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 6 MARK YUDOF

7  
 8 UNITED STATES DISTRICT COURT  
 9 NORTHERN DISTRICT OF CALIFORNIA  
 10 OAKLAND DIVISION

11 DAVID A. KESSLER,

12 Plaintiff,

13 v.

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

17 Defendants.

Case No. 4:08-cv-05554 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;  
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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 (“Hearing  
13 Subcommittee”) held evidentiary hearings on May 20, May 21, June 1, July 13, July 15,  
14 September 22, and October 16 at which the Hearing Subcommittee heard testimony on behalf of  
15 both Kessler and the University (the “Administrative Hearing”).

16           WHEREAS, the Hearing Subcommittee issued a recommendation regarding Kessler’s  
17 grievance to the current Chancellor of UCSF, Chancellor Susan Desmond-Hellman, on January  
18 11, 2010;

19           WHEREAS, the administrative proceeding is not yet complete because the parties are  
20 awaiting a final decision from Chancellor Desmond-Hellman regarding Kessler’s grievance. The  
21 final decision, which could result in assertions of rights to judicial review of that outcome, will  
22 likely clarify and focus some or all of the legal and factual issues that are before this Court, and  
23 may result in arguments over preclusive effect and/or mootness as to all or part of each party’s  
24 claims and defenses in this action before this Court;

25           WHEREAS, staying this action until Chancellor Desmond-Hellman issues a final decision  
26 regarding Kessler’s grievance will result in an economy of judicial resources and avoid  
27 unnecessary duplication of effort by the Court and the parties;

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

- 1 a) The Court’s inherent authority to control and manage litigation (*see, e.g.,*  
2 *Johnson v. Mammoth Recreations Inc.*, 975 F.2d 604, 607 (1992) (“The district  
3 court is given broad discretion in supervising the pretrial phase of litigation.”));  
4 b) The abstention doctrine set forth in *Younger v. Harris*, 401 U.S. 37 (1971) and  
5 *Gilbertson v. Albright*, 381 F.3d 965 (9th Cir. 2004); and  
6 c) Traditional principles of equity and comity;

7 WHEREAS, this Court previously entered an Order on March 16, 2009 and another Order  
8 on September 4, 2009 staying the action until ten days after a final decision is issued regarding  
9 Kessler’s grievance before the Privilege & Tenure Committee, and/or or six months from the date  
10 of the stipulation requesting the stay, whichever date shall occur first;

11 NOW, THEREFORE, THE PARTIES HEREBY STIPULATE THAT:

12 1. To allow Chancellor Desmond-Hellman time to issue a final decision regarding  
13 Kessler’s grievance, the September 4, 2009 stay shall continue unabated, and all pending dates in  
14 this action, including all matters set forth in the Court’s December 12, 2008 Scheduling Order and  
15 the date by which Defendants must respond to the Complaint, be VACATED and the litigation be  
16 STAYED until 120 days after the Court enters this Order.

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

19 Dated: March 11, 2010

CROWELL & MORING LLP

21 /s/ **Karen J. Petrulakis**

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

24 Dated: March 10, 2010

25 /s/ **Thad M. Guyer**  
(as approved 3/10/10)

26 Thad M. Guyer  
27 Attorneys for Plaintiff DAVID A. KESSLER

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PURSUANT TO STIPULATION, IT IS SO ORDERED,

Dated: March 15, 2010

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