

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Case No. 08-cv-\_\_\_\_\_

MURRY L. SALBY,

Plaintiff,

vs.

UNIVERSITY OF COLORADO, and  
PROVOST PHILLIP DiSTEFANO,

Defendants.

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**COMPLAINT AND JURY DEMAND**

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Plaintiff, Murry L. Salby, by and through his attorney, Robert M. Liechty of CROSS & LIECHTY, P.C., brings the following complaint:

1. Plaintiff Salby was a resident of Adams County, Colorado, who now resides in Australia. He had been a tenured professor in the Department of Atmospheric and Oceanic Sciences with defendant University of Colorado since 1997 and a tenured professor in predecessor departments since 1988. Defendant University of Colorado has its principal place of business in Boulder, Colorado. Defendant DiStefano was the Provost of the University during the complained of activities.

2. This Court has jurisdiction over this matter because plaintiff Salby claims that he was forced to resign in retaliation for the exercise of his first amendment rights and that the University violated his fourth amendment rights. Plaintiff also asserts that this Court has jurisdiction over the corresponding pendant state tort.

3. Under Professor Salby's employment duties as a professor, he obtained research grants in the name of the University of Colorado and held responsibilities for performing the attendant research. During his career at the University, Professor Salby attracted over \$10 million in research funding, upon which the University charged overhead of approximately 50%.

4. Between 1997 and 2000, Professor Salby brought grievances involving the departmental chair, Peter Webster. The grievances stated that, among other offenses, the University had on separate occasions diverted from Professor Salby's federal research projects some \$42,000 and some \$56,000, which monies were required to meet the responsibilities of those grants. Those funds were contractually committed to Professor Salby's federal research, for which he held primary responsibility. These funds were diverted from federal research projects during 1997 when Professor Salby was on sabbatical leave overseas. The University ignored Professor Salby's grievances for years, leaving the diversion of federal research funds uncorrected. Consequently, Professor Salby's responsibilities to the respective federal grants could not be met. Through normal reporting procedures, Professor Salby eventually advised the National Science Foundation of the circumstances and the matter was forwarded to the United States Inspector General's Office, who opened a criminal investigation of the University. The investigation resulted in the above-referenced funds being released to the research projects overseen by Professor Salby.

5. With the released funds, Professor Salby purchased a computer that had been required to fulfill obligations to one of the above grants. Because of the University's actions, that project was at that time approximately 3 years behind schedule. Soon after the needed equipment was acquired, the computer's air conditioning failed, which the University was

obligated to provide under its overhead agreement. The University left the failure unremedied for half a year, further delaying that research project because the computer could not be operated properly—the affected project had already been delayed beyond the term of the grant. About a year later, the University discontinued its obligation to maintain software licenses for the computer, which were essential to operate the computer as intended. This discontinuation rendered the computer unusable for the project’s purpose.

6. During 2001, Peter Webster resigned as departmental chair and, a year later, he announced his departure from the University as well. At nearly the same time, Webster, who figured centrally in Professor Salby’s grievances, lodged with the University false allegations of research misconduct against Professor Salby. The allegations were incorporated into Professor Salby’s personnel file without providing Professor Salby information regarding the substance of the allegations nor an opportunity to correct them (if that would have been necessary).

7. At about the same time, the National Science Foundation received a similar set of allegations. On the basis of these false allegations, the National Science Foundation opened a scientific investigation regarding a possible conflict of interest involving the outside work of Professor Salby. Professor Salby complied with all relevant policies.

8. From December, 2006, through August, 2007, Professor Salby was on a second sabbatical leave outside the United States. This leave was approved by the University and conducted pursuant to University policy. Prior to leaving, Professor Salby filed a proposal to continue the funding of his research staff who would remain at the University to meet the responsibilities of Professor Salby's federal research projects. The proposal’s submission was, without cause, blocked by the University. While Professor Salby was overseas, the University

gave his research staff two weeks notice that they would be terminated. The University's actions resulted in the resignation of Professor Salby's research assistant, who Professor Salby had developed with federal research funds and who, for two decades, had overseen the operation of Professor Salby's laboratory, his computers, and his federal research projects.

9. Professor Salby returned to the University at the end of August, 2007. On approximately October 18, 2007, the University and Mr. DiStefano caused an unreasonable seizure of Professor Salby's laboratory, which had been developed by his federal research grants. The University provided no rationale for this seizure. The seizure prevented Professor Salby from performing the research duties of his employment. It also prevented him from meeting his responsibilities to existing federal grants, forcing the default on those grants. The University's seizure of those materials likewise obstructed the publication of research findings for those grants, including findings from prior grants that were still in the review process.

10. Professor Salby repeatedly requested his seized computer files, which contained professional records spanning his 30-year career. Among the seized materials are teaching records, records from federal research, and professional correspondence to colleagues, to scientific journals, and to funding agencies for whom Professor Salby served as a reviewer. Likewise seized were files from Professor Salby's graduate text, a new edition of which has been invited by two international publishers. Defendants' refusal to release Professor Salby's files undermined his career through subsequent teaching, subsequent research, and the publication of a new addition to his book.

11. The seizure also obstructed Professor Salby's teaching. The physical contents of his office were put into a small storage area that could not accommodate them or serve as an office. The office contents (some 50 cartons) occupied half of the storage area which made it impossible to locate

materials that were needed for Professor Salby to fulfill his employment responsibilities. Other materials, including personal property, records supporting Professor Salby's teaching, and U.S. Mail were made inaccessible. The confiscation of Professor Salby's facilities, which were developed from his federal grants, prevented him from applying for new grants, from fulfilling teaching responsibilities, and from meeting his other duties as a professor.

12. Following the confiscation of Professor Salby's laboratory, students tried to enroll in his class for the spring of 2008, but defendants prevented them from enrolling.

13. Professor Salby's employment contract spans the nine-month academic year. During the three months of summer, when not employed by the University, Professor Salby is free to generate income through other sources. During the academic year the University's external-work policy allows Professor Salby to devote 20% of his time to outside activities that generate supplemental income. By undermining his reputation for meeting research obligations and for presenting the results thereof through publication and presentation at scientific conferences, defendants' actions have damaged Professor Salby's ability to secure funding during his nine-month appointment and during the summer, and have also damaged his ability to generate outside income under the University's external-work policy.

14. Defendants' obstruction of his research and teaching has damaged Professor Salby as follows: (1) by preventing him from earning his salary as a professor through fulfillment of his contractual employment duties; (2) by impairing his ability to attract research funding and, hence, to participate in his field; (3) by impairing his ability to generate outside income during his nine-month appointment, pursuant to the provisions of his contract and University policy; and (4) by impairing his ability to generate income during summer months

when he is not employed by the University. Defendants' obstruction of Professor Salby's employment has likewise damaged his capacity for future earning by preventing him from fulfilling research obligations, from acquiring new research funding to maintain technical staff whom Professor Salby developed with two decades of federal support, and from publishing the findings of federally-funded research (a contractual obligation of funds that were awarded to the University). Defendants' actions have also damaged Professor Salby by preventing him from presenting the findings of federally-funded research at international conferences, even conferences at which those findings and Professor Salby's participation were invited. These obstructions of his professional responsibilities have damaged Professor Salby's reputation, upon which his future livelihood rests.

15. The confiscation of Professor Salby's facilities, which support his research and teaching, effectively prevented Professor Salby from meeting his employment duties and made his employment situation untenable. A reasonable person in Professor Salby's position would have had no choice but to resign and, thus, the above actions amount to a constructive discharge.

**FIRST CLAIM  
RETALIATION AGAINST EXERCISE OF FIRST AMENDMENT RIGHTS**

16. Plaintiff incorporates the above allegations herein.

17. The confiscation of Professor Salby's laboratory, personal effects, and professional records was undertaken in retaliation for the grievances that Professor Salby filed to recover federal research funds that had been diverted which, in turn, resulted in the criminal investigation of the University by the Inspector General's Office. Such retaliation violates Professor Salby's First Amendment rights, for which a remedy is provided under 42 U.S.C. §§1983 and 1988.

18. This unlawful retaliation caused damages as stated above.

**SECOND CLAIM  
VIOLATION OF FOURTH AMENDMENT RIGHTS**

19. Plaintiff incorporates the above allegations herein.

20. Seizure of Professor Salby's laboratory and personal effects therein was unreasonable and violated Professor Salby's fourth amendment rights, for which a remedy is provided under 42 U.S.C. §§1983 and 1988.

21. This unlawful seizure caused damages as stated above.

**THIRD CLAIM  
PUNITIVE DAMAGES**

22. Plaintiff incorporates the above allegations herein.

23. The actions described above were done with deliberate disregard for Professor Salby's rights and, therefore, defendant DiStefano is liable for punitive damages under federal law.

**FOURTH CLAIM  
VIOLATION OF C.R.S. §24-50.5-103**

24. Plaintiff incorporates the above allegations herein.

25. The above retaliation constitutes a violation of C.R.S. §24-50.5-103. Ninety days has passed since Professor Salby sent to the University his notice of intent to sue letter under §24-10-109 and, therefore, this Court has subject-matter jurisdiction over this pendent state tort.

26. As a result of this retaliation, plaintiff has been damaged as stated above.

WHEREFORE, plaintiff Murry Salby respectfully requests that this Court enter judgment in his favor and for interest, costs, attorney's fees pursuant to 42 U.S.C. §1988, and such other relief as this Court may deem proper.

**PLAINTIFF REQUESTS TRIAL TO A JURY.**

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