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 7 MARK G. YUDOF

8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA
 10 SAN FRANCISCO DIVISION

12 DAVID A. KESSLER,

13 Plaintiff,

14 v.

15 J. MICHAEL BISHOP, ROBERT DYNES,
 16 MARK YUDOF, "JANE/JOHN DOE",

17 Defendants.

Case No. C 08 5554 PJH

**STIPULATION AND [PROPOSED]
 ORDER CONTINUING STAY OF ACTION**

18 Plaintiff David A. Kessler ("Plaintiff" or "Kessler") and Defendants former Chancellor,
 19 Dr. J. Michael Bishop ("Bishop"), President Emeritus Robert C. Dynes ("Dynes") and President
 20 Mark G. Yudof ("Yudof") (collectively "Defendants") hereby file this stipulation:

21 WHEREAS, Defendant Bishop is the former Chancellor of the University of California,
 22 San Francisco ("UCSF"), which is part of the larger, multi-campus University of California (the
 23 "University"), which is governed by the Board of Regents;

24 WHEREAS, Defendant Yudof is the current President of the University, and Defendant
 25 Dynes is the former President of the University;

26 WHEREAS, Plaintiff Kessler is a tenured faculty member of UCSF and the former Dean
 27 of the Medical School and Vice Chancellor of Medical Affairs at UCSF;

1 WHEREAS, on or about December 12, 2008, Kessler filed the above captioned action
2 before this Court, alleging that Defendants Bishop and Dynes terminated Kessler from his
3 positions as Dean and Vice Chancellor in retaliation for Kessler’s alleged protected whistleblower
4 activity and asserting a cause of action against Defendants pursuant to 42 U.S.C. § 1983;

5 WHEREAS, the controversy pending in this Court involves overlapping issues and arises
6 out of the same facts and circumstances as the controversy currently pending in a previously-filed
7 internal University administrative proceeding, specifically a grievance that Kessler filed on or
8 about January 8, 2008 before the UCSF Division of the University of California Academic Senate
9 Committee on Privilege and Tenure (“Privilege & Tenure Committee”), in which Kessler
10 similarly alleges that Defendants Bishop and Dynes terminated Kessler from his positions as
11 Dean and Vice Chancellor in retaliation for Kessler’s protected, whistleblower activity;

12 WHEREAS, the Hearing Subcommittee of the Privilege & Tenure Committee held
13 evidentiary hearings on May 20-21, June 1, July 13 and July 15 at which the committee heard
14 testimony on behalf of both Kessler and the University, and additional hearing dates are presently
15 set on September 22 and October 16 (the “Administrative Hearing”). After the conclusion of the
16 Administrative Hearing, a committee recommendation and subsequent final decision will be
17 issued regarding Kessler’s grievance. The final outcome of that Administrative Hearing, which
18 could result in assertions of rights to judicial review of that outcome, will likely clarify and focus
19 some or all of the legal and factual issues that are before this Court, and may result in arguments
20 over preclusive effect and/or mootness as to all or part of each party’s claims and defenses in this
21 action before this Court;

22 WHEREAS, staying this action until a final decision is issued regarding Kessler’s
23 grievance will result in an economy of judicial resources and avoid unnecessary duplication of
24 effort by the Court and the parties;

25 WHEREAS, this Court has authority and discretion to stay this action pursuant to:

- 26 a. The Court’s inherent authority to control and manage litigation (*see, e.g., Johnson*
27 *v. Mammoth Recreations Inc.*, 975 F.2d 604, 607 (1992) (“The district court is
28 given broad discretion in supervising the pretrial phase of litigation.”));

- 1 b. The abstention doctrine set forth in *Younger v. Harris*, 401 U.S. 37 (1971) and
2 *Gilbertson v. Albright*, 381 F.3d 965 (9th Cir. 2004); and
3 c. Traditional principles of equity and comity;

4 WHEREAS this Court previously entered an Order, on March 16, 2009, staying the action
5 until 10 days after the conclusion of the Administrative Hearing and/or six months from the date
6 of the stipulation requesting the stay, whichever date shall occur first, and such stay will expire
7 prior to the next hearing date set by the Privilege & Tenure Committee on September 22;

8 NOW, THEREFORE, THE PARTIES HEREBY STIPULATE THAT:

9 1. All pending dates in this action, including all matters set forth in the Court's
10 December 12, 2008 Scheduling Order and the date by which Defendants must respond to the
11 Complaint, be VACATED and the litigation be STAYED until 10 days after a final decision is
12 issued regarding Kessler's grievance before the Privilege & Tenure Committee, and/or six months
13 from the date of the filing of this stipulation, whichever date shall occur first;

14 2. Each party reserves the right to request early termination of the stay on 30 days
15 written notice.

16 Dated: August 14, 2009

FOLGER LEVIN & KAHN LLP

/s/ *Karen J. Petrulakis*

Karen J. Petrulakis
Attorneys for Defendants
J. MICHAEL BISHOP, ROBERT C. DYNES and
MARK G. YUDOF

20 Dated: August 14, 2009

/s/ *Thad M. Guyer*
(as approved 8/13/09)

23 Anthony Bothwell
24 Thad M. Guyer
Attorneys for Plaintiff DAVID A. KESSLER

25 PURSUANT TO STIPULATION, IT IS SO ORDERED,
26 September 4

26 Dated: ~~August~~ _____, 2009

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