judicial decision that the United States Supreme Court had in mind when it observed that "the loser in one forum will frequently seek another, charging the participants in the first with unconstitutional animus." *Butz*, 438 U.S. at 512.

Procedural Safeguards: Finally, the Board of Regents' decision occurred with sufficient procedural protections for the Court to grant quasi-judicial immunity, including: (1) the right to notice of charges; (2) the right to request a hearing before a faculty committee; (3) the right to challenge the participation of a member of the faculty committee; (4) the requirement that the University prove that grounds for dismissal

exist by clear and convincing evidence; (5) the requirement that the University transcribe the hearing; (6) the right to representation by counsel; (7) the right to examine each University witness; (8) the right to present witnesses; (9) the right to present oral and written closing arguments; (10) the right to respond to the faculty committee's findings; (11) the right to request a hearing before the Board of Regents; (12) the requirement that the Board of Regents consider only the evidence in the record; (13) the requirement that the Board of Regents take final action in a public meeting; and (14) the right of judicial review of the Board of Regents' decision under C.R.C.P. 106. Professor Churchill received the full panoply of rights available in judicial proceedings.

Professor Churchill will undoubtedly claim that the safeguards were insufficient because the jury returned a verdict in his favor, but the jury's verdict is not the test by which a court measures judicial immunity. Were it otherwise, quasi-judicial immunity would depend upon the outcome of the lawsuit, but the courts have been clear that the question is whether there are safeguards in the judicial framework designed to control unlawful conduct. *Gressley*, 890 F.Supp. at 1491. If the elements of quasi-judicial immunity exist, a court must grant that immunity as a matter of law independently of the jury's verdict.

Conclusion

The Regents have established that they acted in a quasi-judicial capacity when they heard Professor Churchill's case and terminated his employment. The Regents respectfully request that the Court grant the University immunity as a matter of law from Professor Churchill's Second Claim for Relief.

Dated this 4th day of May, 2009:

OFFICE OF UNIVERSITY COUNSEL

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

Certificate of Service

I certify that I served a true and correct copy of this pleading to Professor Churchill's counsel of record by electronic filing on this 4th day of May 2009:

Robert J. Bruce, Esq.
1875 Lawrence Street
Suite 750
Denver, Colorado 80202

David A. Lane, Esq.
Killmer Lane & Newman, LLP
1543 Champa Street
Suite 400
Denver, Colorado 80202

/s/ *Shirleen Jahraus*